

## Better drafting

**This extract from a will was taken from a 1992 precedent book.  
Let us look at it in detail and consider how it might be improved.**

(1)<sup>1</sup> I bequeath<sup>2</sup> to the vicar and churchwarden<sup>3</sup> of the parish church of .....<sup>4,5</sup> and their successors the sum of £.....<sup>6</sup> upon<sup>7</sup> trust<sup>8</sup> to invest the same<sup>9</sup> and during the period of twenty-one years from<sup>10</sup> my death (which period<sup>11</sup> shall<sup>12</sup> be the perpetuity period<sup>13</sup> applicable to this gift) to apply the income thereof<sup>14</sup> for the purpose of maintaining<sup>15</sup> [description of grave] in good order<sup>16</sup> and repair<sup>17</sup> and<sup>18</sup> in keeping the lettering<sup>19</sup> on any gravestone<sup>20</sup> or to be erected<sup>21</sup> thereon<sup>22</sup> legible and causing<sup>23</sup> the same<sup>9</sup> to be recut from time to time<sup>24</sup> when necessary for that purpose<sup>25</sup> and<sup>26</sup> to apply the balance of the said<sup>27</sup> income as<sup>28</sup> shall not be<sup>29</sup> required<sup>30</sup> for such<sup>31</sup> purpose<sup>32</sup> in keeping the said graveyard in good order and repair.

(2)<sup>33</sup> After the expiration<sup>33</sup> of the said period of twenty-one years<sup>34</sup> the said vicar and churchwarden and<sup>35</sup> their successors shall<sup>36</sup> hold the said sum and investments representing the same<sup>37</sup> upon trust<sup>38</sup> to apply the income thereof in keeping the said graveyard in good order and repair AND<sup>39</sup> I request but without imposing any legal obligation on them that they will<sup>40</sup> maintain the [description of grave] in the manner hereinbefore described<sup>41</sup>.

### General

These two sentences contain 121 and 70 words respectively.

- 1 Wrapping the text under the paragraph number makes both number and paragraph break inconspicuous.
- 2 *I give* would do. We are taught that real property is devised and personal property is bequeathed, but (a) there is no point in distinguishing them; (b) it is in any case clear that it is a gift of money, not land; (c) the distinction can create unnecessary problems [David Mellinkoff, *The Language of the Law*, Little Brown & Co, 1963, pp 353-358]; and (d) "Not until the nineteenth century did it become a lawyerly custom to *devise realty* and *bequeath personalty*, a subtlety contrary to the linguistic and legal history of the words and never uniform in practice" [Mellinkoff, p.354].
- 3 There could be more than one churchwarden.
- 4 *Of the parish church of Westcott = Of Westcott Parish Church.* *Of* is a common marker or verbosity [Bryan Garner, *The Elements of Legal Style*, OUP, 1962].
- 5 Since the gift is to the church rather than to the vicar and wardens, it would be better to say so than to imply the opposite. (We may think that we as lawyers know the code, but why use code?)
- 6 *The sum of* adds nothing to £.....
- 7 *Upon = on.*
- 8 Logical paragraphing would show that *on trust to* governs the rest of paragraph (1) and all of (2). This would make (1) clearer and save repeating the words in (2).
- 9 *trust = it.*
- 10 *During the period of twenty-one years from = For 21 years after.*
- 11 *Which period* is clumsy repetition.
- 12 Is *shall* the imperative or the future? But you cannot command a period to be a particular length, and the future is inappropriate: when is it to be the period? Surely at all times, including now. The present is the correct tense.
- 13 The rule against perpetuities would make this gift void if the obligation to maintain the grave lasted longer than "a life in being (at the testator's death) plus 21 years". The testator could therefore extend the period by nominating someone

whose life — while he or she survived the testator — would defer the start of the last 21 years of the trust. [So an obligation to last "for X's life and for 21 years after his death" would last for 37 years if X survives the testator by 16 years.] (However, the similar rule against accumulations would limit the accumulation of unused trust income with the capital to the basic 21 years.) But there is no need to mention these rules, so the text in parentheses is unnecessary. [See, for example, Parker and Mellows, *The Modern Law of Trusts*, Sweet & Maxwell, 3rd edn (1975), pp. 90ff.]

- 14 *Thereof* is pompous and unnecessary.
- 15 *For the purpose of maintaining = to maintain.*
- 16 What does *good order and* add to *repair*? Not necessarily cleanliness [Adler, *Tried and tested: the myth behind the cliché*, *Clarity* 34 (Jan 1996), p.45].
- 17 *For the purpose of maintaining in repair = To repair.*
- 18 These separate purposes would be more clearly presented as a list.
- 19 The *for the purpose of* introduction has forced the drafter to use too many clumsy *...ing* endings. *Lettering* sounds as though it is part of the list, though of course it is not. *Letters* would do.
- 20 The drafter (or the typesetter) omitted a word here, and it passed unnoticed amidst the mass of verbiage.
- 21 *Erected or to be erected* would only be written by a lawyer. Presumably the monument has not yet been erected.
- 22 *Thereon* has no technical meaning and is obsolete except among lawyers there must be better alternatives.
- 23 If the obligation was to *recut* rather than *cause to be recut* no-one would suggest that the vicar was in breach of trust if he arranged for the work to be done by a specialist.
- 24 *From time to time* adds nothing to *when necessary*.
- 25 *For that purpose* adds nothing.
- 26 *X and Y and Z* suggests that X, Y, and Z are all items in the same list. But here we have *to invest ... and apply ... for maintaining ... in good order and repair ... and in keeping ... and causing ... and to apply...in keeping....* This is messy drafting.
- 27 *The said = the.*
- 28 *The balance ... as* is wrong. It should be *any balance which*.
- 29 This is another misuse of shall.
- 30 *Needed* is less portentous than *required*.
- 31 *Such* is used in this way only (and unnecessarily) by lawyers.
- 32 The repetition of *purpose* is clumsy. *The balance of the said income as shall not be required for such purpose = any surplus or perhaps, for caution, any surplus income.*
- 33 A space between paragraphs would rest the eye and help the reader navigate the document.
- 34 What other said period?
- 35 *Or?*
- 36 The imperative force is weakened by the earlier non-imperative uses of *shall*.
- 37 *The said sum and investments representing the same = the trust fund.*
- 38 We have established that it is a trust.
- 39 Capitals are a poor substitute for proper paragraphing.
- 40 *I request ... that they will = I ask ...them to.*
- 41 *In the manner hereinbefore described = as described.*

### Suggested revision

I give £.... to the parish church of ..... on trust to use the income:

(A) For the first 21 years after my death:

- (1) To keep [description of grave] (including the lettering on the headstone) in good condition; and
- (2) To the extent that there is surplus income, to keep the rest of the graveyard in good condition.

(B) After those 21 years to keep the whole graveyard in good condition. (And without imposing any legal obligation I ask them to continue to maintain the [description of grave].