

5. FUNDAMENTALS OF LEGISLATIVE DRAFTING

5.1 Introduction

The societies of the world did not begin with legislation however in practice they have done. Legislation derives its origin from the Latin combination of the terms 'legis' as means to law and 'latum' as to mean making. Thus it is law making or creation of laws. No doubt. It is not manufacturing of laws. As law making is for a societal cause. In most of the democratic societies the legislators or the parliament is known for law making, however they do not. It is only deliberated and institutionalised. The art of drafting is done by set of experts known as legislative drafters representing the department of legislative drafting howsoever they are addressed by the national legal systems. Due to the multiplicity factors, societal requirements and geographical and political fabric, in the modern times, experts in this field comprise both legal as well as non-legal personalities.

5.2 Legisprudence

The concept of law making and its knowledge is attributed as *legisprudence*. The concept of law making or creation of laws is an art as well as science. It includes systematic study and research adopting multi-disciplinary approaches. Legislating drafting differs from legal writing as the former deals about public documents whilst the latter relates to private affairs. Hence legal writing is not legislative drafting. It can be said legislative drafting is one of the most difficult kinds of legal writing. Legislation determines the happiness of the society at large. It relates to codification of the available body of law in to enacted format.

5.3 Scope and Development

In democratic societies written laws or statutes have attained the status of major or principal source of law. As the statute law derives its life forms from of the will of the people, it becomes binding on the Government and its Agencies. Law making is done by the branch of the government. It also to be understood that the impact of society by way of public participation, work of the civil societies and other selfless actors have a large imprint on the legislative process as such. In the Indian context it is attributed to the Department of Legislative Drafting working under the auspices of the Ministry of Law and Justice, involving both the Central and that of the State Governments. The centre for legislative drafting and research in India caters the need of the Indian drafters in terms of the imparting the requisite training. Technically the drafters are first lawyers to interpret the statutes. Even though they are outnumbered by the legal practitioners, less visible and perform a non-traditional role in the legal profession, in terms of qualitative output they receive great respect and response universally. Drafters are also called as Parliamentary and Regulatory Counsels. Traditionally they were identified as draftsmen. However, it refers only the male masculine. Legal philosophy neither is one person nor one gender world. In every sphere it fosters pluralism. Due to the success of the plain language movement, at present the correct usage is Drafters, which restores gender neutrality. The functions of the drafters are primarily to protect, preserve and communicate the statutes. They are the custodians of the statutes in terms of creation.

The challenge in the science of law making is maintaining the concept of current law. The legislation has to be contemporarily relevant. However, the contentions for the Afro-Asian and other similar societies has been the dream of developing original or indigenous legislations. As most of the prevailing laws or colonial or does not represent the real needs of such societies. Modern schools of drafting aim at native jurisprudence. Stated differently, it is de-colonisation of legislations and respect towards the self-awakening movement.

The Fundamentals Of Legal Drafting

Helen Xanthaki



The Fundamentals Of Legal Drafting:

The Fundamentals of Legal Drafting Reed Dickerson, 1986 This book gives the practitioner a detailed treatment of the principles and applications of effective legal drafting New material on drafting strategy verbal sexism and the use of computers for word processing of legal documents is included in the work

The Fundamentals of Legal Drafting
Drafting Legal Reed Dickerson, 1965 *Legislative Drafting Vol I* Crabbe, 1993-11-27 Legislative drafting is dealt with from the standpoint of the practitioner and Parliamentary Counsel as well as from the angle of the problems which face judges in the construction of statutes The conventions and presumptions of legislative drafting is covered including the importance of the legislative sentence Constitutional problems affecting the legality of legislation are also dealt with Subsidiary legislation is tackled and help is given in respect of offences and penalties consolidation codification statute law revision law reform parliamentary procedure and rules of interpretation

The Fundamentals of Legal Writing Sidney F. Parham, 1967
Legislative Drafting Aldo Zammit Borda, 2013-10-31 Legislative drafting is an extremely onerous exacting and highly skilled task What is clearly conceived in the mind may not be easily expressed with clarity and precision in words It is a highly technical discipline and one of the most vigorous forms of writing Few lawyers have the special combination of skills aptitudes and temperament necessary for a competent draftsman This book provides for the first time detailed commentary on legislative drafting with a specific focus on the Commonwealth covering the ethics of legislative drafting teaching training and retention of drafters the role of legislative drafting in good governance keeping the statute book up to date drafting by more than words the use of graphics labels and formulae in legislation and the particular challenges of drafting for small states It constitutes a key reference for legislative drafters parliamentary counsel and professionals involved in this field in the Commonwealth and beyond This book was based on a special issue of Commonwealth Law Bulletin

Legislative Drafting V. C. R. A. C. Crabbe, 2012-05-23 First published in 1993 Routledge is an imprint of Taylor Francis an informa company

Modern Legal Drafting Peter Butt, Richard Castle, 2001-06-04 This clearly structured and well referenced book shows how and why traditional legal language has developed some of the peculiar characteristics that sometimes make legal documents inaccessible to the end users It examines recent reforms in the UK Australia New Zealand and North America and provides a critical examination of case law and the rules of interpretation Practical elements are also covered Detailed case studies illustrate how obtuse words and phrases can be reworked or removed Particularly useful is the step by step guide to drafting in the modern style using examples drawn from four types of legal documents leases company constitutions wills and conveyances Readers of this book will receive clear instructions on how to make their writing clearer and their legal documents more useful to clients and colleagues This book will benefit all law students and professionals

Principles of Legislative and Regulatory Drafting Ian McLeod, 2009-10-12 Principles of Legislative and Regulatory Drafting provides a succinct guide to an area of law and practice which has previously been poorly served by English

textbooks It explains how drafters can convert legislative and regulatory policy into a form which has the desired effect in the most direct and accessible way On the basis that those who seek to communicate must be conscious of how their words will be read it includes a chapter on interpretation Other chapters include the nature of drafting instructions including ethical considerations the general principles of drafting the protection of human rights the creation of statutory corporations and schemes of licensing subordinate legislation and the creation of criminal offences The principles and skills of drafting are very largely common to both the legislative and regulatory fields but the book draws attention to areas in which significant differences arise Extracts from the Interpretation Act 1978 and the European Convention on Human Rights are included as Appendices The book provides an invaluable introduction for those engaged in legislative and regulatory drafting while also being useful to anyone who is interested in the creation and interpretation of legislative and regulatory texts **Enhancing**

Legislative Drafting in the Commonwealth Helen Xanthaki, 2016-04-14 The quality of legislation within the Commonwealth is an essential element of democracy and the rule of law Although a neglected territory until recently the legislative drafting debate is at the forefront of academic and professional fora at a Commonwealth and at a national level This book brings to light the academic foundations of legislative quality and the many recent innovations deriving from Commonwealth jurisdictions This book was based on a special issue of the Commonwealth Law Bulletin **Legal Writing**

in Plain English, Third Edition Bryan A. Garner, 2023-09-06 The leading guide to clear writing StartFragment and clear thinking StartFragment in the legal profession for more than two decades now newly updated Admirably clear concise down to earth and powerful all too often legal writing embodies none of these qualities Its reputation for obscurity and needless legalese is widespread Since 2001 Bryan A Garner s Legal Writing in Plain English has helped address this problem by providing lawyers judges paralegals law students and legal scholars with sound advice and practical tools for improving their written work Now the leading guide to clear writing in the field this indispensable volume encourages legal writers to challenge conventions and offers valuable insights into the writing process how to organize ideas create and refine prose and improve editing skills Accessible and witty Legal Writing in Plain English draws on real life writing samples that Garner has gathered through decades of teaching experience Trenchant advice covers all types of legal materials from analytical and persuasive writing to legal drafting and the book s principles are reinforced by sets of basic intermediate and advanced exercises in each section For this third edition Garner has retained the structure of the previous versions with updates and new material throughout There are new sections on making your writing vivid and concrete and on using graphics to enhance your argument The coverage and examples of key topics such as achieving parallelism avoiding legalese writing effective openers and summaries and weaving quotations into your text have also been expanded And the sample legal documents and exercises have been updated while newly added checklists provide quick summaries of each section Altogether this new edition will be the most useful yet for legal professionals and students seeking to improve their prose

Wisconsin Bill Drafting Manual Wisconsin. Legislature. Legislative Reference Bureau,1995 **House Legislative Counsel's Manual on Drafting Style** Ira B. Forstater,1995 **Legal Writing in Plain English** Bryan A.

Garner,2022-12-22 This easy to follow guide is useful both as a general course of instruction and as a targeted aid in solving particular legal writing problems Harvard Law Review Clear concise down to earth and powerful all too often legal writing embodies none of these qualities Its reputation for obscurity and needless legalese is widespread For more than twenty years Bryan A Garner s Legal Writing in Plain English has helped address this problem by providing lawyers judges paralegals law students and legal scholars with sound advice and practical tools for improving their written work The leading guide to clear writing in the field this indispensable volume encourages legal writers to challenge conventions and offers valuable insights into the writing process that will appeal to other professionals how to organize ideas create and refine prose and improve editing skills Accessible and witty Legal Writing in Plain English draws on real life writing samples that Garner has gathered through decades of teaching Trenchant advice covers all types of legal materials from analytical and persuasive writing to legal drafting and the book s principles are reinforced by sets of basic intermediate and advanced exercises in each section In this new edition Garner preserves the successful structure of the original while adjusting the content to make it even more classroom friendly He includes case examples from the past decade and addresses the widespread use of legal documents in electronic formats His book remains the standard guide for producing the jargon free language that clients demand and courts reward Those who are willing to approach the book systematically and to complete the exercises will see dramatic improvements in their writing Law Library Journal Drafting Contracts: How and Why Lawyers Do What They Do ,

Negotiating and Drafting Contract Boilerplate Tina L. Stark,2003 This resource serves to educate lawyers and business professionals on how to draft the many types of boilerplate provisions a legal term that refers to the standardized one size fits all provisions of a contract Each chapter tackles one of 20 provisions and analyzes why it is important the key legal and business issues raised and how to draft the provision to suit a particular transaction Such analysis not only helps readers better understand how to draft these provisions in their contracts but also helps them better understand the other party s process *A Manual of Style for Contract Drafting* Kenneth A. Adams,2004 The focus of this manual is not what provisions to include in a given contract but instead how to express those provisions in prose that is free of the problems that often afflict contracts *Legislation in Europe* Ulrich Karpen,Helen Xanthaki,2017-02-23 This book provides a practical handbook for legislation Written by a team of experts practitioners and scholars it invites national institutions to apply its teachings in the context of their own drafting manuals and laws Analysis focuses on general principles and best practice within the context of the different systems of government in Europe Questions explored include subsidiarity legitimacy efficacy effectiveness efficiency proportionality monitoring and regulatory impact assessment Taking a practical approach which starts from evidence based rationality it represents essential reading for all practitioners in the field of legislative

drafting *Drafting Legislation* Constantin Stefanou, 2016-05-13 *Drafting Legislation* sets out to prove Sir William Dale's doctrine that the rules for drafting good quality legislation are the same in common and civil systems of law. Legislative solutions can therefore serve the drafter, the judge and the practitioner of any jurisdiction. The book discusses the general issue of quality in legislation from the legislative process to the actual drafting, interpretation and enforcement. It also analyzes topics related to quality in legislation such as clarity, precision and disambiguity, plain language and gender neutral language and assesses whether Sir William's view of universality in the definition and elements of quality in legislation is right or not. The volume is of critical interest to students and scholars of European law and the philosophy and theory of law.

Drafting Engineering Contracts H. Henkin, 2005-06-21 This E. F. N. Spon title is now distributed by Routledge in the US and Canada. This title available in eBook format. Click here for more information. Visit our eBookstore at www.ebookstore.tandf.co.uk

Lawmaking in Multi-level Settings Patricia Popelier, Helen Xanthaki, William Robinson, João Tiago Silveira, Felix Uhlmann, 2019-09-18 Die Rechtsetzung ist bereits im nationalen Kontext schwer genug in mehrstufigen Umfeldern wie den Bundesländern oder der EU. Ist sie jedoch noch komplizierter? Auf zentraler Ebene müssen Gesetze der Autonomie und Diversität der einzelnen Einheiten Rechnung tragen und trotzdem effektiv, kohärent, einfach und zugänglich sein. Auf der dezentralen Ebene müssen Gesetzgeber die Gesetze, die auf zentraler Ebene erarbeitet wurden, in einem festgelegten Zeitraum in ihrem eigenen Rechtsrahmen implementieren. Diese Herausforderungen werden in diesem Werk, das ausgewählte Beiträge der 2018 an der Universität Antwerpen stattgefundenen Konferenz der Internationalen Gesellschaft für Gesetzgebung enthält, diskutiert. Es befasst sich mit allen Mehrebenensystemen; ein besonderer Fokus liegt jedoch auf der EU, wo die Spannung zwischen Autonomie und Effizienz besonders offensichtlich ist. Teil I untersucht das Thema auf allgemeinsten Ebene und umfasst alle Typen von Mehrebenensystemen. Teil II befasst sich mit der EU-Perspektive und Teil III mit der Perspektive der Mitgliedsstaaten. Die Autoren sind Experten in verschiedenen Disziplinen und Praktiker, was einen interdisziplinären Herangehensweise sicherstellt.

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