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## WHAT HAS CHANGED

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

As with the second and third editions, this edition represents a substantial upgrade. But you won't find changes to the design, or extensive surgery to what came before.

I've expanded my treatment of a few topics; I've moved some sections from one chapter to another; and I've done some tweaking throughout. Otherwise, the third edition has held up well.

Instead, the biggest change is that I've added discussion of many new topics, the result of a further four years of work on the words and phrases used to construct contract provisions. That includes consulting for a broad range of clients, more than a thousand blog posts, around 20 articles, dozens of public and in-house "Drafting Clearer Contracts" seminars around the world, and three semesters of teaching at law school.

Here's an overview of the changes:

- *Introduction*. Revised and expanded. This is where you will now find discussion of the notion of "tested" contract language, which was previously in chapter 1.
- *Chapter 1 (The Characteristics of Optimal Contract Language)*. Slightly revised.
- *Chapter 2 (The Front of the Contract)*. Contains expanded discussion of the traditional recital of consideration and addresses several new topics.
- *Chapter 3 (Categories of Contract Language)*. Revised to include many new topics, including "throat-clearing" (3.25–.28) and consolidating deal points (3.29). It also contains many new examples of dysfunctional verb structures. The discussion of *represents and warrants* has been expanded. And just as Pluto is no longer a planet, language of belief is no longer a category of contract language; instead, chapter 13 now contains a section on belief.
- *Chapter 4 (Layout)*. Now includes a second MSCD enumeration scheme, the hanging-indent scheme.
- *Chapter 5 (The Back of the Contract)*. Largely unchanged.
- *Chapter 6 (Defined Terms)*. Revised to include several new topics, including abbreviations as defined terms (6.9–.12) and circular definitions (6.17–.23).
- *Chapter 7 (Sources of Uncertainty in Contract Language)*. Significantly revised, rearranged, and expanded.
- *Chapter 8 (Reasonable Efforts and Its Variants)*. The part dealing with the function of *efforts* standards, variants of *efforts* standards, and what *efforts* standards mean has been entirely rewritten.

- *Chapter 9 (Material and Material Adverse Change)*. Revised to propose use of *nontrivial* to avoid ambiguity in use of *material* (9.21–.23). Added a discussion of which noun *material* should modify (9.38–.39). And in this chapter and elsewhere, all instances of *representation* have been changed to *statement of fact*, consistent with the recommendations in chapter 3. Otherwise, largely unchanged.
- *Chapter 10 (References to Time)*. Covers several new topics.
- *Chapter 11 (Ambiguity of the Part Versus the Whole)*. Includes a new section on whether singular means plural (11.3–.14) and a new section on using *and* instead of *or*, and vice versa (11.97–.100). Also discusses recent caselaw on use of *all* (11.105–.111). Otherwise largely unchanged.
- *Chapter 12 (Syntactic Ambiguity)*. Includes an expanded discussion of the serial comma (12.57–.76) and how to avoid syntactic ambiguity by restructuring (12.77–.81). Otherwise largely unchanged.
- *Chapter 13 (Selected Usages)*. Covers many new topics.
- *Chapter 14 (Numbers and Formulas)*. Expanded discussion of using words or digits to express numbers. Otherwise largely unchanged.
- *Chapter 15 (Internal Rules of Interpretation)*. Renamed and rearranged; otherwise largely unchanged.
- *Chapter 16 (Typography)*. Largely unchanged.
- *Chapter 17 (Drafting as Writing)*. Largely unchanged.
- *Chapter 18 (Amendments)*. Largely unchanged.
- *Chapter 19 (Letter Agreements)*. Slightly revised.

The third edition contained a chapter 20 (Drafting Corporate Resolutions). It has been deleted: with the new materials added to this edition, it became more obvious that that topic was out of place in this manual.

The third edition also contained an appendix 2 (Statement of Style for Contract Drafting). It too has been deleted; its place will be taken by a new, shorter style guide (see p. xli). What was appendix 1 in the third edition is now the sole appendix to this edition, except that instead of containing three versions, as in the third edition, it now consists of two versions, the annotated “before” version and the redrafted “after” version. Because I thought few readers would find it useful, I omitted the unannotated “before” version.

For a more detailed list of changes, go to <http://www.adamsdrafting.com/writing/mscd/mscd4changes>.

I’ve changed only two recommendations made in previous editions. The first is that previous editions of this manual recommended using *significant* and *material* as defined terms. This manual now recommends that instead of *significant* you use the word *nontrivial*, without defining it (see 9.21), and defining *material* is treated as optional (see 9.30).

The second is that this manual now recommends not indenting the first line of unenumerated text (see 16.55).

Given the scope and ambition of this manual, those changes are modest.

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## ACKNOWLEDGMENTS

I remain in the debt of those I acknowledged in previous editions. Furthermore, just as friends, clients, seminar participants, and readers helped me with previous editions, many have helped with this edition. Some did so indirectly over the years, by telling me about interesting developments, asking thoughtful questions, and pointing out my mistakes. Others did so directly, by volunteering to read the manuscript. I thank them all, but I can't resist singling out a stalwart few: Mark Anderson, Michael Fleming, Gregory M. Harris, Vance R. Koven, Chris Lemens, and Steven H. Sholk.

I continue to be fortunate that Rodney Huddleston, coauthor of *The Cambridge Grammar of the English Language*, was willing to devote time to saving me from embarrassing myself.

And I thank my family for good-naturedly supporting me in my quixotic bid to build a reputation, and a livelihood, on how to write contracts clearly.

In particular, I thank my father-in-law Stephen Kourepinos, who died last year. He was an ebullient man, and a workhorse. He was also thoughtful and generous, although he would deny it if accused.

After living in Switzerland for three years, in 1998 my wife Joanne and I returned to the United States with our infant daughter, Sydney. We needed time to figure out what would come next, so we moved in with Steve and Toni—his wife and Joanne's mother. It was a situation no one thought ideal.

Early in our time with Steve and Toni, I parked myself at their dining room table and announced that I was writing a book about contract drafting. (It turned into my first book, a precursor to this manual.) They would have been entitled to think I was fooling myself. More to the point, we didn't have a home, and I had yet to find a new job. I will forever be grateful to Steve for not informing me, in the salty manner of a Boston-raised son of Greek immigrants, that he expected me to provide for my family before indulging in fantasies.

Instead, he and Toni cheerfully supported me in my first step in what has been a 20-year adventure. I'm glad Steve saw my efforts bear fruit.