

# CONTENTS

<i>Acknowledgements</i>	<i>page ix</i>
<i>Acknowledgements, second edition</i>	<i>xi</i>
<i>List of Panels and Tables</i>	<i>xii</i>
<i>Table of Statutes and Subsidiary Legislation</i>	<i>xiii</i>
<i>Table of Cases</i>	<i>xvii</i>
<b>Introduction</b>	<b>1</b>
Traditional legal language	1
Pressures for reform	2
What this book tries to do	4
<b>1 What Influences the Legal Drafter</b>	<b>6</b>
Introduction	6
Familiarity and habit	7
Conservatism	9
Fear of negligence claims	15
Means of production	17
Professional pressures	21
Straining to avoid ambiguity	22
The mixture of languages	23
Payment by length	31
Payment by time	36
The litigious environment	37
<b>2 How Legal Documents are Interpreted</b>	<b>39</b>
Overview	39
What judges have said about traditional legal drafting	40



The principles of legal interpretation	47
The two 'golden rules' of interpretation and drafting	61
Commercial or purposive interpretation	62
Importance of context	64
Modern restatement	66
Dangers in using precedent as an aid to interpretation	73
Interpreting plain language documents	73
<b>3 The Move towards Modern English in Legal Drafting</b>	<b>76</b>
Introduction	76
The United Kingdom	78
Australia	93
The United States	99
Canada	107
What judges have said about 'plain English'	109
<b>4 Some Benefits of Drafting in Plain English</b>	<b>112</b>
The meaning of 'plain English'	112
Increased efficiency and understanding	114
Fewer errors	118
Image of the legal profession	119
Marketing	121
Compliance with statutory requirements	121
Conclusion	126
<b>5 What to Avoid when Drafting Modern Documents</b>	<b>127</b>
Introduction	127
Wordiness and redundancy	128
Overuse of 'shall'	131
Obscure language	137
Unusual word order	138
Frequently litigated words and phrases	140
Foreign words and phrases	141
Long sense-bites	142
Legalese and jargon	144
Peculiar linguistic conventions	151
Nouns instead of verbs	153



Overuse of the passive	153
Deeming	154
Definitions	155
Overuse of capitals	160
Provisos	163
Conclusion	166
<b>6 How to Draft Modern Documents</b>	<b>167</b>
Modern, standard English	167
Document structure	170
Layout and design	172
Lists	178
Short sense-bites	181
Punctuation	183
Definitions	187
Tables, plans and formulas	191
Notes and examples	198
Simplified outlines	199
‘Shall’ and the modern document	200
Handling generality and vagueness	203
Syntactic ambiguity	207
Pronouns	208
Inclusive language	209
Problems with ‘and’, ‘or’	211
Drafting in the present tense	215
Deeds	216
Amending documents formally	218
Standard forms	219
Conclusion	221
<b>7 Using the Modern Style</b>	<b>222</b>
Lease: how to bring it to an end if the property is damaged	222
Company memorandum of association: subsidiary objects clause	224
Will: attestation clause	225
Will: distribution in unequal shares	227

New land obligations: buyer's restrictive covenant	229
Conclusion	231
<i>Further Reading</i>	233
<i>Index</i>	235