

WHAT HAS CHANGED

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

I like to think that with the fourth edition, this manual achieved maturity, in terms of the scope and depth of the content, as well as the design and binding. The fifth edition builds on that by incorporating the fruit of another five years of burrowing away in contracts.

Here's an overview of the major changes:

- *Introduction*. Revised and expanded. It now includes a new section on excuses for sticking with traditional contract language.
- *Chapter 1 (The Characteristics of Optimal Contract Language)*. Reorganized and expanded—it now considers 12, not six, characteristics of optimal contract language.
- *Chapter 2 (The Front of the Contract)*. Revised the section on the date of the contract.
- *Chapter 3 (Categories of Contract Language)*. Added sections on the following: using the subjunctive mood; separating the subject and verb from the rest of the sentence; using *now* in language of performance; how the *has a duty* test works; when language of discretion is inappropriate; using *may* to express an exclusive option; using language of policy to obfuscate; how *represents and warrants* is conducive to disorder; future facts; dual verb structures; and an expedient way to express company obligations in standard terms. Revised the section on language of intention. Revised and expanded the section on which category of contract language to use.
- *Chapter 4 (Layout)*. The original *MSCD* enumeration scheme—the first-line-indent scheme—has been omitted, leaving just what was previously called the hanging-indent scheme and is now called the *MSCD* scheme.
- *Chapter 5 (The Back of the Contract)*. Revised the discussion of the concluding clause to address the possibility of omitting it. Added a section on indicating the end of all or part of the contract.
- *Chapter 6 (Defined Terms)*. Added new sections on mistakes in using defined terms and ensuring that the value of defined terms exceeds their cost. Revised the section on being consistent in using initial capitals to distinguish defined terms.
- *Chapter 7 (Sources of Uncertainty in Contract Language)*. Revised the discussion of vagueness.
- *Chapter 8 (Reasonable Efforts and Its Variants)*. Extensively revised to reflect my 2019 law review article.
- *Chapter 9 (Material and Material Adverse Change)*. Extensively revised the section on how *material* is ambiguous.

- *Chapter 10 (References to Time)*. Added sections on using *not less than* to state a period of time in language of obligation or prohibition and a section on what period *before* refers to.
- *Chapter 11 (Ambiguity of the Part Versus the Whole)*. Largely unchanged.
- *Chapter 12 (Syntactic Ambiguity)*. Added a section on delimiting commas in coordination and a section on multiple instances of syntactic ambiguity in a sentence. Otherwise largely unchanged.
- *Chapter 13 (Selected Usages)*. Added sections on the following: *abrogate*; *anniversary month*; *appurtenant*; *as between the parties*; *both X and Y, either X or Y*; *coterminous*; *deliver by hand*; *derogate*; *disparagement*; *effluxion of time*; *guarantees—absolute, continuing, irrevocable, and unconditional*; *habendum*; *legally*; *not be concerned to see*; *notify*; *setoff, offset*; *principle of least privilege*; *public domain*; *subsisting*; *termination for cause*; *vest*; and *waiver of presentment*. Rewrote the section on *consequential damages*. Revised and expanded the sections on *including* and *indemnify*.
- *Chapter 14 (Numbers and Formulas)*. Largely unchanged.
- *Chapter 15 (Internal Rules of Interpretation)*. Largely unchanged.
- *Chapter 16 (Typography)*. Largely unchanged.
- *Chapter 17 (Drafting as Writing)*. Largely unchanged.
- *Chapter 18 (Amendments)*. Added a section on *amendment or variation*.
- *Chapter 19 (Letter Agreements)*. Slightly revised.

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