

Good legal writing

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In (2009) 22 *Advocate* 22 there is a piece entitled 'Good Legal Writing' from the pen of Judge Carole Lewis of the Supreme Court of Appeal. What she says must be endorsed, except where she gets it wrong!

At page 23 she (rightly) states that the misuse of Latin phrases is a 'particular irritant' and gives the following example:

'... [T]he phrase *in casu* is frequently used to mean 'in this case'. It means nothing of the sort.'

In a footnote she states:

'Casus refers to the voice in which a noun is used in Latin – nominative, vocative, etc; to an accident or an unexpected event; or to some risk or peril.'

All this is correct up to a point, but also wrong! A noun does not have a 'voice'; *casus* is used in Latin to denote the case in the

inflection of nouns: nominative etc; thus the ablative is sometimes called the *casus sextus*. In Latin the *voice* or *mood* of a verb is called *modus*; the passive mood is, for example, called *patiendi modus*.

As for the meaning of *casus*, the remarks are correct as far as they go, *casus* being derived from *cado* which means 'falling down.' The word is used in a whole range of figurative meanings, euphemistically even in the sense of *death*. It can also bear the meaning of *an occasion, an event, a case* (in the sense of a *circumstance*).

Hiemstra & Gonin in their *Trilingual Legal Dictionary* give the following meanings for *casus*: *geleentheid; geval; toeval; ongeluk // occasion; case; chance, accident*. They give the following for the phrase *in casu*: *in hierdie geval; in die onderhawige geval // in the present case; in the case in question*.

In the *Lexicon Latino-Belgicum* (1738) one of many meanings given for *casus* is: '*t Geval*'.

In West's *Legal Thesaurus/Dictionary*, *casus omissus* is said to be: *An event or contingency for which no provision is made*. Hiemstra & Gonin describes it as a *gebeurlikheid waarvoor die wet nie voorsien nie // contingency not provided for by the statute*.

And then there is the *casus perplexus* (see

Zimmermann *Obligations* 721f): a factual situation (a case) which poses an insoluble legal conundrum.

In casu therefore means something like, 'in the (factual) circumstances of the matter currently under consideration ...', that is, 'in this case'!

Finally, reference may be made to the famous, and mysterious, *unus casus* of Justinian's *Institutes* 4.6.2, which has through the centuries elicited endless comment from scores of scholars. In *Inst* 4.6.2 it is first stated that normally, in an *actio in rem*, the thing (*res*) is claimed by the plaintiff as his from the person who is in possession of the thing. The text then continues:

Sane uno casu qui possidet nihilo minus actoris partes obtinet, sicut in latioribus digestorum libris opportunius apparebit.

Prof JAC Thomas in his edition of the *Institutes* translates the passage as follows:

In one case, however, the possessor does none the less have the role of plaintiff, as appears more appropriately in the more voluminous books of our Digest.

The *unus casus* is a unique or unusual case (in Afrikaans, '*n uitsonderlinge* or *unieke geval*; in German translations of the passage, *casus* is rendered by *Fall*). 

Legal Crossword Number 10

CLUES

Down

- 1 Entailed by a quartering (12)
- 2 Tabula rasa (5,5)
- 3 Whence English Detectives (7,5)
- 4 Empty handed (5,4)
- 5 Unfavoured test to cut a restraint (4,6)

Across

- 1 Describes your performance on a good day (6)
- 2 Killed the death penalty (10)
- 3 To commit arson (5)
- 4 Describes those with whom you need to settle (11)

Answers on page 56.

