

Vice Chancellor J. Travis Laster
Court of Chancery of the State of Delaware

To Fellow Students of the Contractual Arts:

A Manual of Style for Contract Drafting is an essential resource for anyone who works with contracts. Its author, Ken Adams, has produced an impressively innovative, intelligent, and thorough work.

As a judge, I regularly confront transactions where something has gone wrong. Often, it's because the governing agreement wasn't as clear as it could have been. Better contract drafting would lead to fewer disputes. Fewer disputes should mean happier clients.

As practiced in most organizations, contract drafting remains an unscientific activity, conducted mostly by consulting and largely duplicating earlier precedents of questionable quality and relevance. I know that firsthand. While practicing law before joining the Delaware Court of Chancery, a meaningful part of my time was spent commenting on merger agreements and other contracts that carried a high risk of litigation. By bluntly characterizing the current state of the art, I am not suggesting that contract drafters do not take their jobs seriously, nor implying that they do not give extensive thought to the provisions they draft. They do. But all too often, a question is answered or a debate resolved by sticking with language that seems to have worked in the past, trusting that it will work again.

Putting such a precedent-driven activity on a more rational footing is not an easy task. The first step is to establish a comprehensive set of guidelines for the building blocks of contract prose. That's what the *Manual* offers.

I have been a fan of the *Manual* since Ken began his campaign to modernize the preparation of agreements. I've found it compelling enough to cite in one of my opinions. See *Airborne Health, Inc. v. Squid Soap, LP*, 984 A.2d 126, 140 (Del. Ch. 2009). Now in its fourth edition, the *Manual* has reached a level of maturity in its scope and approach.

Ken takes a firm stand on how best to express many fundamental contract concepts. At the same time, he does not always insist on a particular outcome. The best reference works offer enough explication to allow the reader to appreciate the guidance yet opt for a different destination. The *Manual* achieves that balance. You don't have to buy into every position it takes to benefit from consulting it.

Ken hasn't been mindlessly dogmatic either. He constantly probes his work for weaknesses, and he encourages others to do so too. Commendably, he has adjusted his views when the weight of evidence warrants, as you can tell by comparing the different editions of the *Manual*.

Contract drafters undoubtedly will benefit from adopting Ken's recommendations. Judges and litigators will benefit from reading it too. Much of the text consists of detailed discussion, on a level unmatched in my experience, about what makes traditional contract language confusing. Ken offers grammatical and historical insights, and he provides helpful explanations about how familiar phrases were originally supposed to work. He frequently illustrates his analyses

with examples of judicial decisions that likely surprised the original drafters, because the judges seem to have ascribed dispositive meaning to technical contract language using little more than their own wits and a copy of Strunk and White. (Doubtless I have been guilty of that failing at times.) My judicial colleagues would do well to become passingly familiar with the *Manual*, which offers interpretive guidance free of the biased perspective that necessarily permeates an advocate's brief. And litigators could improve their arguments by applying Ken's interpretive recommendations.

This is not to say that if you cite the *Manual* to me or to another judge, your client will win. In some cases, the *Manual* recommends departing from existing practice and adopting a different approach. There, Ken's analysis offers less guidance for existing agreements than hew to older approaches. But even then, the *Manual* provides insight by illustrating an alternative means of addressing a topic.

I hope you find this book useful, as I have, and consult it often. If you do, I suspect you will be less likely to appear in my court (or any other). And if a dispute nevertheless arises, you will be more likely to occupy the linguistic high ground.

Happy drafting!