# Why is legal writing unprofessional?

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Legal writing, like any other work, should be effective and efficient. Most legal writing is neither.

To be effective, a document must be understood, and must be incapable of misinterpretation[1]. But traditional legal writing is often incomprehensible to its intended audience, is sometimes meaningless, and is routinely ambiguous. Most lawyers are indifferent to the first fault and blind to the other two.

To be efficient, a document must enable its intended readers to understand the writer's meaning with as little effort as the complexity of the subject permits.

Here is a comparatively easy example of multiple ambiguities hidden (even, presumably, from the lawyer who drafted it) in unnecessarily challenging prose:

> I give to my wife GH if she survives me by one month my property known as Number 12 Downs Drive Dorking aforesaid or failing which any other property where I live at my death together with all my chattels in and about my said property…

But most lawyers still write this way, through habit, fear of innovation, ignorance of the law ("I don't know what I'd be changing"), and poor literacy ("What's a verb?"). So they write

> I hereby give devise and bequeath all my real and personal property whatsoever and wheresoever situate unto my said wife Janis Andrea Mitchell for her use and benefit absolutely

instead of the sane and effective equivalent

> I give all my property to my wife.

There is now extensive professional literature on the problems of legal writing but few lawyers are aware of it. The others justify their bad writing with the bizarre claim that **"**legalese is necessary because it is more precise than ordinary language".

Why bizarre? Terms of art comprise a very small part of legalese, and even those are constantly reinterpreted by the courts. Most legalese is merely bad style. It consists largely of

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[1] Note added 7.6.22: I would now say that impossibility of misinterpretation is an ideal impossible to achieve. See part 4 of the third edition of *Clarity for Lawyers* (2017).

disorganised document structure; inadequate formatting; poor paragraphing; over-long sentences (sometimes with multi-layered embedded sentences); inadequate punctuation; unusual word order; poor word choice; repetition; grammatical error; and inconsistency. The mix, unleavened by thought, is habitually reused in different circumstances without anyone checking that the details are appropriate; it is, after all, a precedent. Unsurprisingly, this technique creates more mistakes and ambiguities than it avoids, and these problems often pass unnoticed until it's too late to correct them.

It's not just that if your text is 5 times longer than it needs to be you'd expect to spend 5 times as long writing or reading it, and to find 5 times as many mistakes. It is worse than that. Extra time and effort are needed to parse and decode the text. Sometimes it must be read several times. Writers become lost in their own verbal maze, especially when the text is too difficult — and dull — for them or anyone else to check it carefully. Readers glaze over; they might think (wrongly) that they understand, or they might just give up and hope for the best. And as it's tempting to put the whole tedious chore off till another day, lawyers' files tend to attract more dust than enthusiasm.

Far from being necessary, legalese causes much damage. It wastes millions of lawyer-hours a year and the hundreds of millions of euros the lawyers charge for wasting that time. It generates errors. It disenfranchises people who should be involved in preparing or using the document, and it wastes their time as well. It causes documents to fail in their purpose — whether that is to stipulate, to inform, or to persuade. Sometimes (as in consumer documents in Europe and elsewhere) it is unlawful.

Few members of the public, and even fewer judges, are likely to confuse pomposity with professionalism, or to find it impressive. Lay people asked in a survey to comment on a typical lawyer's letter described it as verbose, uninformative, arrogant, misleading, and dishonest.

A good secretary should help by questioning unclear or clumsy writing.