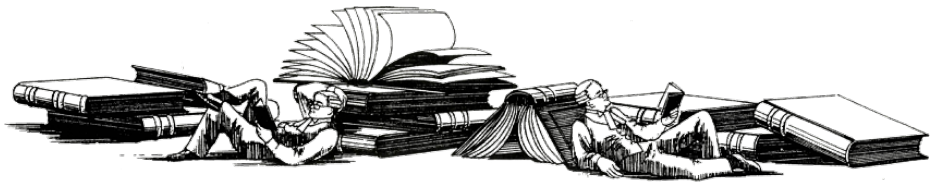


NOTES ON THE STYLE OF THE LAW

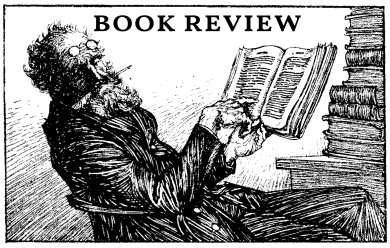
Review: A Manual of Style for Contract Drafting

by

ELIJAH Z GRANET

31 Mar 2023; 1 Car III

reviews ≈ *drafting* ≈ *reference works* ≈
contract law ≈ *literary criticism* ≈



REVIEWED
A Manual of Style for Contract Drafting, 5th edn
by Kenneth A Adams
American Bar Association, 618 pp
US$139.95 (hardback or e-book)

EVERY law student knows by heart cases of contracts which went wrong, from the infamous case of the ship named *Peerless* departing from Bombay,[1] to the saga of improperly specified oats,[2] to the failure to adequately specify the referent of 23.4%.[3] *A Manual of Style for Contract Drafting* (MSCD), now available in its fifth edition, is, in many ways, an antithesis to the student's contract casebook. It is a volume on how to write and create contracts which go

1 *Raffles v Wichelhaus* (1864) 159 ER 375, Exch
2 *Smith v Hughes* (1871) LR 6 QB 597
3 *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101, HL

right. It is an essential reference, and one which ought to be on the shelf of every lawyer whose work involves writing contracts.

The philosophy driving the MSCD is a sage one rooted in the basic question of style: who is the audience? The audience of MSCD is the users of business contracts, sophisticated commercial instruments often dealing with very complex arrangements between parties.[4] This means that 'plain language' drafting is not suitable because contracts deal with things for which there is no plain language equivalent.[5] However, drafting and composition must prioritise clarity and precision, such that the wishes of the parties are clearly and economically conveyed both to the other side's lawyers and to nonlawyers on all sides. This task is very specialised and delicate. Sadly, it is instead too often left to copy-and-paste approaches, with zombie clauses from other contracts shoved together to form templates and boiler plates.

By contrast, MSCD's 19 chapters apply a consistent, clear, and intentional approach to every aspect of this herculean task, from typography[6] to the knotty question of the meaning of 'material' to providing a useful dictionary of potentially problematic contract language. Each of these chapters is incredibly thorough, and would, on its own, be a book worth a purchase price. Together, they form a systematic approach, which is taken to its natural conclusion in the appendix, which provides a very heavily footnoted example contract.

MCSD is, as the name demonstrates, a manual. The author, Kenneth A Adams, has wisely therefore avoided needlessly lengthening it with footnotes or excessive citations. Authority, from both the US and various Commonwealth jurisdictions, is cited only when needed to convince the reader, usually to the aid of banishing some kind of 'legalistic fairy tale' (such as the supposed distinction between 'represents' and 'warrants'). This is foremost a practical book with the singular aim of improving all aspects of contract writing, from questions as broad as layout or typography to things as specific as the use of 'shall' and 'material'. The book melds perfectly with the invaluable *Adams on Contract Drafting* blog, and often helpfully points to further discussion on the blog while keeping the manual slim. This book is made to be referenced, to be used, and to be relied upon.

That final point—reliance—is particularly important. Many of the recommendations—including avoiding traditional but archaic language (such as 'Now, wherefore'), and avoiding using 'best endeavours'—are sure to raise hackles with other lawyers. So much of the value of MSCD lies in the fact that an owner of this wonderful book can avoid arguments by simply pointing to the reasoning and detail and intentionality in the volume. This is true for English lawyers as much as American ones, as the citations of English authorities in the book are fre-

4 However, much of MSCD is still applicable to business-to consumer contracts, as there are many shared principles between the two species.

5 Imagine trying to write a merger agreement in everyday language.

6 where citations to Mr Butterick's *Typography for Lawyers* rightly abound

quent and very learned,[7] The aforementioned[8] case of 'best efforts/endeavours' is a valuable example. Mr Adams discusses English authority which suggests a hierarchy between 'best' and 'reasonable' endeavours,[9] but convincingly argues that the vague *dicta* leave open to the drafter the ultimate point of writing clearly (courts, after all, are venues for contracts gone wrong, not authorities on writing correctly). It is difficult to disagree with any of the (many) England specific arguments advanced in MSCD; the fact that the American Bar Association is publisher should not confuse readers. This is truly a worldwide manual as applicable in England as it in the US.

Many of the learned readers of this publication may own a previous edition of MSCD (and thus need no convincing of its merits). The updates to this edition are quite thorough, perhaps most significantly in the layout chapter, where the former choice of two schemes for indentation has been replaced by a single, clear scheme of hanging indents. The 'reasonable efforts/endeavours' section (previously mentioned) is thoroughly enriched by Mr Adams's new research, and the 'selected usages' chapter (essentially a mini-usage dictionary within the book) has very useful new entries, including on 'disparagement' and 'irrevocable'. The citations to blog posts are also a sign of how much MSCD has changed between editions, in reaction to developments in the world of contract; this is a work continuously revised to reflect the changing factual and legal matrices of commercial law.

To my delight, MSCD is the rare law style guide to take a holistic approach, considering formatting questions like type size, enumeration, and indentation as important as usage questions like word choice, mood, and voice. The contract is considered in the round, with no aspect of the document left to chance. Each chapter sweeps away points of blind tradition, be it using 12-point Times New Roman or the over-proliferation of defined terms. This admirable spirit of MSCD is captured by the insistence against the pointless, distracting, and silly capitalisation of the word agreement. The benefit from a consistent line height achieved by 'this agreement' might seem small, but Mr Adams quite rightly advocates for the change. This is because a contract should, at *every element*, reflect careful and intentional drafting to maximise utility to the clients. After all, for what clients pay for lawyers (and in England, they pay some of the highest rates in the world), they have the right to expect value for money.

The user of MSCD can point to one of her contracts and say with confidence that every single aspect of that document has been carefully considered to give her client value for money. A contract drafter simply doing 'what has always been done' cannot give a client the same assurance. This stark dichotomy alone justifies purchasing MSCD.

7 Occasionally citations are formatted inconsistently, but that's more a problem of the *Blue Book* being odd with 'foreign' authority than any issue with the book, and judicial titles are mangled but these things happen.

8 A word one shouldn't use in a contract

9 See, *eg*, *Rhodia Int'l Holdings Ltd v Huntsman Int'l LLC* [2007] EWHC 292, Comm; 2 Lloyd's Rep 325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