

TEACHING LEGAL WRITING TO A LARGE UNDERGRADUATE CLASS: A TANZANIAN EXPERIENCE

TUSHAR KANTI SAHA*

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I. INTRODUCTION

Legal writing in a classroom setting presents many practical challenges because it involves the art, skill and technique of impacting young, impressionable minds. Designing a new course offering instruction in legal writing to a large undergraduate class with nearly 400 students in the time frame of one semester is a daunting task. Teaching in a way that

* The author holds an LLB from the University of London. He was called to the Bar of England in 1979 and met Lord Denning for a privileged discussion while studying in Lincoln's Inn. On his return to India, he practiced at the High Court at Calcutta until 1986 and obtained an LLM and a PhD from the University of Calcutta. Since then, he has taught in five universities and institutes in India and four in Africa and has written six books, the newest of which is titled *Constitution of Lesotho - A Text of Comparative Research Study*.

accommodates the sheer size of the classroom requires innovation and creativity. The audience entering the room competes for better and strategically important space. To reach out to the last person in the last bench is a near impossibility. There is often audio equipment in classroom, but frequent power outages have a way of turning a lecture into a darkroom exercise, pushing the lecture into modes of a comma, a semi-colon and even a full stop. Even more challenging is the size of the class itself. As the size of the class grows larger, the possibility of drifting away from the mainframe of communicative channel becomes greater, and sometimes a cozy corner segregates into a sleepers' class, which is disconcerting. One cannot carry on simply by ignoring the snoring category of students. In the tropical climate sweeping a coastal town like Dar es Salaam, the sweltering weather is another challenge, especially when classrooms are not air-conditioned.

With the wherewithal in one's disposal, one has to perform his or her best to meet the students' high expectations and satisfy their inquisitive minds eager to learn a little more day after day. This essay seeks to tell the story of an experience in teaching legal writing in a large undergraduate class at an African university. The purpose of this essay is to share this unique experience with peers so that they may benefit from the exercise as both a teaching and learning process for opportunistic use and accommodation. This essay begins with an introduction to the subject of legal writing and the importance of its application in the legal profession. Next, the essay describes the author's task and challenges in designing a syllabus suitable to the local conditions followed by a discussion of the real life teaching of legal writing in a large class in the University of Dar es Salaam ("UDSM"). Finally, this essay concludes with the invaluable lessons the writer has learned from this experience.

II. LEGAL WRITING AND ITS SIGNIFICANCE IN LEGAL PRACTICE

Legal writing is as old as the idea of law itself. Writings of legal nature have been found in edicts inscribed in stones and other durable and non-durable media such as walls, columns, papyrus, earthen clay-pieces, parchment, leather, paper and even wax tablets. They have been found in different countries and in many different languages. Legal writings can be

classified into two broad categories: professional legal writing and academic legal writing. Professional legal writing ranges from official correspondence of a legal nature to the practicing lawyer's drafting and legal submissions, to judgments or opinions from the bench. Academic legal writing includes scholarly articles for law journals, journalistic articles for newspapers or dissertations or theses for academic awards. Each branch has its own requirements and techniques, and they obviously vary according to forum or floor of discussion.

Writing is an art, and the art of legal writing requires technical skill and knowledge. To master this art, one needs to be equipped intellectually and trained in the legal tradition. This tradition is undergoing constant change based upon the mores currently espoused by the legal profession and creative innovation that becomes accepted practice through continuous and reoccurring usage. Such technical training is key to successful legal writing. Personal style is more suitable for academic writing, which must be different for each generation.

Writing in clear, easy and intelligible language has caught the imagination of the new generation of legal writers. There is a growing trend of drafting legal writings in plain language and eliminating legalese as far as practicable to make things easier and simpler.¹ The aim of plain legal English is to make legal writing immediately intelligible to lay persons. According to Gail Dystra:

Plain language is language simplified to make it readily understandable by the average person. It is language stripped of unnecessary complexity, but not stripped of style. It is perhaps language at the lowest common denominator. It is reader-focused language. Clarified or simplified language on the other hand is "language that has been worked on to improve its understandability, but retains technical terms (terms of art), if necessary. It can rely on the assumption of commonly held knowledge of how the legal system or government operates in order to understand the language."²

1. See DAVID KELLY, PLAIN LANGUAGE ASSOCIATION INTERNATIONAL, WHAT IS PLAIN LANGUAGE?, <http://www.plainlanguagenetwork.org/Legal/lawdefn.html> (last visited on Jul. 7, 2009).

2. Pamela Dinsmore & Gail Dykstra, *Readability and Legal Writing: A Preliminary List of CLIC's Legal Information Secretariat Holdings*, 1985

Plain language, when used in the legal context, can be understood at first reading by the client, lawyer and the judge with equal ease. This is possible by writing a document in a legally binding form, weaving the whole matter in a logically organized manner using an economy of concise, unambiguous words and standard grammar and punctuation. All the while, the writer must keep in mind the reader's level of literacy and state of mind. The tone and style of the document stay professional while the content flows easily and smoothly for all to follow.

Understanding how to write using plain, intelligible language is merely one facet of the art of legal writing. Applying this style into a persuasive argument or legal document is the next step toward a mastery of legal writing.

A. Persuasive Writing

Arguments are won by persuasion. The lawyer must persuade his or her audience, in a cogent and coherent manner, of the rationality of a point in focus. Reasoning and analogy must be made in a convincing manner by arguing a point's reasonableness and correctness. Persuasive arguments appear in appellate briefs, in-trial advocacy and even negotiation letters written on a client's behalf. But whether written or oral, a persuasive argument must be centered on the issue and sharply focused with the spotlight of reasonableness.

In 1774, in *Donaldson v. Beckett*³, Lord Camden delivered an exemplary persuasive argument worth review by those attempting to learn the art of persuasive legal writing. In that case, the House of Lords succumbed to Lord Camden's eloquent argument that, upon publication, a book should become public property at common law. In other words, there should not be any claim for copyright. He argued:

[I]f there be any thing in the world common to all mankind, science and learning are in their nature *publici juris*, and they ought to be as free and general as air or water. They forget their Creator, as well as their fellow creatures, who wish to monopolize his noblest gifts and greatest benefits. Why did we enter into society at all, but to enlighten one another's

CAN. LEGAL INFO. COUNCIL 1, 2-6.

3. *Donaldson v. Beckett*, 4 Burr 2408 (1774).

minds, and improve our faculties, for the common welfare of the species? Those great men, those favored mortals, those sublime spirits, who share that ray of divinity which we call genius, are entrusted by Providence with the delegated power of imparting to their fellow-creatures that instruction which heaven meant for universal benefit; they must not be niggards to the world, or hoard up for themselves the common stock.

Glory is the reward of science, and those who deserve it, scorn all meaner views: I speak not of scribblers for bread, who tease the press with their wretched productions; fourteen years is too long a privilege for their perishable trash. It was not for gain, that Bacon, Newton, Milton, Locke, instructed and delighted the world; it would be unworthy such men to traffic with a dirty bookseller for so much a sheet of a letter press. When the bookseller offered Milton five pound for his *Paradise Lost*, he did not reject it, and commit his poem to the flames, nor did he accept the miserable pittance as the reward of his labour; he knew that the real price of his work was immortality, and that posterity would pay it.⁴

If copyright were confirmed as perpetual, Camden said:

“[a]ll our learning will be locked up in the hands of the Tonsons and the Lintons of the age, who will set what price upon it their avarice chuses [sic] to demand, till the public become as much their slaves, as their own hackney compilers are . . . [E]very valuable author will be as much monopolized by them as Shakespeare is at present.”⁵

In this powerful speech, Lord Camden demonstrates how an effective persuasive argument must be founded on reasonableness as he analogizes science and learning to air and water - an analogy carefully crafted to argue that knowledge should remain in public domain, free to the people. Lord Camden pleaded for the universality to share from each other's intellectual stock by focusing on and arguing for the common welfare of society, a point well within the bounds of rationality.

4. WILLIAM COBBETT, *COBBETT'S PARLIAMENTARY HISTORY OF ENGLAND FROM THE NORMAN CONQUEST IN 1066, TO THE YEAR 1803, (1806-1820)*, *summary available at* <http://www.copyrighthistory.com/donaldson.html>.

5. *Id.*

Although this case is no longer good law, there is a lot to learn from the persuasive techniques employed by Lord Camden in this argument. Improving one's way in crafting and drafting a persuasive argument can go a long distance in achieving the goal of winning a case.

B. Legal Drafting

The drafting of legal documents is yet another type of legal writing. Legal drafting is the writing technique employed to create binding, legal text, such as statutes, rules and regulations. Legal drafting is also required for contracts, wills and trusts and public legal documents, such as notices and instructions. Unlike persuasive legal writing, legal drafting requires no legal authority citation and generally is written without a stylized voice.

Guides are available to aid a lawyer in preparing these documents, but a unique application of the "form" to the facts of the situation often is required and more appropriate for your client's needs. Therefore, it is important for law students to hone their legal drafting skills rather than rely on ill-fitted guides. Poor drafting can lead to unnecessary litigation and otherwise injure the interests of a client.

Legal professionals spend many hours of their workday performing legal research, writing legal correspondence, and preparing legal documents and notes. In the legal profession, specialized forms of written communication are required. Legal writing is obviously technical in nature, as it requires a masterly skill in a professional sphere mostly dominated by the legislators, lawyers and judges. Further, legal writing places heavy reliance on authority by requiring legal analysis with balanced judgment, an open mind, and decisive opinion about the merit of a case in hand. Writing is the medium through which a lawyer is required to express his analytical dissection of an issue seeking to persuade others on his clients' behalf. With such a large portion of legal practice focusing on legal research and writing, efficient researching skills and the ability to write clearly and concisely are keys to a successful career as a legal professional.

III. MY ASSIGNMENT IN UNIVERSITY OF DAR ES SALAAM

It is with an understanding of how important legal writing can be to a successful legal career that I accepted a position as Professor of Legal Writing and Drafting at UDSM in February 2006. The law faculty of the UDSM boasts nearly 50 years of standing, once considered the best in East Africa thanks to the contributions of early pioneers. Lord Denning⁶, Master of the Rolls, whom Lord Chief Justice Bingham described as “the best known and best loved English Judge in our history,” was instrumental in the creation of the faculty in a distant location in a fledgling center of higher education. The library was well stocked in the beginning, and its huge collection of old, archival materials deserves the nostalgic reminiscence of the past glory. However, the current stock of law books is in shameful condition. There are no new books in the law section of the library. The Departmental Library was physically inaccessible because of dumping on the floor. Not a single copy of any major text book on any law subject of well known authors can be found. A few bound, photocopied text books can be sighted in the protected shelves beyond the counter for reading without borrowing, but these books are out of bounds for students who are arrowed with the needle of suspicion. They are too precious to take any risk of losing, so they remain untouchable.

Landing mid-semester, I took the assignment to back up the faculty of law for an initial period of two years, but that period was cut short by the twin blow I suffered from Malaria and Typhoid. I was tasked with the job of designing a new syllabus for the legal writing course that would be suited to the students who had no experience with the practical nature of a legal job. As budding lawyers, they would be called upon to perfect their skills through day to day practice, so my task was to provide the students with a basic, working knowledge of effective legal writing.

6. See EDMUND HEWARD, LORD DENNING: A BIOGRAPHY (2d ed.1997) for an interesting, insightful view of this great, colorful, legendary judge who himself was a giant in writing in plain legal English as is evidenced by his series of five books: *Discipline of Law* (1979), *Due Process of Law* (1980), *What's Next in the Law* (1982), *Landmarks in the Law* (1984) and *The Closing Chapter* (1983).

A. *Designing the Curricula, Course Description, and Objectives*

Although the art of legal writing and drafting has been practiced for as long as there have been laws and lawyers, it is only recently that the subject has been recognized as worthy of serious study. Traditional training methods, which have been handed down from generation to generation, have not served the profession well. Legal writing is often accused of suffering from a lack of clarity owing to its lengthy intricate construction and antiquated forms of expression.⁷ Clarity demands precision pointing to the dimension expressing the writing's power while concision requires a dimension reflecting the writing's informational efficiency in relation to the linguistic sign. People read legal writing not because they want to, but because they have to. Lawyers need to learn to write in good, clear English so that their clients understand. In any case, lawyers speak the language of law and think, translate and interpret the law in the language of the court. Therefore, legal jargon is not altogether avoidable, and lawyers need to master the art of written and oral advocacy to the level of perfection. Legal excellence has always been the product of rigorous training followed by hands-on practice in day to day experiences. A budding lawyer is not only to be equipped intellectually with sufficient legal knowledge but must also be groomed with the skill of writing and drafting by doing exercises in regular continuity. Nevertheless, the importance of the theoretical underpinnings to conceptualize the core legal issues and sharpen the analytical tools can hardly be over-emphasized.

Accordingly, I took several months reading from the best practices and mining through internet sources on legal writing. I had a difficult time identifying, collecting and reading materials appropriate for this course considering the local conditions. However, I designed the legal writing course's content and curricula taking into account the ingenuity and exuberance of all available talents. I identified and suggested a number of text books, notably Robin Wellford Slocum's *Legal*

7. GEORGE H. HATHAWAY, PLAIN LANGUAGE PLAIN ENGLISH
SUBCOMMITTEE ON LAWS,
<http://www.michbar.org/generalinfo/plainenglish/columns/133.html> (last
visited Jul. 17, 2009).

Reasoning, Writing, and Persuasive Argument (2006). Then, I made an eclectic list of topics and designed a syllabus, keeping in mind the limited resources and other constraints faced by a university in a developing country in Africa.

The subject contents and curricula were designed and tailor-made by taking into account the ingenuity and exuberance of the available talents and finding expression and satisfaction in the resources at hand. The current requirements for a young lawyer will skirt around writing legal opinion, drafting notices, complaints, complaints and correspondences. Since the need for other legal documents outside the arena of court rooms is great, one also needs to know how to draw up a contract entrenching the contractual terms, as well as drafting deeds and documents relating to leases and mortgages. Thus, I designed a course to impart the basic knowledge and skill in the form of lectures followed by exercises administered and supervised by the instructor under his close scrutiny.

The course was meant to be a power-packed capsulation of a range of practical and useful tools for purveying lessons on writing and drafting. I had 39 lectures in mind and set on a voyage to cover different styles of drafting notices for different purposes, drawing up demand letters, writing opinions and judgments, drafting a simple contract and so on. I set the following course objectives: (1) to impart basic knowledge and develop skill in the art of legal writing; (2) to exercise the basic knowledge in practical terms by hands-on practice; (3) to provide linguistic skill in the art of pleading and advocacy; (4) to train in the skill of oral presentation and articulation of arguments; and (5) to generate confidence in drafting documents in various formats with individualistic style. The pedagogical principles and tools I chose to meet these objectives *inter alia* included: (1) learning-by-doing; (2) visiting and observing the skills in practice in real life practitioners' chambers; (3) hands-on, practical exercises and assignments; (4) exchange of ideas in polishing and refining legal writing drafts; (5) interaction with the experienced draftsmen; and (6) role play. With my curricula and course objectives set, I began my teaching assignment in the ensuing semester in 2006.

B. Classroom Decorum

The building housing the classrooms consisted of two very large halls with offices on each side. Microphones were available but would misbehave sometimes by cross-connection between two adjoining halls, making lectures inter-disciplinary. The number of students in the class was nearly 400. Students gathered on time, but waited outside for the classroom to be vacated by the preoccupants, and jostled for first entry to be front ranking among the listeners. Once seated in many rows, the 400 souls waited with curious minds receptive of a new kind of knowledge in legal writing. They knew the importance of the subject, which will not only be for the written examination but also for its use in the entire professional life and career of the lawyer in the making.

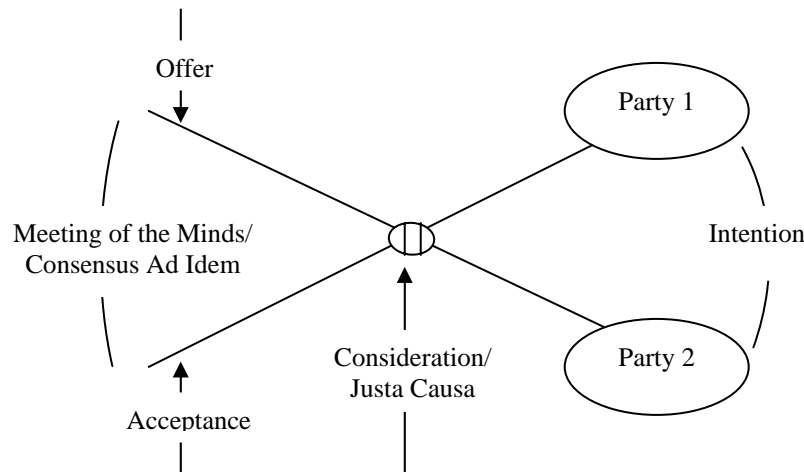
My lectures were scheduled for slots from six to seven in the evening, three days a week. After a long walk from the office, when the lecture is ready for delivery, suddenly, there would be a power outage, leaving us totally powerless. One cannot continue, even at the top of one's voice, in total darkness when you cannot see each other. Once the power would return after a breather, you had already lost your train of thought. My methodology for coping with the problems of a large classroom was to create, in a sense, a public lecture series. Legal writing was not possible in such a big gathering, and it was indeed more of a legal talking class rather than legal writing class. It was impossible to give any individual attention or to monitor and observe how things are being transmitted to the young curious minds.

Because of challenges like this, I ultimately skipped the idea of role play and opted for pictorials to clarify some of the essential features of contract drafting. Let me illustrate with the lesson on drafting a contract.

C. Contract Drafting Exercise

To give students a fair idea about the general principles of contract, I introduced an innovative method of teaching using pictorials. As the Chinese proverb goes; a picture tells a story. My innovation was to state the law in a picture so that it was colorful, crisp, clear and magnetically attractive, peaking the interest of the curious minds.

Contracts are invaluable tools that help both parties to understand the terms of the agreement and individual obligations. Hence, emphasis was given to the fact that clarity is the *sine qua non* of drafting a document of contractual nature. To permanently impress and imprint the concept of contract in the minds of the students, I depicted a contract in the form of a pair of scissors, as represented by the diagram below.



The scissors have two blades representing offer and acceptance. The blades are supported by consideration or *justa causa* in the middle with a tightening screw. By pressing the two blades together to cut the piece of paper, representing the contract, the parties express their intent to contract, and when the two blades meet, they create a consensus ad idem or a meeting of the minds. This picture was further supplemented by the actual production and display of a pair of scissors and a piece of paper in the classroom. When the scissors were employed and the paper was cut, the class broke into roars of laughter. The classroom was lively, and the people of the sleeping order woke up to a wonderland.

Through this simple pictorial, I was able to instruct my class on the process of contract drafting. By beginning with the handles of the scissors being pressed together, students learned the importance of making the intentions, requirements and expectations of the parties clear at the beginning of negotiations.

In drafting contracts, specific attention must be drawn to items like price, quality, quantity, place and time of delivery, and methods of payment. Students also learned that it is necessary to take care in providing for a remedy and jurisdictional sphere of litigation within the contract in case of a breach by either party. The convenience of contract templates to ensure the intentions and obligations of the parties are properly recorded was also demonstrated.

Through the sheer simplicity of this exercise, students were encouraged to avoid complicated verbiage. One of the biggest impediments to clarity and simplicity in legal drafting is the use of legalese. Linguists consider legalese as a distinctive dialect.⁸ Clearly, legalese has not evolved in step with modern English. Whereas the English language is constantly evolving with daily usage, legal language has remained largely cocooned in a conservative shell and somewhat static. The attack against legalese has been mounted on the charges of outdated grammar and construction sentence structure.⁹ Legalese is viewed as wordy, turgid and impersonal. Legalese is an archaic vocabulary based on jargon and excessive use of technical terms not intelligible to the lay person. Legalese suffer from a dependency on French and Latin.

It is common practice for the parties to use legalese when drafting contracts. However, this may make the obligations and terms of the contract unclear. Therefore, the necessity of keeping legal drafts simple and easy to understand was constantly emphasized in my class. A contract should be drafted so that each party knows exactly what is expected of him. Thus, if there are any words that could be misconstrued, or any terms that are ambiguous, defining them with clarity within the contract is a task to be done carefully. When drafting a contract, clarifying the terms and duties should be the ultimate goal of the drafter.

8. See generally WILLIAM LUTZ, *DOUBLESPEAK: FROM "REVENUE ENHANCEMENT" TO "TERMINAL LIVING": HOW GOVERNMENT, BUSINESS, ADVERTISERS, AND OTHERS USE LANGUAGE TO DECEIVE YOU* (1989).

9. See Norman R. Helwig, *The Plain English Movement—An Attack on Legalese*, 8 *Colo. L. Rev.* 2372, 2372-81 (1979); see also, Robert D. Hughes, *Some Plain Talk About Plain . . . Language* 33 *N.Y. CRIM. BAR. ASS'N REV.* 206, 206-11 (1978).

I have used similar pictures for all the subjects that I teach, be it Constitutional Law, Intellectual Property Law or any other subject. Whatever the subject and whatever the picture, the purpose is to encourage efficient drafting through an understanding of the fundamental legal issues of the subject. With contract drafting, regurgitating a model contract was one teaching tool option, but that option was not practical for a large classroom exercise. Essentially, the tool has to be improvised and hand-made to give students a fair idea of how to accomplish efficient drafting. These types of pictorial exercises cannot be perfect or all inclusive with respect to complicated legal issues, but, as with this simple contract exercise, pictorials can be used to convey the fundamentals necessary for effective legal drafting.

IV. MY LEARNING, UNLEARNING AND NEW LESSON

In reflecting on my experiences teaching a large undergraduate classroom in a university with limited resources, I have learned that the wiser choice is not to be so ambitious with the course, thinking that one has to touch the sky. Limiting the course to a palm tree height should be enough; after all, class room writing is not the end of the story. In other words, the syllabus on legal writing need not be so bulky as to embrace too many areas. A legal writing course should provide some essential tools that students can use and sharpen in the course of their career development. In a developing world, no one is in a hurry, so going at a break neck speed kills the spirit before the letters are learned. I have found that it is a good thing to unlearn the conventional approach to a certain degree but not in its entirety. Introduction and injection of newer ideas in small doses makes things more interesting and exciting, thus encouraging innovation and excellence.