

Can contracts be both plain and precise?

By Ian Siebörger

Email: ian.sieborger@ru.ac.za

and Ralph D. Adendorff

Email: r.adendorff@ru.ac.za

Department of English Language and Linguistics, Rhodes University
P.O. Box 94, Grahamstown 6140

Corresponding author: Ralph Adendorff

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Abstract:

One argument against the use of plain language in legal documents is that it is impossible to convey legal meanings in plain language with the same precision as in specialist legal discourse (Hunt 2003). This article reports on a study in which we test this claim by redrafting an extract from a lease agreement into plain English in three stages, producing three versions of the extract in progressively plainer English. We submitted these with the original lease agreement to a senior advocate to elicit his opinion on whether the plain-language versions of the extract are equivalent to the original in legal force. The advocate found that there was only one substantive difference in meaning between the redrafted versions and the original extract. Various differences between the versions are analysed using lexical semantics and Systemic Functional Grammar (as described in Halliday and Matthiessen 2004). This analysis reveals that the redrafted versions could easily be altered to eliminate the difference between them and the original extract, and that ‘plain language’ as conceived by redrafters of official documents may be easy for non-experts to read, but more difficult to read for non-experts. This demonstrates that a “one-size-fits-all” approach to readability is often not tenable, and that plain-language activists can learn much from research in the New Literacy Studies (such as Street 1993) which asserts the existence of a plurality of literacies.

1. Introduction

In the legal and financial sectors, a struggle exists over the extent to which documents should be redrafted into plain language for the benefit of non-experts. Applied linguistic research is required to provide clear insights to those on both sides of this struggle by showing whether plain language has the potential to fulfil all the functions that specialist discourse currently fulfils in these sectors.

The struggle over plain language is not as new as many would think, as McBeth's (2002) history of the plain language movement shows: in the 1600s, Sir Edward Coke argued for the law of England to be translated from French into the English vernacular. He argued that since ignorance of the law is no excuse for disobeying it, non-experts should be able to understand the law. The 18th-century novelists Jonathan Swift and Charles Dickens both criticized lawyers for the obscure language they used.

According to McBeth (2002), the modern plain language movement began in England in the 1970s, with community journalist Chrissie Maher's Plain English Campaign. The movement spread in 1983 through the establishment of Clarity, an international organization of professionals, including lawyers and legal translators, seeking to promote plain English. The establishment of this organization was inspired by a letter from a surveyor complaining that the general public's lack of comprehension of lease agreements was making his work more and more difficult. The plain language movement has since spread to many Anglophone countries, including the USA, Canada, Australia and South Africa.

In South Africa, the ideal of plain communication has been related to “the democratic values of dignity, equality and freedom” (Constitution of the Republic of South Africa, quoted in Balmford 2002:24). Dullah Omar, the former minister of justice, is quoted as saying:

Clear, simple communication is ... an absolute and critical necessity for democracy. People have a right to understand the laws that govern them, to understand court proceedings in matters that affect them, to understand what government is doing in their name.

(quoted in Balmford 2002:24)

To this end, the ministry of justice started a campaign in 1995 to use plain language in drafting laws and government forms (Kimble 2003). Since then, some legislation has prescribed the use of plain language in certain official documents. A notable example is the National Credit Act (Act 34 of 2005) which has a clause entitled “Right to information in plain and understandable language” which stipulates that “The producer of a document that is required to be delivered to a consumer in terms of [the National Credit Act] must provide that document... in plain language” (Clause 64 (1)).

However, there are many people in the legal and financial professions who oppose the move towards plain language, maintaining that drafting official documents in plain language is either undesirable or impossible. Numerous papers taking a critical stance toward the plain language

movement have been published in *Statute Law Review*, for instance. In one such article, Hunt (2003) argues that while legislation in plain language may be desirable, it is impossible to achieve because plain language lacks the precision to exclude loopholes and unintended meanings in a legal text. We decided to test this argument by researching the extent to which an extract of a legal document rewritten in plain language could retain the full legal force of the original extract.

In this research, we aimed to answer the following three questions:

- To what extent can an extract from a legal document be accurately redrafted into language that is easily accessible to a non-expert?
- Do the differences in meaning between an extract from a legal document and several systematically redrafted versions of that extract result in a significant difference in legal force?
- What techniques of rewriting a legal document in plain language are best able to preserve the meaning and legal force of the original document?

To answer these questions, a one-page extract from a legal document (see Appendix 1, p.32) was chosen to be redrafted into plainer English. As explained in the methodology section of this article, effort was taken to ensure that we chose an extract that would be particularly opaque to non-experts. In rewriting the extract, commonly-used Plain Language redrafting techniques were applied in a systematic fashion to produce a plainer 'translation' which could be said to be more a product of those standard redrafting techniques than the authors' own intuitions and prejudices as to what constitutes plain language.

In short, the research reported on in this article is a demonstration of the kinds of semantic differences that can occur between an original legal text and plain language versions of it, and an attempt to discover whether these kinds of semantic difference render a legal text untranslatable into plain English. Its findings contribute to the debate over whether plain language in legal texts is possible.

2. Debates over plain-language redrafting in legal contexts

The calls for plain language redrafting of official documents that are outlined above occur in a particular social and political context, as do certain legal professionals' resistance to these calls. This section of this article explores this context, examining the motivation behind the plain language movement, presenting some of the major arguments for and against plain language in legal texts, and giving a brief critical overview of some methods which have been used in redrafting official documents into plain language.

Before examining the origins of the plain language movement, it is useful to consider why the language used in many official documents is “unplain” in the first place. Martin (1993) provides an insightful account from a systemic-functional perspective of the development of specialist language. He speaks of the discourse of non-specialists on a particular subject as “commonsense” discourse, while specialist language is “uncommon-sense” because it relies on specialist knowledge of the subject at hand, rather than what is commonly known. Martin argues in addition that a key step in conveying specialist knowledge is nominalization, in which processes usually expressed by verbs become expressed by nouns instead, allowing dense packing of information and easier manipulation of processes. For instance, in the sentence “The discovery of gold in Gauteng triggered the modernization of South Africa,” one nominalized process, *discovery*, is made to act on another nominalized process, *modernization*. If these two processes were expressed as verbs, or as Martin would say, congruently, one would need a longer and more complex sentence to convey the same meaning: “Someone discovered gold in Gauteng, and this triggered the process by which people modernized South Africa.” However, high levels of nominalization can also often render texts opaque to readers untrained in a specialist discourse type, because of the density of the nominal groups and the fact that causal and other relations within them become implicit rather than being explicitly articulated. This allows experts who understand nominalizations to have some power over these readers.

Gibbons (1999) points out that this power differential is especially evident in law, a field which centres on interpretation of specialist language. This means that those trained in understanding legal discourse can have particular power over laypeople. A crucial area in which this can occur is in legal contracts, as O'Donnell (1983) shows. Few are able to understand the contracts they sign, which places power in the hands of contract drafters, who are able to introduce clauses in contracts that signatories might object to if they could understand what they meant. Martin (1993) argues that the teaching of literacy in specialist discourse types such as legal discourse at school should diminish this power, thereby 'democratizing' legal discourse by enabling laypeople to decode it successfully.

In the legal field, Gibbons (1999) notes that misunderstandings often occur when a technical term is used in communication with a layperson, especially when that term has not first been adequately defined. He gives the example of the word “aggravating” which is commonly understood to mean “irritating” but in legal register means “making worse”. Specialist vocabulary is often the result of a kind of collapsed nominalization: for instance, the word “claim” has a specialized legal meaning as a nominalized verb denoting “a right to demand money or material goods”. To make matters even more opaque to the lay reader, specialist legal vocabulary can be

encoded in Latin forms such as *sui generis*, meaning “unique” (Dictionary Unit for South African English 2002). Specialist vocabulary, unlike specialist grammar, varies across disciplines, so that it would be impossible to teach school pupils the vocabulary of every specialized text with which they may have to engage in their lives.

If native speakers of a language have difficulty decoding specialist texts, then second-language speakers find this far more difficult. In societies like South Africa, the majority of people are second-language speakers of the language in which most official documents are written, or may not speak that language at all. This makes it an enormous task to teach them competence in specialized discourse types in a language that they may not have a firm grasp of. Thus, instead of trying to teach literacy in specialist discourses at school, plain language advocates such as O'Donnell (1983) argue that official documents should be rewritten in more accessible language. She writes, “the problem of functional literacy was as much a problem of incomprehensible documents as it was of people who had poor reading skills” (1983:59).

However, as mentioned in the introduction, certain critics, particularly in the legal fraternity, argue that it is unnecessary and impossible to rewrite official texts in plain language. Hunt (2003) argues that non-experts are not interested in reading legislation, and so there is no point in writing laws in plain language; instead. Kimble (2003) disputes this, saying that every law directly affects certain members of the public, who should therefore have a chance to read it for themselves, even if they may choose not to. This is in keeping with the principles of open democracy, in which all individuals should be able to comment on and contribute to government policies and laws that affect them. Hunt's argument is still less applicable to contracts such as lease agreements, which untrained people are obliged to sign in order to receive certain goods or services, as O'Donnell (1983) points out. If such people had to seek a legal opinion in order to understand each contract they signed, they would soon be bankrupt and business would proceed at a much slower pace.

Hunt (2003) also argues that plain language is not precise enough to be legally binding. Kimble (2003) rebuts arguments such as Hunt's by saying that for language to be precise, it must necessarily be comprehensible: “unintelligible precision” is an oxymoron. What this rebuttal fails to note is that what may be unintelligible to a layperson could be both intelligible and precise to an expert.

Another argument against plain language redrafting, advanced by Gibbons (1999), is that constructions such as nominalizations and passivization in legal texts do not have precise equivalents in plain language. Martin's (1993) account of nominalization seems to corroborate this. However, the findings of the study reported on in this article suggest that these constructions can be accurately rewritten in plainer language.

Plenty of research has been done to test the effectiveness of a variety of methods of redrafting

official texts into plain language. Both the choice of which methods one uses and the techniques one uses to test their effectiveness depend largely on the researchers' conceptions of what plain language is. In one study, Rudd et al (2004) focused on substituting long words with shorter ones and splitting long sentences into shorter units. They then tested the effectiveness of these methods by applying the SMOG Readability Formula, devised by McLaughlin (1969), to the original and rewritten versions of their texts. This formula measures readability in a text as a function of the number of polysyllabic words per sentence, and thus naturally favours texts with shorter words and sentences. Thus the logic used by Rudd et al (2004) in their redrafting and testing process is circular: they shortened the words and sentences in their rewritten text and then, to test their rewritten text, used a formula that assumes that these very techniques will result in a text that is easier to read. Thus their study says little about whether these redrafting techniques improve the real readability of a text or not.

Studies in which plain-language redrafts of texts are tested on likely readers are far more helpful in comparing the efficacy of a variety of redrafting methods. Two such studies are those by Kimble (2003) and Masson and Waldron (1994). Kimble's study compared originals of a legal contract and a South African statute with versions that he had redrafted in plain language. In all cases, the redrafted versions were found to increase comprehension of the text, speed and ease of reading as rated by the readers who tested the documents. Unfortunately, Kimble does not give many details about his method of redrafting, but it is clear from samples of the texts before and after redrafting that he not only altered the lexico-grammar of the texts but also their format: one original appeared in paragraph form, but Kimble's rewritten version appears as a bulleted list. This reveals one useful strategy that can be used to clarify complex constructions in legal texts, namely converting dense paragraphs into bulleted lists. As a result, we have used this technique in our study, to ascertain whether such changes in format affect the legal acceptability of a document.

Masson and Waldron (1994) used a meticulously systematic methodology in redrafting the legal contracts they studied. Redrafting was done in stages, and the text resulting from each step of revision was tested on non-expert readers. In the first stage, archaic words such as “indenture” were replaced with words in more common usage, such as “agreement”; in the second, the text was translated into more straightforward syntax, and terms referring to the parties were replaced with the pronouns “I” and “you”. In the third stage, legal terms were substituted with more common words or explained in the text. For instance “your security” was paraphrased as “these interests I have given you”. The authors found that translating the text into commonsense syntax resulted in the greatest gain in comprehension. However, the comprehension results for the final redrafted versions of the contracts were lower than expected. From this they concluded that plain language

redrafting could not completely demystify legal texts to lay readers. Extra education in basic legal concepts and legal counselling may also be required. We have adapted several of Masson and Waldron's (1994) redrafting techniques for use in the research reported on in this article.

These examples of research into plain language redrafting give one an idea of what techniques can be used in redrafting texts into plain language and of the extent to which redrafting documents in plain language can improve readability. However, little research has been conducted to examine whether plain language versions of texts can be as precise as originals in specialist registers, as this study aimed to do. Kimble (1998) rebuts the objections of legal professionals who believe that plain-language redrafts of legal texts are less precise than the original texts, but his rebuttal appears rather impressionistic because while he supplied an extract from original legal text and a rewritten plain-language version of it, he only pointed out unclear areas in the original extract without showing how the rewritten version resolved these. His analysis is not grounded in any linguistic theoretical frameworks. For instance, he quotes an extract from an indemnity agreement which reads “the indemnifying party shall be entitled . . . , to the extent that it shall wish, to assume the defense thereof” (1998:114) and then asks “Does this mean that the indemnifying party may somehow assume part, but not all, of the defense?” (1998:114). In this example, Kimble does not use any metalanguage to pinpoint exactly what is unclear about the extract, let alone explain why the rewritten equivalent of this extract is clearer.

In the following section of this article, we show how our study drew on two such theoretical frameworks to compare an original extract from a lease agreement with three versions of the extract redrafted progressively into plainer and plainer English in a grounded, non-impressionistic manner.

3. Testing the legal precision of plain-language redrafting

To investigate whether plain-language redrafts of legal documents can have the same degree of precision and force in law as the original documents, we selected a one-page extract from a lease agreement and redrafted it in plainer language according to some of the redrafting methods mentioned in the previous section of this article (including some used by Masson and Waldron 1994 and Rudd et al 2004). In this process we developed three different versions of the original extract, each plainer than the previous version. These were referred to respectively as the *difficult-words-replaced* version, the *spoken-grammar* version and the *information-restructured* version. We then presented these three versions and the original extract to a senior advocate with extensive experience in contract law, asking him to identify areas where the versions differed in legal force. Finally, an analysis was carried out on the areas that the advocate identified, in order to examine the causes for those differences in legal force and find out what could be done to eliminate them.

This section of this article explains firstly how the original lease agreement extract was chosen, then how the extract was redrafted in stages, how we requested a comparison of the different plain language versions and the original from the advocate, and lastly how we analysed the areas identified by the advocate as containing possible differences in legal force.

Selecting an extract for redrafting

The first step in this study, as with most traditional readability studies, was to find a suitable “naturally-occurring” legal text to rewrite into plain language. We chose to redraft and analyse a residential lease agreement because these documents have to be signed by both lessees and lessors, who in most cases would not be legal experts. In the university town where we live, disputes over lease agreements between students renting off-campus accommodation and their landlords are commonplace. This made lease agreements a topical genre of legal text on which to focus our study.

A lease agreement was selected which is written in fairly typical legal register, with long sentences. In addition, the agreement contains some grammatical errors that made it even less comprehensible.

One page of the lease agreement was selected for redrafting, using an extremely rough statistical readability test of our own devising, based on the average number of words per sentence and the average number of characters per word. The fifth page of the contract scored the highest on a combination of these factors, so it was selected. It is named the *original extract* for ease of identification. This extract is reprinted below and in Appendix 1. These reprinted versions reproduce the bolding, capitalization and formatting of the original lease agreement.

Original extract

LESSOR

- 14 **The LESSOR** shall keep all outside walls and roof, gutters of the premises in order but shall not be responsible for any damage caused by leakage, rain, hail, fire, or any other cause whatsoever nor shall the LESSOR be responsible for any loss or damage which the LESSEE may sustain be reason of any act whatsoever or neglect on the part of the LESSOR or any of his domestic worker’s nor shall the LESSOR be responsible for any loss or damage which the LESSEE may sustain by reason of the premises at any time falling into a defective state of repair or by reason of any repairs to be effected by the LESSOR not being effected timeously or at all and the LESSEE shall not be entitled for any of the foregoing reasons or any other reason whatsoever to withhold any monies payable by him to the LESSOR in terms of the Lease.

LESSEE

- 15 No animals or pets of any kind shall be kept on any part of the premises without the **written consent of the LESSOR**. In the event that the Lessee has kept pets, subject to the Lessor’s approval in writing, the Lessee shall have the interior of the premises **professionally fumigated immediately prior to vacating the premises**.

In the event of a fire occurring on the premises, the LESSOR shall be entitled to forthwith terminate the Lease in which event he shall refund to the LESSEE any rent paid in advance beyond the date of such termination and the LESSEE shall not have claim for damage in consequence of any such deprivation for damage by fire to furniture or any personal effects. The LESSEE undertakes not to use apparatus or any trades or process or keep any hazardous goods on the premises, which may violate the LESSOR'S fire insurance policy or increase any premium payable thereunder.

- 16 Notwithstanding anything to the contrary contained herein and notwithstanding any receipt given for rent or deposit paid, should the LESSOR be unable to give the LESSEE occupation of the premises on the commencement date, by reason of the premises being in a state of disrepair, or by reason of the fact that the previous tenant not having vacated the premises or by reason of any fact, whatsoever not due to willful default, the LESSEE shall have no claim for damages or other right of action against the LESSOR as a result thereof and undertakes to accept occupation from whatever date the premises are available subject to a remission of rent for the period of non-occupation.

Redrafting the extract in plain language

We decided to replicate Masson and Waldron's (1994) technique of rewriting an original text into plain language in three stages, with the result of each stage being a version of the original text that can be compared with the original or other versions. However, we devised different sets of changes to be made in each stage of redrafting for this research project. This was done in such a way that Stage 1 focused on simplifying the extract's vocabulary, Stage 2 on its syntax and Stage 3 on its page formatting, allowing each of these areas to be analysed separately.

Stage 1: *Difficult-words-replaced* version

Masson and Waldron (1994) spread the substitution of archaic words, legal terms and other difficult lexical items for more common words across three different stages of their redrafting process. In this study we combined these into one step as the first stage of the process. This stage had two sub-steps. In the first of these, lexical items were marked for substitution:

- if they were judged to be archaisms (including compounds such as *herewith*),
- if they were marked as technical legal terms in the *South African Concise Oxford Dictionary*,
- if a plainer or more commonplace equivalent of the item could be found in the *South African Concise Oxford Dictionary*.

In addition, all readily apparent grammatical, typographic and punctuation errors that could be removed by the substitution or deletion of a single word were corrected, and instances of generic masculine pronouns were replaced with *he/she* or one of its inflections.

There were three sets of lexical items judged to be difficult that were not replaced:

- Lexical items such as “responsible”, “available” and “professionally fumigated” were not replaced when it was deemed that using the equivalent listed in the dictionary would have

made the text more difficult to comprehend than it was at present.

- “Lessee”, “Lessor” and “Premises” are clearly defined at the beginning of the original lease agreement, so it did not seem that there would have been an advantage in replacing them with plainer phrasal equivalents, which would have made the text longer and much more grammatically complex.
- The meanings of some nominalizations would be made clearer in the next step of redrafting, and so they were not replaced. Examples include “occupation” and “obligation”.

In the second sub-step of this stage, the words that were marked for substitution were replaced with equivalent words or phrases taken from the definition of the appropriate senses of those lexical items in the *South African Concise Oxford Dictionary* (Dictionary Unit for South African English 2002).

Table 1 shows a list of all the substitutions that were made in this stage of redrafting. The version produced after this stage was named the *difficult-words-replaced* version.

Original lexical item	Substitute	Reason for substitution
Shall	Will	Archaic usage
Damage	Unwelcome and harmful effects	Legal term
Whatsoever	At all	Archaic word
Sustain	Suffer	Difficult word
Be	By	Typographic error
By reason of	Because of	Difficult word
He	He/she	Generic masculine pronoun
Worker's	Workers	Punctuation error
Defective	Faulty	Difficult word
State of repair	Condition	Difficult expression
Effectuated	Brought about	Difficult word
Timeously	In good time	Difficult word
Entitled	Given a right	Legal term
Foregoing	Previously mentioned	Archaic word
Withhold	Refuse to give	Archaic word
Monies	Money	Legal term
Payable	Required to be paid	Difficult word
Consent	Permission	Difficult word
In the event that/of	If	Difficult expression
Subject to	Dependent on	Difficult expression
Interior	Inside	Difficult word
Inmediately	Immediately	Typographic error
Prior to	Before	Difficult expression

Original lexical item	Substitute	Reason for substitution
Vacate	Leave	Difficult word
Occuring	Happens	Difficult word
Forthwith	Without delay	Archaic word
Terminate	Bring to an end	Difficult word
In which event	If this happens	Difficult expression
Refund	Pay back	Difficult word
In advance	Ahead of time	Difficult expression
Prior to	Before	Difficult expression
In consequence of	As a result of	Difficult expression
Such	<i>None (deleted)</i>	Grammatical error
Deprivation	Lack of something considered essential	Legal term
Effects	Belongings	Legal term
Undertakes	Formally promises	Difficult word
Apparatus	Equipment	Difficult word
Trades	Business	Difficult word
Violate	Fail to comply with	Difficult word
Premium	Amount	Difficult word
Thereunder	For it	Archaic term
Notwithstanding	In spite of	Archaic term
To the contrary	Opposite in meaning	Difficult expression
Herein	In this document	Archaic term
Should	If	Archaic usage
Commencement	Beginning	Difficult word
State of disrepair	Poor condition	Difficult expression
Willful	Intentional	Legal term
Default	Failure to fulfil an obligation	Legal term
Action	A lawsuit	Legal term
Thereof	Of that	Archaic term
Remission	Cancellation	Difficult word

Table 1: Lexical items substituted in stage 1 of redrafting

The *difficult-words-replaced* version is printed below and also appears in Appendix 2. The bolding and text formatting is retained from the original extract.

Difficult-words-replaced version

LESSOR

14 **The LESSOR** will keep all outside walls and roof, gutters of the premises in order but will not be

responsible for any unwelcome and harmful effects caused by leakage, rain, hail, fire, or any other cause at all nor will the LESSOR be responsible for any loss or unwelcome and harmful effect which the LESSEE may suffer because of any act at all or neglect on the part of the LESSOR or any of his/her domestic workers nor will the LESSOR be responsible for any loss or unwelcome and harmful effect which the LESSEE may suffer because of the premises at any time falling into a faulty condition or because of any repairs to be brought about by the LESSOR not being brought about in good time or at all and the LESSEE will not be given a right for any of the previously mentioned reasons or any other reason at all to refuse to give any money required to be paid by him to the LESSOR in terms of the Lease.

LESSEE

- 15 No animals or pets of any kind will be kept on any part of the premises without the **written permission of the LESSOR**. If the Lessee has kept pets, dependent on the Lessor’s approval in writing, the Lessee will have the inside of the premises **professionally fumigated immediately before leaving the premises**.

If a fire happens on the premises, the LESSOR will be given a right to without delay bring the Lease to an end. If this happens he/she will pay back to the LESSEE any rent paid ahead in time beyond the date of this ending and the LESSEE will not have claim for unwelcome and harmful effects as a result of any lack of something considered essential for damage by fire to furniture or any personal belongings. The LESSEE formally promises not to use the equipment needed for any business or process or keep any hazardous goods on the premises, which may fail to comply with the LESSOR’S fire insurance policy or increase any amount required to be paid for it.

- 16 In spite of anything opposite in meaning contained in this document and in spite of any receipt given for rent or deposit paid, if the LESSOR is unable to give the LESSEE occupation of the premises on the beginning date, because of the premises being in a poor condition due to neglect, or because of the fact that the previous tenant not having left the premises or because of any fact at all not due to intentional failure to fulfill an obligation, the LESSEE will have no claim for a sum of money in compensation for a loss or injury or other right to a lawsuit against the LESSOR as a result of that and formally promises to accept occupation from whatever date the premises are available conditional upon a cancellation of rent for the period of non-occupation.

Stage 2: Spoken-grammar version

This stage of redrafting included five sub-steps, which were carried out in sequence on each paragraph of the *difficult-words-replaced* version:

1. All remaining perceived grammatical errors were corrected. This included a semantic error in which a confusing preposition was substituted for a more appropriate combination of a conjunction and preposition, and an error in concord in which a non-finite verb was replaced with an equivalent that agreed with the subject of the clause. Table 2 lists these corrections, with the words from the *difficult-words-replaced* version that were substituted printed in bold, as well as their substitutes.

Grammatical error	Corrected clause
<p>and the LESSEE will not have claim for unwelcome and harmful effects as a result of any lack of something considered essential for damage by fire to furniture or any personal belongings</p> <p>or because of the fact that the previous tenant not having left the premises</p>	<p>and the LESSEE will not have claim for unwelcome and harmful effects as a result of any lack of something considered essential because of damage by fire to furniture or any personal belongings</p> <p>or because of the fact that the previous tenant has not left the premises</p>

Table 2: Grammatical corrections in stage 2 of redrafting

2. Nominalizations were rewritten in a more congruent form without adding or deleting lexical items where possible. Rewriting nominalizations often made it necessary to introduce agents into the text. But where the implied agent was not clear from the context of the nominalization, a semantically empty agent such as “someone” was added, or the nominalization was not rewritten in cases where the nominalization was a commonly used word, and rewriting the nominalization would result in tortuous syntax which could increase the level of reading difficulty of the text. For example, the nominalization *effects* was not rewritten as *things that are effected* because the word was used often in the text, and rewriting this nominalization at every point where it was used in the text would make the text rather tiresome to read. In addition, one nominalization, *leakage*, was reduced to a more verblike form, *leaks*, but retained as a noun since it was judged that the closest non-nominalized substitute to this word, *things that leak*, was not entirely equivalent to it semantically, and in any case, *leaks* are commonly referred to as objects. The nominalizations that were rewritten are presented in Table 3.

Nominalization	Substitute
Any loss... which the LESSEE may suffer	The LESSEE losing anything
Any act at all... on the part of the LESSOR or any of his/her domestic workers	Anything the LESSOR or any of his/her domestic workers does
Neglect on the part of the LESSOR or any of his/her domestic workers	Anything the LESSOR or any of his/her domestic workers... neglects to do
Any repairs to be brought about by the LESSOR not being brought about	The LESSOR does not get someone to repair things which he/she should repair
The written permission of the LESSOR	The LESSOR writing a document to permit this
The LESSOR's approval in writing	The LESSOR writing a document to permit this
Delay	Delaying
An end	To end
Claim	The right to claim
Any lack of something considered essential	Lacking anything considered essential
Damage by fire to furniture or any personal belongings	Because fire has damaged furniture or any personal belongings
Occupation of the premises on the beginning date	To let the LESSEE occupy the premises on the beginning date
Neglect	Anyone having neglected it
The fact that the previous tenant has not left the premises	Because the previous tenant has not left the premises
Intentional failure to fulfil an obligation	Intentionally failing to fulfil a task the Lease obliges the LESSOR to do
No claim for a sum of money in compensation for a loss or injury or any other right to a lawsuit against the LESSOR	No right to sue the LESSOR
Occupation	The right to occupy the premises
A cancellation of rent for the period of non-occupation	The LESSOR cancels rent for the period when the LESSEE does not occupy the premises

Table 3: Nominalizations substituted in stage 2 of redrafting

3. All passive clauses were rewritten in the active voice. Where agent deletion had taken place, a semantically empty subject such as “no one” or “someone” was used in the rewritten version. These passive clauses and their equivalents in the active voice are shown in Table 4.

4. Syntax was rearranged into a Subject, Finite, Predicator, Complement, Adjunct (SFPCA) order (Bloor and Bloor 2004:59). Exceptions were made when it was deemed that moving a

Passive construction	Active substitute
<p>The LESSOR... will not be responsible for any unwelcome and harmful effects caused by leaks, rain, hail, fire, or any other cause at all</p> <p>...and the LESSEE will not be given a right for any of the previously mentioned reasons or any other reason at all to refuse to give any money required to be paid by him to the LESSOR in terms of the Lease.</p> <p>No animals or pets of any kind will be kept on any part of the premises without the LESSOR writing a document to permit this.</p> <p>...the Lessee will have the inside of the premises professionally fumigated immediately before leaving the premises.</p> <p>...the LESSOR will be given a right to without delaying end the lease.</p> <p>...or increase any amount required to be paid for it.</p> <p>In spite of anything opposite in meaning contained in this document...</p>	<p>...the LESSOR will not be responsible for unwelcome and harmful effects that leaks, rain, hail, fire, or any other cause at all may have.</p> <p>...and the LESSEE will not have a right for any of the previously mentioned reasons or any other reason at all to refuse to give any money that the Lease requires him/her to pay to the LESSOR.</p> <p>No one will keep animals or pets of any kind on any part of the premises without the LESSOR writing a document to permit this.</p> <p>...the Lessee will have someone fumigate the inside of the premises professionally, immediately before leaving the premises.</p> <p>...the LESSOR will have a right to without delaying end the lease.</p> <p>...or increase any amount that his/her insurer requires the LESSOR to pay for it.</p> <p>In spite of anything opposite in meaning that this document contains...</p>

Table 4: Passive constructions rewritten in the active voice in stage 2 of redrafting

5. constituent would alter the meaning of a clause. For example, the clausal adjunct “depending on the Lessor writing a document to permit this” was not moved in the following sentence to preserve the perceived ambiguity of this sentence from the *difficult-words-replaced* version:

If the Lessee has kept pets, depending on the LESSOR writing a document to permit this, the Lessee will have someone fumigate the inside of the premises professionally, immediately before leaving the premises.

Table 5 lists the clauses that were rearranged in this sub-step.

Clause to be rearranged	Rearranged clauses
<p>...nor will the LESSOR be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of the premises at any time falling into a faulty condition</p> <p>...nor will the LESSEE have a right for any of the previously mentioned reasons or any other reason at all to refuse to give any money that the Lease requires him/her to pay to the LESSOR.</p> <p>...the LESSOR will have a right to without delaying end the lease.</p>	<p>...nor will the LESSOR be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of the premises falling into a faulty condition at any time</p> <p>...nor will the LESSEE have a right for any of the reasons mentioned previously or any other reason at all to refuse to give any money that the Lease requires him/her to pay to the LESSOR.</p> <p>...the LESSOR will have a right to end the lease without delaying.</p>

Table 5: Clauses rearranged in SFPCA order in stage 2 of redrafting

6. Finally, the sentences of the *difficult-words-replaced* version were split up into shorter sentences by placing full stops at the end of selected clauses, while ensuring that the logico-semantic relations between clauses remained intact by inserting relevant connecting words and implied subjects. For example, the following sentence from the *difficult-words-replaced* version was split into two:

The LESSEE formally promises not to use the equipment needed for any business or process or keep any hazardous goods on the premises, which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it.

In the *spoken-grammar* version, the two clauses in the verbal group complex *not to use the equipment needed for any business or process or keep any hazardous goods on the premises* were separated so that each became the Complement of a separate sentence. This required that the subject and verb of the original clause be repeated, along with the qualifier *which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it*. The resultant pair of sentences in the *spoken-grammar* version read as follows:

The LESSEE formally promises not to use the equipment needed for any business or process which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it. The LESSEE formally promises not to keep any hazardous goods on the premises which may fail to comply with the LESSOR'S fire insurance policy or increase any amount that his/her insurer requires the LESSOR to pay for it.

The new sentence boundaries in the *spoken-grammar* version are marked below by bold full stops within brackets, (.).

This second stage of redrafting produced what is named the *spoken-grammar version*. This version is printed below and in Appendix 3. This version no longer preserves much of the bolding of the original extract, since the bold sections from the original extract were extensively rewritten in stage 2 of redrafting.

Spoken-Grammar Version

LESSOR

- 14 **The LESSOR** will keep all outside walls and gutters and the roof of the premises in order(.) But the LESSOR will not be responsible for unwelcome and harmful effects that leaks, rain, hail, fire, or any other cause at all may have(.) The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of anything the LESSOR or any of his/her domestic workers does or neglects to do(.) The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of the premises falling into a faulty condition at any time or because the LESSOR does not get someone to repair things which he/she should repair, in good time or at all(.) The LESSEE will not have a right for any of the reasons mentioned previously or any other reason at all to refuse to give any money that the Lease requires him/her to pay to the LESSOR.

LESSEE

- 15 No one will keep animals or pets of any kind on any part of the premises without the LESSOR writing a document to permit this. If the Lessee has kept pets, depending on the Lessor writing a document to permit this, the Lessee will have someone fumigate the inside of the premises professionally, immediately before leaving the premises.

If a fire happens on the premises, the LESSOR will have a right to end the lease without delaying. If this happens, he/she will pay back to the LESSEE any rent paid ahead in time beyond the date when the LESSOR ends the lease(.) The LESSEE will not have the right to claim for unwelcome and harmful effects as a result of lacking anything considered essential because fire has damaged furniture or any personal belongings. The LESSEE formally promises not to use the equipment needed for any business or process which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it(.) The LESSEE formally promises not to keep any hazardous goods on the premises which may fail to comply with the LESSOR'S fire insurance policy or increase any amount that his/her insurer requires the LESSOR to pay for it.

- 16 If the LESSOR is unable to let the LESSEE occupy the premises on the beginning date, because the premises is in a poor condition due to anyone having neglected it, or because the previous tenant has not left the premises or because of any fact at all not due to intentionally failing to fulfill a task the Lease obliges the LESSOR to do, the LESSEE will have no right to sue the LESSOR as a result of that(.) The LESSEE formally promises to accept the right to occupy the premises from whatever date the premises are available, on the condition that the LESSOR cancels rent for the period when the LESSEE does not occupy the premises. This clause applies in spite of anything opposite in meaning that this document contains(.) It also applies in spite of any receipt given for rent or deposit paid(.)

Stage 3: Information-restructured version

In this stage, the text was reformatted in four steps. Firstly, the text was rearranged so that each clause complex a new line of type, to make it easier to distinguish between them.

Secondly, where adjacent clauses or groups of clauses have common constituents, those constituents were elided from each of the clauses and placed at the head of a bulleted list, with the

remainder of the constituents appearing as items in the bulleted list. For example, one of the clause complexes that was split in the *spoken-grammar* version was recombined, with bullet points added to mark the two co-ordinated clauses in the complement as options that could apply, as shown below:

The LESSEE formally promises not to

- use the **equipment** needed for any business or process, or
- keep any **hazardous goods** on the premises

which may fail to comply with the LESSOR's **fire insurance policy** or increase any amount that his/her insurer requires the LESSOR to pay for it.

In the third step, a heading was also added to each paragraph to summaries what each applied to. Furthermore, the words “lessor” and “lessee” were capitalised uniformly throughout the extract, to aid readers in distinguishing between references to the two parties.

Lastly, phrases were also put in bold type where we believed this would aid readers in quickly identifying what situation particular sentences applied to, and/or what actions were to be taken if these situations applied. For example, in the clause “The LESSOR will keep **all outside walls and gutters and the roof of the premises** in order,” the items to which the clause applies have been highlighted. The version resulting from this stage is named the *information-restructured* version. It is reprinted below and in Appendix 4.

Information-Restructured Version

14 Limits of the LESSOR's responsibilities

The LESSOR will keep **all outside walls and gutters and the roof of the premises** in order.

But the LESSOR will not be responsible for any unwelcome and harmful effects that **leaks, rain, hail, fire, or any other cause at all** may have.

The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer

- because of **anything the LESSOR or any of his/her domestic workers does or neglects to do,**
- because of **the premises falling into a faulty condition at any time,** or
- because **the LESSOR does not get someone to repair things which he/she should repair,** in good time or at all.

The LESSEE will not have a right for any of the reasons mentioned previously or any other reason at all **to refuse to give any money** that the Lease requires him/her to pay to the LESSOR.

15 Pets

No one will keep **animals or pets** of any kind on any part of the premises without the LESSOR writing a document to permit this.

If the LESSEE has kept pets, depending on the LESSOR writing a document to permit this, the LESSEE will have someone **fumigate** the inside of the premises professionally, immediately before leaving the premises.

Fire

If a fire happens on the premises, the LESSOR will have a right to **end the lease** without delaying.

If this happens, he/she will pay back to the LESSEE **any rent paid ahead in time** beyond the date when

the LESSOR ends the lease.

The LESSEE will not have the right to claim for unwelcome and harmful effects as a result of lacking anything considered essential because fire has damaged **furniture or any personal belongings**.

The LESSEE formally promises not to

- use the **equipment** needed for any business or process, or
- keep any **hazardous goods** on the premises which may fail to comply with the LESSOR's **fire insurance policy** or increase any amount that his/her insurer requires the LESSOR to pay for it.

16 **Delays in letting the LESSEE occupy the premises**

If the LESSOR is unable to let the LESSEE occupy the premises on the beginning date,

- because the premises is in a **poor condition** due to anyone having neglected it, or
- because the **previous tenant has not left** the premises, or
- because of **any fact at all** not due to **intentionally failing to fulfill a task** the Lease obliges the LESSOR to do,

the LESSEE will have no right to **sue** the LESSOR as a result of that.

The LESSEE formally promises to accept the right to occupy the premises from **whatever date the premises are available**, on the condition that the LESSOR **cancels rent** for the period when the LESSEE does not occupy the premises.

This clause applies

- in spite of **anything opposite in meaning that this document contains**, and
- **in spite of any receipt given for rent or deposit paid.**

Comparing the legal force of the redrafted versions with the original

To compare the legal force of the redrafted versions, we approached a senior advocate, who has plenty of day-to-day experience of working with financial contracts, to evaluate and compare the meanings of all four of the texts.

The first author arranged an appointment with the advocate in his chambers. At this appointment, the advocate was supplied with copies of all three plain-language versions and the *original extract*. The *information-restructured* version was labelled Version 1, the *spoken-grammar* version was labelled Version 2, the *difficult-words-replaced* version was labelled Version 3 and the *original extract* was labelled Version 4. He was also given a copy of the original lease agreement with the *original extract* omitted, since the extract and the plain-language versions of it had to be read in the context of the full lease agreement to have any legal force at all.

The advocate was told that versions 1, 2, 3 and 4 were different versions of the same page from the lease agreement, written in different styles of language. He was asked to read each version in numerical order as page five of the original lease agreement, and decide whether each would be suitable as part of a legally-binding lease agreement. We asked him to read the versions in order from the *information-restructured* version to the *original extract*, so that the *original extract* would not be seen as the norm from which the other versions deviated, which might have prejudiced him unduly against the plain-language versions of the extract.

Next, the advocate was asked to compare Version 1 (the *information-restructured* version) with Version 2 (the *spoken-grammar* version) and make notes of all the possible situations in which, if litigation regarding the lease agreement was pursued, a magistrate would rule differently based on Version 1 than (s)he would based on Version 2, giving reasons. He was asked to compare Version 2 with Version 3 (the *difficult-words-replaced* version) and Version 3 with Version 4 (the *original extract*) in the same manner. This test was designed to reveal the differences in legal force between each version, and hence between the *original extract* and each redrafted version of the extract.

The advocate was allowed to read and compare the documents in his own time, then complete his notes and return the documents to us. These notes (see Appendix 5) are comprehensive and very clear in their pinpointing of possible differences in meaning between the texts.

Analysis of the data

After the advocate's notes had been received, we analysed all the differences between the versions that he mentioned. This analysis sought to discover, based on linguistic theory, why these identified differences in legal force existed. Various instances where differing wordings were used in different versions without significant change to the legal meaning of the versions being noted were also analysed to discover why these were successful in preserving the legal force of the *original extract*.

Lexical semantics was used to compare the meanings of individual lexical items in the *original extract* with their counterparts in the *difficult-words-replaced* version. This was done using componential analysis (as outlined in Nida 1975) to find components of meaning present in one of the lexical items that were not present in the other. Relations of hyponymy were considered where one lexical item appeared to have a smaller scope of reference than its counterpart in another version.

For differences on a phrasal or clausal level between the various versions, Systemic Functional Grammar (SFG, as set out in Halliday and Matthiessen 2004) was used as a set of tools for analysis. In particular, the Transitivity system of the Ideational metafunction of SFG was used to analyse how lexical items were configured into participants, processes or circumstances which affected meaning at the clausal level. SFG's typification of the logico-semantic relations that hold between clauses (which falls under the Logical Metafunction, another sub-category of the Ideational Metafunction) was also helpful in pinpointing whether different meanings arise from the different means used to link clauses in the different versions.

4. Insights from the advocate's comparison of the versions

The advocate wrote a meticulously detailed set of notes on the *original extract* and the three redrafted versions we gave to him. These notes are reproduced in Appendix 5. This section gives a summary of the advocate's conclusions on the texts, and discusses their implications for our research.

The notes begin with a section summarizing the rules of interpretation as developed by precedent in South African law. This section informs the advocate's comparison of the various versions of the extract and so is useful in understanding the reasoning behind it.

It appears that the strategy of asking the advocate to read the *information-restructured* version first and work backwards through the redrafted versions to the *original extract* was successful in ensuring that the advocate was not prejudiced in favour of the *original extract* and against the rewritten versions. He writes that clause 14 in the *original extract* “incorporates some new typographical and/or grammatical errors” (i.e. errors that were not present in the rewritten versions because they had been corrected in them). He also writes that the paragraph on fire in clause 15 of the *original extract* was “drafted in terminology that is well-nigh unintelligible”, showing that redrafting of the *original extract* was necessary to enable even legal experts to interpret it successfully. This observation seems to support Kimble's (2003) argument that the plainer the language of a text is, the more likely it is to be clear in meaning.

That said, the advocate is less than complimentary about the style of much of the rewritten versions. In many places he labels constructions as “clumsy”. One example is the construction “to refuse to give any money” which appears in all the rewritten versions of clause 14. Some of these instances of “clumsy phraseology” will be discussed in the analysis section of this report.

Despite these charges of “clumsiness”, the advocate concludes that there is “very little difference if any in meaning between the 4 versions, save the confusion relating to the written permission in the clause dealing with pets and fumigation”. This exception will be discussed in the following section of this article, but the advocate's statement shows that it is by and large possible to retain the legal force of an original legal document in plain-language redrafts of that document.

As regards evaluating the various techniques used in the redrafting process, the advocate finds that the smallest difference in phraseology and therefore meaning occurs between the *spoken-grammar* version and the *information-restructured* version, since text format, headings, bolding and bullet points add very little to the legal interpretation of a text. These are therefore the plain-language redrafting techniques that were best able to preserve the legal force of the original document.

The largest differences in meaning occur between the *original extract* and the *difficult-words-*

replaced version. This indicates that substituting specialist legal terminology and other archaic or uncommon words in legal documents is the technique which is least successful at preserving the original document's legal force.

5. Analysis of the differences between the versions

We conducted a comparative analysis of the semantics and lexico-grammar of each version of the text in order to understand the differences in meaning that the advocate comments on in his notes, and also to examine why some other changes in wording and syntax were found to be successful in preserving the legal meaning of the *original extract*. First, the *original extract* was compared with the *difficult-words-replaced* version. Next, the *difficult-words-replaced* version was compared with the *spoken-grammar* version, and lastly, the *spoken-grammar* version was compared with the *information-restructured* version, to observe how the rearranging of clauses in the *information-restructured* version was successful in preserving the legal meaning of the extract. In this section of the article, we report on each of these three comparisons in turn, largely mirroring the three steps in the process of redrafting the *original extract*.

Comparison of the *original extract* with the *difficult-words-replaced* version

Clause 14

In this clause, the only differences between the two versions which the advocate mentions in his notes is that the construction “to refuse to give any money” replaced “to withhold any monies” in the *original extract*, as well as sundry typographical errors which were corrected in the *difficult-words-replaced* version. He writes that the phrase “to refuse to give any money” was “plainly clumsy drafting”, but that it should be interpreted as having the same force as “to withhold any monies”. He also does not interpret the elimination of the typographical errors as having an effect on the legal force of the clause.

In finding out why “to refuse to give any money” is considered a clumsy equivalent for “to withhold any monies”, the word “give” is of particular importance because it is polysemous: it can mean both “to hand over something to someone else” and “to hand over something to someone else voluntarily without expecting anything in return”. The second meaning is a hyponym of the first, with the components [+VOLUNTARY] and [-RECIPROCAL] added to it.

The word “withhold” simply means “to hold back something”, which is the same as “refuse to give” where the first meaning of “give” is intended. In the *difficult-words-replaced* version, it is clear that this first meaning is intended, since the Goal¹ of “give” is “any money required to be paid

by him to the LESSOR in terms of the Lease”. The lease is an arrangement whereby money is exchanged for the right to live in a particular place, so it is clear that something is expected in return for money required to be paid in terms of the lease.

Nevertheless, the fact that “give” is polysemous may cause some confusion in this sentence, particularly if the second, more restricted meaning of “give” comes to mind before the first, more general meaning. When this occurs, people may be puzzled at how the lessee could be refused the right not to give money voluntarily to the lessor, since this would cancel out the very voluntariness that is a component of this restricted sense of “give”. This possible confusion may be the reason why the advocate labels this construction as clumsy but does not suggest that it differs in meaning from the *original extract*.

Another pair of equivalent lexical items in this phrase, “money” (from the *difficult-words-replaced* version) and “monies” (from the *original extract*), is less problematic. “Monies” can be considered a hyponym of “money” in that it refers to “money that is owed”. Thus it has an additional component of meaning, [+OWING], that is not present in “money”. However, the *difficult-words-replaced* version compensates for that by placing the Qualifier “required to be paid...” after “money”, showing that it refers to money owing, as does the *original extract*.

A less clumsy plain-language version of “withhold any monies” that could be substituted for “refuse to give any money” in the *difficult-words-replaced* version is “refuse to pay any money”. “Pay” is a partial synonym of “give”, but it does not have a restricted meaning with the components [+VOLUNTARY] and [-RECIPROCAL] as “give” does, eliminating the confusion this word may cause.

The advocate remarks on two errors on the copy of the *original extract* that we handed him, namely “be” in the phrase “be reason of any act whatsoever” and “worker's” in “neglect on the part of the LESSOR or any of his domestic worker's”. In these cases “by” and “workers” respectively are clearly intended, because both phrases would otherwise be ungrammatical and therefore meaningless. Therefore, these erroneous words were substituted with the correct ones in the *difficult-words-replaced* version. The advocate does not regard these corrections as having an impact on the legal force of the document, probably because interpreters of a contract must, according to precedent, have regard to the obvious intention behind the wording, rather than the wording itself, as he writes in the preamble to his notes. Interpreting the contract this way would mean that obvious typographical errors would have to be interpreted as though the correct words stood in their place.

Clause 15

The differences between this clause in the *original extract* and its counterpart in the *difficult-words-replaced* version are the source of the greatest difference in legal force between the *original extract* and the redrafted versions. In the *original extract*, the following clause complex appears:

In the event that the Lessee has kept pets, subject to the Lessor's approval in writing, the Lessee shall have the interior of the premises **professionally fumigated immediately** [sic] **prior to vacating the premises.**

This was rewritten as follows in the *difficult-words-replaced* version:

If the Lessee has kept pets, dependent on the Lessor's approval in writing, the Lessee will have the inside of the premises **professionally fumigated immediately before leaving the premises.**

The advocate writes that in the *difficult-words-replaced* version and subsequent versions, it is unclear whether the "approval in writing" applies to the lessor having kept pets or to having the inside of the premises professionally fumigated. He writes that according to the *contra proferentem* rule in legal theory, ambiguity should be interpreted against the authors of contracts, since they were able to make the meaning plain, but did not. The author in this case is assumed to be the lessor. The reading of this ambiguity that places the greatest obligation on the lessor is that which requires the lessor to give written permission for fumigation to take place, so this is the more probable interpretation a court would make. The advocate also writes that in the *original extract*, it is clear that the written permission refers to the fumigation, not keeping pets. This means that the *original extract* would have the same legal force as the *difficult-words-replaced* version, despite the ambiguity of the latter.

According to the Ideational Metafunction in SFG, the problematic constituent "subject to the Lessor's approval in writing" (in the *original extract*) and "dependent on the Lessor's approval in writing" (in the *difficult-words-replaced version*) is a Circumstance. The Process that the Circumstance refers to is determined by which clause the Circumstance is judged to be a constituent of. In the *original extract*, it may be attached to the main clause as shown below, where square brackets are used to demarcate embedded clauses:

In the event	[that	the Lessee	has kept	pets,]	subject to the Lessor's approval in writing,	the Lessee
	[Conj.	Actor	Process	Goal]		
Circumstance				Circumstance		Actor
shall have	the interior of the premises		professionally fumigated			
Process	Range		Circumstance			
immediately before	[leaving	the premises].				
	[Process	Range]				
Circumstance						

Alternatively, the Circumstance may be part of the embedded clause as shown below:

In the event	[that	the Lessee	has kept	pets,	subject to the Lessor's approval in writing,]	the Lessee
	[Conj.	Actor	Process	Goal	Circumstance]	
Circumstance						Actor
shall have	the interior of the premises		professionally fumigated			
Process	Range		Circumstance			
immediately before	[leaving	the premises].				
	[Process	Range]				
Circumstance						

In the *difficult-words-replaced* version, much the same situation exists, except that instead of being a constituent of an embedded clause or a main clause, the Circumstance can be a constituent of either a dependent or independent clause. These two options are shown below, with slashes to demarcate the boundary between the dependent and independent clause:

If the Lessee has kept pets, / dependent on the Lessor's approval in writing, the Lessee will have the inside of the premises professionally fumigated immediately before [leaving the premises].

or

If the Lessee has kept pets, dependent on the Lessor's approval in writing, / the Lessee will have the inside of the premises professionally fumigated immediately before [leaving the premises].

We interpreted the *original extract* as ambiguous when drafting the *difficult-words-replaced* version. Therefore effort was made to preserve this perceived ambiguity as part of the meaning of the *original extract*.

But since the advocate interprets the *original extract* as being unambiguous, analysis is required to find out how this interpretation is possible. The most likely reason lies in the different clausal structures of the two versions and the placing of commas in the clause complex. In the *difficult-words-replaced* version, the use of the conjunction “If” structures the clause complex into a dependent clause and independent clause instead of one main clause with embedded clauses, as “In the event that” does. “If” was substituted for “In the event that” since it was a plainer equivalent, but not much attention was given to how it changed the structure of the clause complex. In the *original extract*, a comma separates “In the event that the Lessee has kept pets” from “subject to the Lessor's approval in writing”. The fact that these two constituents are separated in this way means that one more naturally reads them as two separate Circumstances, in which case “subject to the Lessor's approval in writing” applies to the fumigation. But in the *difficult-words-replaced version*, “If the Lessee has kept pets” is not a Circumstance, but a dependent clause or part thereof. This means that since the commas remain in place, “dependent on the Lessor's approval in writing” is separated from the remainder of the clauses on either side of it and thus could apply equally to either of them.

The ambiguity of the *difficult-words-replaced version* of this clause complex could be avoided by moving the Circumstance “dependent on the Lessor's approval in writing” to immediately after “fumigated”, as shown below:

If the Lessee has kept pets, the Lessee will have the inside of the premises professionally fumigated, dependent on the Lessor’s approval in writing, immediately before leaving the premises.

However, this solution could cause further confusion as to who the implied Actor of “leaving the premises” is. This confusion would be obviated by substituting “leaving” with “the Lessee leaves” as below:

If the Lessee has kept pets, the Lessee will have the inside of the premises professionally fumigated, dependent on the Lessor’s approval in writing, immediately before the Lessee leaves the premises.

The advocate also criticizes the second paragraph of Clause 15 in the *original extract* for being “drafted in terminology that is well-nigh unintelligible”. He particularly identifies the reference to “any such deprivation” as being meaningless, since there was no possible antecedent for the referring expression “such deprivation”. In the *difficult-words-replaced* version, the word “such” was omitted for this reason, so that “any such deprivation” is rendered as “any lack of something considered essential”. The advocate believes that if one was to interpret the phrase with the word “such” considered to be superfluous, it would have the same force in the *difficult-words-replaced* version as in the *original extract*.

Similarly, the advocate regards the reference to “any trades” in the *original extract* as meaningless. We struggled to interpret this phrase when drafting the *difficult-words-replaced* version, but eventually guessed that the first “or” in the clause “The LESSEE undertakes not to use apparatus or any trades or process...which may violate the LESSOR'S fire insurance policy or increase any premium payable thereunder” was a typographical error intended to be “of”. This was the only satisfactory explanation identifiable for the presence of “or” in this position, since the verb “use” does not normally collocate with “trades” in English usage. Hence, the *difficult-words-replaced version* of this clause is

The LESSEE formally promises not to use the equipment needed for any business or process...which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it.

The advocate believes that this is equivalent in force to the original if the words “any trades” in the original were interpreted as superfluous.

Clause 16

The advocate writes that the phraseology of this clause in the *original extract* “rather more eloquently conveys the same intention as in the other three versions”. This comment provides an interesting insight into the opinion legal experts may have toward plain language as a whole: they may see it as less “eloquent” than specialist legal discourse because it cannot use the same semantically rich terminology that specialist legal discourse does. For instance, the phrase “willful default” in the *original extract* was rewritten as “intentional failure to fulfil an obligation”, clearly a longer and grammatically more complex phrase, but one that would be more transparent to a non-expert since it explains what “willful default” means. However, this phrase still seems as though it would be rather opaque to a second-language speaker, since it contains two nominalizations, “failure” and “obligation”. These were rewritten in more congruent form in the *spoken-grammar version*.

The advocate also points out “the rather extraordinary positioning of the comma” after the word “fact” in the following context in the *original extract*:

...should the LESSOR be unable to give the LESSEE occupation of the premises on the commencement date, by reason of the premises being in a state of disrepair, or by reason of the fact that the previous tenant not having vacated the premises or by reason of any fact, whatsoever not due to willful default, the LESSEE shall have no claim for damages or other right of action against the LESSOR as a result thereof...

Here, the comma after “fact” could be construed as functioning in such a way that “whatsoever” and “not due to willful default” are intended as Qualifiers elided from each item but the last in the nominal group complex formed by the list of reasons for which the lessee will have no claim for

damages, but this would plainly make no sense, since, for example, “by reason of the premises being in a state of disrepair whatsoever not due to willful default” is ungrammatical. “Whatsoever” as a Qualifier in a Nominal Group is only grammatical if preceded by the Deictic “any”, so it is clear that “whatsoever” in this case only refers to “any fact”, and therefore so must the Qualifier “not due to willful default”, since there is no comma separating it from the list. It is clear, then, that the comma is misplaced, and hence the *original extract* should be interpreted as though it is not present. This is what was done in drafting the *difficult-words-replaced* version, so in this version “at all” (in place of “whatsoever”) and “not due to intentional failure to fulfil an obligation” (in place of “not due to willful default”) qualify only “any fact” and not all the items in the list. This has the same legal force as the *original extract* if the offending comma is ignored.

Comparison of the *difficult-words-replaced* version with the *spoken-grammar* version

Clause 14

The advocate does not notice any difference in meaning in this clause between the two versions, but does comment that the *difficult-words-replaced* version consists of one long sentence, while the *spoken-grammar* version is broken up into shorter sentences, and that the *difficult-words-replaced* version incorporates some “objectionable grammar”, without giving examples. Since this “objectionable grammar” is not seen as changing the legal force of the extract in any way, one need not for the purposes of this study dwell on analysing it.

Clause 15

No differences in meaning between the *difficult-words-replaced* version and the *spoken-grammar* version of this clause are noted as altering legal force. As regards the second paragraph of the clause, the advocate writes that the terminology of the *difficult-words-replaced* version is “more clumsy and difficult to comprehend” than that of the *spoken-grammar* version. This improvement in the terminology was a byproduct of rewriting nominalizations more congruently. For instance, “end” was nominalized in the *difficult-words-replaced* version in the following clause: “the LESSOR will be given a right to without delay bring the Lease to an end”. This is rather an uncommon usage of the word “end”. In the *spoken-grammar* version, it was replaced with “end” acting as a verb, as follows: “the LESSOR will have a right to end the lease without delaying.”

In addition, three difficult lexical items in the *difficult-words-replaced* version, “equipment”, “business” and “process”, were deleted from the *spoken-grammar* version because they were judged to be superfluous. The clause complex they appear in is the following:

The LESSEE formally promises not to use the equipment needed for any business or process or keep any hazardous goods on the premises, which may fail to comply with the LESSOR’S

fire insurance policy or increase any amount required to be paid for it.

In the *spoken-grammar* version, it appears as follows:

The LESSEE formally promises not to keep any hazardous goods on the premises which may fail to comply with the LESSOR'S fire insurance policy or increase any amount that his/her insurer requires the LESSOR to pay for it.

In the *difficult-words-replaced* version, the most likely interpretation of this clause complex is that the defining relative clause “which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it” has been elided from the Goal “the equipment needed for any business or process”. The comma before the relative clause separates it from the clause “or keep any hazardous goods on the premises” to show that the relative clause applies not only to “any hazardous goods” but also to “the equipment needed for any business or process”. This makes the clause complex difficult to comprehend, a problem which needed to be addressed in the *spoken-grammar* version. We found that the Goal “the equipment needed for any business or process which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it” was superfluous, since if any such business or process failed to comply with the fire insurance policy or increased its premiums, it would conceivably be of a hazardous nature. Therefore, the equipment needed for it would most likely fall under the category of “hazardous goods” and thus be covered by the Goal “any hazardous goods which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it”. Therefore the advocate does not see any difference in legal force between the *difficult-words-replaced* version and the *spoken-grammar* version on this point.

Clause 16

The advocate writes that in this clause, the phraseology of the *difficult-words-replaced* version was somewhat more intelligible than that of the *spoken-grammar* version. This is exactly the opposite of what it was hoped the redrafting process would achieve. One possible reason for this remark may be that in the process of rewriting nominalizations more congruently, extra clauses and constituents such as agents needed to be added to the text, making it more grammatically complex. For instance, “because of the premises being in a poor condition due to neglect” is a fairly simple clause in the *difficult-words-replaced* version, but is replaced by “because the premises is in a poor condition due to anyone having neglected it”, a more complicated clause with embedding, in the *spoken-grammar* version. It is clear to see how someone with training in decoding devices used in formal discourses, such as nominalizations, would find the latter version of the clause less intelligible than the former, but one without this skill may battle to comprehend the nominalization

“neglect”, and so would find the latter version more intelligible than the former.

Comparison of the *spoken-grammar* version with the *information-restructured* version

Since the differences between these two versions lie largely in text formatting, the advocate finds no differences in legal force between them. The following is an example of where the wordings of the two versions do differ. In clause 16, these two sentences appeared in the *spoken-grammar* version: “This clause applies in spite of anything opposite in meaning that this document contains. It also applies in spite of any receipt given for rent or deposit paid.” Its counterpart in the *information-restructured* version was as follows:

This clause applies

- in spite of **anything opposite in meaning that this document contains**, and
- in spite of **any receipt given** for rent or deposit paid.

The most obvious additions to the *information-restructured* version are the bullets, which serve to mark the two Circumstances that follow them as items in a list. To allow this conversion to a list, which in this case is realized as an Adverbial Group Complex, the two clause complexes from the *spoken-grammar* version were rejoined. (They were initially constituents of the same clause complex in the *original extract* and the *difficult-words-replaced* version.) In the second clause complex, the pronoun “It” has “This clause” as its antecedent, so “This clause” functions as the Actor in the main clause of both clause complexes. Both main clauses also have a common Process, “applies”. All that differs between them is the Circumstance each takes. This means that the clause complexes can be rewritten as one clause complex with “This clause” as the Actor in the main clause, “applies” as the Process, and two Circumstances. The additive relationship between the two clause complexes conveyed by the adverb “also” in the *spoken-grammar* version is conveyed in the *information-restructured* version by the conjunction “and”, which is inserted between the two Circumstances to form an adverbial group complex. In this way, no meaning is lost or created between *the spoken-grammar version* and the *information-restructured* version when clauses with identical Processes and Participants but differing Circumstances are combined into a bulleted list.

The advocate also does not consider the headings introduced in the *information-restructured* version as altering the legal force of the document. He writes, “as a rule, headings do not influence the plain meaning of the words in the clause”. Therefore, although he regards the heading of clause 16, “Delays in letting the LESSEE occupy the premises” as misleading, it does not affect his interpretation of the clause. It would possibly be more fitting to phrase the heading as a question, such as “What happens if the premises are not available at the start of the lease?” or even a

conditional clause, such as “If the premises are not available at the start of the lease”. Kimble (2003) uses a similar formulation to the latter as a heading in one of his plain-language versions of a legal text.

6. Conclusion

The first question that this study was designed to answer is “To what extent can an extract from a legal document be accurately redrafted into language that is easily accessible to a non-expert?” The emphasis here is on the word “accurately”, since the study did not involve tests to establish exactly what language is easily accessible to a non-expert, but instead relied on common techniques used by plain-language redrafters to supply its view of what constitutes accessible language. The answer to this first question has to be “to a very large, if not total, extent”. The final plain-language redraft of the *original extract*, the *information-restructured version*, differs significantly in meaning from the original in only one sentence. Further analysis shows that this sentence, regarding whether the lessor's permission was required to fumigate the premises, can easily be rewritten in relatively plain language in a way that reconciles the rewritten versions' meaning with that of the original.

The second research question is related to the first: “Do the differences in meaning between an extract from a legal document and several systematically redrafted versions of that extract result in a significant difference in legal force?” As explained above, there is only one ambiguity in the redrafted versions that could potentially result in a difference in legal force. However, it happens that according to the legal rules of interpretation of contracts, this ambiguity had to be interpreted in the same way as the corresponding sentence in the *original extract* is interpreted. This means that there was no significant difference in legal force between the extract and the systematically redrafted versions of it.

The third research question was “What techniques of rewriting a legal document in plain language are best able to preserve the meaning and legal force of the original document?” As discussed in the “Insights from the advocate's comparison of the versions” section of this article, restructuring the format of text on the page, adding clause headings and marking list items with bullet points prove to be the most effective measures in preserving the meaning of the original document.

Several factors limit the applicability of these findings. Firstly, since only one short extract from one lease agreement was redrafted in this study, the extent to which the findings of this research can be generalized to all legal documents is severely limited. However, this study was not aimed at finding out if all legal documents are perfectly translatable into plain language; it simply sought to discover if it is at all possible for legal prose to be redrafted in plain language while retaining its

legal force. Secondly, the quality of the plain language versions of the legal document that were produced in this study is limited by the quality of the redrafting techniques used in producing them, because this project has used an extremely systematic approach to redrafting texts into plain language. It would be interesting to compare the results of such an approach with those of a more subjective approach with no uniform set of techniques used to render a text in plain language. Would such an approach produce a more comprehensible plain-language version than a systematic approach? Which approach would produce a plain-language version more faithful in meaning to the original text?

This research gives an indication that plain language can indeed convey the intricacies of legal contracts. As our analysis has shown, plain language does not have the lexical density that the conventional legal register does, but the more complex grammatical structures of plain language are more than capable of eliminating ambiguities and loopholes. These grammatical structures can even make meaning clearer, especially when assisted by devices such as bullet points which give a more graphic view of the relations between constituents in a text if used judiciously.

This should encourage plain language lobbyists by providing a hint that plain language in legal texts is not only a desirable ideal, but is possible in practice, at least in some instances. It should motivate government and legal authorities to consider seriously redrafting of texts into plain language, instead of concluding prematurely that it is impossible to rewrite legal texts in plain language or that plain-language texts will necessarily be more problematic to interpret than texts written in conventional legal register.

This project has also raised a range of questions that should stimulate further research. Obviously, the methods used here could be repeated on extracts from other subgenres of legal writing, such as legislation, to see if they can be faithfully rendered in plain language.

The analysis section of this report suggested that what may be comprehensible to non-legal experts, may be difficult to comprehend for experts. Observation of the way experts and non-experts in a particular discourse read writing in that discourse could show whether this notion is true or not. What is envisaged here is the type of ethnographic work that has been done in a research movement known as the New Literacy Studies (see Street 1983 for an overview of this movement). Research from the New Literacy Studies in general is valuable reading both for those studying the plain language movement and plain language activists themselves. It shows that “readability” is not a quality that is inherent to texts, but differs depending on readers' past experience. A particular style of writing could be easily comprehensible to non-experts, but completely mystifying to experts, for example. The New Literacy Studies demonstrate a need to move past a “one-size-fits-all” approach and develop documents tailored more precisely to a style

appropriate to specific groups of target readers.

The final thing this research has shown is that redrafting texts in a specialist discourse accurately into plain language is no simple task. Even the most “automatic” of methods of rewriting requires a detailed understanding of the text. At times expressing specialist language in a plain but accurate way can make for some convoluted grammar, which may need to be untangled using still more redrafting methods. Nevertheless, plain language does have the resources to convey at least some content from specialist discourses accurately, including the legal discourse of contracts.

Endnotes:

¹ For ease of identification, all Systemic Functional Grammar labels in this article are written with an initial capital letter.

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Appendix 1: Original extract

Bolding and other text formatting reflects that of the original lease agreement.

LESSOR

- 14 **The LESSOR** shall keep all outside walls and roof, gutters of the premises in order but shall not be responsible for any damage caused by leakage, rain, hail, fire, or any other cause whatsoever nor shall the LESSOR be responsible for any loss or damage which the LESSEE may sustain be reason of any act whatsoever or neglect on the part of the LESSOR or any of his domestic worker's nor shall the LESSOR be responsible for any loss or damage which the LESSEE may sustain by reason of the premises at any time falling into a defective state of repair or by reason of any repairs to be effected by the LESSOR not being effected timeously or at all and the LESSEE shall not be entitled for any of the foregoing reasons or any other reason whatsoever to withhold any monies payable by him to the LESSOR in terms of the Lease.

LESSEE

- 15 No animals or pets of any kind shall be kept on any part of the premises without the **written consent of the LESSOR**. In the event that the Lessee has kept pets, subject to the Lessor's approval in writing, the Lessee shall have the interior of the premises **professionally fumigated immediately prior to vacating the premises**.

In the event of a fire occurring on the premises, the LESSOR shall be entitled to forthwith terminate the Lease in which event he shall refund to the LESSEE any rent paid in advance beyond the date of such termination and the LESSEE shall not have claim for damage in consequence of any such deprivation for damage by fire to furniture or any personal effects. The LESSEE undertakes not to use apparatus or any trades or process or keep any hazardous goods on the premises, which may violate the LESSOR'S fire insurance policy or increase any premium payable thereunder.

- 16 Notwithstanding anything to the contrary contained herein and notwithstanding any receipt given for rent or deposit paid, should the LESSOR be unable to give the LESSEE occupation of the premises on the commencement date, by reason of the premises being in a state of disrepair, or by reason of the fact that the previous tenant not having vacated the premises or by reason of any fact, whatsoever not due to willful default, the LESSEE shall have no claim for damages or other right of action against the LESSOR as a result thereof and undertakes to accept occupation from whatever date the premises are available subject to a remission of rent for the period of non-occupation.

Appendix 2: Difficult-words-replaced version

Bolding and other text formatting reflects that of the original lease agreement.

LESSOR

- 14 **The LESSOR** will keep all outside walls and roof, gutters of the premises in order but will not be responsible for any unwelcome and harmful effects caused by leakage, rain, hail, fire, or any other cause at all nor will the LESSOR be responsible for any loss or unwelcome and harmful effect which the LESSEE may suffer because of any act at all or neglect on the part of the LESSOR or any of his/her domestic workers nor will the LESSOR be responsible for any loss or unwelcome and harmful effect which the LESSEE may suffer because of the premises at any time falling into a faulty condition or because of any repairs to be brought about by the LESSOR not being brought about in good time or at all and the LESSEE will not be given a right for any of the previously mentioned reasons or any other reason at all to refuse to give any money required to be paid by him to the LESSOR in terms of the Lease.

LESSEE

- 15 No animals or pets of any kind will be kept on any part of the premises without the **written permission of the LESSOR**. If the Lessee has kept pets, dependent on the Lessor's approval in writing, the Lessee will have the inside of the premises **professionally fumigated immediately before leaving the premises**.

If a fire happens on the premises, the LESSOR will be given a right to without delay bring the Lease to an end. If this happens he/she will pay back to the LESSEE any rent paid ahead in time beyond the date of this ending and the LESSEE will not have claim for unwelcome and harmful effects as a result of any lack of something considered essential for damage by fire to furniture or any personal belongings. The LESSEE formally promises not to use the equipment needed for any business or process or keep any hazardous goods on the premises, which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it.

- 16 In spite of anything opposite in meaning contained in this document and in spite of any receipt given for rent or deposit paid, if the LESSOR is unable to give the LESSEE occupation of the premises on the beginning date, because of the premises being in a poor condition due to neglect, or because of the fact that the previous tenant not having left the premises or because of any fact at all not due to intentional failure to fulfill an obligation, the LESSEE will have no claim for a sum of money in compensation for a loss or injury or other right to a lawsuit against the LESSOR as a result of that and formally promises to accept occupation from whatever date the premises are available conditional upon a cancellation of rent for the period of non-occupation.

LESSOR

- 14 **The LESSOR** will keep all outside walls and gutters and the roof of the premises in order. But the LESSOR will not be responsible for unwelcome and harmful effects that leaks, rain, hail, fire, or any other cause at all may have. The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of anything the LESSOR or any of his/her domestic workers does or neglects to do. The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer because of the premises falling into a faulty condition at any time or because the LESSOR does not get someone to repair things which he/she should repair, in good time or at all. The LESSEE will not have a right for any of the reasons mentioned previously or any other reason at all to refuse to give any money that the Lease requires him/her to pay to the LESSOR.

LESSEE

- 15 No one will keep animals or pets of any kind on any part of the premises without the LESSOR writing a document to permit this. If the Lessee has kept pets, depending on the Lessor writing a document to permit this, the Lessee will have someone fumigate the inside of the premises professionally, immediately before leaving the premises.

If a fire happens on the premises, the LESSOR will have a right to end the lease without delaying. If this happens, he/she will pay back to the LESSEE any rent paid ahead in time beyond the date when the LESSOR ends the lease. The LESSEE will not have the right to claim for unwelcome and harmful effects as a result of lacking anything considered essential because fire has damaged furniture or any personal belongings. The LESSEE formally promises not to use the equipment needed for any business or process which may fail to comply with the LESSOR'S fire insurance policy or increase any amount required to be paid for it. The LESSEE formally promises not to keep any hazardous goods on the premises which may fail to comply with the LESSOR'S fire insurance policy or increase any amount that his/her insurer requires the LESSOR to pay for it.

- 16 If the LESSOR is unable to let the LESSEE occupy the premises on the beginning date, because the premises is in a poor condition due to anyone having neglected it, or because the previous tenant has not left the premises or because of any fact at all not due to intentionally failing to fulfill a task the Lease obliges the LESSOR to do, the LESSEE will have no right to sue the LESSOR as a result of that. The LESSEE formally promises to accept the right to occupy the premises from whatever date the premises are available, on the condition that the LESSOR cancels rent for the period when the LESSEE does not occupy the premises. This clause applies in spite of anything opposite in meaning that this document contains. It also applies in spite of any receipt given for rent or deposit paid.

Appendix 4: Information-Restructured Version

14 **Limits of the LESSOR's responsibilities**

The LESSOR will keep **all outside walls and gutters and the roof of the premises** in order.

But the LESSOR will not be responsible for any unwelcome and harmful effects that **leaks, rain, hail, fire, or any other cause at all** may have.

The LESSOR will not be responsible for the LESSEE losing anything or any unwelcome and harmful effects which the LESSEE may suffer

- because of **anything the LESSOR or any of his/her domestic workers does or neglects to do,**
- because of **the premises falling into a faulty condition at any time,** or
- because **the LESSOR does not get someone to repair things which he/she should repair,** in good time or at all.

The LESSEE will not have a right for any of the reasons mentioned previously or any other reason at all **to refuse to give any money** that the Lease requires him/her to pay to the LESSOR.

15 **Pets**

No one will keep **animals or pets** of any kind on any part of the premises without the LESSOR writing a document to permit this.

If the LESSEE has kept pets, depending on the LESSOR writing a document to permit this, the LESSEE will have someone **fumigate** the inside of the premises professionally, immediately before leaving the premises.

Fire

If a fire happens on the premises, the LESSOR will have a right to **end the lease** without delaying.

If this happens, he/she will pay back to the LESSEE **any rent paid ahead in time** beyond the date when the LESSOR ends the lease.

The LESSEE will not have the right to claim for unwelcome and harmful effects as a result of lacking anything considered essential because fire has damaged **furniture or any personal belongings.**

The LESSEE formally promises not to

- use the **equipment** needed for any business or process, or
- keep any **hazardous goods** on the premises

which may fail to comply with the LESSOR's **fire insurance policy** or increase any amount that his/her insurer requires the LESSOR to pay for it.

16 **Delays in letting the LESSEE occupy the premises**

If the LESSOR is unable to let the LESSEE occupy the premises on the beginning date,

- because the premises is in a **poor condition** due to anyone having neglected it, or
- because the **previous tenant has not left** the premises, or
- because of **any fact at all** not due to **intentionally failing to fulfill a task** the Lease obliges the LESSOR to do,

the LESSEE will have no right to **sue** the LESSOR as a result of that.

The LESSEE formally promises to accept the right to occupy the premises from **whatever date the premises are available,** on the condition that the LESSOR **Cancels rent** for the period when the LESSEE does not occupy the premises.

This clause applies

- in spite of **anything opposite in meaning that this document contains**, and
- **in spite of any receipt given for rent or deposit paid.**

CONTRACT OF LEASE

I have been requested to examine a contract of lease, with four differing versions of a number of clauses, and express a view as to the effect of the differing phraseology in each of the different versions.

PRINCIPLES/RULES OF INTERPRETATION

In approaching the interpretation of a contract, the interpreter is enjoined first to apply the 'golden rule' of interpretation, namely that "the language in the document is to be given its grammatical and ordinary meaning, unless this would result in some absurdity or some repugnancy or inconsistency with the rest of the instrument... The correct approach to the application of the 'golden rule' of interpretation after having ascertained the literal meaning of the word or phrase in question is, broadly speaking, to have regard:

- (1) to the context in which the word or phrase is used with its interrelation to the contract as a whole, including the nature and purpose of the contract...;
- (2) to the background circumstances which explain the genesis and purpose of the contract, ie to matters probably present to the minds of the parties when they contracted...;
- (3) to apply extrinsic evidence regarding the surrounding circumstances when the language of the document is on the face of it ambiguous, by considering previous negotiations and correspondence between the parties, subsequent conduct of the parties showing the sense in which they acted on the document, save direct evidence of their own intentions" (*Coopers & Lybrand v Bryant* 1995 (3) SA 761 (A) at 767E – 768E).

The problem with the application of these erudite principles of interpretation to a contract such as that under scrutiny is that it is generally a standard form contract prepared by an estate agent or lessor, and there is very little scope for determining the "intention" of the parties, as it is more often than not a "take it or leave it" affair. Under such circumstances, any ambiguity in the contract is subject to the *contra proferentem* rule which provides that if the wording is incurably ambiguous, it should be interpreted against the author as he had it in his power to make the meaning plain.

Other useful rules of interpretation that may be of assistance in the present matter are the following:

- (1) An equitable construction which does not give one party an unfair or unreasonable advantage over another should be placed on an agreement unless the intention of the parties is manifestly otherwise (*Rand Rietfontein Estates Ltd v Cohn* 1937 AD 317 at 330 – 331);
- (2) A construction should be placed on the agreement which leads to the least inconvenience (*Deutsche Evangelische Kirche zu Pretoria v Hoepner* 1911 TPD 218 at 232);
- (3) Where a provision in an agreement is capable of two meanings, it should be interpreted in the manner which renders it functional rather than otherwise (*du Plessis v Nel* 1952 (1) SA 513 (a) at 523;
- (4) An agreement should be presumed not to intend tautology or superfluity, but rather to accord each word some effect or use (*Portion 1 of 46 Wadeville (Pty) Ltd v Unity Cutlery (Pty) Ltd* 1984 (1) SA 61(A) at 70A – 72C)
- (5) General expressions in an agreement should be interpreted only to include matters in

respect of which it appears that the parties intended to contract, and not those which they did not contemplate (the so-called “*eiusdem generic, noscitur a sociis*” rule);

THE CONTRACT IN QUESTION

The contract under scrutiny contains three clauses relevant to this exercise. Clause 14 defines the obligations of the lessor. Clause 15 regulates the keeping of animals or pets by the lessee, and the consequences should fire occur on the leased premises. Clause 16 deals with the situation should there be a delay in the opportunity for the lessee to take occupation. I examine the 3 clauses in turn, specifically with a view to ascertaining whether the use of differing lay-out or wording in the 4 versions presented may result in a difference of interpretation of those clauses.

Clause 14

Apart from punctuation and line lay-out, and the fact that a clause heading occurs at the commencement of the clause in version 1, there is no distinction between versions 1 and 2, and there should be no difference in interpretation of the plain meaning of the words (as a rule, headings do not influence the plain meaning of the words in the clause). The references in both versions to the absence of an entitlement of the lessee “to refuse to give any money” that the lease requires him/her to pay to the lessor is plainly clumsy drafting, but must be interpreted to have meaning, which would mean that the clause should be interpreted to intend a prohibition on withholding monies payable under the agreement.

Version 3, apart from combining all the elements of versions 1 and 2 into a single sentence, and employing some objectionable grammar in the process, conveys the same meaning as intended in versions 1/2, and there should be no difference in the interpretation of the versions. While version 4 incorporates some new typographical and/or grammatical errors, it too must be interpreted to intend the same meaning as the other 3 versions.

I have not commented upon the enforceability of the attempt to contract out of liability, as I do not understand my brief to extend that far. To the extent that it does, I would not consider the exemption from liability for wilful or intentional acts which occurs in all versions to be universally enforceable.

Clause 15

Pets

Once again, the difference in layout between versions 1 and 2 conveys no difference in meaning. The clumsy phraseology gives rise to some confusion as to whether the written document to which reference is made in the second sentence contemplates permission to keep pets, or permission to fumigate. As it may give rise to an obligation upon the lessee, it may be interpreted against the lessor as the author, absolving the lessee from fumigating unless the lessor grants written permission therefor. This confusion persists in version 3, which otherwise also conveys the same meaning as versions 1 and 2. Version 4 is phrased in such a manner as to convey that the written permission contemplated refers to the act of fumigation.

Fire

The discrepancy in lay-out between versions 1 and 2 does not permit of a variation of interpretation of the plain meaning of the two versions. In version 3, although different terminology is employed in defining the right to terminate, the effect thereof is identical. Although the terminology employed to embody the elimination of any claim the lessee may have had is more clumsy and difficult to comprehend, the tenet of interpretation requiring an interpretation rendering the wording employed meaningful rather than meaningless would result in an interpretation identical to that of versions 1 and 2. The change of phraseology of the undertaking contemplated at the end of the paragraph does

not permit of a different interpretation of the effect of such undertaking from that applicable to versions 1 and 2.

The attempt in version 4 to eliminate any claim by the lessee is drafted in terminology that is well-nigh unintelligible. The reference to the consequence of “any *such* deprivation” (my italics) is not preceded by any reference to deprivation, and is meaningless. Should this phrase be interpreted as if the word “such” is superfluous, despite the general principle against such an approach, the clause would convey the same meaning as the equivalent clauses in the other versions. The reference in the undertaking to “any trades” is similarly meaningless. Absent such reference, the phraseology of the undertaking conveys the same meaning as that in the other versions.

Clause 16

Once again, the heading that appears in version 1 does not influence the plain meaning of the content of the clause, and is in fact misleading, given the content of the clause. It may be disregarded for purposes of interpretation. There is again no scope for ascribing a different meaning to versions 1 and 2 because of the differing lay-out in the two versions. The phraseology regarding the diminution of rent for the period where occupation is rendered impossible, and that which deals with potential conflicts with other provisions of the agreement, is extremely poor, but must be understood, if meaning is to be ascribed to it, in respect of the first provision to provide a rent holiday for periods of non-occupation, and in the second instance, to constitute an overriding provision intended to retain the validity of the agreement, even when the lessor is unable to comply with the provisions relating to the commencement of the lease, or the proper maintenance thereof. That the lessee may be ill-advised to accept such terms is beyond the scope of this enquiry.

The phraseology of version 3, although still clumsy, embodies somewhat more intelligibly the intention to keep the agreement alive despite a failure by the lessor to comply with his obligations. It is no different in meaning to the equivalent provision in versions 1 and 2. The phraseology in version 4, despite the rather extraordinary positioning of the comma after the word “fact” in the sixth line, rather more eloquently conveys the same intention as that in the other three versions.

CONCLUSION

Despite differences in lay-out and phraseology, there is accordingly very little difference if any in meaning between the 4 versions, save the confusion relating to the written permission in the clause dealing with pets and fumigation.