
WHAT HAS CHANGED

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

The first edition appeared in 2004. I wrote it while still a practicing corporate attorney, so in my attempts to master contract language I was necessarily something of a dilettante. That changed in 2006, when I made the study of contract drafting my livelihood. That focus meant that the second edition, which came out in 2008, was a very different book—entirely redesigned, significantly expanded, extensively rewritten.

Since then I've been engaged in the same range of activities that gave rise to the second edition. I've continued to blog, originally at AdamsDrafting, then at The Koncise Drafter, now at Adams on Contract Drafting. Blogging has allowed me to air new ideas, chew over problems, hear of new developments, and engage with like-minded readers to an extent that otherwise would have been impossible. Since the second edition was published, I've posted more than 800 blog items, many of them representing my first treatment of issues addressed in this edition.

I've continued giving public seminars in the United States with West LegalEdcenter and in Canada with Osgoode Professional Development, as well as in-house seminars at companies, law firms, and government agencies. I've also presented public seminars in Australia, Malaysia, Thailand, and Switzerland; that has given me a better sense of how drafting usages vary, or don't, from country to country. And I've continued teaching at the University of Pennsylvania Law School. I've learned a great deal from seminar participants and my students.

One new development is that I've launched Koncison Contract Automation. By 2011, document-assembly technology and my understanding of my subject had both developed enough to allow me to take a baby step toward commoditizing contract language. Koncison's proof-of-concept product is a confidentiality-agreement template, available for free. Compiling the language for that template allowed me to test some of my recommendations and explore new issues.

Thanks to the wealth of material I had to draw on, there is much that is new in this edition. I also moved some sections, and I retooled much of the prose. Here's an overview of the changes:

- *Introduction*. Extensively revised.
- *Chapter 1 (The Characteristics of Optimal Contract Language)*. New; includes some topics previously addressed in the introduction, in what is now chapter 7, and in what is now chapter 17.
- *Chapter 2 (The Front of the Contract)*. Significantly expanded by integrating new material throughout.
- *Chapter 3 (Categories of Contract Language)*. Greatly expanded by integrating new material throughout; by adding new sections on language of belief,

language of intention, and language of recommendation; and by adding, from what is now chapter 13, an expanded discussion of *represents and warrants*.

- *Chapter 4 (Layout)*. Significantly expanded by integrating new material throughout.
- *Chapter 5 (The Back of the Contract)*. Slightly expanded.
- *Chapter 6 (Defined Terms)*. Slightly expanded.
- *Chapter 7 (Sources of Uncertainty in Contract Language)*. Significantly expanded by integrating new material throughout and by adding sections on antecedent ambiguity and failure to address an issue.
- *Chapter 8 (“Reasonable Efforts” and Its Variants)*. Slightly expanded.
- *Chapter 9 (“Material” and “Material Adverse Change”)*. Slightly expanded.
- *Chapter 10 (References to Time)*. Significantly expanded by integrating new material throughout.
- *Chapter 11 (Ambiguity of the Part Versus the Whole)*. Significantly expanded by adding a section on the ambiguity that arises when one of a series linked by *or* is modified by a conditional clause, and by adding a case study. Revised the sections on the effect of adjectives and cumulation of attributes.
- *Chapter 12 (Syntactic Ambiguity)*. Significantly expanded by adding a section on closing modifiers with offsetting commas and a section on the serial comma.
- *Chapter 13 (Selected Usages)*. Expanded by more than two-thirds (in terms of the number of paragraphs).
- *Chapter 14 (Numbers and Formulas)*. Slightly expanded.
- *Chapter 15 (Provisions Specifying Drafting Conventions)*. Largely unchanged.
- *Chapter 16 (Typography)*. The section on fonts rewritten; otherwise largely unchanged.
- *Chapter 17 (Drafting as Writing)*. Shorter, because some sections were moved to chapter 1.
- *Chapter 18 (Amendments)*. Largely unchanged.
- *Chapter 19 (Letter Agreements)*. Largely unchanged.
- *Chapter 20 (Corporate Resolutions)*. Largely unchanged.

ACKNOWLEDGMENTS

I owe a great debt to the readers of my blog, at its different addresses, who have offered me comments and suggestions. My commenter hall of fame includes Michael Fleming, Eric Goldman, and Chris Lemens. Steven H. Sholk has been a prolific source of leads. Mark Anderson has provided a valuable English-law perspective. Brian D. Rogers and Bradley B. Clark have provided welcome encouragement. And Glenn D. West has been gracious enough to chime in when I’ve asked for the benefit of his unmatched expertise in some key areas.

I owe particular thanks to Gregory M. Harris. He gave a substantial portion of the manuscript of this edition a thoroughgoing review of the sort that an author can only dream of. He corrected me on some important points, persuaded me to refine how I present analyses and make recommendations, and pointed out some annoying tics in my prose. Meade Ali, Ajay Krishnan, Chris Lemens, Vance R. Koven, Brian D. Rogers, and Steven H. Sholk also provided many valuable comments on the manuscript. And a squad of volunteers too numerous for me to name here read extracts of the manuscript and flagged an array of issues needing my attention. Thank you, all.

I was very fortunate that Rodney Huddleston, coauthor of *The Cambridge Grammar of the English Language*, was kind enough to read a version of chapter 11 (Ambiguity of the Part Versus the Whole) and offer detailed comments. The assistance that Professor Jeffrey P. Kaplan of San Diego State University and Dr. Colin Sparrow of the Mathematics Institute of the University of Warwick, England, rendered in connection with the previous editions carries over into this one, and so do my thanks to them.

Thanks to encouragement and support from Stephen W. Seemer, West LegalEdcenter now offers my U.S. live seminars, various webcasts, and my book *The Structure of M&A Contracts*. And I continue to benefit from the enthusiasm and determination of Heather J. Gore of Osgoode Professional Development.

I've benefitted greatly from my relationship with Tim Allen and his colleagues at Business Integrity, developer of ContractExpress, the leading document-assembly software. Their support allowed me to launch Koncision Contract Automation, and I've had a blast getting to grips with their amazing product. Tim and I see eye to eye on the current state of contract drafting and prospects for the future, and I greatly enjoy our occasional dinners together in cities around the United States.

I continue to rely on Bruce T. Wilson for good-humored counsel and friendship. And I remain indebted to Steven Pappas for helping to smooth my transition from law-firm associate to freewheeling contract-drafting guy.

My wife, Joanne, continues to be an indefatigable source of love, tolerance, good humor, and old-fashioned hard work. My daughter, Sydney, stands to be far more accomplished and engaged than her father. The support of Joanne's parents, Steve and Toni Kourepinos, continues to be invaluable. But Max the Pekingese, my industrious assistant while I wrote the second and third editions, is no longer with us.

Although my mother has since passed away, I'll repeat the paragraph that rounded out the acknowledgments in the second edition:

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.