

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

By Joseph Kimble

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

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

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

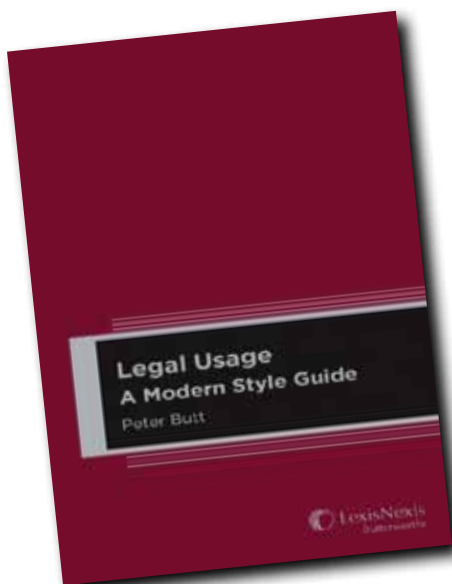
In his Preface, Professor Butt makes no bones about his writing and drafting preferences:

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

---

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

---



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

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

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

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

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

#### Nature of recitals

##### Terminology of recitals

*Whereas*

*Recital 'of/to' this agreement*

##### Definitions in recitals

##### Uses of recitals

*To provide an easy way into the document*

*To help interpret the document*

*To set up an estoppel*

*To pass title by 'feeding the estoppel'*

*To obtain statutory presumption of truth of statement*

*To preserve a party's rights*

*To facilitate the implication of terms*

##### Abuses of recitals

*Recitals containing substantive obligations*

*Recitals and notice*

##### Recitals and supplemental instruments

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

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

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



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

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

**Order of Provisions**

**Front-loaded structure: key concepts before subsidiary concepts**

Example: front-loaded structure

**Topic-based structure: material organized by subject area**

Example: topic-based structure

**Chronological structure: mirror the steps in the transaction**

**Table of Contents**

**Usefulness**

**Grouping topics in table**

[with extended side-by-side comparison]

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

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

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

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

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

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

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

**The Contest**

## FOCUS ON YOUR PET’S CARE NOT THE COST

Pets’ medical emergencies never happen when you expect them. Pet insurance reimburses you for covered vet bills, so you can give your pet the best care possible.

SAVE 10% WITH YOUR MEMBER DISCOUNT\*

1-877-343-5314  
 aspcapetinsurance.com/sbm  
 Priority Code: SBMPET

**PET HEALTH INSURANCE**

\*Discounts apply to base plan premium. Plans are underwritten by the United States Fire Insurance Company and administered by Fairmont Specialty Insurance Agency (FSA Insurance Agency in CA), companies of Crum & Forster. The ASPCA® does not offer insurance. Through a strategic licensing agreement, in exchange for the use of ASPCA trademarks, the ASPCA is paid a royalty fee of up to 10% of the purchase price, with a minimum of \$335,000 per year. U0816-SBM01

PREFERRED PARTNER

STATE BAR OF MICHIGAN