
Plain Language

Plain English in Personal Property Leasing

By James J. Vlasic

James J. Vlasic is an associate of Sommers, Schwartz, Silver and Schwartz, P.C., and a member of the Consumer Law Committee of the State Bar of Michigan.

Contracts should be readable. As instruments meant to express a mutual undertaking, they must be designed to be understood. We must remind ourselves to temper our ambition to load contracts with legal meaning with a concern that they be understandable and understood by the contracting parties. This requires that in drafting contracts we use plain, clear and coherent words with common everyday meanings, and that we divide and caption lengthy agreements to improve their readability.

Leasing

The growth in this decade of personal property leasing by consumers and businesses alike has been rapid and substantial. While automobiles probably constitute the most popular leased goods, the thirst for leasing of computers and other office equipment in the business sector, and of televisions and furnishings by individual consumers, appears to be virtually unquenchable. Even so, too many lease contracts remain largely incomprehensible to the layperson. Let's look at how a typical vehicle lease might be made more readable without sacrificing legal content.

Plain and Simple

Almost any lease can be shortened and simplified without loss of enforceable rights if it is redrafted with simplification in mind. For instance, to describe the information to be contained in a vehicle lease schedule, the language of Column B right might be substituted for that in Column A.

These suggestions can be summarized: Make it short. You need not lose meaning in doing so. For example, if the lease schedule has a space for each component of a vehicle description, those components need not be repeated in the contract. When

communication is the goal, one-liners can be very effective.

One-liners that are too long-winded lose their punch, however. How much better is the first of these sentences than the second?

"Lessee will keep all of the insurance in force until Lessor accepts return of the leased vehicle from Lessee at the end of the lease or sells it under Section 4 above." (32 words)

instead of:

"All insurance required to be provided by Lessee shall be maintained in full force and effect by the Lessee during the term of the lease, for each vehicle, including any extensions, and until the vehicle is returned to Lessor, and in fact sold by Lessor pursuant to the provisions of Paragraph 4 above." (56 words)

I suggest that the second sentence, 1.75 times as long as the first, is not 1.75 times as good. I have also underlined a few words in the second sentence which probably do not help anyone to understand it. At some time everyone of us has drafted language like that second sentence. We can all do better in the future.

Column A

1. The term of the lease for such vehicle.
2. The year, make, model, body style and color of vehicle.
3. Whether lessor or lessee will provide insurance.
4. The amount of the security deposit for the vehicle.

Column B

1. The lease term.
2. The description of the vehicle.
3. Insurance shall be provided by _____.
4. The security deposit.

"Plain Language" appears regularly in the *Michigan Bar Journal*. It is edited by the Chairperson of the Plain English Committee of the State Bar, George H. Hathaway, The Detroit Edison Company, Room 688 WCB, 2000 Second Avenue, Detroit, MI 48226. Through this column the Plain English Committee hopes to publicize and promote the use of plain English in the law. Groups, committees and individuals are invited to contribute articles. For a copy of the publication guidelines and to discuss topics, contact Mr. Hathaway at the above address.

Don't say It

Although the goal is an enforceable contract that provides for all reasonably foreseeable possibilities, it isn't always necessary to use every descriptive word you can think of (or can find in any contract form anywhere) to achieve this. You might do just as well before a judge or jury with common, simple and descriptive words. These types of words might even induce the other party to read, understand and remember to comply with the contract terms in the first place.

Another example of "before" and "after" your plain language redraft demonstrates how contract language can be shortened and clarified:

Before:

Maintenance and Repairs

"Lessee shall at all times keep and maintain the vehicle and all accessories in good operating condition and working order, and shall use as a guide the maintenance program prescribed in the Owner's Manual provided by the manufacturer of the vehicle, and Lessee shall perform all preventive maintenance required to insure full validation of the manufacturer's warranty. Lessee shall be responsible for all maintenance and repairs, and the Lessee shall himself replace all tires which become unserviceable. All tires and parts substituted for those originally contained in or attached to any vehicle shall be new and of like kind, brand, quality grade, size and capacity as on the vehicle at the time of original delivery by Lessor to Lessee. All of the aforesaid to be at Lessee's cost and expense. All parts substituted on or, with Lessor's consent, added to the vehicle shall be deemed to be a part of the vehicle for all purposes."

After:

Maintenance and Repairs

"Lessee will maintain the vehicle and its accessories in good operating condition, and will have all preventive maintenance done which is required by the manufacturer's warranty. Lessee is responsible for all maintenance and

repairs at Lessee's own expense, including replacement of worn tires with comparable tires. Replacement parts must be new and become part of the vehicle. Lessee will supply all fuel, lubricants and filters and keep the vehicle waxed and polished."

Again, perhaps boilerplate lost is understanding (even enforceability) gained.

One more note. By now you've noticed the continuing use of the lawyers' words "Lessee" and "Lessor" in all the examples. One alternative to "Lessee" is "Customer," but it has eight letters rather than six. Perhaps a better choice would be "We" and "You," and to define which parties these terms refer to in the introductory paragraphs of the agreement.

How does It Look?

Did the captions above the previous contract sections help you read and understand the contract language by giving you a preview of the meaning? Often a simple change in form with little change in language works wonders. To this end, you should itemize, use captions, and use capitals and bold print. If it still looks ominous, itemize again!

One last example. I hope that even we lawyers can understand the second version of the following contract language more easily than the first. Perhaps as important, it is certainly easier to find the language which governs a particular set of facts and point it out to a client, adversary, judge or jury.

Before:

11. Default

"Insofar as performance by the Lessee is concerned, time is of the essence of this lease agreement. If Lessee defaults in the performance of any of the terms, conditions, covenants, representations, or warranties contained herein (or in any Schedule F) on the part of the Lessee to be performed, or if Lessee files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, is voluntarily or involuntarily adjudicated bankrupt or insolvent, or if a petition for reorganization shall be approved by any court of competent ►

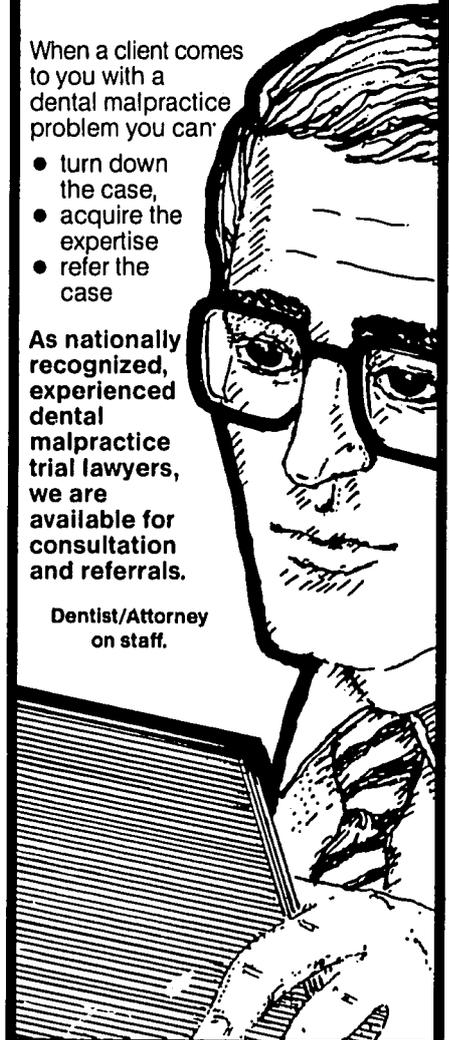
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jurisdiction, or if a receiver or trustee or similar officer shall be named, designated or appointed for Lessee's business or property, or if Lessee shall permit or suffer any distress, attachment, levy or execution to be made or levied against any or all of his property, or if any sale, mortgage, lease or encumbrance or any leased vehicle be made or attempted, or if any execution or attachment be made thereon, or if Lessee shall be refused any insurance required to be carried under the provisions of this agreement, or if Lessee shall permit or suffer cancellation of any such insurance coverage, or if Lessor through no fault of its own is unable to obtain or keep in force insurance coverage at normal premium charges as provided in subparagraph 5(B), or if any vehicle is not used principally in the state specified in the Schedule F pertaining to such vehicle or if any vehicle is subjected to unreasonable or abusive use, or if Lessee shall be or become in default under any lease or agreement heretofor entered into with Lessor or shall be in default in any other obligation to Lessor, whether heretofor or hereafter existing, then and in any of such events (all hereinafter in this Paragraph 11 called "Default") Lessor shall, in addition to all other remedies available to Lessor at law or in equity or otherwise, have the right to exercise anyone or more of the following remedies hereinafter set forth in this Paragraph 11(B)."

After:

11. Default

"(A) Time is of the essence in your performance under this lease. If any of the following events occur, you will be in default under this lease agreement:

(1) You fail to comply with any of the terms, representations or warranties in this agreement or Schedule F as to any vehicle leased to you by us (default as to one vehicle is default as to all);

(2) You fail to pay your rent in full, monthly in advance, on or before the first of each month;

(3) You are voluntarily or involuntarily adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors, or a receiver or trustee is appointed to take control of any of your property;

(4) Any of your property is attached or levied against or the vehicle is seized or encumbered;

(5) Your insurance required under this agreement lapses or you are refused such insurance or fail to deliver satisfactory current proof of insurance to us;

(6) You abuse any vehicle, treat it so as to invalidate the manufacturer's warranty, or fail to use it principally in the state listed on Schedule F.

If you become in default we can exercise any or all of our rights under paragraph 11(B)."

Which version did you slight in reading? Were they equally easy to comprehend? Which would appear more friendly to a customer or a client?

Good Luck

Drafting plain language contracts is not a job for experts. It's a job for all lawyers. We must learn to do it well. I hope you have found at least one suggestion useful in your drafting. ■

The author thanks Norman Sommers for his thoughtful comments.

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