Choosing a Lawyer Wisely

Seeking "Legalese" and "Gobbledygook" Verus "Plain Speaking"

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Many people have the simplistic notion that the best expert for any complicated problem is someone who communicates in a complicated way--in other words, an expert who speaks and writes in incomprehensible "gobbledygook" and, in the case of a lawyer, one who also uses a hefty amount of "**legalese**" -- the Latin words and the "whereas", "wherefor", "Now therefor"words.

I have found that my clients with experience, common sense, and wisdom have the opposite notion. They would agree with Albert Einstein's statement that anyone who can't explain his or her ideas in simple language hasn't gotten the ideas clear in his or her own mind. While I am not sure that Einstein's statement applies to complex theories in science (confession: I have never understood even his own efforts to simply explain his theories) I know from my years of working with clients that this statement does apply to most legal concepts and legal documents. A lawyer who really has studied and understands his or her area of expertise, and who takes satisfaction from helping clients to

share in the creating of business or other relationships or dealing with disputes in these relationships rather that just pretentiously impressing people with his legal knowledge, has figured out how to present the expert information to clients in an understandable but also thorough manner.

"I do everything I can to avoid using 'lawyer phrases' or 'legalese'...."

Furthermore, the non-pretentious lawyer knows that it is not necessary for most legal agreements to use much, if any, Latin-based or ancient English or American "lawyer phrases" or other forms of "**legalese**". Indeed, I do everything I can to avoid using such language, and instead to use "**plain English**" alternative language wherever possible, because I see as my prime goals in document writing

1. FIRST, to make sure all parties understand all the issues that are involved in their planned relationship, so that if and when such issues arise the parties are not taken by surprise and then filled with resentment;

2. SECOND, to make sure that all parties are able by themselves to read my document and see that it adequately and clearly addresses these issues;

3. THIRD, to make sure that all parties with the help of their own attorneys are able to use their own experience and common sense to contribute their suggestions to the document in terms of how it should cover the relationship involved;

4. FOURTH (and very important), to take care that none of the parties (or even their attorneys) is left with the uneasy feeling of fear or dread that this party might be"tricked" (or their attorney later embarrassed) because that party signed something that party did not understand or intend with consequences that party or his/her attorney was not able to foresee.

"the key factors which lead to disputes over a document and the relations it has created ... are unpleasant surprises ... and resentment by one of the parties that

something was 'put over' on him or her...."

These points, particularly the FOURTH point are very important. I have found that the key factors which lead to disputes over a document and the relations it has created, and then extreme hostility making a compromise or "settlement" difficult and then leading to a lawsuit or other form of dispute resolution, are

- unpleasant surprises for one or more of the parties that an event occurs which they failed to anticipate but which a competent lawyer could have alerted them to, with the result that whatever "deal" the parties had gotten into together is now threatened.

  These common "surprises" are best handled by consultations with an experience attorney who can deal with "what ifs" at a time when it is not clear which persons in a deal will benefit from or be hurt by a surprising event (for example, death, divorce, desire to quit a business or co-owned property) so the parties can in an atmosphere of calm reflection anticipate solutions for the possible unexpected events. In other words, they can decide how to deal with such unexpected events while these are"**context neutral**". If later on the unexpected event does occur the parties realize that they had both agreed on what to do without anticipating who would benefit or be harmed by the event, so neither party now feels the other party is being "hypocritical" in following the pre-established procedures for dealing with the event.

- a resentment by one of the parties that something was "put over" on him or her and they were thus "taken advantage of" (a form of bullying) and now they need to retaliate.

It is important to remember that when any party feels "taken advantage of" in a "deal" especially if this takes the form of an "unpleasant surprise" that makes that party feel duped or bullied, that party, with a creative lawyer, can almost always undo or at least "throw sand into" that deal. On the other hand, if one or more of the parties to a "deal" are not surprised by an event, but recognize that they had been alerted to its possibility in a "plain English" and otherwise clear but thorough document, and that they made a knowing decision to take the risk of that possibility, then the emotional tone of efforts to resolve the dispute which has arisen is usually one of reasonableness and compromise.

"A well written 'plain English' agreement is a valuable form of insurance against large future legal expenses arising from disputes over the relationship. "

A well written "plain English" agreement prepared by a lawyer experienced in the history of what can go wrong in any relationship (which essentially is what lawyers learn from reading court decisions found in "law books") is a valuable form of insurance against large future legal expenses arising from disputes over the relationship.