

Mastering the Architecture of Modern Contracts: A Technical Analysis of Kenneth A. Adams' Manual of Style

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In the high-stakes environment of commercial transactions, the contract serves as the ultimate source of truth. However, for decades, legal professionals have relied on a dialect often referred to as "legalese"—a mixture of archaic terminology, redundant phrasing, and convoluted syntax that frequently obscures intent rather than clarifying it. Kenneth A. Adams' **A Manual of Style for Contract Drafting (MSCD)**, now in its fifth edition, has emerged as the definitive technical framework for dismantling traditional drafting habits and replacing them with a disciplined, rigorous, and efficient system of prose. This article provides an in-depth exploration of the MSCD methodology, the evolution of its editions, and a technical guide for implementing its principles to mitigate legal risk and enhance operational clarity.

The Evolution of Contract Drafting Standards

Contract drafting has historically been an oral tradition passed down from senior partners to associates, largely based on the copying and pasting of legacy templates. This "copy-paste" culture has preserved linguistic fossils that have no place in modern commerce. The publication of the first edition of *A Manual of Style for Contract Drafting* in 2004 marked a paradigm shift, moving the focus from "what" provisions to include to "how" those provisions should be expressed.

As documented in the **Fifth Edition**, Kenneth A. Adams has expanded the manual by over 70 pages of new material, reflecting a continuous refinement of his "Categories of Language" framework. This evolution reflects the increasing complexity of international business and the need for a standardized "coding language" for contracts that reduces the likelihood of costly litigation stemming from syntactic ambiguity.

The Strategic Importance of Drafting Style

Why does style matter in a technical document? In legal contexts, style is not about aesthetics; it is about **precision**. A misplaced comma or an ambiguous modal verb (such as "shall") can lead to millions of dollars in damages. By adopting a rigorous style manual, organizations can achieve:

- **Reduced Litigation Risk:** Eliminating ambiguity prevents opportunistic interpretations by opposing counsel.
- **Efficiency in Negotiation:** Clearer drafts reduce the time spent on "translation" during the redlining process.
- **Improved Automation:** Standardized prose is more compatible with Contract Lifecycle Management (CLM) software and AI-driven drafting tools.
- **Clarity for Non-Lawyers:** Business stakeholders can understand their obligations without needing a legal interpreter.

Core Theoretical Framework: The Categories of Language

The cornerstone of the MSCD methodology is the classification of contract language into specific "Categories of Meaning." Instead of using words based on habit, the drafter selects words based on the specific functional role the sentence plays in the contract. Understanding these categories is essential for technical accuracy.

1. Language of Obligation

Traditional drafting uses the word **"shall"** for almost everything. Adams argues that "shall" should be strictly reserved for the **language of obligation**, where the subject is a party to the contract and has a duty to perform. If the subject is not a party, or if the sentence describes a condition rather than a duty, "shall" is inappropriate.

2. Language of Discretion

This category uses **"may"** to indicate that a party has the power or permission to act, but is not required to do so. Misusing "may" in place of "shall" (or vice versa) can fundamentally change the power dynamics of an agreement.

3. Language of Performance

Used to perform an act simultaneously with the signing of the contract (e.g., "The Seller hereby sells the Assets"). It typically employs the word **"hereby"** to signal that the text itself is the act of performance.

4. Language of Policy

These are rules that govern how the contract works but do not impose a duty on a party (e.g., "This Agreement is governed by the laws of New York"). This should be expressed in the indicative mood (present tense) rather than using "shall."

Technical Analysis: Traditional vs. MSCD Styles

The transition from traditional drafting to the MSCD standard requires a systematic replacement of archaisms and redundancies. The following table illustrates the technical differences between these approaches.

Traditional Drafting Phrase	MSCD Recommended Alternative	Technical Rationale
"The Tenant shall pay the rent..."	"The Tenant shall pay the rent..."	Proper use of "shall" for party obligation.
"The Agreement shall terminate on..."	"The Agreement terminates on..."	Language of Policy: Use present tense, not "shall."
"Indemnify and hold harmless"	"Indemnify"	Elimination of redundant doublets.
"Including but not limited to"	"Including"	"Including" is inherently non-exclusive in modern usage.
"Represent and warrant"	"States" or "Represents"	Avoids confusing the remedies for misrepresentation vs. breach.
"In the event that"	"If"	Reduction of word count and cognitive load.
"Null and void"	"Void"	Redundancy; if it is void, it is null.

The Problem with "Shall"

Perhaps the most famous contribution of the MSCD is its critique of the word "shall." In traditional legal writing, "shall" is used to mean "must," "will," "is," and even "should." This is known as **"The Seven Senses of Shall."** Adams advocates for the "Has-Does" test: if you can replace "shall" with "has a duty to," it is correct. If not, you are likely misusing it. The Fifth Edition further refines this by discussing the nuances of "must" as an alternative for conditions precedent (e.g., "To receive the Bonus, the Employee must...").

Mechanics of Contract Architecture

Beyond word choice, the MSCD provides a blueprint for the structural layout of a contract. This "Information Architecture" ensures that the document is navigable and logical.

Defined Terms and Nested Logic

Definitions should be used to simplify, not complicate. Adams suggests a strict protocol for definitions:

- Placement: Use a dedicated definition section or define terms in-line if they are used only once.
- Formatting: Always capitalize defined terms and use bolding for the definition itself.
- Avoid Substantive Requirements: Never hide an obligation inside a definition (e.g., defining "Delivery" to include a requirement that the goods be shipped via FedEx). Obligations belong in the body of the contract.

The Internal Numbering System

A consistent numbering system (e.g., 1, 1.1, 1.1(a)) is vital for cross-referencing. The MSCD recommends avoiding "Above" and "Below" references (e.g., "See section 4.2 above") because they are prone to error when clauses are moved during negotiation. Instead, use absolute references.

Implementing the MSCD: A Step-by-Step Practical Field Guide

Transitioning an entire organization's template library to the MSCD standard is a significant engineering task. Follow these steps for a successful implementation:

Phase 1: Audit and Categorization

Review existing templates to identify "Red Flags":

1. Count the occurrences of "shall" and test them against the Categories of Language.
2. Identify doublets and triplets (e.g., "assign, transfer, and set over").
3. Search for archaisms like "witnesseth," "whereas," and "heretofore."

Phase 2: Developing the Style Guide

Create a customized internal style guide based on the Fifth Edition of the MSCD. This guide should serve as the "Standard Operating Procedure" (SOP) for all internal drafters. It must define the preferred modal verbs, punctuation standards (such as the serial comma), and layout preferences.

Phase 3: Template Reconstruction

Rewrite core templates from the ground up. Do not attempt to "clean up" old drafts; the structural flaws are often too deep. Use the MSCD principles to build modular clauses that can be assembled like code components.

Phase 4: Training and Quality Assurance

Drafting is a skill that requires practice. Provide legal teams with workshops focused on the "Categories of Meaning." Implement a peer-review process where drafts are audited for compliance with the new style guide.

Case Studies and Troubleshooting Common Errors

The value of the MSCD is best seen in the prevention of "failure modes"—scenarios where poor drafting leads to operational or legal failure.

Case Study: The Misplaced Modifier

In a famous dispute involving a Canadian telecommunications company, the presence of a single comma in a contract allowed a party to terminate an agreement early, resulting in a \$2 million loss. The MSCD provides specific rules for **Syntactic Ambiguity**, particularly concerning the "Rule of the Last Antecedent." By applying Adams' rules for list structures and comma usage, this ambiguity would have been eliminated.

Troubleshooting: The "Represent and Warrant" Trap

Many drafters use "represents and warrants" as a standard introductory phrase for facts. However, if a statement is a "representation," the remedy for it being false is often rescission and tort damages. If it is a "warranty," the remedy is contract damages. By combining them, drafters create uncertainty about the available remedies. The MSCD suggests using "states" or simply being clear about whether the statement is a representation or a warranty based on the intended remedy.

Handling "Provisos"

The phrase "provided that" (the proviso) is often used to create exceptions, conditions, or additional duties, making it the "Swiss Army Knife" of bad drafting. The MSCD recommends replacing provisos with specific, dedicated sentences. For example, instead of "The Buyer shall pay \$100, provided that if the goods are damaged, the price is \$50," use "The Buyer shall pay \$100. But if the goods are damaged, the Buyer shall instead pay \$50."

Broader Implications for Legal Technology and AI

As the legal industry moves toward **Computational Law** and AI-driven contract analysis, the principles of the MSCD become even more critical. Large Language Models (LLMs) and automated drafting systems perform best

when the input data—the contract prose—follows a consistent, logical structure. Kenneth A. Adams' work essentially provides the "Syntax Rules" for the next generation of legal tech. Contracts written in MSCD style are more easily parsed by software, allowing for better risk scoring, automated extraction of obligations, and more accurate legal analytics.

Ultimately, *A Manual of Style for Contract Drafting* is not just a book for lawyers; it is a manual for anyone involved in the creation of commercial value. By treating contract prose as a technical asset rather than a literary exercise, organizations can transform their legal departments from cost centers into drivers of efficiency and clarity. Whether you are using the Third, Fourth, or the newly expanded Fifth Edition, the goal remains the same: the pursuit of the "limited universe" of clear, unambiguous contract language.

Tags: #Kenneth A. Adams #Contract Drafting #Legal Style #MSCD 5th Edition #Technical Writing

