
WHAT HAS CHANGED

Welcome to the second edition of *A Manual of Style for Contract Drafting*.

When I wrote the first edition, I was still a practicing corporate attorney, so in my attempts to master contract language I was necessarily something of a dilettante. That changed in January 2006, when I took the logical step of making contract drafting my livelihood. Since then I've been immersed in the subject.

For one thing, I've devoted much more time than previously to research and analysis. I've published articles in the *New York Law Journal* and elsewhere—over a dozen in the past two years. But the real spur to productivity has been my blog, at adamsdrafting.com. I've felt compelled to feed the beast, posting over 300 items—with little fluff—since I launched my blog in May 2006. Without the blog to spur me on, I wouldn't have addressed in this edition anywhere near as many issues as I do. And giving my ideas a public airing allowed me to refine them before committing them to print.

I've also been giving public seminars in the U.S. with West Legalworks and in Canada with Osgoode Professional Development, as well as internationally, and I've been giving in-house seminars at companies, law firms, and government agencies worldwide. And in fall 2005 I started teaching the first-ever course in contract drafting offered at the University of Pennsylvania Law School. I've learned a great deal from seminar participants and my students.

As a result of this intensified focus, the second edition incorporates much new material. Here are some of the main changes:

- The new introduction incorporates bits of the old preface and the old chapter 1 (Two Rules).
- New chapter 6 (Sources of Uncertainty in Contract Language) incorporates bits of old chapter 1, old chapter 7 (Vagueness), and old chapter 8 (Ambiguity), along with new material.
- Old chapter 7 has been split into new chapter 7 (“Best Efforts” and Its Variants) and new chapter 8 (“Material” and “Material Adverse Change”), each of which incorporates new material.

- Old chapter 8 has been split into new chapter 9 (References to Time), new chapter 10 (Ambiguity of the Part Versus the Whole), and new chapter 11 (Syntactic Ambiguity).
- New chapter 12 (Select Usages) is a greatly expanded version of old chapter 9 (Select Word and Phrases).
- New chapter 1 (The Front of the Contract), new chapter 2 (Categories of Contract Language), new chapter 3 (Layout), new chapter 4 (The Back of the Contract), and new chapter 15 (Typography) each represent a significantly expanded version of a counterpart chapter in the first edition.
- The appendix—“before,” “before, annotated,” and “after” versions of a contract—is new.

In preparing the second edition I was able to revisit issues that I had addressed inadequately in the first edition. Some of my fixes were relatively modest, for example my revised treatment of *including without limitation* (see 12.100) and *without limiting the generality of the foregoing* (see 12.448). More significant are the changes I made to reflect my belated realization that *material* is not only vague but also ambiguous; see 8.3. I was also able to fix the incorrect analysis of the ambiguity of *or* contained in the first edition; see 10.29.

THE MARKETPLACE OF IDEAS

Any book that bills itself as a manual of style had better be reliable. It's clear from the fixes contained in this edition that I'm fallible, but here's my opening position with respect to the second edition: The usages I recommend in this book are those that are clearest and most efficient for accomplishing a given drafting goal. That's the case even if what I recommend does battle with the conventional wisdom—take for instance my view that it's pointless and confusing to use the phrase *represents and warrants* in a contract (see 12.285). You may think differently, but until such time as you demonstrate, in detail and in writing, why I'm mistaken, I'll stick to my guns.

I'm not adopting this stance out of belligerence. I suggest in the introduction that there's no such thing as a personal drafting style, only drafting that is clear and efficient and drafting that is less so. If you adopt that approach, it's counterproductive to be unduly squeamish about scrutinizing contract language. Instead, it would be for the best if alternative approaches were to do battle in the marketplace of ideas, even at the risk of some light bruising. I've certainly benefited from the frank input of readers of my blog.

ACKNOWLEDGMENTS

In the first edition I had relatively few people to thank, in that I had for the most part written it in splendid isolation. Circumstances were very different this time around.

It was my good fortune that Susana Darwin became executive editor of the Section of Business Law of the ABA around the time I started compiling this edition in earnest. It's been a pleasure working with her. And my thanks go to Annie Beck and her colleagues at Lachina Publishing Services for their work on the design and composition of this edition.

Professor Jeffrey P. Kaplan of San Diego State University helped salvage my analysis of the ambiguity of *or* and otherwise offered suggestions on all things linguistic. Dr. Colin Sparrow of the Mathematics Institute of the University of Warwick, England, commented on the first edition's discussion of numbers and formulas; my debt to him carries over into the second edition. I thank also all those who commented on drafts of the various articles that constituted raw material for this edition.

More generally, I've benefited from the dozens of readers of my blog who have offered thoughtful comments, posed intriguing questions, and given me leads to some important cases. They even pitched in with proofreading this edition. This manual is much richer for their contribution. In particular, I thank Michael Fleming and Mike Wokasch for their perceptiveness and generosity.

I've also enjoyed the fellowship of other bloggers, in particular Eric Goldman, Kevin O'Keefe, Victoria Pynchon, Wayne Schiess, and Ray Ward. The blogosphere may be something of an echo chamber, but it's a congenial one.

Victoria Watkins of Osgoode Professional Development, in Toronto, was the first to think that the first edition of this book could form the basis for a seminar. At the invitation of Steve Seemer of West Legalworks, I've had the opportunity to present that seminar in cities across the U.S. And it's thanks to Anne Kringel that I find myself teaching at the University of Pennsylvania Law School.

Others have provided valuable advice and encouragement: Tim Allen, Ross Guberman, David Munn, Martin Pagel, Brian Quinn, Bryn Vaaler, Laura Williams, and Dick Wydick.

I've long relied on Bruce Wilson for good-humored counsel and friendship. Steve Pappas has been an unabashed fan, and he helped smooth my transition from law-firm associate to freewheeling contract-drafting guy.

In 1997, I returned to New York with my wife Joanne and one-year-old daughter Sydney after a three-year stint in Geneva, Switzerland. I was without a job, and we had no home. Joanne and her parents

Steve and Toni Kourepinos had every reason to be alarmed when I announced that I wanted to write a book on contract drafting—namely my first book, *Legal Usage in Drafting Corporate Agreements*—and set up shop at Steve and Toni’s dining-room table. Subsequent events showed that I wasn’t entirely delusional, but they had no reason to know that. I thank them for their patience.

In particular, Joanne has faced with good cheer the vicissitudes of my unconventional career path. And she has a great instinct for knowing when to be the cheerleader and when to fetch the bucket of cold water.

I apologize to Sydney, now twelve. The sight of her bleary-eyed and etiolated father hunched over the keyboard at all hours can’t be too edifying.

One agreeable aspect of what I now do is that I’m unexpectedly revisiting, in an altogether more concerted way, the affinity for English usage that was routinely on display around the Adams family dinner table. My mother Florence, my late father Charles, and my siblings living (Charles, Jr. and Christine) and departed (Adrian, Louise, and Andrew) created a fertile mix of intellect and idiosyncrasy. I thank them for it.