

References are to paragraph numbers except where specified as a page number (p.) or a range of page numbers (pp.).

A

absolutely, 1.59

according to, in accordance with,
13.351–352

acknowledge. *See* acknowledgments

acknowledgments, 3.436–441

acknowledge used with other verbs,
3.375, 3.441

relation to recitals, 3.438

rhetorical emphasis in, 3.440

used inappropriately to introduce
other language, 3.25, 3.439

acronyms. *See* initialisms

action or proceeding, 13.1–.3

actively, 13.4–.5

active voice. *See* voice

actual, actually, 13.6–.8

address of party, whether to include
in introductory clause, 2.69, 2.70,
2.72

affiliate

example of a defined term with a
definition that's largely clear, 6.92

having a parent enter into a contract
on behalf of an affiliate, 2.57–.60

referring to, in the introductory
clause, 2.54, 2.83–.84

incorporating, in the definition of
defined terms for party names,
2.95

time of determination, 10.149–.153

affirmatively, affirmative, 13.9–.13

after, 10.24, 10.26, 10.62

agreement

in title, 2.11–.12

not using defined term *this*
Agreement, 2.124–.128

not using initial capital in, 2.20,
2.125

versus *contract*, 2.11

agrees that, 3.25, 3.28, 3.441

agrees to, 3.40, 3.109–.111

all, 11.102, 11.104, 11.105–.111

all capitals

don't for party-name defined terms,
2.97

don't use for entire provision, 16.29
for party names in introductory
clause, 2.52

for party names in signature blocks,
5.30, 5.38

in article headings, 4.10

in title, 2.2

allonge, 1.15, 13.14

also, 13.17

ambiguity, p. xxxix, 7.5–.22. *See*
also and; or; references to time;
syntactic ambiguity

and, 11.20–.45, 11.92–.96,
11.145–.153

and/or, 11.86–.91

and ... or, 11.92–.96

antecedent ambiguity, 7.14–.22

any, 11.103–.104

comma, 4.40, 4.43, 10.9, 12.18,
12.25–.30, 12.32–.42, 12.43–.56,

12.57–.76, 13.517, 13.760

"creative" ambiguity, 7.6–.7

each, 11.101–.102, 11.104

every, 11.101–.102, 11.104

in formulas, 14.23

latent ambiguity, 7.34

lexical ambiguity, 7.10–.13

material, 9.7–.9, 9.10, 9.17–.23, 9.24

may, 3.206–.208

may not, 3.268, 3.279

may ... only, 3.201–.205

notice, 13.585–.592

notice periods, 10.65–.66

or, 11.46–.85, 11.92–.96,

11.112–.141, 11.145–.153

plural nouns, ambiguity relating to,
11.15–.20

- references to time, 10.21–.106
- syntactic ambiguity, 12.1–.81
- using enumeration to eliminate, 12.3, 12.9, 12.15, 13.624, 14.32–.33, 14.34, 14.36, 14.42
- using tabulation to eliminate, 12.9, 12.17
- willful*, 13.896–.897
- amenable to cure*, 13.215
- amendment, 18.1–.20
 - as opposed to amendment and restatement, 18.3–.4
 - as opposed to supplement, 18.10
 - change affecting entire provision, 18.15–.20
 - change affecting part of provision, 18.12–.14
 - introductory clause in, 18.6
 - language of performance in, 18.9
 - layout of, 18.20
 - lead-in of, 18.7
 - title of, 18.5
 - use of italics in, 18.20
- amendment and restatement
 - as opposed to amendment, 18.3–.4
 - introductory clause in, 18.6
 - lead-in of, 18.8
 - title of, 18.5
- among other things*, 13.18–.22
- amongst*, p. xxxv, 13.23–.25
- among* versus *between* in introductory clause, 2.48–.50
- and*
 - ambiguity of, 11.20–.45, 11.92–.96, 11.145–.153
 - stating meaning of, in an internal rule of interpretation, 15.19
 - using instead of *or*, 11.97–.100
- and/or*, 11.86–.91
- and ... or*, 11.92–.96
- anniversary*, 13.26
- annual meeting*, 13.28–.29
- any*, 11.103–.104
- anyone*, 13.30
- apostrophe
 - curly and straight, 16.47–.16.53
 - shareholders' agreement*, 13.726, 13.727
 - using with *notice* and periods of time, 13.598
- applicable*, 13.31–.36
- approved as to form and content*, 5.70
- archaisms, generally, 1.4–.6
- Arial font, 16.3, 16.6
- arising out of or relating to*, 1.49, 13.37–.53
- articles, 4.7–.11
 - don't use initial capitals in references to, 4.109, 17.34
 - enumeration, 4.11
 - grouping sections in, 4.7–.8
 - heading, 4.10
- as amended*, 13.54–.60
 - internal rule of interpretation regarding, 15.11, 15.12
- as consideration*, 13.61–.65
- as liquidated damages and not as a penalty*, 13.66–.73
- as of date*, 2.35, 5.18
- assumptions, 3.463–.465
- as the case may be*, 13.74–.76
- as well as and together with*, 13.841–.844
- at all times*, 10.138–.141
- at any time*, 3.322, 10.128–.130, 13.252, 13.801–.803
- at its sole discretion*, 3.224–.254, 3.255–.257, 13.298
- at law or in equity*, 1.54
- at least one of X and Y*, 13.77–.92
- at no time*, 1.59
- attachments, 4.82–.96. *See also* exhibits; schedules
 - alternative terms for, 5.76–.77
 - as part of contract, 5.106–.109
 - don't emphasize references to, 5.82
 - don't use initial capitals in references to, 5.83
 - enumerating, 5.84–.90
 - exhibits, 5.91–.92
 - kinds of, 5.75, 5.78
 - placement of, 5.81–.83
 - referring to, 5.81–.83
 - schedules, 5.93–.105
 - virtual, 5.110–.115
- attest*, 5.64
- at that point in time*, 17.19
- at the place where*, 17.19
- at the time at which*, 17.19
- at the time that/when*, 17.19
- attorn*, 1.15, 13.14, 13.93–.99
- attorneys' fees*, 13.493–.494

attorney work product, adding notation to draft, 4.122

Australia, p. xxxv, 2.122, 3.83, 3.98, 3.100, 4.73, 5.57, 5.76, 5.80, 8.74, 13.521, 13.524, 13.525. *See also* Commonwealth nations

automatically, 13.100–104

automated contract drafting, p. xlii, p. xliii

autonomous definitions, 6.28–60.
See also defined terms; definitions; integrated definitions

and virtual attachments, 5.113–114, 6.60

definitional verbs, 6.37–44

emphasis, 6.36

enlarging definition, 6.40–41

full, 6.37

however referred to used in, 1.50

includes, 6.40–45

limiting definition, 6.40–41

means, 6.37, 6.41–45

means and includes, 6.42

not including integrated definition in, 6.59

placement, 6.33–35

refers to, 6.45

structure of, 6.29–32

stuffed, loaded, 6.52–58

autonomy, lawyer reluctance to surrender, pp. xli–xlii

B

backdating, 2.46–47

backending, 4.91–99

basis, 13.105–109

because, 1.57, 13.110–112

before, 10.25, 10.26, 10.64

belief, 13.113–115

best efforts, 1.17, 8.18–27, 8.39–49, 8.71–73, 8.77–79. *See also* efforts standards; *reasonable efforts*

best endeavours. *See* *best efforts*

between

in references to points in time, 10.26

versus *among* in introductory clause, 2.48–50

between or among, 13.116–118

biannual, 10.79

biennial, 10.79

billion, 13.518–519

bimonthly, 10.79

biweekly, 10.79

blocks of text, optimal length of, 4.70–74

body of the contract. *See also* article; enumerated clauses; section; subsection

arranging, 4.79–90

blank space after, 5.72

components of, 4.5–78

giving heading to, 2.211–213

meaning, 3.1

books and records, 1.45, 13.119–123

boosting a defined term, 6.79–80

breach, 3.176–186

curing breach, 13.210–215, 13.233–234

bringdown condition and materiality, 9.27, 9.36, 9.45–57, 9.58–63, 9.89, 9.107

British English, p. xxxv, 8.91, 12.58, 13.93, 13.24, 13.93, 13.108, 13.130, 13.336, 13.784. *See also* England, United Kingdom

buried verbs, 3.281, 3.311, 12.80, 13.318, 13.347, 13.591–592, 13.697, 13.771, 17.7–10

business day

denoting periods of time in, 10.72

internal rule of interpretation

regarding date for taking action and, 15.8

buy versus purchase, 13.124–127

by, 10.25

by and between, 2.48

bylaws, 13.128–130

by means of, 17.19

by reason on, 17.19

by virtue of the fact that, 17.19

C

Caesars Entertainment dispute involving *and*, 11.98–100

calendar day, 10.73

calendar month, 10.97

calendar year, 10.95

- Calibri font, 4.77, 16.7–16.8, 16.12, 16.14, 16.38, 16.40
- can*, 3.189
- Canada, p. xxxv, 2.38, 5.36, 8.71–.72, 10.45, 12.26–.31, 13.96–.99, 13.416, 13.424, 13.521. *See also* Commonwealth nations
- capable of being cured*, 13.215
- categories of contract language, 3.1–.482. *See also* consolidating deal points; language of agreement; language of declaration; language of discretion; language of intention; language of obligation; language of performance; language of policy; language of prohibition; language of recommendation; throat-clearing; voice
- active voice in, 3.11–.24
- assumptions not constituting, 3.463–.465
- introduction to, 3.1–.7
- selecting which to use, 3.466–.482
- third person in, 3.8–.10
- certain*, 13.131
- that certain*, 13.808
- certify*, 13.132–.134
- changing contract drafting at organizations, pp. xl–xlii
- changing contract drafting at the level of the industry, pp. xlii–xliii
- change in control, change of control*, 13.135
- civil law, 2.88, 5.67, 13.534, 13.837
- clarity as a characteristic of optimal contract language, 1.3–.36
- closing*, 13.136–.146
- closing day*, 10.15
- cognizant*, 13.147–.148
- colon
- don't use instead of definitional verb, 6.43
 - one space after, 16.44
 - to introduce a series of statements of fact, 3.417
 - to introduce a set of enumerated clauses, 4.37, 4.43
- column, two, format, 4.75–.78
- comma
- ambiguity, 12.16, 12.29–.30, 12.32–.42, 12.43–.56, 12.57–.76
 - don't use in formulas, 14.21
 - in enumerated clauses, 4.40, 4.43
 - serial comma, 12.57–.76
 - to express fractional amounts, 13.518
 - with *such as*, 13.760, 13.762, 13.764
- commensurate with*, 17.19
- commits to*, 3.113
- Commonwealth nations, p. xxxv, 2.18, 2.108, 2.116, 2.211, 3.145, 4.73, 6.98, 16.59. *See also* Australia, Canada, England
- competitive*, 13.149–.152
- complete and accurate*, 13.153–.160
- completely*, 1.59
- comply with* versus *perform*, 13.207–.208
- concluding clause, 5.2–.28
- avoiding signature-page mix-ups, 5.28
 - accepting the terms of the agreement, 5.26
- archaisms in, 5.27
- function of, 5.2
- referring to authorization, 5.21–.23
- tense used in, 5.15–.17
- traditional form of, 5.19–.26
- two kinds of, 5.3–.7
- using *as of* date in, 5.18
- using *intending to be legally bound* in, 5.24–.25, 5.26
- using *signing* instead of *executing and delivering* in, 5.8–.14
- condition
- condition precedent* and *condition subsequent*, 3.315
 - meaning, 3.313–.315
 - use of *material adverse change* in closing conditions, 9.45–.46
- conditional clause, 3.316–.326
- function of, 3.316–.318
 - matrix clause, 3.317–.320, 3.322, 3.324–.325, 3.327–.350, 13.886–.887
 - position of, in sentences, 3.326
 - verbs in conditional clause, 3.321–.323

verbs in matrix clause, 3.324–.325
 conditions, expressing, p. xxxix,
 3.313–.362
 a condition might not be the only
 condition, 3.369–.370
 condition doesn't make sense if it
 can be ignored, 3.363–.368
 using conditional clauses,
 3.316–.326.
 See also conditional clause
 using language of obligation,
 3.356–.362
 using language of policy, 3.351–.355
confidential, adding notation to draft,
 4.122
 conflict, 7.35–.36
 consent after signature blocks, 5.71
consequential damages, 1.19,
 13.161–.180. *See also* lost profits
 consideration. *See also* recital of
 consideration
 addressing a lack of consideration,
 2.183–.186
 as consideration, 13.61–.64
 eliminating the word *consideration*,
 2.202–.206
 in consideration of, 2.169
 consistent, contract language should
 be, 1.63–.66
 consolidating deal points, 3.29
 conspicuous, acknowledging that text
 is, 16.34–16.35
 Construction Specifications Institute,
 3.117
 consumer contracts, p. xxxiv, 1.30,
 3.10, 3.84, 4.89
continuously, continuous, 13.187–.192
contract versus agreement, 2.11
 contractions, 17.36
contractual, 13.193–.195
costs and expenses, 1.45, 13.196–.198
coupled with an interest, 1.19, 1.22,
 13.199–.209
 couplet, 1.38
covenant, 3.165–.169
covenants and agrees to, 2.161, 3.113
covenants to, 3.113
 cover sheet, 2.215–.216, 4.115
 cross-references, 4.109–.114
 don't emphasize, 4.109

 don't use initial capitals in, 4.109,
 17.34
 function of, 4.100–.104
 hyperlinking, 4.111
 including headings, 4.110
 kinds of, 4.101–.102
 omitting *of this agreement* and *hereof*
 from, 4.105
 referring to enumerated clauses,
 4.108
 to definitions, 6.103–.114
 updating, 4.112–.114
 using *section* in cross-references to
 subsections, 4.107
 wording of, 4.105–.111
 curing breach, 13.210–.215,
 13.233–.234

D

dangling text, 4.44
 date
 as of, 2.35, 2.38, 5.18, 19.5, 19.17
 using *date* instead of *day*, 10.14–.15
 format of, in introductory clause,
 2.31–.32
 function of, in introductory clause,
 2.30
 in introductory clause different from
 date of signing, 2.23–.47
 the date notified, 10.18–.20
 the date that is, 10.16–.17
 using day-month-year format
 instead of month-day-year format,
 10.8–.13
 whether to include in introductory
 clause, 2.23–.29
dated for reference, 2.38
 dating signatures, 2.36, 5.5–.7
day
 unit for apportioning quantities per
 unit of time, 10.98
 unit of period of time, 10.72
 using, instead of *date*, 10.14–.15
day and year first above written, 5.26
deem, 3.48, 3.312, 13.104, 13.216–.222
default, 13.223–.234
 default versus event of default,
 13.224–.229

- has occurred and is continuing*, 13.230–.234
- defined terms. *See also* autonomous definitions; defined terms for party names; definition section; definitions; integrated definitions abbreviations, using as, 6.9–.12 defining in singular or plural, 6.4, 15.10 defining on site versus in definition section, 6.88–.94 effect on readability, 6.115 for party names, 2.90–.117 nature of, 6.3–.8 parts of speech used as, 6.3 *party* used as, 2.111–.114 purpose, 6.2 redundancy when using, 6.118 *this Agreement*, 2.124–.128 selecting, 6.13–.16 to refer to parties collectively, 2.110–.114 types of definitions, 6.27–.85, 6.86 using, efficiently, 6.105–.118 using in defined term word used in definition, 6.17, 6.92 using initial capitals in, 6.6–.7
- defined terms for party names, 2.90–.117 based on party name, 2.100–.103 creating and using, 2.91–.97 don't provide alternatives for, 2.107 don't use all capitals for, 2.97 *employee*, using as, 2.109 if party is an individual, 2.100 if used before defined, 6.111–.114 paired defined terms that differ only in final syllable, 2.105 *party of the first part*, *party of the second part*, 2.115–.117 referring to affiliates and subsidiaries in definition of, 2.95 referring to successors in definition of, 2.96 selecting, 2.98–.108 to refer to parties collectively, 2.110–.114 two kinds of, 2.98–.99 using common noun for, 2.104–.108
- when either party might play a given role, 2.118–.124 when to use initialism for, 2.102–.103 where to position parentheses when defining, 2.94 whether to use *the* with common noun used as, 2.106
- definitions. *See also* autonomous definitions; defined terms; integrated definitions autonomous, 6.28–.60 circular, 6.17–.23 cross-references to, 6.103–.114 dictionaries, looking to, for, 6.119–.122 integrated, 6.61–.85 overlapping, 6.24–.26 whether to use autonomous or integrated, 6.86 definition section, 6.87–.102. *See also* defined terms; definitions function of, 6.87 placement of, 5.100, 6.95–.97 referring to, 6.110 using two columns for, 6.98–.102 versus defining terms on site, 6.88–.94
- desire* (verb) in purpose recitals, 2.146, 2.148
- despite the fact that*, 17.19
- directly*, 13.235–.237
- disclaim*, 13.238–.240
- discretion. *See* language of discretion discretionary *shall*, p. xxxv, 3.73, 3.86
- division, performance by, 2.81–.82
- does not expect*, 3.277
- does not include*, 6.40–.41, 6.45
- double materiality, 9.58–.63
- due*, 3.310
- due or to become due*, 13.241
- due to the fact that*, 17.19
- duly*, 13.242–.251
- during ... employment*, 13.252–.253
- during such time as*, 17.19
- during the course of*, 17.19
- during the period*, 10.88–.89
- during the term of this agreement*, 13.254–.256
- duty* versus *obligation*, 3.171–.172

E

- each*, 11.101–102, 11.104
each and every, 1.58
earlier of X and Y, 13.809–814
effective date, 2.30, 2.38, 2.44
efforts standards, p. xxxviii, 8.3–122
 caselaw, Australian, on, 8.74
 caselaw, Canadian, on, 8.71–73
 caselaw, English, on, 8.65–70
 caselaw, significance of, 8.36–37
 caselaw, Singapore, on, 8.75
 caselaw, U.S., on, 8.38–64
 confusion over, 8.1–2
 drafting, 8.84–122
endeavours, p. xxxv, 8.8, 8.55,
 8.65–70, 8.74, 8.75, 8.91–93
 enforceability of, 8.54–61
 function of, 8.3–6
 meaning of different, 8.15–18,
 8.18–33
 misleading commentary, 8.76–81
 objective versus subjective, 8.29–30
 Uniform Commercial Code and,
 8.82–83
 variety of, 8.7–14
e.g., 13.385
either ... or, 11.55
ejusdem generis, 3.475, 13.366, 13.375,
 13.380, 13.491
 electronic signatures, 5.68–69
employee, using as defined term for
 party name, 2.109
end versus terminate, 13.257–261
 England, 1.39, 2.18, 2.88, 2.138,
 2.109–110, 3.78, 3.200, 3.225,
 3.314, 3.405–411, 3.423, 3.425,
 5.31, 5.35, 5.41, 5.48, 5.58, 7.21,
 7.33, 8.8, 8.55, 8.65–70, 8.91–93,
 10.34, 10.97, 11.105, 13.178,
 13.644, 14.39, 17.37. *See also*
 British English, Commonwealth
 nations, United Kingdom
 English used in contracts
 internationally, pp. xxxiv–xxxv
entitled to, is
 don't use in language of obligation,
 3.136, 3.152–153, 3.274
 in language of discretion,
 3.264–267
 entitled to, is not
 as alternative to language of
 discretion, 3.274
 in language of prohibition,
 3.280–282
 enumerated clauses, 4.32–54
 avoiding dangling text after, 4.44
 enumeration, 4.45–53
 first-line-indent versus hanging-
 indent format, 4.60–61
 function of, 4.32–36
 integrated versus tabulated, 4.41–44
 not using headings in, 4.54
 punctuation in, 4.37–40
 tabulation, 4.41–44
 using enumeration to eliminate
 ambiguity, 12.3, 12.9, 12.17,
 13.624, 14.32–33, 14.34, 14.36,
 14.42
 enumeration
 articles, 4.11
 enumerated clauses, 4.32–54
 in formulas using prose, 14.32–33
 MSCD enumeration schemes,
 4.2–69, 4.75
 sections, 4.16–19
 subsections, 4.28–30
enure, 13.447
especially, 13.262–265
etc., 13.266–269
et seq., 13.270–273
event of default, 13.224–229
every, 11.101–102
except as provided in, 13.610
excluding without limitation, 13.387
exclusive
 and *sole* in licensing, 13.736–740
 sole and exclusive, 13.741–743
execute and deliver, 5.8–14,
 13.274–279
executed as a deed, 5.58–59
 exhibits. *See also* attachments;
 schedules
 enumeration, 5.84–90
 function, 5.91
 internal rule of interpretation
 regarding, 15.9
 referring to, in body of the contract,
 5.92
expiration and termination, 13.783–794

expressio unius est exclusio alterius,
3.191, 3.362, 13.380
extremely, 13.870

F

fact that, the, 17.22–.23
fails to, 13.280–.281
failure to address an issue, 7.37–.41
faithfully, 13.282–.286
fax, 13.287–.290
50%
 and meaning of *likely*, 13.499
 instead of *half*, 13.639–.640
first and second person, writing
 contracts in, 3.9–.10
fixed fee, 13.291–.292
following, 10.62
fonts, 16.2–16.14
 Arial, 16.3, 16.6
 Calibri, 4.77, 16.7–16.8, 16.12,
 16.14, 16.38, 16.40
 cross-system compatibility,
 16.9–16.12
 Times New Roman, 16.3–16.6, 16.8,
 16.12, 16.37
following the conclusion of, 17.19
footers. *See* headers and footers
for any reason or no reason, 13.293–.299
force and effect, 13.300–.302
for clarity, 13.319
for example, 13.385
formal, formally, 13.303–.305
formulas, 14.20–.63
 using mathematical equations,
 14.60–.63
 using prose, 14.21–.59
form and substance, 13.306–.309
for the avoidance of doubt, 13.310–.318
for the purpose of, 17.19
for the reason that, 17.19
forthwith, p. xxxv, 10.126
forward slash, 13.871–.872
fractions
 decimal fractions, 13.515–.519
 in formulas, 14.47–.48, 14.50
 instead of percentages, 13.641
 using virgule to state, 13.872
fraud and intentional
 misrepresentation, 13.320–.327

from, 10.24, 10.26, 10.62
 stating meaning of, in an internal
 rule of interpretation, 15.16
from the beginning of time, 13.328–.329
from time to time, 10.131–.137
frontloading, 2.1, 2.13, 4.91–.99,
5.102
front of the contract. *See* title;
 introductory clause; recitals; cover
 sheet; index; table of contents;
 index of definitions
full-time, 13.331–.335
fully, 1.59
furthermore, 1.57

G

gender-specific language, avoiding,
13.636, 13.912, 15.14, 17.11–.18
good faith and reasonableness,
13.679–.688
good faith, implied duty of, 3.172,
3.225–.257, 8.6, 13.297–.298,
13.685, 13.722–.723
good and valuable consideration, 2.188
goods and chattels, 1.39
governing-law provision, 3.451, 13.37,
13.779
granting language, 1.12, 3.55–.69,
3.258–.259
 instead of language of discretion,
 3.56–.60
 instead of the verb *license*, 3.61–.63
 using grant instead of *grant to*,
 3.64–.69
Grantee–Grantor as defined terms,
2.104
grant
 as alternative to *hypothecate*, 1.12
 instead of *grant to*, 3.64–.69
greater of X and Y, 13.809–.814
gross negligence and negligence,
13.557–.578
guarantee as term of art, 13.341–.345
guarantee versus *guaranty*, 13.336–.340
guarantees, 2.198–.201
guarantees that, 3.25, 13.346

H

half instead of 50%, 13.639
has a duty test, 3.74
 headers and footers, 4.115–.123
 file names, 4.121
 logos, 2.169, 4.123
 notations in, 4.122
 page numbers, 4.115–.120
 headings
 articles, 4.10
 don't use in subsections, 4.31
 in recitals, 2.136–.140
 internal rule of interpretation
 regarding, 15.17
 section, 4.20–.26
 using term of art in, 1.23, 13.755,
 13.890
here- and *there-* words, 3.37, 7.22,
 7.23–.27, 13.349–.350, 13.817
 internal rule of interpretation
 regarding, 15.15
hereby, 2.162–.163, 3.31, 3.33,
 3.35–.37, 13.349, 15.15
hereby waives the right to, 3.262–.263,
 3.285–.290
hereof, 4.105, 13.349, 15.15
herein, 7.24, 13.349, 15.15
hereinafter used with integrated
 definitions, 2.93, 6.64
hereunder, 7.23, 7.26, 15.15
highly, 13.870
hold harmless, 1.17, 1.43, 13.419–.427,
 13.431, 13.435
however referred to used in autonomous
 definitions, 1.50
hypothecate, 1.12, 1.48

I

i.e., 13.446
if and only if, 1.32, 1.59
if ... then, 3.319–.320
I have authority to bind, 5.36
immediately, 10.113–.117
 and *promptly*, 10.108–.127
 imperative mood, 2.137, 3.117–.124,
 5.42
 implied warranty of merchantability,
 emphasizing disclaimer of, 16.25
 in accordance with, according to,
 13.351–.352
 in accordance with this agreement, used
 in recitals, 2.150–.153
 in addition, 13.17
 in all respects, 1.59
 in any manner, 1.59
 in any way, 1.59
 in combination with, 17.19
 in consideration of the premises,
 2.166–.167
 including, includes, 13.353–.386
 includes used as definitional verb,
 6.40–.45
 includes without limitation, includes
 but is not limited to, 13.353,
 13.359–.367, 13.378–.384
 including with limitation, 13.386
 including without limitation, including
 but not limited to, 13.353,
 13.359–.367, 13.378–.384
 internal rule of interpretation
 regarding, 15.18
 inclusive, exclusive, with respect to
 periods of time, 10.23–.27
 in consideration of, 2.169
 in consideration of the premises, 2.167
 incorporated by reference, 2.154–.155,
 13.388–.388
 indefinitely, 13.394–.398
 indemnify, 13.399–.441
 and *will be liable for*, 13.441
 as a term of art, 13.439–.441
 defend, 13.431
 function, 13.399–.416
 hereby indemnifies versus shall
 indemnify, 13.417–.418
 indemnify and hold harmless, p.
 xxxviii, p. xxxix, 1.43,
 13.419–.429
 shall indemnify and keep indemnified,
 13.430
 prepositions used with, 13.432–.438
 indenture, 2.12, 13.442–.444
 index of definitions, 2.217, 4.115,
 6.104–.109, 6.110, 6.114
 indicative mood, 3.117–.124
individual, 2.73
 inertia, pp. xxxvii–xxxviii
in furtherance of, 17.19

- initial capitals
 don't overuse, 17.29–.34
 don't use, in references to agreements, 2.20, 2.125
 don't use, in references to attachments, 5.83, 17.34
 don't use, in references to sections and articles, 4.109, 17.34
 in defined terms, 5.7–.8
- initialisms
 don't use as alternative defined term, 6.5
 don't use, in defined term for agreement, 2.128
 providing definitions for, 6.8
 using, for party-name defined terms, 2.101–.103
- in lieu of*, 17.19
in particular, 13.262–.264
in order to/for, 17.19
in order that, 17.19
in other words, 13.445
in particular, 13.263–.264
 Institution of Civil Engineers, 3.126
 insurance policy as contract, 2.12
- integrated definitions, 2.93–.94, 6.61–.85. *See also* autonomous definitions; defined terms; definitions
 boosting a defined term, 6.79–.80
 clarifying scope of, 6.76–.77
collectively, 6.78
 emphasis, 6.68–.69
 matching parts of speech of defined term and, 6.84–.85
 not using *hereinafter* with, 6.42
 placing defined-term parenthetical, 6.70–.75
 stacking defined terms, 6.81–.83
 structure, 6.62–.67
- intending to be legally bound*. *See* intent to be legally bound, statement of
- intentional misrepresentation and fraud, 13.320–.327
intentionally omitted, 4.114, 18.18
 intent to be legally bound, statement of, 2.87–.89, 2.186, 5.24–.25, 5.26
- internal rules of interpretation, 6.4, 6.49–.50, 10.43, 10.55, 13.524, 14.57, 15.1–.23, 17.37
- international cultural differences in drafting, p. xxxv
 internationally, use of this manual, pp. xxxiv–xxxv
in the course of, 17.19
in the event that/of, 17.19
- introductory clause, 2.15–.128
between versus among in, 2.48–.50
 creating defined terms for party names in, 2.90–.117
 date stated in, 2.23–.45
 describing in, limited role of parties, 2.61–.64
 describing parties in, 2.68–.89
 format, 2.17–.18
 function, 2.15
 identifying parties in, 2.51–.55
 in amendment, 18.6
 order of the parties in, 2.56
 referring in, to lists of parties, 2.65–.67
 referring in, to parent company entering into contract on behalf of affiliate, 2.57–.60
 referring in, to performance by a division, 2.81–.82
 referring in, to trustee, 2.78–.80
 referring in, to type of agreement, 2.19–.21
 verb to use in, 2.22
- inure*, 13.447–.450
involuntarily, voluntarily, 13.873–.874
in witness whereof, 5.19, 5.26
 Ireland caselaw, p. xxxv, 10.34
irrevocably, 3.43–.45, 13.290–.297
is binding upon, 17.19
is eligible for, 3.311
is not prohibited from, 3.277
is not required to, 3.268–.276
is subject to, 3.311
is to be, 3.448, 3.470
is unable to, 17.19
is unaware of, 13.489–.490
it being understood, 13.451–.455
it is agreed that, 3.25
it is emphasized that, 1.59

J

joinder, 13.456–.460
joint and several, 13.462–.475

K

know all men by these presents, 2.16
knowledge, 13.477–.488

L

language of agreement, 2.162, 3.27, 3.30–.32
 language of declaration, 3.27, 3.371–.441. *See also*
 acknowledgments; *represents and warrants*
 acknowledgements as, 3.436–.441
 alternatives to statements of fact, 3.430–.431
 function, 3.371–.373
 statements of fact as, 3.374–.429
 language of discretion, 3.442–.451
may at its sole discretion in, 3.224–.254, 13.298
 expressing prohibition by exception to, 3.302–.304
is entitled to in, 3.264–.267
is not prohibited from in, 3.277
is not required to in, 3.268–.276
may in, 3.188–.189
may ... only in, 3.201–.205
may request in, 3.219–.223
may require in, 3.215–.218
 suboptimal alternatives to *may*, 3.189
 use in arbitration provision, 3.107
 using granting language instead of, 3.56–.60
 whether discretion is limited, 3.190–.200
 language of intention, 3.442–.451
 language of obligation, 3.70–.186
 don't use instead of language of performance, 3.41
 impossible obligations, 3.155–.158
 instead of language of performance for services, 3.52–.54
 obligations to stop something from happening, 3.159–.163
 to express conditions, 3.356–.362
 language of obligation imposed on someone other than the subject of a sentence, 3.131–.154
 contexts in which occurs, 3.131–.136
 don't use *is entitled to* in, 3.136, 3.152–.153, 3.274
 don't use *receive* in, 3.135, 3.151
 shall cause in, 3.143–.146
 shall, must, or will to convey, 3.137–.150
 ways of avoiding, 3.141–.150
 language of obligation imposed on the subject of a sentence, 3.72–.130
agrees to in, 3.109–.111
 don't use the simple present tense in, 3.125–.127
 indicative mood in, 3.117–.124
is responsible for in, 3.128–.130
 problematic usages in, 3.109–.116
 when exercising discretion requires cooperation, 3.260–.261
 whether to use *shall, must, or will* to convey, 3.72–.108
 language of performance, 2.162–.163, 3.33–.69
 actions that don't work in, 3.46
 don't use *agrees to* as, 3.40
 don't use *do* as an auxiliary in, 3.40
 don't use *is pleased to* in, 3.42
 don't use the passive voice in, 3.38
 don't use the present continuous in, 3.39
 don't use, to indicate absence of performance, 3.47
 don't use to indicate future performance, 3.48
 for performance of services, 3.52–.54
 function of, 3.33
 granting language, 3.55–.69, 3.258–.259
 hereby in, 3.35–.37
 in an amendment, 18.9
 in buying and selling, 3.49–.51
 irrevocably in, 3.43–.45
 use the present tense in, 3.33
 language of policy, 3.305–.311
 buried-actor policies, 3.309–.311, 17.9

function of, 3.305
 kinds of, 3.306
 passive voice in, 3.312
 used to express conditions,
 3.351–.355
 verbs in, 3.307–.308
 language of prohibition, 3.278–.304
 by way of exception to language of
 discretion or obligation,
 3.302–.304
 don't use *agrees not to*, 3.293
 don't use *cannot*, 3.293
 don't use *hereby waives the right to to*
 express, 3.285–.290
 don't use *may not*, 3.279
 don't use *nor shall*, 3.298–.301
 don't use *shall in no way*, 3.292
 don't use *shall never*, 3.291
 don't use *shall refrain*, 3.283–.284
is not entitled to, 3.280–.282
must not, 3.278
shall not, 3.278
 using of collective nouns with,
 3.295–.297
 language of recommendation,
 3.452–.454
 latent ambiguity, 7.34
later of X and Y, 13.809–.814
 Latinisms, 2.16, 13.22, 13.385, 13.446,
 13.491–.492, 18.10
 lead-in, 2.86, 2.154, 2.160–.209, 3.30
 and incorporation by reference,
 2.154
 in an amended and restated
 contract, 18.8
 in an amendment, 18.7
 language of agreement in, 3.30
 recital of consideration in,
 2.166–.210
 recommended form of, 2.160
 use of *now*, *therefore* in, 2.167
 wording, 2.160–.165
lease (noun), 2.12
lease (verb), 3.63
legal fees, 13.493–.494
lesser of X and Y, 13.809–.814
 letter agreement, 19.1–.17
 components, 19.3–.17
 function of, 19.1–.2

licence or *license*, spelling of the verb,
 p. xxxv
license (verb), 3.61–.63
Licensee–Licensor as defined terms,
 2.105
lien, 1.51
likely, 13.495–.501
locus sigilli, L.S., 5.49
 logic rules, 1.32, 11.56
look to, 13.502–.504
 lost profits, 13.181–.186
lump sum, 13.505–.507

M

MAC. *See material adverse change*
 MAE. *See material adverse effect*
 manual of style, need for in contract
 drafting, p. xxxiii
material, 7.51, 9.1–.37
 ambiguity of, 9.4–.9, 9.17–.23
 defining, 9.24–.30
 how used, 9.10–.16
 limiting use of, 9.31–.37
 versus *material adverse change*,
 9.48–.50
 which noun to modify, 9.38–.39
material adverse change, 9.2, 9.8, 9.16,
 9.40–.139
 aggregation, 9.43, 9.44, 9.54–.55,
 9.68, 9.127–.130
 baseline date, 9.71, 9.78
 carve-outs to definition of,
 9.131–.135
 defining, 9.79–.139
 double materiality, 9.58–.63
 field of change, 9.98–.117
 how provisions using, relate to other
 provisions, 9.136–.139
 initialism for, 9.79
 in bringdown condition, 9.56
 meaning of, 9.88–.90
prospects, 9.108–.117
 quantitative guidelines, 9.91–.97
 using, 9.41–.78
 using defined term *Material* when
 defining, 9.80, 9.88–.90
 verbs in *material adverse change*
 provisions, 9.64–.68
 versus *material*, 9.48–.50

where used, 9.41–.47
 using, as opposed to *material adverse effect*, 9.69–.77
material adverse effect, 9.69–.77. *See also material adverse change*
materially, 9.1, 9.26–.27, 9.29, 9.36, 9.52–.53
 defining, 9.26–.27, 9.29
 in bringdown condition, 9.36, 9.52–.53
 materiality
 bringdown condition and, 9.26, 9.29, 9.36, 9.45–.57, 9.58–.63, 9.89, 9.107
 double materiality, 9.58–.63
 mathematical equations, 14.60–.63
 matrix clause. *See conditional clause*
may
 ambiguity inherent in, 3.206–.208
 at its sole discretion with, 3.224–.254
 in language of discretion, 3.188–.189
 redundant in restrictive relative clauses, p. xxxix, 3.459–.462
 stating meaning of, in an internal rule of interpretation, 15.21
 to convey possibility, 3.206–.214
may at its sole discretion, 3.224–.257, 13.298
may not, 3.268, 3.279
may ... only, 3.201–.205
may refuse, 3.277
may request, 3.219–.223
may require, 3.215–.218
means, 6.37, 6.41–.45
means and includes, 6.42
 not using *mean*, 6.38–.39
merely, *mere*, 3.3, 13.508–.511
midnight, 10.35–.38
might, 3.209–.213
 money, stating amounts of, 13.512–.525, 14.10–.12, 14.15
 autonomous definitions regarding, 13.524–.525
 currencies, 13.520–.523
month
calendar month, 10.97
 unit for apportioning quantities per unit of time, 10.93–.94, 10.97
 unit of period of time, 10.75, 10.78
moral turpitude, 13.527–.545

Mortgagee–Mortgagor as defined terms, 2.105
 MSCD enumeration scheme, 4.2–.69, 4.75
must
 in language of obligation imposed on someone other than the subject of a sentence, 3.137, 3.139
 in language of obligation imposed on the subject of a sentence, 3.88–.90
 in language of obligation to express conditions, 3.356–.359
 don't use in language of policy to express conditions, 3.354
must not, in language of prohibition, 3.278
mutatis mutandis, 13.491, 13.546–.548
mutual, *mutually*, 13.549–.555

N

needless elaboration, 1.53–.56
need not, 3.276
need only, 3.359
negligence and *gross negligence*, 13.557–.578
New Engineering Contract, 3.126
 Ngram, Google, 8.23–.26, 8.91, 13.24
no later than, 13.579–.584
 nominalization. *See buried verbs*
nonbusiness day, 10.74
nontrivial, 7.51, 9.21–.23
 limiting use of, 9.31–.37
noon, 10.36–.37
nor shall, 3.298–.301
notice
 and *prior notice*, 13.585–.592
 apostrophe with, 13.598
 termination with prior notice, 13.593–.597
 notice periods, ambiguity in, 10.65–.66
 notices provisions, 2.68, 2.72, 13.134, 13.642
notwithstanding, 13.599–.605
 and eliminating nullified provisions, 13.612–.613
novation, 1.15, 1.22, 13.614–.616
now, *therefore*, 2.167

now, wherefore, 2.167

numbers, whether to use words or digits to state
big, stating, 14.10–.12
problems with using both words and digits, 14.4–.3
using both words and digits, 14.1–.3
using first words, then digits, 14.13–.16
using only digits for all numbers, 14.17–.19
numbers, consecutive ranges of, 14.64–.75
distinguishing between stepped rates and shifting flat rates applied to, 14.64–.71
gap in, 14.74–.75
overlap in, 14.72–.73, 14.75

O

obligation. See also language of obligation
and adjectives, 3.173
and *breach*, 3.176–.186
and *covenant*, 3.165–.169
and *prohibition*, 3.170
comply with versus *perform*, 3.174–.175
versus *duty*, 3.171–.172
of any kind, 1.59
on, 10.24, 10.25, 10.83
one year and a day, 10.80–.82
only, 13.617–.621
on one or more occasions, 10.131–.137
on the one hand ... on the other hand, 11.93, 13.622–.631
option contracts, 2.191–.197
or
ambiguity of, 11.46–.85, 11.92–.96, 11.112–.141, 11.145–.153
specifying meaning of, in an internal rule of interpretation, 15.19
using instead of *and*, 11.97–.100
Oxford comma, 12.57–.76

P

parentheses, 2.13, 2.93–.96, 4.32–.33, 5.41, 6.62–.67, 6.111, 12.17, 12.56,

13.454, 13.632–.636, 14.1, 14.8, 14.24–.26, 14.33, 14.34–.37

particularly, 13.262–.264

parties

collective defined term for, 2.110–.114
defined terms for names of, 2.90–.117
describing, in the introductory clause, 2.68–.89
entering into a contract on behalf of an affiliate, 2.57–.60
extraneous information relating to, 2.86–.89
identifying, in the introductory clause, 2.51–.55
incidental information relating to, 2.83–.85
referring to lists of, in the introductory clause, 2.65–.67
serving an administrative function, 2.75–.76, 2.96
whether to provide address for, in introductory clause, 2.69, 2.70, 2.72
with limited role, 2.61–.64, 5.47

party

as a defined term, 2.111–.114
as an adjective, 13.637
internal rule of interpretation for, 15.13

party of the first part, party of the second part, 2.115–.117

passive voice. See voice

payable, 3.309

pay versus *pay to*, 3.69

per annum, 17.19

percentages, 13.638–.641

expressing results of calculation as, 14.22, 14.49–.52

perfection, perfect, 1.9

period

adding or deleting enumerated clause in amendment, 18.17, 18.19

bold, after section heading, 4.20

in a set of enumerated clauses, 4.34

in section numbers, 4.16

space after, 16.44

periodically, 10.144–.148

period of time, 17.19

perpetually, 13.394–.398
personal delivery, 13.642–.645
 personnel, 13.646–.650
 persuade, contract language should
 not seek to, 1.57–.61
 plain English. *See* standard English
plan of exchange, in title, 2.10
plan of merger, in title, 2.9
 plural, whether singular means,
 11.3–.14
 role of *any*, 11.9–.12
 possessives, 17.36
 precision as a characteristic of optimal
 contract language, 1.33–.36
prevailing party, 13.651–.658
previous to, 17.19
prior notice and notice, 13.651–.658
prior to, 10.64, 17.19
privileged and confidential, adding
 notation to draft, 4.122
procure, p. xxxv, 3.145
product and units of the product, 13.659
 prohibition. *See* language of
 prohibition
promises to, 3.112
promptly, 7.46, 10.110–.112
 and *immediately*, 10.108–.127
 pronouns
 internal rule of interpretation
 regarding, 15.14, 15.22
 singular *they*, 5.45, 17.15–.17
proprietary, 13.660–.662
pro rata and prorating, 10.100, 10.102,
 13.107, 13.473, 13.492, 14.48,
 14.58
prospects, 9.108–.117
provided that, 13.663–.666
 provided, however, that, 13.663,
 13.666
provision, 13.667–.670
 provisos. *See* *provided that*
 punctuation, 17.37. *See also*
 apostrophe; colon; comma;
 quotation mark; semicolon; period
 traditional view of, 17.37
purchase versus buy, 13.124–.127
pursuant to, 17.19

Q

quotation marks
 curly and straight, 16.47–.53
 don't use with attachment
 enumeration, 5.82
 in creating autonomous definitions,
 6.36
 in creating integrated definitions,
 2.93, 6.68–.69

R

Read before signing, 5.42
reasonable efforts. *See also* *efforts*
 standards; *best efforts*
 carve-outs from definition of,
 8.117–.120
 add-ins to definition of, 8.121–.122
 compared to *best efforts*, 1.17,
 8.19–.30
 defining, 8.109–.122
 using instead of *reasonable*
 endeavours, 8.91–.93
 using only, 8.86–.90
 wording *reasonable efforts* provisions,
 8.94–.104
reasonable endeavours. *See* *reasonable*
 efforts
 reasonableness and good faith,
 13.679–.688
reasonable, reasonably, 7.42,
 13.671–.678
receipt and sufficiency, 2.189
 recital of consideration, 2.166–.210
 and New York General Obligations
 Law, 2.197
 and Uniform Written Obligations
 Act, 2.186
 backstop recitals, 2.171–.174
 establishes rebuttable presumption,
 2.179–.181
 false, 2.200–.201
 function of, 2.168–.170
 good and valuable consideration, 2.188
 guarantees, 2.198–.201
 option contracts, 2.191–.197
 outside the United States,
 2.207–.210

- pretense consideration, 2.175–.178
- rebuttable presumption of consideration, 2.179–.181
- receipt and sufficiency*, 2.189
- recommended form of lead-in, 2.160
- structuring consideration, 2.182–.190
- recitals, 2.129–.159. *See also* recital of consideration
- defined terms in, 2.158–.159
- function of, 2.43, 2.81, 2.84, 2.117, 2.130–.135, 13.631, 18.4
- in accordance with this agreement* in, 2.150–.153
- incorporation by reference and, 2.154–.155
- kinds of, 2.130–.133
- narrative prose in, 2.142–.144
- no need for enumeration in, 2.141
- omitting archaisms from, 2.137–.138, 2.143
- omitting substantive provisions from, 2.155
- relation to language of declaration, 3.438
- significance in determining whether a contract is under seal, 5.49
- significance in determining whether a lease was executed as a deed, 5.59
- subject to the terms of this agreement* in, 2.150
- to amendment, 18.6
- true and correct* and, 2.156–.157
- using heading with, 2.136–.140
- verb in purpose recitals, 2.145–.149
- reckless, recklessness*, 7.50, 13.564–.566, 13.572–.577
- redundancy, omitting, generally, 1.37–.56
- references to time, 10.1–.153. *See also at all times; at any time; day; during the period; from time to time; immediately; month; one year and a day; on one or more occasions; periodically; promptly; so long as; week; within; year*
- apportioning quantities per unit of time, 10.91–.106
- avoiding confusion by adding a time component, 10.149–.153
- dates, 10.7–.20
- don't use confusing points in time, 10.67
- how to state a time of day, 10.46–.49
- midnight*, 10.29, 10.35–.38, 10.40, 10.42
- noon*, 10.36–.37
- other standards for speed, frequency, and duration, 10.107–.148
- periods of time, 10.61–.90
- points in time, 10.21–.60
- prepositions used to refer to a day, 10.22–.28
- prepositions to use to refer to occurrence of an event, 10.56–.60
- internal rule of interpretation regarding, 15.7, 15.16
- stating the time of day, 10.33–.55
- time of day as a boundary between periods of time, 10.39–.43
- time zones, 10.50–.55, 15.7
- using *at* to state a deadline, 10.44–.45
- using *on* to denote a day-long period of time, 10.83
- when in a day a point in time occurs, 10.29–.32
- which unit of time to use, 10.71–.79
- refers to*, 6.45
- regard shall be had to*, 13.689–.690
- registration number of party, including in introductory clause, 2.70
- register* as defined term, 6.7, 6.45
- remediable breach*. *See* curing breach
- remediate*, 13.691–.693
- remit, remittance*, 13.694–.697
- repetition, contract language should omit, 1.62
- representations and warranties*. *See represents and warrants*
- represents*. *See represents and warrants*
- represents and warrants*, p. xxxviii, 1.14, 1.22, 3.374–.411. *See also warrants* addressing remedies directly instead, 3.420–.429
- as term of art, 1.14
- English law and practice, 3.405–.411

remedies for inaccurate statements
of fact, 3.377–.379
remedies rationale for, 3.380–.397
timeframe rationale for, 3.398–.404
use of, 3.374–.376
using *states* instead, 3.412–.419
required to, is not, 3.189, 3.268–.277
resistance to change, pp. xxxvi–xxxviii
respective, respectively, 13.698–.708
respective, 13.699–.705
respectively, 13.706–.708
responsible for, is, 3.128–.130
Restatement (Second) of Contracts, 2.87,
2.192–.196, 2.200, 3.171, 3.226,
13.68, 13.322, 13.464–.466,
13.469, 13.474, 13.839
Restatement (Second) of Torts, 13.322
Restatement (Third) of Suretyship, 2.200
restrictive and nonrestrictive clauses,
and *that and which*, 12.43–.56
and *such as*, 13.756–.766
restrictive relative clause, p. xxxix,
3.218,
3.255, 3.456–.462
use of *may* in, 3.459–.462
use of *shall* in, 3.457–.458
response to draft with modern
contract language, pp. xxxix–xl
reviewing the other side's draft,
p. xxxix
rhetorical emphasis, 1.58–.61, 3.268,
3.292, 3.440, 13.317, 13.869,
13.895, 16.36
rightfully, rightful, 13.709–.712
right, title, and interest, 13.713–.718
Romanette, 4.45
rounding numbers, 10.100, 14.53–.58
rule of the last antecedent, 12.13,
12.25, 12.29
rules of interpretation. See also
*ejusdem generis, expressio unius est
exclusion alterius*, rule of the last
antecedent
internal rules of interpretation, 6.4,
6.49–.50, 10.43, 10.55, 13.524,
14.57, 15.1–.23, 17.37
judicial rules of interpretation,
12.13, 12.25, 13.380

S

(*s*), 13.634
(*s*)*he*, 13.636
said, 7.16, 7.22, 13.719–.720
same, 13.721
satisfactory, 7.42, 13.722–.723
schedules. See also attachments;
exhibits
disclosure schedules, 5.94–.100
enumeration, 5.84–.90
function, 5.93
placing contract sections in,
5.101–.102
internal rule of interpretation
regarding, 15.9
using *in* or *on* with, 5.103–.105
seals, 5.48–.56, 5.60, 5.61–.62
and consideration, 5.52
and statutes of limitations, 5.54
current significance, 5.49–.56
original function of, 5.48
sections, 4.13–.26
don't use initial capitals in
references to, 4.109, 17.34
enumeration, 4.16–.19
first-line-indent format for, 4.55–.57
hanging-indent format for, 4.62
function of, 4.13–.15
grouped in articles, 4.7
headings, 4.20–.26
not using *section* for group of
sections, 4.8
text not falling within, 4.26
security interest, 1.9
semiannual, 10.79
semicolon
adding enumerated clause in
amendment, 18.17
don't use in recitals, 2.144
in section headings, 4.23
to separate enumerated clauses, 4.40
when stacking defined terms, 6.81
with provisos, 13.663
semimonthly, 10.79
semiweekly, 10.79
sentence, length of, 17.2–.5
serial comma, 12.57–.76
set forth in, 17.19
several. See *joint and several
shall*

- in language of obligation imposed
 - on the subject of a sentence, 3.72–.108
- stating meaning of, in an internal rule of interpretation, 15.20, 15.21
- used to mean *has a duty to*, 3.72–.75, 3.104–.108
- shall*, misuse of, p. xxxix
- discretionary, p. xxxv, 3.73, 3.86
- example of inconsistency, 1.64
- example of *shall* failing the *has a duty* test, 3.105
- has a duty* test, 3.74
- in conditional clauses, 3.322
- in definitions, 6.53
- in definitional verb, 6.44
- in language of obligation imposed on someone other than the subject of sentence, 3.137–.138, 3.153
- in language of obligation to express conditions, 3.356–.362
- in language of policy, 3.308, 6.44
- in language of policy to express conditions, 3.352, 3.354
- in restrictive relative clauses, 3.457–.458
- in *shall not be required to*, 3.215
- instead of language of performance, 3.41
- shall cause*, 3.143–.150
- shall never*, 3.291
- shall not*, in language of prohibition, 3.278
- shall procure*, p. xxxv, 3.145
- shareholder* or *stockholder*, 13.724–.725, 13.730
- shareholders agreement*, 13.726–.728
- should*, 3.73, 3.323
- signatory*, 13.731–.733
- signed, sealed, and delivered*, 5.49
- signature block, 5.29–.70
 - authorization, 5.34, 5.36
 - dating signatures, 2.36, 5.5–.46
 - deeds, 5.57–.59
 - don't use more than one entity
 - name per signature block, 5.31
 - format, 5.30–.42
 - having legal counsel sign, 5.70
 - notarizing signatures, 5.65–.67
 - parties with limited roles, 5.47
 - seals, 5.48–.56, 5.60, 5.61–.62
 - signing a contract electronically, 5.68–.69
 - two persons signing for one entity, 5.35
 - undated signatures in, 5.43–.46
 - witnessing signature, 5.63–.64
- signature page, 5.28, 5.73–.74
- signature page follows*, 5.72
- signature, undated, 5.43–.46
- significant*, 9.7, 9.19–.21
- signing*, 5.13
- silent on*, 13.734–.735
- Singapore caselaw, p. xxxv, 8.75
- singular means plural, whether, 11.3–.14
 - role of *any*, 11.9–.12
- sole*
 - sole and exclusive* in licensing, 13.736–.740
 - sole and exclusive*, 13.741–.743
- solicit*, 13.744–.747
- so long as*, 10.142–.143
- sources of uncertain meaning, 7.1–.55.
 - See also* ambiguity; vagueness
 - ambiguity, 7.5–.27
 - blurred boundaries, 7.52–.55
 - conflict, 7.35–.36
 - failure to address an issue, 7.37–.41
 - failure to be sufficiently specific, 7.28–.32
 - mistake, 7.33–.34
 - vagueness, 7.42–.51
- South Africa caselaw, p. xxxv, 2.79
- specific*, 13.748–.750
- spouse*, 13.751
- stacking defined terms, 2.94, 6.81–.83
- standard English, 1.28–.32
 - as compared to plain English, 1.29
 - as opposed to “tested” contract language, 1.30
 - does not involve dumbing down, 1.30
- starting*, 10.24
- statements of fact. *See also*
 - representations
 - alternatives to, 3.430–.431

- as language of declaration, 3.372
 - don't include, in concluding clause, 5.20
 - don't refer to, as becoming inaccurate, 3.434
 - don't use *breach* in connection with, 3.432–.433
 - placement of introductory language to, 4.21
 - using *represents and warrants* to express, 3.374–.411
 - using *states* to express, 1.21, 3.412–.419
 - states*, using, instead of *represents and warrants*, 1.21, 3.412–.419
 - statutes
 - not tracking wording of, in contracts, 2.9–.10, 13.123
 - shall meaning “should” in, 3.73, 3.86
 - stockholder or shareholder*, 13.724–.725, 13.730
 - strictly*, 1.59
 - strings of synonyms or near-synonyms, 1.38–.52
 - style guide, use of in contract drafting, p. xxxiii
 - style in contract drafting, p. xli
 - subject to*, 2.150–.151, 3.311, 13.606–.609, 13.612–.613
 - and eliminating nullified provisions, 13.612–.613
 - subject to the terms of this agreement*, 2.150–.151, 13.608–.609, 13.610
 - subject, verb, and object, gap between, 17.6
 - subjunctive, 3.323, 3.355
 - subrogation*, 13.752–.755
 - subsections, 4.27–.31
 - don't use for omnibus sections, 4.15
 - don't use headings in, 4.31
 - enumeration, 4.29–.30
 - first-line-indent format for, 4.58
 - function of, 4.27
 - hanging-indent format for, 4.62–.63
 - using *section* to refer to, 4.107
 - subsequent to*, 17.19
 - subsidiary*
 - example of a defined term with a definition that's largely clear, 6.92
 - capitalizing the defined term for, 6.6
 - incorporating, in the definition of defined terms for party names, 2.95
 - referring to, in the introductory clause, 2.54, 2.83–.85
 - time of determination, 10.149–.153
 - substantial*, 7.46
 - successors and assigns*, internal rule of interpretation regarding, 15.23
 - such*, 7.20–.22, 13.720, 13.767–.769
 - such as*, 13.756–.766
 - suffer*, 13.770–.772
 - survival, 13.773–.782
 - of claims, 13.774–.776
 - of provisions, 13.777–.779
 - of statements of fact, 13.780–.782
 - supplement, 18.10
 - symbols in tables in chapter 3, meaning of, 3.7
 - syntactic ambiguity, 12.1–.81
 - avoiding, by restructuring, 12.77–.81
 - in mathematical formulas, 14.23
 - meaning of, 12.1
 - modifiers, 12.2–.42
 - serial comma, 12.57–.76
 - that* and *which*, 12.43–.56
- ## T
- table of contents, 2.214–.215, 4.115
 - tabulation
 - of enumerated clauses, 4.41–.44, 4.59–.61, 4.66
 - of mathematical formulas, 14.59
 - of the introductory clause, 2.18
 - using, to eliminate ambiguity, 12.9, 12.17
 - templates, p. xxxvi, p. xxxviii, p. xl, pp. xlii–xliv, 4.69
 - terminate* versus *end*, 13.257–.260
 - termination* and *expiration*, 13.783–.794
 - termination for convenience*, 13.795–.806
 - termination for any reason or no reason*, 13.293–.297
 - termination without cause*, 13.804
 - terms and conditions*, 13.807
 - terms of art, 1.7–.27
 - improvised, 1.16–.18

- in languages other than English, 1.27
- replacing, 1.20–.26
- unduly complex, 1.19
- unnecessary, 1.11–.15
- using, in heading, 1.23, 13.755, 13.890
- tested, argument that traditional contract language has been, p. xxxvii, 1.30
- that*, 12.43–.56
- that certain*, 13.808
- the*
 - extraneous, 17.35
 - using with party-name defined term that is a common noun, 2.106
- the *date notified*, 10.18–.20
- the *date that is*, 10.16–.17
- there can be no assurance that*, 13.815–.816
- therefore*, 1.57
- there is, there are*, 17.24
- there-* words, 13.349–.350
- therefor*, 13.817–.818
- these presents*, 2.16, 5.26
- thing*, 13.819
- third party*, 2.115, 13.820–.826
- third-party beneficiaries, 2.58, 13.826 and the defined term *Party*, 2.112–.114
- third person, writing contracts in, 3.8–.10
- throat-clearing, p. xxxix, 3.25–.28
- through*, 10.25
- throughout the universe*, 13.827–.828
- time. *See* references to time
- time is of the essence*, 1.19, 13.829–.840
- timely*, 13.108
- time zones
 - internal rule of interpretation regarding, 15.7
 - specifying, in reference to time of day, 10.50–.55
- Times New Roman font, 16.3–.6, 16.8, 16.12, 16.37
- title, 2.2–.14
 - agreement and contract in*, 2.11–.12
 - given to amendment or amended and restated contract, 18.5
 - making title concise, 2.3–.5
 - not including party names in, 2.6
 - not using jargon in, 2.7
 - supplementing, 2.13
 - unnecessary to track terminology of state statutes in, 2.9–.10
- to*, 10.25, 10.26
 - stating meaning of, in an internal rule of interpretation, 15.16
- together with and as well as*, 13.841–.844
- to the extent permitted by law*, 13.845–.847
- to the extent that*, 17.21
- trademarks, references to, 13.848–.863
- traditional contract language
 - dysfunction of, p. xxxvi
 - resistance to changing, pp. xxxvi–xxxviii
- training, p. xli
- transfer* as defined term, 6.3, 6.7, 6.45
- triplet, 1.38
- true and correct*, 2.156–.157
- trust as party to a contract, 2.78–.80
- two-column format, 4.75–.78
- typography. *See also* all capitals; initial capitals; fonts
 - apostrophe, curly and straight, 16.47–.53
 - bold, 2.93, 4.16, 4.20–.21, 4.57, 4.109, 6.6, 6.36, 6.68, 16.18, 16.20, 16.28, 16.30, 16.32
 - characters per line, 4.76, 16.39–.41
 - design embellishments, 16.57–.59
 - emphasis, 16.18–.36
 - first-line indents, 16.54–.56
 - fonts, 16.2–.14
 - font size, 16.37–.38
 - italics, 4.21, 4.109, 6.6, 16.18, 16.30, 16.32, 16.33, 18.20
 - justification, 16.15–.17
 - line spacing, 16.40
 - quotation marks, curly and straight, 16.47–.53
 - rhetorical emphasis through, 16.36
 - serif versus sans serif, 16.13–.14

space after punctuation, 16.44–.46
 underlining, 4.21, 4.109, 13.663,
 16.18, 16.21

U

under no circumstances, 1.59
undertakes to, 3.113
under the provisions of, 17.19
 Uniform Commercial Code, 2.197,
 3.226, 3.240, 3.251, 3.387, 3.392,
 3.401, 5.56, 8.82–.83, 13.880,
 14.12, 16.25–.27, 16.30–.31
 Uniform Written Obligations Act,
 2.186
 United Kingdom, p. xxxv, 3.126,
 13.517. *See also* British English,
 England
units of the product and product, 13.659
unless and until, 13.864–.865
unless the context otherwise requires,
 13.866–.867
unless the parties agree otherwise, 13.868
until, 10.25
 stating the meaning of, in an
 internal rule of interpretation,
 15.16
until such time as, 17.19
utmost, 13.869

V

vagueness, 7.42–.51. *See also* *efforts*
standards; material
immediately, 10.113–.117
material, 9.3–.6
moral turpitude, 13.527–.545
negligence and gross negligence, 7.50,
 13.557–.578
promptly, 7.46, 10.110–.112
reasonable, reasonably, 7.42,
 13.671–.678
reckless, recklessness, 7.50,
 13.564–.566, 13.572–.577
satisfactory, 7.42, 13.722–.723
substantial, 7.46
wanton, 7.50, 13.564–.566, 13.572

very, 13.870
vendor, using, as the defined term for a
 party name, 2.108
virgule, 13.871–.872
voice, active versus passive, 3.11–.24,
 3.38, 3.105–.106, 3.123, 3.132,
 3.134, 3.135, 3.136, 3.142, 3.151,
 3.152, 3.264–.266, 3.270, 3.274,
 10.19, 13.102–.103, 13.218,
 13.689–.690, 13.794, 17.8–.10
 buried-actor policies, 3.309–.311,
 17.9
voluntarily, involuntarily, 13.873–.874

W

waiver of jury trial, 3.289, 13.846,
 16.28
want (verb) in purpose recitals,
 2.146–.149
wanton, 7.50, 13.564–.566, 13.572
warrant (verb), 1.24, 13.878, 13.881.
See also *represents and warrants*
warrant (noun), *warrant certificate*,
warrant agreement, 13.875–.877
warranty, 13.878–.880, 13.890–.892
week
 unit of period of time, 10.76
 unit for apportioning quantities per
 unit of time, 10.98
well and truly, 13.893–.895
whatsoever, 1.59
whereas, 1.4, 2.143
which, 12.43–.56
whilst, p. xxxv, 13.23–.25
wholly, 1.59
will
 in language of obligation imposed
 on someone other than the
 subject of a sentence, 3.137, 3.140
 in language of obligation imposed
 on the subject of a sentence,
 3.91–.95
 in language of policy, 3.307
 misuse of, in language of policy to
 express conditions, 3.354
 stating meaning of, in an internal
 rule of interpretation, 15.20

to express future time, 3.76–.79
will be expected to, 3.116, 3.277
willful, willfully, 7.12, 13.564–.565,
 13.573, 13.578, 13.896–.897
will have plus a period of time, 10.90
wish (verb) in purpose recitals, 2.146,
 2.148
within, 10.68–.70
with the exception of, 17.19
*without limiting the generality of the
 foregoing*, 13.353, 13.380,
 13.898–.906
without prejudice, 13.907–.908
with respect to, 17.25–.27
witnesseth, 2.137–.139

wordsmithing as a term of denigration,
 11.36
 wordy phrases, 17.19
workmanlike, 13.909–.912
wrongfully, wrongful, 13.712

Y

year
 unit of period of time, 10.77, 10.78
 unit for apportioning quantities per
 unit of time, 10.92, 10.94–.96
calendar year, 10.95