



Pleadings Without Tears – A Guide to Legal Drafting Under the Civil Procedure Rules

By William Rose (revised and updated by Roger Eastman), 9th edition, Oxford University Press, 2017

REVIEWED BY **GARRY WILLIAMS**

IT IS A MATTER OF SOME REGRET TO ME THAT *MYLWARD v Weldon* (1596) appears to have been forgotten.

In *Mylward's* case, the plaintiff had his son, Richard (instead of counsel), draw up the Replication (which, as I'm sure you all know, was what a Reply used to be called).

This pleading ended up being rather longer than was usual. As the judgment recounts it occupied "six score sheets of paper, and yet all the matter thereof which [was] pertinent might have been well contrived in sixteen sheets of paper".

The courts of the time being slightly more robust than they are today, Richard was committed to Fleet Prison and it was ordered that the warden should then take him to Westminster Hall "and then and there cut a hole in the *myddest* of the same engrossed Replication (which is delivered unto him for that purpose), and put the said Richard's head through the same hole, and so let the same Replication hang about his shoulders with the written side outward; and then, the same so hanging, shall lead the same Richard bare headed and bare faced, round about Westminster Hall, whilst the Courts are sitting, and shall shew him at the bar of every of the three Courts within the Hall, and shall then take him back again to the Fleet, and keep him prisoner until he shall have paid 10l. to Her Majesty for a fine, and 20 nobles to the defendant, for his costs in respect of the aforesaid abuse ...".

While getting a pleading wrong these days is unlikely to result in quite the same outcome, particularly given s 9 of the New Zealand Bill of Rights Act 1990 (the right not to be subjected to cruel, degrading, or disproportionately severe treatment or punishment) and due to the fact that the courts appear to have a more permissive approach to litigants in person than they once did, getting the pleadings right has many advantages.

William Rose's *Pleadings Without Tears* is about getting

pleadings right and doing so in a way that puts the client's case in the best possible light having regard to the circumstances.

The book is written in an approachable and entertaining style and is inexpensive. I bought a Kindle electronic copy from Amazon for US\$31.57. The paperback version was the same price.

It outlines the core skills required and fundamental rules to be followed to produce successful pleadings and other litigation documents.

While it would be fair to say that it is primarily intended for those who are new to litigation, it nevertheless will be of appeal to a wider legal audience. This is because it contains practical insights and tips that will be of benefit to not just the "newly minted" among us.

It is probably important to point out that *Pleadings Without Tears* is not a litigation precedent encyclopaedia or reference book like *Atkin's Court Forms* or *Bullen & Leake: Precedents of Pleadings*. Rather, as the Foreword says:

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gain a real insight into how lawyers present their clients' cases, and how they do this in ways that will be attractive to the court."

The book is divided into 13 chapters.

Chapter 1: Pillars of Understanding (General Principles) starts with some preliminary advice about how to approach the task of drafting a pleading.

In essence, Mr Rose accepts straight off the bat that there is no one "right" way to draft a statement of claim or defence, but counsels that it is usually possible to draft one in such a manner as will maximise its strength. However, in order to do that he stresses two points.

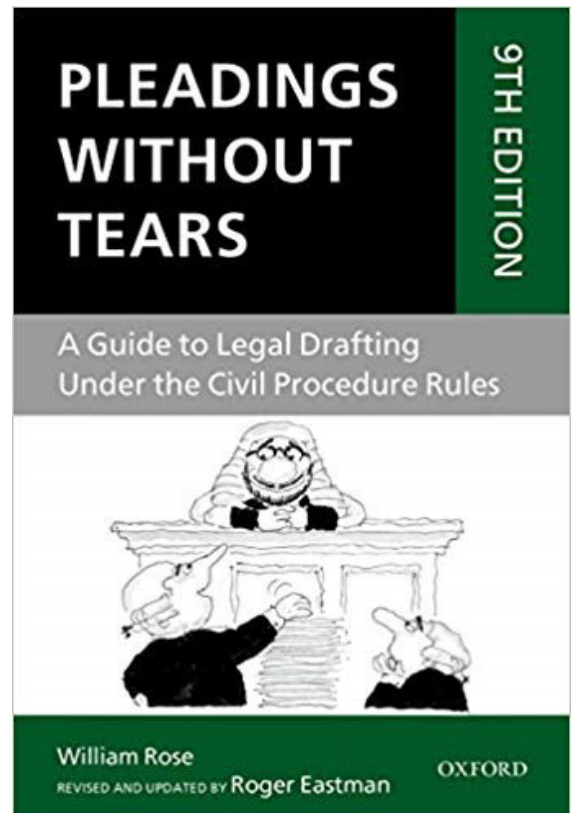
First, he says "it is imperative that you get as **full instructions** as you can before starting". It is, after all, much better to get it right the first time and not have to amend.

Second, he counsels using language with precision, arguing that precise and elegant drafting carries with it the air of **authority** and that that can have a useful effect on the way in which an opponent and the court views a case.

The remaining chapters deal with the following topics in turn:

- *Chapter 2: Getting the Show on the Road (The Claim).*
- *Chapter 3: Making a Fight of it (The Defence and Counterclaim).*
- *Chapter 4: The Right to Reply (The Reply).*
- *Chapter 5: Don't Answer Back (Rejoinder, etc).*
- *Chapter 6: Pray – Tell Me (The Request for Further Information)*
- *Chapter 7: 'Just to Let You Know ...' (The Answer to a Request for Further Information).*
- *Chapter 8: Come and Join In (Additional Claims Against Third Parties).*
- *Chapter 9: Pieces of Eight (The Part 8 Procedure).* This is what we would call Originating Applications.
- *Chapter 10: 'To Tell You the Truth ...' (Witness Statements, and the Odd Affidavit).*

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- *Chapter 11: Just a Minute (Minutes and Agreed Orders).*
- *Chapter 12: Bones of Contention (The Skeleton Argument).*
- *Chapter 13: A Matter of Opinions (Opinion Writing).*

Each chapter provides a wealth of practical examples and contains the necessary detailed analysis and explanation to enable the reader to easily acquire a thorough understanding of how to draft each of the documents discussed.

The importance of pleadings should not be overlooked and *Pleadings Without Tears* does not do so. The work accurately describes the functions of pleadings and highlights, in particular, that a well-drawn pleading should enable the parties to accurately identify the issues in dispute and evidence that will need to be called. Nor does it overlook the fact that the drawing of a really good pleading in a complex case requires a mastery both of the relevant facts and the applicable law.

While mastery of the art of pleading only comes with experience, Mr Rose's *Pleading Without Tears* is the primer a novice needs to get the hang of this aspect of court-craft.

I am confident that its readers will benefit from its coverage of the principles upon which good pleading is based.

If only Richard Mylward had a copy back in 1596. ■

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