

Review of Peter Butt's *Legal Usage: A Modern Style Guide*

By Joseph Kimble

In a word, this book is superb. In additional words, it is thoroughly researched, impressive in the range of sources cited, eminently practical, clearly written, and (yes) great fun to read.

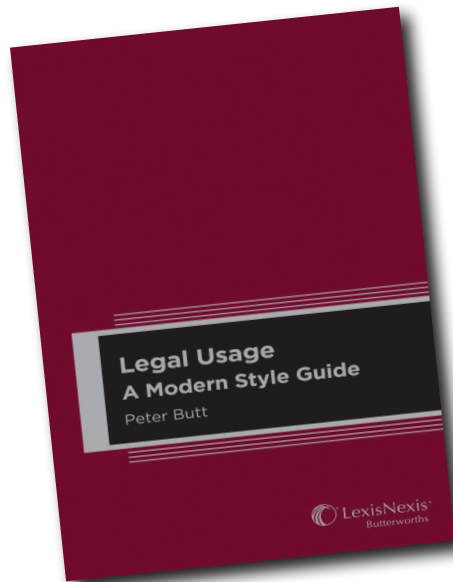
Peter Butt, an emeritus professor of law at the University of Sydney, is probably the leading Australian authority on land law. And he just happens to be a leading international authority on drafting, having written *Modern Legal Drafting* (now in its third edition). He's also—full disclosure—a friend.

The book covers three broad areas: (1) legal concepts (such as ambiguity, definitions, and terms of art); (2) practical usage (such as cross-referencing, document design, and punctuation); and (3) words and phrases (by the hundreds). Throughout, the reader is drawn in by the clean, open design and the informative, well-differentiated headings and subheadings. The book is a visual delight, full of charts, lists, bullets, and side-by-side before-and-after examples.

In his Preface, Professor Butt makes no bones about his writing and drafting preferences:

My usage recommendations unashamedly endorse plain English—not to dumb down communication but to elevate it, not to discourage elegance but to enhance it, not to deaden writing but to enliven it.

"Plain Language," edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 34 years. To contribute an article, contact Prof. Kimble at WMU-Cooley Law School, 300 S. Capitol Ave., Lansing, MI 48933, or at kimblej@cooley.edu. For an index of past columns, Google "Plain Language column index."



So it is that the book repeatedly offers plain-language alternatives to archaic or confusing terms: not *give, devise, and bequeath*, but *give*; not *joint and several*, but *together and separately* or *together and individually*. Yet the author is careful: after distinguishing between *rescind* and *terminate*, he cautions that using the word *end* "may sacrifice precision."

The breadth of international scholarship—in cases, books, and journals—is exceptional. He draws on sources throughout the English-speaking world, although (as he acknowledges) he rarely cites U.S. cases. So why should U.S. lawyers get the book? Because I'm betting that nearly all the usage advice applies to U.S. lawyers as well. Certainly that's true for the advice on drafting style.

Many of the entries are followed by juicy suggestions for "Further Reading." (Or, as the author would punctuate it according to

British style, juicy suggestions for "Further Reading".) And plain-language advocates will be pleased that those suggestions often include articles in the *Clarity Journal*, *The Scribes Journal of Legal Writing*, *The Loophole* (from the Commonwealth Association of Legislative Counsel), and the Plain Language column in the *Michigan Bar Journal*.

Among the book's special pleasures are the mini-essays on drafting. For instance, here are the headings and subheadings for the entry "Recitals":

Nature of recitals

Terminology of recitals

Whereas

Recital 'of/to' this agreement

Definitions in recitals

Uses of recitals

To provide an easy way into the document

To help interpret the document

To set up an estoppel

To pass title by 'feeding the estoppel'

To obtain statutory presumption of truth of statement

To preserve a party's rights

To facilitate the implication of terms

Abuses of recitals

Recitals containing substantive obligations

Recitals and notice

Recitals and supplemental instruments

This entry covers four pages. It should give you an idea of the wealth of information and advice that the book contains.

Another mini-essay, under the entry "Document Organisation," is one of several that emphasize the importance of attending

Legal Usage is a work of remarkable scholarship, judicious in its recommendations and compellingly readable.

not just to sentences and words in drafting, but also to how the ideas are organized:

Order of Provisions

Front-loaded structure: key concepts before subsidiary concepts

Example: front-loaded structure

Topic-based structure: material organized by subject area

Example: topic-based structure

Chronological structure: mirror the steps in the transaction

Table of Contents

Usefulness

Grouping topics in table

[with extended

side-by-side comparison]

And to get an idea of the crisp, lively writing style, consider these few examples:

- (under **cease and desist**): “A lawyer’s pairing, meaning no more than ‘stop.’”
- (under **CONTRACTIONS**): “Contractions can be used in legal documents, as in normal prose, as long as they do not create ambiguity. The only barrier to their use is the legal drafter’s ingrained reluctance to appear conversational.”
- (under **shall/must**): “*Shall* has had its day.”

A footnote to the last example: despite the author’s opposition to *shall*, in the “Further Reading” after the entry, he cites 19 sources under three headings—“On *shall* generally”; “On abolishing *shall* completely”; and “On retaining *shall* for actions that carry consequences for a breach.” Professor Butt consistently shows judgment, recognizes possible exceptions and distinctions,

and acknowledges contrary arguments. He is a thoughtful, knowledgeable arbiter.

As any reviewer might, I have a quibble or two. For my taste, a few too many sentences start with *However*. Also, I’m not a fan of the tendency in Commonwealth drafting—reflected in some of the examples—to make each clause (or subpart) a single sentence, although Professor Butt acknowledges that there is no “rule” requiring it. But these are minor quibbles indeed.

Legal Usage is a work of remarkable scholarship, judicious in its recommendations and compellingly readable. Buy it, enjoy it, and learn from it. ■



Joseph Kimble taught legal writing for 30 years at WMU–Cooley Law School. His third and latest book is Seeing Through Legalese: More Essays on Plain Language. He is senior editor of The Scribes Journal of Legal Writing, editor of the “Redlines” column in Judicature, a past president of the international organization Clarity, and a drafting consultant on all federal court rules. He led the work of redrafting the Federal Rules of Civil Procedure and Federal Rules of Evidence. Follow him on Twitter @ProfJoeKimble.

filler

The Contest

There’s still time to try your hand at the latest contest. The deadline is July 23. You’ll find it in the May column. Just Google “Plain Language column index.”