

Alphabet soup

by Mark Adler

The most distinctive characteristic of traditional legal drafting is the construction of absurdly long sentences.

There is not the least merit in this. It does no good, and it does much harm. No legal or syntactic technicality demands - or even suggests - it. The requirement that we cover all possibilities to protect our clients is not a requirement that we cover them all in a single breath. Long sentences do not aid comprehension or add precision; on the contrary, they work actively against both, boring and confusing the reader. As they have several serious disadvantages and nothing in their favour, their use is unjustifiable, and may amount to professional negligence.

You (and I use this pronoun to point the finger) do not just tack one thought at the end of another. That would be too easy. Word order is inverted in unfamiliar ways (aping Latin — inappropriately, as it has a different structure). Often sentences are nested one in another. Idea A begins, but before the reader can make sense of it, clause B breaks in, abandoning thought A and starting another; perhaps clause C interrupts B; finally we reach the end of the sentence, but its beginning has long been forgotten, and the reader must turn back and start again.

There are still more ingredients for the linguistic soup. You pour in words and phrases indiscriminately: words and phrases which add nothing. Most legal writing could be trimmed to a third of its length with no loss of meaning, and some gain: as the water level falls - if I may dilute my metaphor - previously hidden rocks appear.

Even the three-page sentence-paragraph you have built is not difficult enough to decipher. The last stage is the painstaking removal of all the punctuation which would have helped guide the reader through the maze.

Now you have legal language: a skyscraper erected by balancing bricks in an unstable, uncemented pile.

This foolish custom (or set of customs) is maintained because it is the custom. The reason for doing it is that you do it. If you did not do it, it would not be the custom, so you would not "need" to do it. But as it is the way things are done, you do it, trailing more woolly writers behind you. Anything that is done, must be done. The Sheeps' Charter. This insipid surrender of the writer's autonomy is not professionalism.

Several adverse consequences follow from this mutilation of our language:

- Your text (which it is important to understand) is unnecessarily difficult - and dull - to read.
- Mistakes are easily made and easily overlooked. (This includes mistakes of interpretation by the reader as well as those of construction by the writer.)
- It is often impossible to tell which words or clauses modify which other words or clauses, as a result of which the sentence is ambiguous.

Here is a comparatively minor example, taken from the lease of a flat in a development. (When the draft was first submitted, amendments were discouraged on the ground that it was a standard lease, not only for that block, but for many other blocks already let. The extract I quote is typical of the lease, though it comprised less than 1% of the whole.) I call it a minor example because it is a short paragraph with comparatively easy syntax. Let us use footnotes to analyse it.

"The Building¹" means the building forming part of the Development comprising² several flats and³ all⁴ structural parts⁵ thereof⁶ including⁷ the roofs gutters rainwater pipes⁸ foundations floors all⁴ walls bounding individual flats⁹ therein⁶ and³ all external parts¹⁰ of the Building¹¹ and all⁴ Service Installations¹² except¹³ those used solely for the purpose of an individual flat

¹ I prefer small capitals or italics (if word processing permits) to flag defined terms, to avoid confusion when a capital letter starts a sentence.

² Is it the building or the development which comprises several flats? If it does not matter, why bother with the phrase?

³ "And" suggests that what follows is different from what goes before. We say "I met Tom and Dick", not "I met Tom and Tom's head including his nose eyes ears...".

⁴ "All" is not particularly appropriate, since some parts are not included. Why not "the", which the drafter considered adequate for the roofs and other items?

⁵ Are non-structural parts to be excluded? It does not say so. And what does the drafter mean by "structural"? Is it intended to exclude non-load-bearing walls? They may be part of the structure. Is it not foolish to list so many inclusions taken for granted, but only hint at one of the few material points the passage is supposed to make?

⁶ It is impossible to tell whether "there.." refers to the the building, the development, or the flats.

⁷ All the items included would be taken for granted, as in the example in note 3. And as the list is not exhaustive, the reader is left to wonder why some items were included and others not, unless it is because the items not mentioned are *not* included. A judge might

accept the argument of a tenant that the ambiguity created should be construed against the drafter.

- 8 When a list contains items more than one word long, the affectation of removing the punctuation creates unnecessary ambiguity. Does the drafter mean "including the roofs, gutters, rainwater, pipes..." or "including the roofs, gutters, rainwater pipes...". This example may be fanciful, but in other lists the problem is real, and traditional drafters do not provide a solution.
- 9 Presumably the intention is to exclude walls which do not bound individual flats, but the drafter does not say so, and again leaves room for argument.
- 10 Compare "'The Tenant' means Tom and his skin" (but not the rest of him?).
- 11 This part of the definition is circular.
- 12 "Service Installations" were also defined at inordinate length in the original, but the gist was that they were the conduits, which would have been a more convenient name.
- 13 This seems to be the point of the paragraph, since all previous items would have been taken for granted. But does "except" refer only to "Service Installations" or to everything in the list? Probably the former, but that is guess based on common sense.

How should this be written? In three stages.

- (A) Ask yourself if the passage is necessary. If not, omit it altogether.

We need only define "building" to:

- distinguish this building from others;
- specify which of more than one commonly accepted definition we intend; or
- restrict or expand the commonly accepted definition.

The first criterion was not met. The development was a small one, with a single building containing nine flats, and a short drive through the garden to the street. There was no other building with which it could have been confused, but perhaps it would be as well to exclude outhouses which might be added later.

Perhaps the second criterion was met, though the original draft does not address the point. A lawyer might ask if the development's boundary walls and fences were included, although the use of the singular "Building" implies that they were not.

The third criterion was satisfied, by excluding some service installations, perhaps some of the internal walls, and perhaps anything not used exclusively for an individual flat. Again, the original draft does not fulfil its task.

- (B) Say what the clause intends, without elaboration. For example:

"THE BUILDING" is that edged red on the plan, but excludes:

- (a) (which?) internal walls; and^a**
- (b) CONDUITS, except those used only by an individual flat.**

Or:

"THE BUILDING" is that edged red on the plan, but excludes those of the following items which are used only by an individual flat.

- (a) (Which?) internal walls.**
- (b) CONDUITS.**

The slight syntactic difference between these alternatives is not of great importance, but anyone interested in the technicalities can find a discussion in *Drafting Legal Documents* by Barbara Child^b .

(C) Having said what you need to say, stop.

^a "And" is not essential.

^b West Publishing Co; St Paul, Minnesota; 2nd edition, 1992; pages 346-352.