

Access Starts With Plain-Language Forms

Evaluating Two Leases

By Dr. Neil James and Greg Moriarty

Not long ago, the Plain English Foundation was presented with an ideal opportunity to evaluate two forms (“precedents” in Australian English) for the same commercial transaction. One was written in plain language and the other in traditional legalese.

The two documents related to the commercial lease of an office space of around 300 square meters. A small business was seeking a new home and negotiating with two landlords in the same area for two similar properties. The key difference they confronted was in the documents that each landlord used.

We decided to evaluate the leases at three levels:

1. text
2. users
3. outcomes

This would help us to assess not only the relative merits of each text, but also the value of the three different methods in evaluating them. And given the power imbalance between a small business and a corporate landlord, it was also useful to assess whether the leases provided access to a fair legal process.

The two leases

We de-identified the legalese lease by calling it the “East lease” and the plain-language lease the “West lease.” Both were around the same length — at 11,700 and 11,000 words, respectively. The longer East lease was a traditional form with language like this:

The Lessee will maintain all taps washers cisterns and water outlets in the premises and the Lessee will not without the written consent of the Lessor interfere with any drainage or water supply facilities to or upon the land or with any of the appurtenances thereto

The West lease was a model form drafted by a state law society. It attempted to apply plain language, and it sounded like this:

There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule.

“Plain Language,” edited by Joseph Kimble, has been a regular feature of the *Michigan Bar Journal* for 37 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, visit www.michbar.org/plainlanguage.

Text analysis

Plain English Foundation’s Verbumetric® system evaluates a document’s likely effectiveness by analyzing 12 text elements with a 100-point plain-language index. Six elements relate to the structure and design and six to written expression. Table 1 summarizes the scores. While neither lease met the benchmark of 80 out of 100 for plain language, there was a clear difference in quality.

Table 1: Verbumetric® evaluation of leases

Document elements	East lease (legalese)	West lease (plain language)
Structure and design	43	66
Expression	44	60
Plain-language index	43/100	63/100

Most notable was the better structure of the West lease, opening with a clearer summary and contents list and having much more effective numbering and headings to aid navigation. It used a more contemporary layout with white space and readable typography. The East lease was visually very dense.

The leases’ written expression had more similar features, such as an overuse of the passive voice and too many long sentences. They also tended to use inefficient multiword prepositions such as “in relation to,” “for the purposes of,” and “in the absence of.”

The big difference was in the tone. The East lease relied on archaic legalese that made the text far more formal than necessary. This also made it more error-prone with meandering sentences often leading to incorrect punctuation — in some cases at the expense of legal meaning.

One surprise is that both fared reasonably well in readability because both leases were reasonably well pitched for the education levels of their intended audience. This suggests that a single indicator such as readability may not predict a document’s overall effectiveness.

User testing

Next, we validated our text analysis with some user testing with two groups representative of the intended readers: nonlegal readers with a small-business background and qualified practicing lawyers. Participants read both leases, answered questions about each, and then compared them. We were particularly interested in which document the small-business group perceived to

be fairer. The lawyers answered extra questions about legal effectiveness. Table 2 summarizes the results.

Table 2: User-testing results

Audience and criteria	East lease (legalese)	West lease (plain language)
Small-business users		
Overall rating	42	73
Overall preference	0%	100%
Preference for efficiency	0%	100%
Lawyers		
Overall rating	58	79
Legal effectiveness	59	76
Overall preference	20%	80%
Preference for efficiency	0%	100%

Small-business users

When asked to rate the East lease out of 100 for effectiveness, the small-business group scored it below a pass mark at just 42 — almost identical to the Verbumetric® rating. They found the document confusing and difficult, which translated into a negative view of the deal. Among their comments:

- I would be wary of signing this lease
- I don't trust this landlord
- Must be read carefully in case there is a trap
- The lessor has not thought much about the lessee

The small-business group rated the West lease much more positively at 73 for overall effectiveness, which was higher than the corresponding Verbumetric® rating. Qualitative comments were far more positive, particularly about the structure and design. They concluded:

- With this format I would be happier doing business
- Lessor appears to be reasonable, approachable and not hiding or trying to take advantage

All small-business participants agreed that the West lease would be easier to use and take less time.

Legal users

The lawyers made identical observations about the structure and expression of the East lease, but on average rated it 58 for overall effectiveness. Their observations included these:

- I would have to spend a lot of time to explain it to the lessee
- Lessor has sought to protect himself to the utmost
- Sentences are long and difficult to understand
- Could only be understood by a lawyer

The lawyers also rated the West lease more highly at 79 for overall effectiveness. They commented on the “good structure” and “clear modern language” and noted that the document:

- Seems a fair agreement
- Makes obligations/rights clear
- Want[s] lessee to understand

The lawyers agreed that the West lease would take less time to read, and 80% thought it would be easier to use. The minority that preferred the East lease noted that while they “personally” preferred the West lease, they felt that “courts and lawyers were more used to working with legalese” and would expect it.

The lawyers graded the legal effectiveness of the West lease at 76 — far higher than the East lease at 59. This suggests a positive correlation between plain language and legal precision.

Overall, there was strong consensus about the quality of the two forms. Most users made the same assumptions as a result of reading them: that the landlord was seeking to maximize advantage at the lessee's expense, reducing the transaction's fairness. The user testing also supported the Verbumetric® results.

Outcome analysis

The third level of evaluation was in some ways the rarest aspect of this case study: an outcome analysis. While text analysis and user preferences are useful predictors, what were the *actual* results? And how well did these correlate with the first two measures?

We developed six criteria to quantify the outcomes, as Table 3 outlines.

Table 3: Outcomes for each lease

Criteria	East lease outcomes	West lease outcomes
1. Duration of negotiation	3 months	3 weeks
2. Exchanges between parties	24	5
3. Points in dispute	46 (16 clarified, 22 agreed, 8 rejected)	5 (all agreed to)
4. Dollar costs	Lessee's legal costs: \$10,000 Lessor's lost rent: \$50,000-\$60,000	Lessee's legal costs: \$2,000
5. Indirect costs	Time of all parties Impact on businesses	Nil
6. Result	Lease did not proceed	Lease proceeded

The differences were stark. The West lease negotiation was 75% faster, involved 80% fewer exchanges, and had 90% fewer points in dispute. Most importantly, it succeeded, and the deal concluded. This was, in turn, much cheaper for the parties and less taxing on their time. The legal process was also fairer for the

small-business owners, who were potentially at a disadvantage in negotiating with a corporate landlord.

But there was more to come even after the East deal fell through. The East lease property agent used its own short-form lease proposal to take a deposit and start the transaction process. This form included a clause that the lessee would pay the lessor's "reasonable legal costs" if the lease did not proceed.

The lessee duly received a \$10,000 bill for the failed East lease deal from the lawyer. The company declined to pay but could not recover its deposit until the dispute was resolved. It approached the state legal services commission.

The lessee argued that the bill was well above what was reasonable for the transaction and was in large part due to the poor quality of the East lease. It contrasted the East lease dealings with the successful West lease deal it had concluded.

Not surprisingly, the solicitor whose precedent was under scrutiny rejected the lessee's criticisms because of "the number of issues the lessor requested us to address." The dispute dragged on over many months until an eventual settlement, with the costs reduced by one-third.

Table 4: Costs of the dispute

Criteria	Outcomes
1. Time	75 months
2. Exchanges between parties	30
3. Dollar costs	Fees reduced by around one-third, from \$9,500 to \$6,250
4. Indirect costs	Considerable time of lessee, solicitor, and agent Reputational impact with legal-services regulator

Conclusions

The main conclusion from this exercise is clear: there was a direct correlation between the structure, design, and language of the precedents and the user satisfaction and outcomes.

For plain-language practitioners, the case study also confirms that a comprehensive assessment of textual features is a useful predictor of likely effectiveness. But this must include a broad sweep of indicators ranging across structure, design, and expression.

For lawyers, the most alarming aspect of this study may be the assumptions that readers make about their clients. The small-business readers assumed that the East lease landlord was trying to "trap" them, which instantly impaired trust. Even the lawyers admitted that the East lease could be understood only by a lawyer and that the landlord was trying to maximize its advantage. Both groups regarded the legalese lease as more time-consuming, and the lawyers even thought it was less legally effective.

A crucial test is how well a lawyer's document fosters the client's interests. The lawyers who drafted the East lease may argue that it was essential to maximize client benefit. Yet it is hard to see how a client's interests were served by a failed transaction that cost very real dollars in lost rent and time.

For the small business, justice certainly would not have been served had it agreed to the East lease. All it wanted was a new office space and a fair deal. Ultimately, a traditional legal precedent thwarted that process, while a plain-language alternative secured the right result. ■

Dr. Neil James is the executive director of Plain English Foundation, which combines plain-English training, editing, and evaluation with a campaign for more ethical public language. He has published three books and around 100 articles and essays. He was the inaugural chair of the International Plain Language Federation and has served as vice president and president of PLAIN.

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