

Legalese makes way for simple, easy-to-understand contracts

FAR TOO often I've come across agreements that get straight into the detail of the transaction without providing the background, objectives of the parties or the purpose of the agreement.

It is sometimes difficult to understand what the parties wanted to achieve without understanding the context. I always preferred the approach of recording the background, purpose and objective with some detail to provide the reader with a context. This makes the contract clearer and easier to understand.

The importance of this drafting approach was again highlighted by the Supreme Court of Appeal in *Dexgroup (Pty) Ltd v Trustco Group International (Pty) Ltd* and others (2014) 1 All SA 375 (SCA). Wallis AJA

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was surprised by a submission that when interpreting a contract the well-established rule of construing the plain words must be complied with and only if there is ambiguity or uncertainty could the surrounding circumstances or factual matrix be considered. This is no longer the approach adopted when interpreting any document.

Wallis AJA stated that "in interpreting any document the starting point is inevitably the language of the document but it falls to be

construed in the light of its context, the apparent purpose to which it is directed and the material known to those responsible for its production. Context, the purpose of the provision under consideration and the background to the preparation and production of the document in question are not secondary matters introduced to resolve linguistic uncertainty but are fundamental to the process of interpretation from the outset."

It is clear that our courts do not consider only the language in a contract when interpreting it. While clear language will always aid in interpreting contracts, the context of a contract and the objectives are also considered.

There is a global shift among commercial lawyers towards the use

of clear, simple language in contracts. Many South African lawyers have changed their drafting styles in line with this approach. Gone are the days of complex sentence construction and the use of words not used in everyday language. "Whereas", "hereinbefore", "aforesaid" and "forthwith" are just some of the many outdated expressions better left out.

Contracts and all documents can be drafted in simple, clear everyday language. Legalese should be avoided except where legal terms have specific meanings that would be lost if translated or the use of the term makes the provision easier to understand. Sentences should be short and to the point, no more and no less required to convey the meaning.

If you are entering into a

contract, make sure that you understand everything in it and that there is no room for uncertainty about how a provision can be implemented or interpreted. Don't be afraid to query the meaning of terms used and ask for the contract to be drafted using clear, simple language.

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