A PIECE ("THE *ADVOCATE* PIECE") ON DEFINITIONS ("DEFINITIONS" OR "EXPLANATIONS")

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Snapwire

What an odd habit it really is. Without much reflection, we pepper the documents we draft – pleadings, affidavits and heads of argument – with definitions. The initial paragraphs of our legal masterpieces are often so densely spiced with words surrounded by brackets and quotation marks that one can scarcely see the wood for the individually defined words (or notice mixed metaphors).

The reader trips unwittingly into the document, tumbling over hurdles that impede easeful reading, which, ironically, were in the first place installed to achieve the very opposite: the Janus-headed ideals of clarity and precision.

The Competition Commission ("the Commission") and the Competition Tribunal ("the Tribunal") both found against XYZ (Pty) Ltd ("XYZ") in the complaint initiated by ABC (Pty) Ltd ("ABC"). (Naturally, the document contains mention of no other company…)

Or worse still: The plaintiff, Mr George Jones ("the plaintiff" or "Mr George Jones"), concluded a contract of lease ("the contract" or "the lease") with his daughter, Ms Samantha Jones ("the daughter", "the defendant", "Ms Samantha Jones" or "Ms Jones").

Or, owing to the exigencies of cutting-and-pasting, Mr George Jones is defined as "Mr Jones" only at his third or fourth mention. Or having been defined, sweetly and simply, as "Mr Jones", *Mr George Theophilus Jones* keeps rearing his unruly head.

The desperate fidelity we show to the needless, often deeply clumsy, defining of terms is borne of the vain hope on the part of drafters that they might achieve a measure of clarity and precision that evaded generations of journalists and novelists. As if the reader of *our* texts have no sense of context; as if, frankly, they lack the ability to read.

At all costs, we must disabuse our foggy-eyed readers that the ABC (Pty) Ltd mentioned in the first paragraph is, in fact, the same as the entity ABC to which reference is made a little lower down and throughout the remainder of the document.

Even though there's only one entity ABC that plays any role in the narrative that unfolds. Even though ABC is universally well-known, like Shoprite or Clicks or SAB. Even though the context of the narrative as a whole makes it impossible that there might be any confusion whatsoever.

Without the perfunctory "("ABC")" inserted after the first mention of that name, we have learnt to think that, in Hansel-and-Gretel fashion, our hapless readers will lose their way, soon confusing ABC with some other entity that has nothing to do with the cause of action or defence at issue. That they will think Shoprite is not Shoprite and Clicks not Clicks. Etcetera ("Etc").

Research shows that there are competing theories over the origins of this inelegant habit. One school contends that it derives from the legislature's comparatively salutary practice of using section 1 in every Act of Parliament as the definitions clause, in which technical or at least pivotal terms deployed in that statute are defined.

But, a statute is, of course, a different kettle of fish. It is to be read and understood by members of the general public that are obliged to arrange their conduct so that it complies with whatever duties the statute imposes. The scope for confusion is considerable; the consequences, dire. The motivation for the use of definitions in that context is plain.

What is more, situated before the start of the narrative part of the statute, a definitions clause is a bit like the list of characters – the *dramatis personae* – at the start of a Shakespeare play. With a cast sometimes in the tens and reams of early-modern English to follow, the need for clarity, indeed for help of any kind, before the narrative commences is all too clear.

But *our* omnipresent definitions are not serried together at the top of a document. They sweep across the body of the text, as disquieting as tumbleweed. Surely, neither the statute, nor the Shakespeare theory is persuasive.

In the wake of my own archival enquiries, I venture that the true origin is something quite different: the habit is drawn from a custom of our colleagues at the side bar, who unlike us, are wont to fire off letters to their colleagues ("opponents"), in which ease of reading and elegance are positively drawbacks.

Opponent letter-readers are not supposed to enjoy reading those letters. They are not expected to sigh the sigh of relief that comes with sinking into a Jane Austen novel, which creates a cerebral hum akin to that of a cat being stroked. No, both in style and content, the letter is devised to strike at the reader's heart, through the use of words like prescription, costs *de bonis propriis*, and a string of unnecessary definitions – that signify mastery of the law and of life.

When one grasps the true origin of this practice – essentially an *in-terrorem* device that is devised to rile and irk – one realises the absurdity of our adoption of it. For the most part, the documents that we painstakingly draw are meant to soothe and lull. To generate in the reader a gently affirmative nod, a glow of assent and accord.

Our readers, after all, are mostly judges whom we wish are much more like a purring cat than a roused and grated opponent receiving an unwelcome and breathlessly assertive letter ("our letter") sent through the ether from Bryanston ("Bryanston") to Bedfordview ("Bedfordview").