
ABOUT THIS MANUAL

The Purpose of This Manual

This manual offers guidelines for clear and concise contract language. If you're making decisions regarding contract language without consulting it, it's overwhelmingly likely you're copy-and-pasting, relying on flimsy conventional wisdom, or improvising.

If you draft contracts and follow the recommendations in this manual, your contracts will be clearer and shorter and will express the transaction more accurately. That will allow you and your organization to save time and money, reduce risk, and compete more effectively. If you review or negotiate contracts, this manual will help you determine whether deal points are articulated sensibly and will help you spot and address potential sources of uncertain meaning. If you interpret contracts—for example, if you're involved in dispute resolution—this manual will help you ascertain meaning and determine what's causing any confusion.

This manual should be useful for readers in every contract ecosystem—a solo or small-firm general practitioner handling a broad range of contracts, from leases to separation agreements; a contract manager responsible for negotiating contracts with customers; a BigLaw associate preparing mergers-and-acquisitions contracts; an in-house lawyer overhauling their company's template sales contracts; a paralegal reviewing confidentiality agreements their company is being asked to sign; a judge considering how to interpret a contested contract provision.

No other work addresses in comparable detail the words and phrases that make up contract provisions. And other works—including some by prominent commentators—offer analysis that too often doesn't withstand scrutiny. This manual isn't squeamish about citing examples: the marketplace of ideas requires that you not only develop your own ideas but also challenge those offered by others.

Why a Manual of Style?

A manual of style can be used as a resource by any person or organization seeking to write more clearly and consistently. For four reasons, a manual of style would be especially useful to those who draft, review, negotiate, or interpret contracts.

First, compared to other kinds of writing (expository, narrative, and persuasive), contract prose is limited and stylized—except for recitals (see 2.129), it only regulates conduct, states facts, and allocates risk. That's why this manual can attempt to be comprehensive in scope.

Second, a lot is at stake in contracts, so contract parties routinely fight over nuances of contract language. To reduce the risk of finding yourself in such fights, it's best to be aware of those nuances.

Third, contracts are precedent driven, so the same language is repeated in contract after contract. That increases the risk of getting contract language wrong, and the reward of getting it right.

And fourth, traditional contract language is dysfunctional (see pp. xxxvii–xxxix). If you want an alternative to recycling the dysfunction, you’ll likely need help.

What This Manual Covers

One way to think of this manual is that it doesn’t cover what you say in a contract, it covers how to say it. But that’s an oversimplification, because meaning doesn’t arise in a vacuum, independent of usages. Instead, how you say something can affect meaning in unexpected ways. So this manual inevitably includes plenty of the what-to-say with the how-to-say-it.

Mostly it doesn’t discuss entire provisions, although it considers terminology used in, for example, indemnification provisions (see 13.420). And analysis of some distinctive usages—for example, *inures* (see 13.472)—considers the context in which they’re used.

Like any book about how to write clearly, this manual covers a broad range of topics. But it doesn’t cover them all exhaustively. For example, it can offer only some examples of redundancy (see 1.35)—it’s not a legal dictionary.

This manual doesn’t deal with consumer contracts—contracts between businesses and individual consumers—although much of what it says could be applied to such contracts. Instead, it’s intended for those who draft, review, negotiate, or interpret business contracts—contracts between businesses that either are experienced in handling transactions or are represented by lawyers.

This manual doesn’t limit itself to standard contract usages. Instead, it recommends the clearest and most concise usages over those with only tradition going for them. If a recommendation departs markedly from what is traditional, that’s noted.

To keep this manual practical, it dispenses with footnotes, it cites authorities sparingly, and it limits some explication. It does without a bibliography, because it attempts to offer the most authoritative treatment, from the perspective of the contract drafter, of the topics it covers.

The appendix contains two versions of a contract: the “Before” version, annotated with footnotes to explain its drafting shortcomings; and the “After” version, redrafted to comply with the recommendations in this manual. The difference between the “Before” version and the “After” version shows the cumulative effect of a rigorous approach to drafting usages, big and small. Readers might find that the footnotes in the annotated “Before” version allow them to locate quickly those parts of this manual that discuss a given topic.

To illustrate the analysis, this manual contains many examples of contract language. Except as indicated, they’re not presented as models. Indented examples of contract language are in a sans serif typeface; indented quotations from caselaw or commentary use the same typeface as the rest of the text.

Most of the Recommendations Are Low-Key

With some exceptions, contract language that complies with the recommendations in this manual doesn’t draw attention to itself. It simply eliminates the stumbling blocks, the repetition, the redundancy, the obscure legalisms, the archaisms, and the inconsistencies. What’s left is the deal, which is what readers will focus on. So your drafting prowess might not be a center of attention, but readers will get to the substance with less delay and confusion, so your job will be easier.

Those recommendations that likely will appear novel include not using the defined term *this Agreement* (2.123–.127), using *states* instead of *represents and warrants* (3.454–.463), and the alternatives to the ambiguous *material* (9.51–.64).

Using This Manual Internationally

English is used in contracts around the world, not just contracts between companies from English-speaking countries. English has become the lingua franca of international business. A Swedish company and a Japanese company might opt to have contracts between them be in English, rather than Swedish or Japanese. And a German company in an international group might require that its contracts with other German companies be in English.

For anyone working with English-language contracts who isn't a native English speaker, there's no such thing as a beginner's level in English-language contracting. A contract must address what's required for the transaction; no one would accept as a valid excuse that the English of a drafter, reviewer, or negotiator was limited. And the stakes are high.

On the other hand, because contract prose is limited and stylized, it's likely to be less encumbered with peculiarities of English than are other kinds of writing. Those who aren't native English speakers should find it easier to gain command of contract prose than it is to become fluent in colloquial English. This manual will help.

Anyone drafting contracts in English can safely use this manual. In the prose used, contracts drafted in the United States, the United Kingdom, Australia, and Canada largely share the same characteristics. Differences in terminology exist, but are trivial. For example, whereas Commonwealth drafters use *completion*, U.S. drafters prefer *closing*. And Canadian drafters have given their own spin to *attorn* (see 13.90–.92). This manual recommends eliminating some differences in terminology by dispensing with the Commonwealth usages *amongst* and *whilst* (see 13.19), *clause* (see 4.9), *endeavours* (see 8.9), *forthwith* (see 10.130), and *procure* (see 3.162).

Differences in spelling are likewise trivial. For example, in American English, *license* is both a noun and a verb, whereas in other varieties of English, *licence* is the noun and *license* is the verb.

The Significance of Caselaw

This manual cites caselaw as part of its analysis of different usages—mostly opinions by federal and state courts in the United States, but also opinions by English, Canadian, and Australian courts, along with, it so happens, one opinion from each of Ireland, Singapore, and South Africa.

Court opinions tell us which usages risk causing disputes and how judges misinterpret contract language. Because the prose of English-language contracts is so similar the world over, the lessons from caselaw are universal. An Illinois case involving syntactic ambiguity would be as relevant to drafters in Australia as it is to those in the United States.

This manual doesn't cite caselaw to support attributing a specific meaning to a particular usage. For one thing, courts tend to be overly confident of their understanding of how English works. But more to the point, a contract should speak directly to the reader, in standard English (see 1.30), without relying on caselaw to breathe meaning into it. (See pp. xxxix–xli regarding the notion of “tested” contract language.)

Readers have asked how the recommendations in this manual have fared in the courts. That's like assessing how law-abiding someone is by how often juries acquit them. Contracts drafted consistent with this manual shouldn't end up in court because of a fight over confusing contract language.

But sometimes contract parties pick fights for no good reason. And sometimes judges make bad decisions to achieve a desired outcome, or they make mistakes. A court might give a usage a meaning different from what this manual says you can expect, or it might attribute significance to a usage this manual says is pointless. For example, see 3.90 (regarding caselaw holding that *shall* can mean *should*) and 2.175–.177 (regarding caselaw attributing significance to a backstop recital of consideration).

Both the law and the English language are intricate, sprawling things, so you can expect this sort of caselaw glitch occasionally. An errant court opinion is no reason for this manual to retreat from any of its recommendations.

Is This Manual Succeeding or Failing?

If you look through a random assortment of contracts drafted in the United States (the largest market for this manual), it's likely you would be hard-pressed to find signs that those who drafted the contracts had consulted this manual. Does that mean this manual has failed?

There's an appetite for clearer contracts. This manual has sold tens of thousands of copies. This author has offered training to thousands of individuals and dozens of companies, law firms, and government agencies around the world. He hears from people who use this book for training sessions at law firms and in teaching contract drafting at law schools. And he hears from many appreciative readers, directly and through social media.

In terms of empirical evidence, 15 years ago the concluding clause this manual recommends (see 5.3) started appearing in contracts filed on the U.S. Securities and Exchange Commission's EDGAR system, where public companies file their "material" contracts. But the number of contracts involved is a tiny fraction of the number of contracts on EDGAR that use the egregiously archaic *witnesseth* (see 2.137).

2021 saw two noteworthy developments regarding the reach of this manual. In *Pelopidas, LLC v. Keller*, No. ED 109395, 2021 WL 3501988 (Mo. Ct. App. 10 Aug. 2021), the court noted that "In her briefing to this Court, Keller primarily relied on the A.B.A.'s *A Manual of Style for Contract Drafting*, a highly regarded authority on contract drafting." The court then considered this manual's discussion of language of performance and language of obligation and the role of *shall*, before turning to caselaw and dictionaries. This is the first time a court has cited in any detail this manual's categories-of-contract-language analysis. And more generally, this might be the first time a court has so clearly shown that it has relied on this manual. (For more about this case, see 3.545.)

And in a job posting in July 2021, the company Patreon included as one of the requirements "Own a copy of 'A Manual of Style for Contract Drafting' by Ken Adams." That makes explicit this manual's role as a credential for demonstrating contract-drafting sophistication. It's consistent with what a reader told this author in a 2017 email message: "I was interviewing for a new job 6 months ago and mentioned I am a big MSCD fan. The GC said 'That is the most impressive thing you could have said.' Needless to say, I got the job. THANK YOU!"

So there's plenty of anecdotal evidence that this manual is regarded by many as an essential resource. There's no sign yet that this manual has had a noticeable effect on the mass of business contracts, but that's to be expected. Because contract drafting is a precedent-driven part of a notoriously conservative profession, measurable change will take time. Meanwhile, this manual is available for anyone who wants contracts that are clearer and more concise. For this author, that's enough to make this manual a success.

TRADITIONAL CONTRACT LANGUAGE IS DYSFUNCTIONAL

The Scale of the Dysfunction

The notion that the prose of contracts can and should be clear and modern is catching on. But contracts drafted without the benefit of rigorous guidelines—most contracts—remain awash in dysfunction. The details differ, but the effect is consistent: readers must wade through a slurry of archaisms, redundancy, chaotic verb structures, overlong sentences, and confusing terminology. In short, traditional contract language.

It's not as if the dysfunction of traditional contract language is a problem for only nonlawyers. Everyone is in the same fog, although some are in denial.

It doesn't matter how exalted the law firm, company, or other organization—they mostly churn out dysfunction. The poor quality of their contracts conflicts with the aura of excellence that such organizations seek to foster.

Why the Dysfunction Matters

Dysfunctional contract language throws a wrench into the contracts process:

- By making contract language harder to read and more confusing, it wastes time and money at every stage of the process: drafting, review, negotiating, and monitoring enforcement.
- It can result in suboptimal outcomes in deals that get done.
- It can result in deals getting so bogged down that they don't get done.
- It can hurt your competitiveness, if your competitors have clearer contracts.
- It leads to disruptive disputes, with some ending up in messy and expensive court or arbitration proceedings.
- It demoralizes those who work with contracts.

Copy-and-Pasting

The dysfunction is propagated by copy-and-pasting.

A new transaction will likely resemble previous transactions, so an obvious way to create a contract for a new transaction would be to copy one or more contracts used in previous transactions, adjusting them to reflect the new transaction. That should be a source of efficiency, but if you're using word processing, the result is copy-and-pasting—copying on faith from precedent contracts, or templates, of questionable quality and relevance.

Ideally, anyone basing a new contract on another contract should check the other contract carefully to make sure it's as relevant as can be and as clear as can be,

but usually that's not what happens. Perhaps someone more senior has told you to use that contract, so you're reluctant to tinker with it. Or your organization has used that contract for years, so you assume it must be OK. Or you're too busy, burned-out, jaded, or inexperienced to do a proper review, so you copy, hoping for the best. To some extent, we're all riders on the copy-and-paste train, we're all cranking the handle of the copy-and-paste machine.

Copy-and-pasting makes for a passive approach to drafting. Instead of determining what's required in a given context and treating precedent contracts as raw material, you let whatever you're copying set the agenda. And you're reluctant to change whatever you're copying—it made sense to someone at some point, so you might get into trouble if you change it.

Copy-and-pasting tends to be accompanied by other pathologies. Because you're just copying, you're not given guidelines for clear contract language, and you're not trained in how to draft clearly. Instead, you accept that what you're copying represents the established order. You become inured to the dysfunction.

Underestimating Complexity

Another factor impeding change is that many lawyers aren't equipped to assess the quality of contract drafting. The delusion that one drafts well is easy to catch and hard to shake, particularly in the absence of proper training, rigorous guidelines, and a critical readership. If more attention has been paid to litigation writing than to writing contracts clearly, it's likely because litigators write for an outside audience—judges. Unless a problem arises, a contract's only readers are likely to be the lawyers who drafted and negotiated it and, to a greater or lesser extent, their clients. Usually that's not a critical readership.

Even those inclined to improve contracts underestimate what's involved. For example, law firms often assign the task of preparing templates to those who are perhaps least qualified for the task—junior lawyers with time on their hands. And those newly converted to the cause of “plain English” contracts are prone to assuming that all that's required is common sense and a copy of *Plain English for Lawyers* from law school (see 1.72–.74).

Those who work with contracts are also prone to assuming they can figure out the implications of individual usages based on their own understanding—usually limited—of English and what sounds right. (For an example of that relating to *efforts* provisions, see 8.119.) But in contracts, where the stakes are often high and prose can be subjected to extraordinary scrutiny, things are not always as they seem. To get a sense of that, you only have to skim chapter 11 (Ambiguity of the Part Versus the Whole).

Judges share this overconfidence: you will find in this manual many examples of judges considering the implications of a contract usage and reaching a conclusion that makes no sense. In particular, many judges are ill-equipped to handle disputes over ambiguous contract language. See *Many Judges Are Bad at Textual Interpretation. What Do We Do About It?*, Adams on Contract Drafting (5 Aug. 2020), <https://www.adamsdrafting.com/many-judges-are-bad-at-textual-interpretation/>. That's not surprising—judges aren't trained in linguistics, and outside of this manual, the legal commentary on ambiguity is skimpy. Don't expect courts to save you from drafting mistakes.

Legalistic Hairsplitting

And it doesn't help to bring to contract drafting and interpretation a hairsplitting legalistic mindset. If you read into contract usages a meaning that's at odds with

how the English language works, you confuse matters and risk straying into nonsense. Three prime examples of that are legalistic interpretations of *represents and warrants* (see 3.413), *efforts* standards (see 8.24), and *indemnify and hold harmless* (see 13.440).

EXCUSES FOR STICKING WITH TRADITIONAL CONTRACT LANGUAGE

No one meaningfully challenges in a public forum the recommendations in this manual. See Kenneth A. Adams, *The Deafening Silence: Why People Generally Don't Take Me On in the Marketplace of Ideas*, Adams on Contract Drafting (8 Aug. 2020), <https://www.adamsdrafting.com/the-deafening-silence/>. Instead, this author has occasionally encountered, in writing and in private exchanges with lawyers and law-school faculty, general arguments for sticking with traditional contract language.

Claiming That Traditional Contract Language “Works”

One such argument is that traditional contract language “works.” See, e.g., Kenneth A. Adams, *Where Are the Data Showing that Traditional Contract Language Is Dysfunctional?*, Adams on Contract Drafting (20 Feb. 2017) (about an exchange on Twitter in which someone described traditional contract drafting as “text that works”), <http://www.adamsdrafting.com/where-are-the-data/>. That notion assumes a binary world in which contracts work or don’t work. In fact, contracts are clear or less clear, working with them is less time-consuming or more time-consuming, and they present less risk of dispute over confusing prose or more risk. And caselaw is full of instances of confusing traditional usages causing a dispute.

Claiming That Traditional Contract Language Has Been “Tested”

A more nuanced argument against changing traditional contract language is that traditional contract language has been litigated, or “tested,” so it has an established, or “settled,” meaning.

Here’s how one commentator expressed it: “[C]areful writing can even be counterproductive if the result is to re-draft language that has been previously interpreted by a court as having a particular meaning. Ironically, in such a case, changing the words—even for the better—can only increase uncertainty.” Robert C. Illig, *A Business Lawyer’s Bibliography: Books Every Dealmaker Should Read*, *Journal of Legal Education* 585, 625 (May 2012).

This argument suffers from three weaknesses, each fatal. First, because courts have scrutinized some traditional contract terminology but not the full range of contract usages, the notion of “tested” contract language applies only narrowly.

Second, the notion of “tested” contract language suggests that all courts ascribe the same set meaning to individual usages. That’s not so. How courts interpret usages depends on the circumstances of each case and the semantic acuity of the judge, and can vary over time and among jurisdictions. See for example the caselaw on *indemnify and hold harmless* (see 13.441–.445).

And third, if parties to a contract had to ask a court to determine the meaning of a particular provision, that’s because the contract failed to state clearly the intent of the parties. Why rely on wording that created confusion? Instead, express meaning

clearly, so you needn't gamble on a court attributing the desired meaning to a contract. Courts must clean up whatever messes they're presented with, but this manual is free to recommend ways to avoid confusion. The Delaware Court of Chancery has acknowledged as much, noting "the difference between the roles served by courts and judges, on the one hand, and commentators like Adams, on the other." *GRT, Inc. v. Marathon GTF Technology, Ltd.*, No. CIV.A. 5571-CS, 2011 WL 2682898, at *14 n.79 (Del. Ch. 11 July 2011).

So although some lawyers will continue to claim that "tested" contract language is safer than expressing meaning clearly, it's a lazy platitude.

Claiming There's a Shared Understanding of What Traditional Contract Language Means

One encounters the suggestion that people who work with contracts attribute a given meaning to a contract usage, the implication being that that makes it so. (For examples relating to the meaning of *efforts* provisions, see 8.25.) Attributing meaning in this manner faces three problems.

First, such statements rely on sweeping and often exaggerated generalization (*Everyone would agree that ...*). That's because the speaker is trying to express that this view is the conventional wisdom, and what level of support an idea must have to constitute conventional wisdom is necessarily nebulous.

Second, a bigger problem is that such statements rely on *argumentum ad populum* (also known as "appeal to common belief" and other names), the logical fallacy that a proposition must be true because many or most people believe it. Even if you can establish that a given understanding is widespread—that would seem to be the case with *efforts* provisions—that doesn't mean it's valid. Invoking *argumentum ad populum* is a reliable sign one has lost an argument.

And third, if a usage is clearly ambiguous, it does no good to claim that people who work with contracts think it expresses only one of those meanings. That's the case with *material*; see 9.20.

Claiming That Traditional Contract Language Means What People Think It Means

A law-school faculty member proposed to this author that words mean what people think they mean, so an *efforts* standard in a contract means whatever someone drafting or negotiating that contract thinks it means. But that explanation doesn't apply to interpreting contracts.

The idea that words mean whatever people think they mean features in debate over the changing meaning of words and phrases. On one side, you have those who bemoan the tendency of speakers and writers to debase a word by extending it beyond some ostensible proper meaning. On the other side, you have those who think it futile and wrongheaded to stand in the way of changes in language. Saying that words mean what people think they mean is one way of acknowledging that the latter camp has a point. (This sort of debate is part of broader skirmishing between "prescriptivists" and "descriptivists.")

Such debate takes place because the meaning the speaker attributes to the usage in question—whether it's *fulsome*, *literally*, or some other contentious word or phrase—is clear. If someone says, "I'm so hungry I could literally eat a horse," it's clear that they're using the word *literally* to add emphasis, as opposed to using it to emphasize the exact truth of the statement. To anyone inclined to quibble, the issue isn't that the meaning is unclear, it's whether it hews to some orthodoxy.

This sense of words meaning whatever someone thinks they mean doesn't apply to disputes over confusing contract usages. In a dispute, the question is not whether a clear meaning inappropriately fails to follow convention, but what meaning the parties attributed to a given contract usage.

Claiming That It's Risky to Eliminate Traditional Usages

Related to invoking the notion of "tested" contract language is claiming it would be risky to drop any entrenched usage, whether or not it has been endorsed by courts. The fear is that if a deal community employs a given usage to express a given meaning, employing a different usage to express the same meaning could result in mischief.

One can sympathize with this reservation—up to a point. A counterparty might push back against the new usage, so it takes longer to close the deal (see p. xxxvii), but it should be less of a concern that litigators might try to attribute an unexpected meaning to the new usage. Dropping a suboptimal traditional usage allows you to express the intended meaning more clearly. It's difficult to make mischief with clear.

THE ROLE OF INERTIA

Those advancing general arguments in favor of traditional contract language seem disinclined to do the hard work of considering what usages are clearest and most concise. Instead, they seem motivated by inertia.

Inertia at the Level of the Individual

Most of us are wary of creative thinking, preferring instead to tackle a task by using what we already know, even if the result is inferior. This instinct is universal: you can find examples in medicine, in sports, and in cooking. Because contract drafting is inherently precedent-driven, it's particularly prone to inertia. (For more on the role of inertia in contract drafting, see the "Inertia" category of the Adams on Contract Drafting blog, <http://www.adamsdrafting.com/category/inertia/>.)

Even in debate over individual usages, one can attribute to inertia the way some commentators invoke obscurantist rationalizations to explain confusing terminology.

Inertia can operate through several mechanisms. One is "learned helplessness"—if you copy-and-paste traditional contract language for long enough, you might find it difficult to accept that there's an alternative. Another is "cognitive dissonance"—if you have no alternative to copy-and-pasting, that could lead you to idealize traditional contract language. A third is peer pressure—you see the merit of a modern alternative to a traditional usage, but you're reluctant to draw attention to yourself by making the change. And fourth, you might have no illusions regarding traditional contract language, but you don't have the time or authority to fix it.

Inertia at Companies

Large companies have the most to lose from dysfunctional contracts and the most to gain from fixing them. And because companies tend to use a limited number of templates repeatedly, they can achieve economies of scale in fixing their templates. But generally, that's not enough to insulate companies from inertia, even those

companies that proclaim their contracting excellence and those with ample resources to do the job properly.

It's unlikely anyone will challenge inertia at a given company—doing so can make you seem like a troublemaker. And those with the authority to effect change might be sufficiently removed from day-to-day contracts work that they're willing to accept blithe assurances that all is as it should be.

Furthermore, the costs of dysfunctional contract language (see p. xxxvii) tend to involve the drip-drip-drip of time and money being chronically wasted and the easy-to-dismiss risk of getting involved in an expensive, disruptive, and potentially embarrassing dispute. And the benefits of fixing contract language aren't easy to quantify. Those costs and benefits matter only if you plan for the long term. If you're focused on the short term, they're easy to ignore.

Another risk is deals not getting done because negotiations have bogged down over bloated and misconceived contract language. But in the fog of deal-making, it's generally easy to find other culprits to blame for that.

So although companies should be in a good position to escape from the dysfunction of traditional contract drafting, most remain mired in it.

Inertia at Law Firms

Cleaning up the language and substance of a law firm's contracts requires a centralized effort of the sort that's problematic for law firms. Law-firm template initiatives can be fragile—underdeveloped, underused, and susceptible to being abandoned when a champion moves on.

One problem is that compared to most company law departments, law firms have to draft a relatively broad and unpredictable range of contracts. That makes it harder to achieve economies of scale, and clients probably won't be willing to pay for the work required.

There's also the curse of the nonbillable hour. Generally, doing nonbillable work doesn't enhance one's chances of becoming partner. That's why you hear of law firms giving to lawyers passed over for partnership the task of overhauling templates. Besides the fact that the skills required to run a deal are different from the skills required to express a deal clearly in a contract, putting one of your also-rans in charge of a template initiative sends a clear signal that it's a low priority.

And implementing a rigorous firm-wide template initiative would require that partners surrender some autonomy. At most law firms, that would seem unlikely.

IMPLEMENTING THE RECOMMENDATIONS IN THIS MANUAL

When You're Drafting

Although contract language that complies with the recommendations in this manual mostly doesn't draw attention to itself (see pp. xxxiv–xxxv), some people will be predisposed to object to contract prose that's different to what they're used to. Be prepared for that. The primary constituency to keep in mind is those representing the other side to a transaction, but you should also consider people more senior than you on your side of the transaction.

How to prepare for any pushback depends on whom you're dealing with. When it comes to someone more senior in your organization, it would be prudent to

consider their expectations. Are they a traditionalist? If so, are they open-minded? You might mention this manual to them and see whether that starts a conversation. If they're not receptive to modern drafting, then give them what they expect, making strategic concessions on usages that don't affect meaning but being gently persistent on issues that might affect the deal or create confusion.

As regards people on the other side of the deal, consider explaining to them in advance what's behind the usages in your draft. That could be accomplished by this email cover note:

The language used in the attached draft complies with the recommendations in Kenneth A. Adams, *A Manual of Style for Contract Drafting* (ABA 5th ed. 2022).

That book recommends replacing many traditional drafting usages with clearer alternatives, so some usages you see routinely might be absent from this draft. Please don't ask that we add traditional usages to this draft unless that would make the contract clearer or would better reflect the deal as you understand it.

And please check what *A Manual of Style for Contract Drafting* has to say about any usage you're inclined to add to this draft. It might be problematic in ways you hadn't considered.

It's in the interests of both sides not to spend time making, or even discussing, changes that are irrelevant to the deal and changes that risk creating confusion or making the contract harder to read.

Any pushback would likely vary depending on the kind of transaction. If it's a one-off, bet-the-company transaction as opposed to one of many similar deals your organization does, those working the deal probably wouldn't welcome the disruption that comes with having to navigate novel language. For example, because cost-effectiveness and efficiency in the contract process generally aren't a client priority in mergers-and-acquisitions transactions, M&A drafting is particularly clumsy and M&A lawyers seem inclined to follow the herd. And indentures—a kind of lending contract—can be shockingly archaic (see 3.58); it appears they've long been immune to pressures to make them clearer.

But if you sell widgets in thousands of transactions each year, it would make sense to strip out anything wordy or extraneous, so your deals close faster. And because it's your template, the other side can expect that you won't react favorably to changes aimed at restoring traditionalist dysfunction.

For an example of the tradeoffs involved, see the discussion regarding using *states* instead of *represents and warrants*, at 3.457–.463.

Consider taking a firm stance even when it comes to, say, your use of a lowercase *a* in *this agreement* (see 2.124). Although it's a usage that has no deal significance and tends to befuddle traditionalists, little is gained by sacrificing it. Anyone who is so dogmatic as to get worked up about *this agreement* is likely to have a problem with other modern usages, so you're likely to find yourself discussing those usages too.

Using *this agreement* could actually work to your advantage, as it offers a convenient way to set ground rules for negotiations over contract wording. It appears early in the contract, and the explanation for it is simple. Getting the other side to accept *this agreement* might well pave the way for their accepting other novel usages. If someone nevertheless insists on your using a capital *A*, you'll know you're dealing with a reactionary who is willing to ignore the convention that you don't

meddle with the other side's draft without good reason. It's best to know that early on, so you can adjust.

More generally, be realistic about the extent to which you as an individual can follow the recommendations in this manual. If you're working with an organization's traditional templates or standard industry contracts, you might have little opportunity. Even if you have control over your drafting, retooling traditional contract language takes time. It might be best to take an incremental approach, starting first with those provisions you get the most use out of, so you get a quicker return on the time invested.

When You're Reviewing

If you're reviewing the other side's draft, a certain etiquette applies. Your task isn't to turn their draft into a thing of beauty. You look only for whatever doesn't reflect the deal as you understand it and whatever could create confusion. You give a pass to those features of traditional contract language that don't make sense but aren't confusing. Examples include use of a traditional recital of consideration (see 2.165), benign overuse of *shall* (see 3.103), and archaisms in the front and back of the contract. Asking the other side to change such things risks needlessly antagonizing them.

Features that are worth flagging include anything that should be a condition that's instead expressed as an obligation (see 3.389), inherently confusing usages (for example, *indemnify and hold harmless*; see 13.440), and instances of ambiguity. And if they've caused disputes, it's worth flagging even seemingly minor glitches, for example throat-clearing verb structures (see 3.27) and use of *may* in restrictive relative clauses (see 3.509).

If whoever prepared the other side's draft is a traditionalist, you might have to explain to them what prompted you to request a change. Citing this manual might facilitate that discussion by providing you an explanation you can point to and by demonstrating that your proposed change is based on an internationally recognized set of guidelines.

EFFECTING CHANGE AT ORGANIZATIONS

A Style Guide as Foundation

If you want your organization's contracts to be clear and consistent, your first step should be to adopt a style guide.

Even if all contracts personnel at an organization are informed consumers of modern contract language, that doesn't make for an efficient contract process, as too much would be at the whim of individuals with different experience, aptitudes, and training. What's needed is centralized initiatives.

The foundation for an efficient contract process is a style guide for contract usages. It's unlikely that the drafters in an organization would independently choose the same usages, so the only way to achieve consistency would be to impose consistency through a style guide.

Some organizations adopt their own style guide. But for an organization to prepare a suitably comprehensive style guide from scratch would be challenging, considering the expertise and time required. Even 30 pages wouldn't cover the territory adequately.

This manual might seem like a style guide, but it's too big and too detailed to be used by all contracts personnel in your organization. Instead, this manual would likely be appropriate for those who work extensively with contract language.

But it's suitable as a foundation for a style guide. In the fourth edition of this manual, this author announced that he expected to publish a shorter work entitled *Drafting Clearer Contracts: A Concise Style Guide for Organizations*. It makes sense for one style guide to become the accepted standard, in the manner of *The Chicago Manual of Style*, which is widely used in the United States for general publishing. But life intervened—that shorter work has yet to appear. Let's see whether this author can get his act together.

Training and Templates

Once you have a style guide, the next step is to train your contracts personnel to draft and review contracts consistent with the style guide. But that isn't enough. People draft contracts by copying, so if you want clear and modern contracts, you need clear and modern templates.

In overhauling templates, organizations tend to indulge in “drafting by committee,” with those involved jockeying to include their pet contract usages, usually based on whatever conventional wisdom they've picked up. The process drags on, and one can expect the result to be mediocre—experience handling a kind of transaction doesn't mean you're equipped to express it in a contract clearly and concisely.

In theory, you could enlist a contract-drafting specialist—someone like this author—but it's not clear where you would find one. There's no credential that announces contract-drafting specialists, and there's no career path for contract-drafting specialists. But the bigger problem is that if you attempt to introduce a new template into an organization that has known only traditional dysfunction, there's a good chance it will reject the template.

Surrendering Autonomy

Besides inertia, an obstacle to an organization embracing this manual or using a style guide is that lawyers generally resist efforts to standardize their work. Individual autonomy has long been an integral part of being a lawyer.

In particular, it's commonplace to hear lawyers refer to their own or someone else's drafting “style.” The implication is that each drafter draws on a palette of alternative yet equally valid usages.

But that's inconsistent with what's required for optimal contract language. (The word “style” in the title of this manual isn't an endorsement of the notion of drafting styles. Instead, the title was loosely intended to evoke the ambition of *The Chicago Manual of Style*.) The only criterion for judging contract prose is how clear it is. When a drafter has several alternative usages available to accomplish a drafting goal, one will generally be clearer than the others. It would make sense for all drafters to employ only the clearest usages. Even if those alternative usages are equally clear, having all the members of an organization employ the same usage would eliminate confusion and make it easier to move blocks of text from one contract to another.

Lawyers should be willing to surrender autonomy over the building blocks of contract language. The freedom to recycle a grab-bag of usages based on some combination of limited research, uncertain conventional wisdom, and expediency

isn't freedom worth preserving. Just as use of standardized, high-quality brick, stone, and steel doesn't prevent architects and builders from being creative, use of standardized contract usages doesn't stifle creativity in articulating a transaction. Instead, it enhances creativity, because it leaves you more time to focus on substance and makes you more confident you're being clear and concise.

Specialization

But an efficient contract process can involve more than individual lawyers surrendering autonomy. As the heft of this manual suggests, acquiring a command of the full range of issues lurking in contract language takes time. That investment pays off, but perhaps not for everyone. In larger organizations, greater complexity generally leads to greater specialization—it doesn't make economic sense for everyone in the organization to be a specialist, and not everyone will have the aptitude.

The realities of the contract-drafting process suggest that for a substantial organization to achieve high quality and maximum efficiency, what's required is not only standardization but also specialization. For an organization with a sufficient volume of contracts requiring customization, specialization can readily be achieved through automated contract drafting. Information technology allows you to create contracts not by copy-and-pasting from precedent contracts but by completing an annotated online questionnaire and selecting from among the options offered. A few specialists prepare the text used in an automated system.

Aside from whether an organization can achieve economies of scale to justify implementing an automated system for creating contracts, the obstacles to specialization are cultural. They're the same as those that impede standardization, except that specialization involves not just surrendering autonomy but also, for some, relinquishing any role in contract drafting. For those organizations that can overcome those obstacles, the potential rewards are clear. But one shouldn't be optimistic—document-assembly technology has never come close to the level of adoption that its boosters had hoped for.

Giving Nonlawyers a Greater Role

Contracts are associated with lawyers. But business contracts pertain to business dealings. A relatively small part of business contracts relates directly to the law, namely the legal framework for the transaction and how disputes are handled.

So although lawyers are routinely involved, to a greater or lesser extent, in setting the terms of a deal, it's standard for businesspeople to handle most or all of that task. And it's not the case that only lawyers are equipped to handle the law part of contracts: not being a lawyer doesn't preclude you from being familiar with how the law works and being responsible for how the law applies to your affairs.

By contrast, if you get to decide how to say what you want to say in a contract, it's likely you're a lawyer. But seeing as it's routine for people other than lawyers to be responsible for setting deal terms, it would be odd to preclude nonlawyers from handling how best to express those deal terms.

So in theory, nothing prevents those who aren't lawyers—businesspeople, contract managers, paralegals, and others—from being more involved in both aspects of working with contracts. That should be welcomed, as it would make a deeper pool of talent available to the contracts community. What matters isn't what hat you wear, it's that you're competent.

And they would offer better value—with lawyers, you’re paying for a credential that generally is unrelated to work with contracts. In working with contracts, this author applied hardly anything he learned in law school. That’s likely the case for most lawyers.

But for nonlawyers to have a greater role, they would need a good command of contract language and contract substance. In that regard, they probably have work to do—being in thrall to lawyers might have contributed to a sense of learned helplessness on the part of many nonlawyers.

(Regarding the word *nonlawyer*, see Kenneth A. Adams, *Sometimes “Nonlawyer” Is the Only Word That Works*, Adams on Contract Drafting (26 Aug. 2020), <https://www.adamsdrafting.com/sometimes-nonlawyer-is-the-only-word-that-works/>.)

ACHIEVING SYSTEMIC CHANGE

Turning Contract Templates into a Commodity

Just as within an organization it doesn’t make sense to leave individuals to draft contracts entirely as they see fit, it also doesn’t make sense to have each company create its own templates for standard commercial contracts. Information technology now offers alternative ways to compile contract language, but each has shortcomings.

Utopians see potential in crowdsourcing, with individuals collaborating to create contracts that reflect collective wisdom. But given how complicated contracts are, and given what’s at stake, you need strong editorial control. That’s antithetical to the notion of crowdsourcing.

Free online repositories of contracts have come and gone, offering little or no quality control, consistency, customization, guidance, and credibility. And there’s always the U.S. Securities and Exchange Commission’s EDGAR system. It’s free, and you get what you pay for.

Some services use information technology to parse EDGAR and other repositories of contracts, displaying the different ways that contracts address particular issues. You get to see exactly what’s in the contracts, but that’s unrelated to whether a provision is drafted clearly, accurately reflects the deal or the law, or is relevant to the user’s needs.

Some vendors offer curated templates. At the bottom end of the market, they offer rubbish for free or for a nominal amount. The top end of the market offers you traditional BigLaw drafting, with all its shortcomings.

Real progress would require automated templates that comply with a style guide, incorporate authoritative subject-matter expertise, and offer extensive customization. That’s the only alternative to endless copy-and-pasting, but no such service exists, although it would be straightforward to build one, given the will and the necessary expertise. Without such a service, access to quality contract language will be restricted to the few with the time, resources, and expertise to create it themselves.

Using Artificial Intelligence

Generally, reviewing contracts is more challenging and time-consuming than drafting contracts. Instead of creating drafts by adjusting a template you’re familiar

with, you're trying to make sense of drafts that might vary wildly, in terms of what they say, how they say it, and how what they say is arranged.

Many companies are looking to apply artificial intelligence to contracts. AI can look for patterns in draft contracts, compare them to existing patterns, and tell the user something useful.

But how that works out depends on how you go about it. If you examine your drafts using patterns derived from a stash of contracts, it's likely those contracts reflect the dysfunction of traditional contract drafting. The result is likely to be an exercise in garbage in, garbage out. Using AI to review contracts is more promising if you combine your AI with expertise, so you're discerning in what you look for and what you tell the user.

But using AI to help users make sense of chaos is, by itself, unlikely to significantly improve the quality of contract language.