

42-AUG Colo. Law. 107

Colorado Lawyer

August, 2013

Department

Reviews of Legal Resources ^{a1}

Book Review

A MANUAL OF STYLE FOR CONTRACT DRAFTING, 3D ED. BY KENNETH A. ADAMS 519 PP.; \$99.95
ABA PUBLISHING, 2013 321 N. CLARK ST., CHICAGO, IL 60654 (800) 285-2221; WWW.ABABOOKS.ORG

Matthias M. Edrich ^{a2}

Copyright © 2013 by The Colorado Lawyer and Colorado Bar Association; Matthias M. Edrich

Kenneth A. Adams left private practice as a corporate attorney in 2006 to become a consultant, writer, and speaker on contract drafting. The first edition of his guide, *A Manual of Style for Contract Drafting (Manual)*, appeared in 2004, and a subsequent revision was released in 2008. That it has been well received is evidenced by the publication of this third edition.

The *Manual* is a comprehensive and current style guide for contract drafters, reviewers, and interpreters. It does not provide substantive explanations on what to say in a contract. Instead, it aims to help the reader say clearly and effectively whatever the reader already knows must be said.

***108** In more than twenty chapters and several appendices, with convenient section references throughout, Adams discusses the characteristics of optimal contract language. He covers the historical quirks and customs of contracts, the structural components and layouts of contracts, common grammatical and structural problems and best practices to address these problems, and formatting suggestions. In addition, he describes the structure of special types of contracts, including contract amendments, letter agreements, and corporate resolutions.

The *Manual* begins with a useful discussion of historical perspectives on existing contract language. Adams offers his take on the archaisms, myths, and misunderstandings that have survived in modern contracts. For example, he urges that simple narrative prose replace the archaic use of single-sentence “WHEREAS” paragraph structures for recitals. He also mocks traditionalists’ strict insistence on using the term “between” to describe a contract with two parties and the word “among” to describe a contract with more than two parties, or using a “silly couplet such as *by and between*.” According to *The Oxford English Dictionary*, the word “between” is preferable, but Adams cautions that it probably would not be worth antagonizing the other side for using *among* or *by and between* in contract drafts. Adams also decries the use of the introductory phrase “know all men by these presents” as an egregious and stodgy Latin translation that serves no purpose other than to provide evidence of the drafters “thrall to the archaic.”

The *Manual* includes rather lengthy discussions on other principled matters Adams appears to be passionate about, including whether recitals to consideration are still *en vogue* or necessary, and what to do with the often criticized misused and overused modal auxiliary verb “shall.” Unlike other critics of legal prose who promote the abolition of the word “shall” (*see*, for example, Garner, “Shall We Abandon *Shall*?” *ABA Journal* (Aug. 2012)), Adams argues that the term is still useful. For example, the term has long been recognized in business contracts as an expression setting forth an obligation, which means there is no reason to abruptly excise the word under all circumstances. (In statutes, however, the word causes general confusion as to whether drafters intend the obligatory “must” or the discretionary “may”)

To say that the *Manual* is nothing more than a listing of outdated contract terms and a narrow critique of legalese, however, is incomplete. Adams does a very good job of explaining the origins of archaisms and why drafting practices have changed in recent years or should change to facilitate concise and precise drafting. He cites developments in case law to support changes to traditional drafting concepts and to suggest best practices. The *Manual* promotes a pragmatic approach to contract drafting--an approach that favors the use of simple terms, concise and plain English writing, and standard formulations and templates, in lieu of traditionalist “crafting” that has nowadays become meaningless and needlessly complex.

Similar to *The Bluebook*, the *Manual* is a reference book and not a novel. Although the introduction and initial pages may provide interesting bedside reading, the remainder of the book is more suitable for looking up relevant concepts while drafting or reviewing a contract. The book is ring-bound and easy to open and flip through. It is a highly recommended desk book for any practitioner who frequently drafts or reviews contracts. More information about the *Manual* and its author is available online at www.adamsdrafting.com.

Footnotes

[a1](#)

Reviews of Legal Resources is published to apprise attorneys of books and other resources that may be of interest to them. Readers wishing to make review suggestions, provide review copies, or write reviews should contact Leona Martinez at leonamartinez@cobar.org. For a list of titles available for review at press time, see page 109.

Readers who have questions about any reviewed material should contact the reviewer. Prices listed are based on information available at the time the reviews were published, and are subject to publisher discretion. Please contact the publisher to obtain a copy of the book.

[a2](#)

Matthias M. Edrich is a tax attorney with the national law firm of Kutak Rock LLP in the firm's Denver office--(303) 292-7887, [matthias.edrich @kutakrock.com](mailto:matthias.edrich@kutakrock.com).

42-AUG COLAW 107

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.