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## THE LAW SOCIETY

CLARITY was represented at the May meeting of the Business Improvement Committee of The Law Society.

The committee were already familiar with CLARITY but showed considerable interest in the details of our work and in our problems. They would like to support us and individual members made helpful suggestions. Two have since joined.

They thought that The Society and CLARITY should work together and suggested in particular that we help draft the new edition of the conveying Conditions of Sale. There should be more detailed news of these developments in the next issue.

They made various suggestions and are interested in raising the profile of our campaign. They are putting us in touch with the Training Committee.

The committee's support for our Interpretation Bill should be of help in bringing it before Parliament.

We have been asked to attend meetings from time

Continued on back page

## The ANNUAL MEETING

will be held at The Law Society's Hall, 113 Chancery Lane, London WC2 from 7.30pm until about 9pm on Friday, 6th October. There is of course no charge for attendance and visitors are welcome.

It will be preceded at 6.30pm by a buffet dinner; charges are £10 for members and £15 for visitors.

An application form for members accompanies this Newsletter; would anyone else interested please contact Justin Nelson at the address on the back page?

If you are unable to come but would like to make suggestions or comments about the future of CLARITY, please write in.

Last year there was a vote against seeking recognition by The Law Society as a Special Interest Association, at least for the time being. (The issues were discussed in Newsletters 10 and 11 (September and December 1988)). The majority at the meeting - though conscious it was only a small part of CLARITY - thought we would be more effective if seen to be separate from the establishment. The minority thought we would have more influence on a conservative profession if seen to have the backing of authority. Is it time for a change of mind?

## SUBSCRIPTIONS

Subject to ratification at the annual meeting, the subscription for the year beginning 1st September 1989 will be £8.

This increase, the first since CLARITY was founded in 1983, is needed to cover the increasing activities as well as rising costs.

No additional payment will be sought from those who joined from January to August 1989 at the old rate. However, those whose 1988 subscriptions were only paid this year are politely but firmly invited not to excuse themselves.

## SEMINARS

### CLARITY/TRENT

Our Nottingham seminar on the drafting of wills, organised jointly with Trent Polytechnic, was a success. The day was over-subscribed and those who attended found it interesting and useful. Trent have asked us to repeat it but no definite plans have yet emerged.

CLARITY had no hand in the two morning lectures, though several members attended.

John Thurston, senior lecturer at the Polytechnic, gave a detailed but easy-to-follow talk on the legal points to be considered when drafting a will. This was pitched at just the right level for the busy non-specialist some years past the final exams.

He was followed by Dr Sheila Foster, principal lecturer. Her view of the taxation aspects was scholarly and a little harder to follow but more stimulating than that sounds.

In the afternoon, Dr Michael Arnheim on behalf of CLARITY warned against many drafting traps, lacing his talk with exercises intended to elicit safe alternatives. He ended, sadly short of time, with a summary of plain English principles.

This was our third collaboration with Trent. In previous years we have covered commercial leases and commercial conditions of sale. Are there any preferences for future topics?

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### LOWE & GORDON Drafting seminar

a report by Brian Bowcock

Most practising lawyers have too little time, inclination or expertise to tackle - far less achieve - concise and efficient drafting.

Grahame Gordon, a CLARITY member, supplies a solution. Backed by the widely-experienced Peter Camp, he provided a varied and stimulating day's activity: incisive instruction interspersed with drafting exercises. Positive (how to go about it and how to put it) and negative (pitfalls to avoid) were both covered.

This professional course gave practical help which amply justified the cost. I give an unqualified recommendation to attend its repeats and (if this one is anything to go by) any other Lowe & Gordon course in your field.

This course, which will be repeated in London on 1st November, costs £200 net of VAT. CLARITY members pay £10 less. Details can be obtained from Grahame Gordon on 493 2428.

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### DEVELOPING THE COMMERCIAL LEASE OF THE FUTURE

This one-day seminar by Legal Studies & Services Ltd was held on June 5th.

As its theme was the content, rather than the style, of leases, no CLARITY reviewer attended. However, we understand that the course reflected the speakers' enthusiasm for plain English and used D.J. Freeman & Co's latest standard draft as basis. This lease, which represents a compromise between the traditional and clear drafting elements in the firm, is well-spaced and well-headed and punctuated, though sparsely.

CLARITY is happy to welcome as members speakers Susan Hall and Paul Clark, both partners in D.J. Freeman.

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### QUEEN MARY COLLEGE 21st - 23rd September

QueenMary's 6th annual residential course on legal drafting will be held at Girton College, Cambridge under the directorship of Professor Roy Goode. It carries 10 continuing education points.

The emphasis is on plain English and clear document structure.

The format is a mixture of lectures, panel sessions and group discussions. Participants draft short documents to a given brief and revise and improve specimens. They can choose between the conveyancing, banking and commercial fields. There will also be opportunities for informal discussions with the speakers, most of whom are CLARITY members.

Delegates will be accommodated in pleasant surroundings at Girton College and working sessions will be held at the Graduate Centre on the banks of the Cam.

Registration begins at 4pm on the Thursday and the course ends after lunch on Saturday. There is a dinner on Friday night.

The cost is £275 residential, £250 otherwise, with £90 spouse's fee. Further details and application forms are available from Hanna Wine on 975 5555.

## LETTERS: THE INTERPRETATION BILL

From Professor J.E. Adams  
Queen Mary College, University of London  
Mile End Road, London E1 4NS

I would like to comment on the draft in the latest Newsletter.

### Preamble

I hope that if the Bill goes forward you will address the constitutional aspects. There must be a knowledgeable public lawyer who could be persuaded to advise. My guess is that the exact reproduction of the usual formula is not essential for validity. My suggestion is to try "The Queen with the advice and consent of the Lords and Commons assembled in this present Parliament enacts that:-"

This gives effect to various "principles" of modern drafting:

- (i) Active voice not passive;
- (ii) "by [the advice...]" replaced by "with...";
- (iii) "assembled" moved to substitute current practice for Norman-French syntax;
- (iv) "as follows" removed in favour of "that".

These proposals are not equally significant; none is worth going to the stake (moving to the Tower?) for.

I would like to see the attempt made at using a new form of preamble in the initial Bill submitted for enactment, even if a late "retreat" in favour of the traditional formula proves necessary.

### Clause 1

I am not taken with the present definition of "document" but have not yet hit upon an alternative; I will keep trying. The solution may be not to try to define it. An alternative is "instrument", as used in the Law of Property Act, although this is a rather old-fashioned word.

I would like to see the present clause split in two. The first limb is obviously a definition, but the second one is more of a substantive provision, so one is in danger of a "stuffed definition". Dividing the two elements avoids this.

### Clause 2

Why switch from the present tense of the first three provisions to the future tense of the remainder? I urge the use of the former throughout; see the good example set by Sir Benjamin Cherry in section 61 LPA!

Equally, I question the "gear change" or inconsistency between "any reference will be to" (sub-clause 5), "will be construed as a reference to" (sub-clauses 6 and 8) and "Any reference to ... will be a reference to" (sub-clause 9). On a similar point, the indefinite article "a" in sub-clauses 3 and 10 is replaced by "any" in sub-clauses 5 to 8, 9 and 11. On the latter, I suggest "a" throughout and on the former I think the first usage is the best on balance.

I don't much care for "vice versa" in (2) and would prefer "Singular ... plural and plural words include the singular" but I don't feel strongly about the point.

The more I looked at sub-clause 3, the more convinced I became that the whole topic of notices deserves a separate section. I also urge strongly that the section should only be a residuary or "fall-back" provision so that other arrangements can be agreed.

On the detail I have a number of comments. "Lodging" is not easy; does it mean delivery to the sender's Document Exchange or to the intended recipient's Document Exchange? Whilst all the exchanges are affiliated their rules are not uniform; two users may not be members of the same Exchange. Many of the rules govern issues like (deemed) time of service, too. Lastly, I think "the ordinary course of ... document exchange" is, at the lowest, awkward and, more seriously, meaningless.

I hope "will be deemed" is avoided, either becoming "will be treated" or, better, being replaced with "Service will be taken to have been effected at the time ...". However, deemed service at a time is rather ambitious and "on the day" may be safer.

There is a policy element in sub-clause 8. Suppose an Act of 1962 has been amended by one of 1986, and a 1988 deed refers to the 1962 Act; treating that as a reference to the 1986 Act creates no problem. Would the parties always want it also to

cover a 1990 amendment? I accept that is how the present Interpretation Act works out, but I wonder how clearly that is understood. The Use Classes Order change illustrates the problem; see my note at [1987] Conv 243. That prompts the further thought of whether reference to an Act includes a reference to subordinate legislation. I would support that extension and surely "re-enacted" is as important as "amended".

The thinking behind sub-clause 11 escapes me, and I would oppose it as it stands. By a side-wind, it would seem to abolish the need for consideration. That may be no bad thing, but it should not be done surreptitiously in this way! Secondly, it would double limitation periods overnight (and doubtless increase indemnity premiums!) for some purpose I haven't worked out. Even if the provision stands, it should not be retrospective - again, see s.61 LPA on this.

Finally, the omitted provisions of that section (61) should be brought into this legislation.

#### Clauses 3 and 4

Again, I plead for present tense - "does not extend" and "comes into force".

I know how much easier it is to criticise a draft than to start with a blank sheet. I constantly find "horrors" in documents I have used to illustrate points in drafting lectures and classes. So I apologise to whoever has prepared the present draft for my criticisms. I strongly support the proposal and hope it comes to success.

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**From A.J.L. Glover**  
**Company Secretary, Inco Alloys International**  
**Holmer Road, Hereford HR4 9SL**

I have two suggestions in relation to the proposed Bill as published in the March Newsletter of Clarity.

1. I believe the final words of clause 2(8) should read "and as later amended or re-enacted".

2. I suggest an additional clause to eliminate the need for expressions of the type "but without prejudice to the generality of the foregoing". I propose the following but expect the wording could be improved:-

"The words 'includes' and 'including',

when preceding a list of members of a given class, do not limit the generality of that class so as to exclude members other than those stated."

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**From Brian Bowcock**  
**Solicitor, Durrad Davies & Co**  
**25 Barker St, Nantwich, Cheshire CW5 5EN**

Although it has been said that "document" includes a letter this is not commonly understood. It would be a good thing to make the scope of the Bill clear, as by "letters and other private documents".

On the basis of the usual meaning of words, clause 1 of the Bill gives far too restrictive an impression. In particular, "store" is limited and should be supplemented at least by "or transmit".

"It" in sub-clauses 2(3)(i) to (iii): The clause begins "In any document..." and the "it" must be taken to refer to that document. However, it is another document - that referred to in the document under analysis - which is to be served.

A possible substitution for 2(6): "Any reference to a trustee or other office holder or property owner will be construed as including successors."

A possible 2(12): Operative provisions may be identified by symbols.

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**From Chris Elgey**  
**The College of Law**  
**St Catherines, Guildford, Surrey GU3 1HA**

The only suggestions I can make apart from what you already have are:

"Conducting media" includes sewers, drains, water courses, pipes, cables, wires and other channels;

"Securities" includes shares, stocks, units, debentures, loan stock, deposits, receipts, bills, notes and warrants;

Where one person gives an indemnity to another, the indemnity covers costs, charges, losses, expenses and liabilities.

There are problems with all these so ignore them if you wish. I am, however, quite interested in the indemnity point. Is there any difference between costs, charges and expenses?

**The Interpretation Bill**  
(note)

A revised version of the Bill, incorporating many of the suggestions made for improvement of the first draft as well as some new material, appears on pages 6 and 7. The numbering below refers to this second draft; the letters on pages 3 and 4 of course use the clause numbering of the original.

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Preamble: This has been redrafted as suggested by Professor Adams. Is there a constitutional lawyer in the house?

1: Several people expressed reservations about the definition of document but no satisfactory alternative has emerged. Professor Adams' hesitant proposal - instrument - is also open to argument, and is out of keeping with the spirit of the Bill. We have tried "text" instead of "document", as it seems simpler, applying the Bill, without definition, to any words.

2: We hope to offer in the next issue a clause permitting extension of the Act, by statutory instrument or otherwise, to increase flexibility. Suggestions are invited.

3: Perhaps this clause is more complex than is needed; the purpose is to dispense with "from the date hereof" and similar expressions.

4: We have followed Professor Adams' suggestions about style, except for the use of "vice versa"; although this is foreign, it has become part of the language and would be understood by anyone reading the Act.

4(1) has been expanded to allow for companies.

4(7): With respect to Mr Bowcock, we did not accept his suggestions for the clause. "Trustee" - if a trustee is an office-holder - is redundant. "Including successors" changes the meaning by retaining the reference to the original incumbent and adding, rather than substituting, his successors. Property owners are a different breed: landlords want references to "tenant" to include the original tenant and his successors; the Law Commission have recommended change but that is a matter of substantive law, out of place here.

4(9) has been recast to avoid the anomalies but a decision is needed on the policy element. Do you have any views as to whether Acts should be interpreted in their form at the date of the document (as in this draft) or as later amended or re-enacted (as in the Interpretation Act 1978)? The first seems fairer and more certain; Justin Nelson prefers the second, as being easier to establish, without research into earlier versions of the statute.

4(10) incorporates Mr Glover's proposal, though differently phrased.

The old 2(11) has been omitted.

5/6: Again, we have taken Professor Adams' advice, allocating a separate part for service of documents and expanding on the provisions. The proviso in clause 1 allows other arrangements. Brian Bowcock's grammatical point has been met by the insertion of the words "of a document" in the introductory line.

7: This is a new section, still incomplete.

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Before adopting Ms Elgey's suggestions, we would appreciate readers' views about whether they are necessary. Can we rely on the ordinary meaning of "conduit", "security" and "indemnity"? And even if so, would it be helpful to add the definitions to encourage the doubtful?

# INTERPRETATION OF PRIVATE DOCUMENTS BILL

## A BILL

To simplify the drafting of documents by establishing standard definitions.

The Queen, with the advice and consent of the Lords and Commons assembled in Parliament, enacts that:

### Application

1. This Act applies to all text dated after \_\_\_\_\_ 19\_\_ , except to other Acts and subordinate legislation, unless a different intention is clear from the text or from external evidence.
2. (Subordinate legislation)

### Definitions

3. (1) Text whose date is not apparent on the face of it is dated:
  - (a) If its wording is the prerogative of the sender, when it is transmitted to another person; and
  - (b) In any other case, when a binding agreement as to its wording is reached.
- (2) "Today" means the date of the text.
4. (1) Words of one gender include any other gender and references to a person include a corporation;
  - (2) Singular words include the plural and vice versa;
  - (3) The measurement of distance is in a straight, horizontal line;
  - (4) Subject to section 3 of the Summer Time Act 1972, a reference to time is to Greenwich Mean Time;
  - (5) "Working day" is any day other than Saturdays, Sundays and public holidays and lasts from 9.30am to 5pm;
  - (6) "Month" means calendar month;
  - (7) A reference to an office-holder is a reference to the holder of that office for the time being;
  - (8) A duty imposed is to be performed and a power conferred is exercisable, in each case from time to time;
  - (9) A reference to an Act of Parliament or to subordinate legislation is a reference to it as amended or re-enacted when the text is dated;
  - (10) A reference to a block of text by citing words at the beginning and end is a reference to the text including those words;
  - (11) A commitment by more than one person is joint and several.

### Service of documents

5. A provision for service of a document is satisfied by:
  - (a) Delivering it by hand;
  - (b) Posting it by ordinary post, properly addressed and with the first class postage pre-paid;

- (c) Sending it properly addressed by recorded delivery or registered post;
- (d) Lodging it properly addressed according to the rules of a document exchange of which the sender is a member and which is or is affiliated to an exchange of which the recipient is a member; or
- (e) Sending it by facsimile to the recipient's published number and receiving a satisfactory transmission report, with the original marked by the machine.

6. A document is taken to have been served, unless the contrary is shown:

- (a) Under clause 5(a) - on delivery, if more than two hours before the end of the working day, but otherwise on the next working day;
- (b) Under clause 5(b) - on the second working day after the next collection from the postbox;
- (c) Under clause 5(c) - on acceptance at the address shown;
- (d) Under clause 5(d) - on the second working day after the next collection from the sender's exchange; and
- (e) Under clause 5(e) - at the end of transmission, if more than two hours before the end of the working day, but otherwise on the next working day.

### Conveyances

7. In any conveyance (as defined by the Law of Property Act 1925):

(a) The conveyance of part of a building, divided horizontally, includes only

the insides of the rooms, corridors and cupboards within the boundaries of that part, plaster on the walls, ceilings, internal walls which are not load-bearing, floorboards, doors, door frames, windows, window frames, shop fronts, and conduits which are inside the boundaries and serve that part of the building exclusively;

(b) Consent is to be in writing and not unreasonably withheld;

(c) A duty not to do something is a duty not to permit others to do it;

(d) A duty to insure a structure is a duty:

(i) To insure (so far as cover is reasonably available)

against fire, explosion, storm, flood, ground movement, malicious damage, civil disorder and impact by vehicles, animals, aircraft and things falling from aircraft,

in its full reinstatement value, including all necessary professional fees and the removal of debris,

and for loss of rent exceeding £1,000 a year under any single letting; and

(ii) To serve on the person to whom the duty is owed, as soon as they are received, copies of the policy and the receipts for the premiums;

(e) A duty to maintain is a duty to keep the property clean, tidy, repaired and decorated to a reasonable standard similar to that at the date of the conveyance;

### General

8. This Act does not extend to Scotland or Northern Ireland.

## PRECEDENT LIBRARY

The library is growing slowly and further contributions would be welcomed. Copies can be obtained, by members only, by sending s.a.c. and payment (to cover photocopying charges only) 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 no new items this issue) is:

Agency agreement	Katharine Mellor	.90
Commercial lease	Justin Nelson	£1.20
Commercial lease	Mark Adler	.40
Computer software licence	Justin Nelson	.40
Contract for sale of house	Mark Adler	.10
Contracts for sale of house	Justin Nelson	.....
Registered		.20
Unregistered		.20
Contracts for sale of business		.....
Registered land		.40
Unregistered land		.40
Divorce petition	Mark Adler	.10
Enquiries before contract	Justin Nelson	.....
General		.50
Additional:		.....
Residential land		.10
Business goodwill		.30
Commercial land		.10
Existing leasehold		.20
Farmland		.10
Land subject to a tenancy		.30
Licensed premises		.20
New residential lease		.20
New business lease		.10
Sale under continuing power of attorney		.10
Res freehold (questionnaire to V)	Mark Adler	.50
Res leasehold (questionnaire to V)		.50
Land Registry transfer		.10
Partnership deed	Brian Bowcock	.60
Personal reps' advert under s.27 TA 1925	Alan Macpherson	.10
Residential flat lease	Justin Nelson	.90

## REFERRALS REGISTER

This list is open to any solicitor member willing to accept referrals of clients from other members.

Please write to the Newsletter if you would like to be included.

<u>Solicitor</u>	<u>Area</u>	<u>Telephone</u>	<u>Field</u>
Richard Ablitt	Croydon	01-681 0139	General civil but not debt collection
Richard Castle	Plymouth	0822 853534	Anything non-contentious
Mr A.J.B.Monds	Yeovil	0935 23407	Company/commercial
David Pedley	Keighley, W. Yorks	0535 32700	General but especially conservation, public enquiries and private prosecutions
Ian Torrance	London WC2	01-242 6154	General, but unusual litigation in particular



## COMPUTER REVIEW by Mark Adler

**STYLEWRITER: The plain English Editor**  
Editor Software Pty Ltd (Tel: 0454 318567)

£195 + VAT with discounts for multiple sales  
A 15% discount is offered to CLARITY members

Early in the computer revolution my father speculated that thinking machines would replace the courts. Of course, they cannot: the range of possible facts is infinite and judgment a delicate art. How could this be reduced to the logic of a computer?

So it is with language. English is irregular and powerful and it seems absurd that a desktop computer program could improve the style in which it is written. Yet Stylewriter has made an impressive attempt.

It is designed for IBM PCs and works with several word-processing systems. If your files are stored in ASCII (so that you can read them from the instruction "C>type filename"), Stylewriter will cope; however, it is not fully compatible with all such programs and if it does not recognise your formatting instructions the presentation will be unsatisfactory. It does work directly on Microsoft Word, Multimate and Wordstar.

Stylewriter is a simple program to use. I imagine that anyone familiar with a word processor could be taught it in less than an hour. Yet it gives an interesting analysis of your prose and many tips for improving it.

It takes longer learning from the manual, although that is (as you would expect) clearly written. This is because it is not just a guide to the program but, interwoven with those instructions, a useful course in producing clear English.

After you have prepared your document in the word-processing program and have stored it on disc, you instruct Stylewriter to check it.

It first shows you an analysis. This gives, among other information, the average sentence length and the ratio of passive verbs to sentences. The individual sentence lengths are shown on a graph. The manual recommends that the average should be between 10 and 20 words, the maximum 40 words and the passive verb ratio 25% or less.

I had intended a grouse about the dogmatic objection to passive verbs. However, towards the end of the manual my criticism was met by a list of the circumstances in which their use is valid. The user is merely warned that the active is generally better and that more than one passive verb for each four sentences probably indicates overuse. Of

course, this depends on the type of document.

Stylewriter also matches your document against its own lists of over 9,500 avoidable or doubtful words and phrases. Complex words, jargon, cliches, redundant expressions and some 20 other categories are highlighted in the text, with suggestions for improvement. For instance, if you have used the phrase "in conjunction with" it will, sensibly, point out that "with" alone will usually be sufficient.

It would not be practical to include amongst the words to be avoided the jargon of every profession. Legal words, however, have a category of their own.

Words condemned as "complex" are highlighted, with simpler alternatives recommended. I thought the program's standards here were set too low and discouraged proper use of a rich language. "Adequate" and "obtain" are not difficult words.

Other recommendations are not to my taste. "Sexist terms" are challenged and, whilst this may be a good cause, it is a political rather than a stylistic one. This category was the only one in which Stylewriter substituted expressions longer and clumsier than the originals. Whilst on a political note, libertarians may be concerned that "benefit of the doubt" is chosen as an example of a cliché to be avoided.

To these complaints the writers have an answer. The program can easily be altered to the taste of the user. Words can be added to or deleted from almost all the categories (and there is room for insertion of "House Style"). Any category with which you do not want to be troubled can be switched off, either temporarily or for ever.

Inevitably, the program makes mistakes. In warning against vogue words which are often meaningless it suggested I edit out "structural" from a repairing covenant. The adverbial ending of "comply" made it think that "to comply" was a split infinitive. But to provide for all such misunderstandings, even if they could all be foreseen, would make the program unwieldy.

I tested it against my standard lease, which is in plain English (or so I thought), and was hurt by the drubbing it gave me. I did not agree with all

agree with all its recommendations but a number did make good sense. I did better with letters, which lend themselves more to the informal style which the program promotes. But then need leases be formal? After initial resistance, I grudgingly changed "structural alterations" to "structural changes". I drew the line at replacing "obtained" with "got".

Stylewriter does not claim to be a spelling checker but it did point out a word duplicated by mistake. I would like to see this expanded in future editions, so that it would pick out all but the commonest words if repeated in a sentence or paragraph.

I have a few minor complaints about the practical aspects of the program, although I expect that they could easily be corrected. Sometimes the message errors flashed too fast for me to read them; the cursor is larger than that which I normally see and it persisted in an irritating way when I reinstalled my word-processor. Worse, it was not always apparent when one job had been finished and the machine was waiting for me to instruct it in the next.

The most serious defect is the lack of speed, although I expect this is inevitable when so much has to be checked on the current generation of computers. Stylewriter runs faster on the latest hardware but it is only suitable for checking

especially important documents or as an occasional trainer. No office could afford the time to apply Stylewriter to all its documents.

Finally, it is strange that the program does not offer automatic editing. At the expense of even more time, it prints out a report; otherwise you have to note the alterations on a print-out of your text and then type them in through the word processor. It would be much easier (and I believe a simple matter to arrange) if each recommendation could be accepted or not through Stylewriter and the text up-dated as you went.

Despite its drawbacks, this is a remarkable program and there can be few, if any, CLARITY members whose style would not improve if subjected to its discipline.

I dare not run this review through it. I am still depressed by yesterday's score.

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Note: Editor Software say that they are hoping to include in the 2nd edition, due in 18/24 months, automatic editing, a fast spelling checker, a word frequency and word usage analysis, a word repetition formula and more measures of readability. They are also taking into account users' and reviewers' opinions.

## NEWS FROM OVERSEAS

David Elliott has kindly sent an article, "Lawyers Learn to Speak Plainly", copied from "The Dominion", a New Zealand daily. This contains several items of interest:

While there is a discernible movement toward plain English, change ... is taking time. Victoria University is the only law school in New Zealand to teach a second year small group programme which emphasises a plain English approach to legal writing. The course has only been possible over the last few years as the law itself began to change...

While there is definite evidence of change, particularly by Court of Appeal judges, most judgments are still written in legal language...

In Australia the rewriting of summonses and court forms in the State of Victoria saves around \$600,000 a year in staff time alone. The constant queries caused by unintelligible court forms have been

avoided.

Some American states now have plain English laws requiring documents to be written in a clear, cogent manner. In New Zealand, Public Trust wills, tax forms and some insurance policies are now written in plain English. The last New Zealand "Encyclopaedia of Forms and Precedents" gives examples of Plain English documents for lawyers to follow.

Nearly a quarter of the country's lawyers have taken part in seminars on clear drafting run by the New Zealand Law Society.... In workshops groups took clauses from common precedents they had used for years. The lawyers found translating them into a clearer style difficult as they hadn't realised there were ambiguities in some of their most common legal phrases.

Mr Elliott, who is Law Drafting Officer to the New Zealand Law Commission, has also sent a copy of the proceedings of a two-day seminar on legis

lative drafting held by the Commission in March 1988. Several eminent lawyers spoke in favour of plain English.

The deputy prime minister, who is also the Minister of Justice, declared: "I support the plain English approach to legal drafting. But I am doing more than that. I am actively pursuing the government's pledges in that area.... I urge legislative draftsmen and women, lawyers, and drafters of all other sorts of documents which affect people's rights and obligations, to make plain and simple communication their aim. I also urge you all to expect it from each other." He endorsed the Public Trust's production of plain English wills (and powers of attorney?), and reported:

Labour Party policy has for several years been "to simplify laws to make them as readily understandable as possible and to reduce the total number of statutes and regulations."

The Law Reform Commission of Victoria has published four "excellent" volumes on plain English: its 1987 report, a legislative drafting manual, a plain English rewrite of the Victoria Takeovers Code and a book of standard forms. They are "not large and ... attractively packaged. They are easy to read."

Some interesting statistics were given by Professor David Kelly, who chairs the Victorian Law Reform Commission:

"Some indication is to be found in a 1984 report by Coopers & Lybrand of the extent of the administrative and compliance costs associated with poor drafting on the effectiveness of forms used by the UK Department of Health and Social Security.... One form alone, with an estimated annual use in excess of four million copies, accounted for errors costing more than £1m to remedy. The cost of remedial action for errors in all fourteen forms (in the study) was more than £11m.... Most of these errors could be eradicated by better design and clearer language."

Professor Kelly also spoke about the Takeovers Code:

"We attempted to demonstrate the difference between plain English...and the drafting style which prevails in Australia by rewriting the Takeovers Code, one of

our most complex pieces of legislation, in plain English. Our aim was not to make it intelligible to the average citizen. That would be impossible. The average citizen has insufficient grasp of the commercial context. Our aim was simply to make it as intelligible as possible to those who were familiar with the relevant context. Lawyers, regulators and others in the takeovers industry have responded enthusiastically to our redraft. It is less than 60% the length of the original and vastly more clear. In the course of our work, we identified a number of recurrent defects which contribute to the confusion of the original."

He also mentioned the proposed establishment of a legal drafting institute at Monash University. An earlier institute, established in 1974 for the prospective drafters of Australia and other commonwealth countries, had failed for want of interest. But "there is (now) considerable support for the proposal around Australia. There is also a market in the Pacific and in South East Asia."

Walter Iles, Chief Parliamentary Counsel, said:

Parliamentary Counsel have mixed feelings about plain English. On the one hand we welcome it and we think that the plain English advocates are people who are really coming along very late in the piece. Last century Lord Thring, who was looked upon as the father of the English style of legislative drafting, said in his text that the word best adapted to express a thought in ordinary composition will generally be found to be the best that can be used in an Act of Parliament....

Our view is that Parliamentary Counsel have actually led the way in style of the law. They have a structure and approach to it which I think is far superior to the conveyancing styles that are used in the rest of the legal profession....

I am struck by what I have heard of Australia, that there seems to have been a degree of antagonism between Parliamentary Counsel and the plain English advocates. I think what we need in New Zealand is co-operation between those who advocate plain English and Parliamentary counsel.

## WELCOME TO NEW MEMBERS

Christine Bolam, solicitor, Greenwich  
Simon Carter, solicitor, Chester  
Paul Clark, solicitor, D.J. Freeman, London  
Susan Hall, solicitor, D.J. Freeman, London  
Andrew McFarlane, solicitor, Bath, member of  
Law Society Business Improvement Com'tee  
David Pester, trainee solicitor, Bristol  
J. Haldane Tait, solicitor, Edinburgh  
Hilary Tarran, solicitor, Nottingham  
David Thomas, solicitor, Liverpool, member of  
Law Society Business Improvement Com'tee  
Jonathan Weeks, solicitor, Lucas Industries  
Roger Wilkinson, legal executive, Blackburn

## RENEWALS

Late 1988 subscriptions have still been arriving and on 15th June we had 291 members.

We owe thanks to several members for donations above the normal subscription.

### A PLEA

Please do send the 1989 subscriptions on the enclosed form before you forget. A good deal of time and money was spent sending reminders last year and even then we lost about 150 members.

The Law Society: continued from front page

to time - probably once a year - and will be in regular contact with the committee meanwhile. (From September, we will be dealing instead with the more senior Remuneration and Practice Development Committee of The Law Society's Council.)

From a letter from a company in response to a complaint by a member of the public:

...The chemical structure of the super absorbers are based on polyacrylates. They owe their absorberency to carboxylic groups located in the spine of the polymer. When an aqueous medium comes into contact with the polymer, these groups solvate rapidly and develop mutually repulsive negative charges. This causes the polymer to uncoil and absorb the medium to many times its weight. Cross-linking prevents solution of the polymer. The aqueous medium quickly becomes orientated on the polymer's surface by virtue of hydrogen bonding and the result is a gel...

I hope this explanation has dispelled any concerns you may have had...

From the Winchester Probate Registry:

In cases when the death occurred on or after 4th April 1988 it will no longer be necessary to describe the applicant's relationship to the deceased as either "lawful" or "natural". There are however two exceptions to this rule, which are that the spouse of the deceased should still be described as either the "lawful widow and relict" or "lawful husband" and adopted kin should still be described as "lawful adopted son" etc.

From s.36(1) of the Finance Act 1951:

A body corporate shall not be deemed for the purpose of this section to cease to be a resident in the United Kingdom by reason only that it ceases to exist.

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## COMMITTEE

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