

ASPEN COURSEBOOK SERIES

Cynthia M. Adams • Peter K. Cramer

A Practical Guide to Drafting Contracts

From Concept to Closure

SECOND EDITION

Cynthia M. Adams, Clinical Professor of Law, Indiana University Robert H. McKinney School of Law
Peter K. Cramer, former Assistant Dean for Graduate Programs, Washington University School of Law; and former Associate Director of The Center for Global Legal English, Georgetown University Law Center

From concept to closure, **A Practical Guide to Drafting Contracts** provides detailed instruction for drafting contracts. Moreover, it teaches readers how to adapt *existing* contracts and forms to the specific needs of their client—as is frequently done by lawyers in legal practice. Step-by-step instruction and examples unpack the purpose of each provision for a wide range of (domestic) contracts, and integrate the basic principles that apply to both domestic and international transactions. Practice exercises further develop drafting skills and a working knowledge of the language and syntax of contract law.

Indispensable in law school and beyond, **A Practical Guide to Drafting Contracts** features:

- **Step-by-step instruction** through the entire drafting process
- **In-depth explanations and helpful examples**
- **Insights into the strategic decisions** behind drafting contracts
- **Hands-on exercises**
 - to raise awareness of commonly occurring contract provisions
 - to encourage use of phrasing appropriate to audience and purpose
 - to build familiarity with the legal principles of contracts

- to practice modifying forms and contracts drafted by other parties
- **Discussion of U.S. law** regarding certain contract provisions and drafting issues
- **A companion website with numerous resources for teaching and learning**, including more exercises and drafting assignments.

Features that facilitate understanding for non-native speakers:

- **Examples, exercises and explanations** written for non-native speakers
- **Annotated definitions of business and legal terms**

New to the Second Edition:

- **Enhanced coverage** of negotiating and drafting contracts in the United States
- **Mind-mapping exercises** that help learners think deeply about key contract provisions and their effect on other important aspects of the contract
- **New contract simulations and drafting exercises**
- **Clear signposting of text and exercises** specifically written for non-native speakers

www.AspenPublishing.com

10052790-0002

ISBN 978-1-5438-1062-2 9 0000



FPO

Adams
Cramer

A Practical Guide to Drafting Contracts
From Concept to Closure

SECOND
EDITION



A Practical Guide to Drafting Contracts

From Concept to Closure

SECOND EDITION



ASPEN
PUBLISHING

*A Practical Guide to
Drafting Contracts*

EDITORIAL ADVISORS

Rachel E. Barkow

*Segal Family Professor of Regulatory Law and Policy
Faculty Director, Center on the Administration of Criminal Law
New York University School of Law*

Erwin Chemerinsky

*Dean and Jesse H. Choper Distinguished Professor of Law
University of California, Berkeley School of Law*

Richard A. Epstein

*Laurence A. Tisch Professor of Law
New York University School of Law
Peter and Kirsten Bedford Senior Fellow
The Hoover Institution
Senior Lecturer in Law
The University of Chicago*

Ronald J. Gilson

*Charles J. Meyers Professor of Law and Business
Stanford University
Marc and Eva Stern Professor of Law and Business
Columbia Law School*

James E. Krier

*Earl Warren DeLano Professor of Law
The University of Michigan Law School*

Tracey L. Meares

*Walton Hale Hamilton Professor of Law
Director, The Justice Collaboratory
Yale Law School*

Richard K. Neumann, Jr.

*Alexander Bickel Professor of Law
Maurice A. Deane School of Law at Hofstra University*

Robert H. Sitkoff

*John L. Gray Professor of Law
Harvard Law School*

David Alan Sklansky

*Stanley Morrison Professor of Law
Faculty Co-Director, Stanford Criminal Justice Center
Stanford Law School*

ASPEN COURSEBOOK SERIES

*A Practical Guide to
Drafting Contracts
From Concept to Closure*

Second Edition

CYNTHIA M. ADAMS

Clinical Professor of Law

Indiana University Robert H. McKinney School of Law

PETER K. CRAMER

Former Assistant Dean for Graduate Programs

Washington University School of Law

Former Associate Director, Center for Global Legal English

Georgetown University Law Center



Copyright © 2020 Aspen Publishing. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.AspenPublishing.com.

Cover image: Illus_man/Shutterstock

To contact Customer Service, e-mail customer.service@aspenpublishing.com, call 1-800-950-5259, or mail correspondence to:

Aspen Publishing
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-1-5438-1062-2

Library of Congress Cataloging-in-Publication Data

Names: Adams, Cynthia M. (Cynthia Matson), author. | Cramer, Peter K., author.

Title: A practical guide to drafting contracts: from concept to closure / Cynthia M. Adams, Clinical Professor of Law, Indiana University Robert H. McKinney School of Law; Peter K. Cramer, Former Assistant Dean for Graduate Programs, Washington University School of Law, Former Associate Director, Center for Global Legal English, Georgetown University Law Center.

Description: Second edition. | Frederick, MD: Aspen Publishing, [2020] | Series: Aspen coursebook series | Includes bibliographical references and index. | Summary: "A law school coursebook on drafting contracts"—Provided by publisher.

Identifiers: LCCN 2019053775 | ISBN 9781543810622 (paperback) | ISBN 9781543820898 (ebook)

Subjects: LCSH: Contracts—Language. | International business enterprises—Law and legislation. | Legal composition. | English language—Textbooks for foreign speakers. | Contracts—United States—Language. | LCGFT: Textbooks.

Classification: LCC K840.A925 2020 | DDC 808.06/6346—dc23

LC record available at <https://lcn.loc.gov/2019053775>

About Aspen Publishing

Aspen Publishing is a leading provider of educational content and digital learning solutions to law schools in the U.S. and around the world. Aspen provides best-in-class solutions for legal education through authoritative textbooks, written by renowned authors, and breakthrough products such as Connected eBooks, Connected Quizzing, and PracticePerfect.

The Aspen Casebook Series (famously known among law faculty and students as the “red and black” casebooks) encompasses hundreds of highly regarded textbooks in more than eighty disciplines, from large enrollment courses, such as Torts and Contracts to emerging electives such as Sustainability and the Law of Policing. Study aids such as the *Examples & Explanations* and the *Emanuel Law Outlines* series, both highly popular collections, help law students master complex subject matter.

Major products, programs, and initiatives include:

- **Connected eBooks** are enhanced digital textbooks and study aids that come with a suite of online content and learning tools designed to maximize student success. Designed in collaboration with hundreds of faculty and students, the Connected eBook is a significant leap forward in the legal education learning tools available to students.
- **Connected Quizzing** is an easy-to-use formative assessment tool that tests law students’ understanding and provides timely feedback to improve learning outcomes. Delivered through CasebookConnect.com, the learning platform already used by students to access their Aspen casebooks, Connected Quizzing is simple to implement and integrates seamlessly with law school course curricula.
- **PracticePerfect** is a visually engaging, interactive study aid to explain commonly encountered legal doctrines through easy-to-understand animated videos, illustrative examples, and numerous practice questions. Developed by a team of experts, PracticePerfect is the ideal study companion for today’s law students.
- The **Aspen Learning Library** enables law schools to provide their students with access to the most popular study aids on the market across all of their courses. Available through an annual subscription, the online library consists of study aids in e-book, audio, and video formats with full text search, note-taking, and highlighting capabilities.
- Aspen’s **Digital Bookshelf** is an institutional-level online education bookshelf, consolidating everything students and professors need to ensure success. This program ensures that every student has access to affordable course materials from day one.
- **Leading Edge** is a community centered on thinking differently about legal education and putting those thoughts into actionable strategies. At the core of the program is the Leading Edge Conference, an annual gathering of legal education thought leaders looking to pool ideas and identify promising directions of exploration.

For Alex, Zach, and Forrest.
CMA


For Cathy, Felix, Lena, and my parents.
PKC



Summary of Contents


<i>Table of Contents</i>	xi
<i>Preface</i>	xxiii
<i>Acknowledgements</i>	xxv
<i>About the Authors</i>	xxvii
Chapter 1 Introduction	1
Chapter 2 Preliminary Drafting Concerns	9
Chapter 3 Contract Structure and Formatting	23
Chapter 4 Defined Terms	41
Chapter 5 The Beginning of the Contract	55
Chapter 6 The Importance of Clear and Concise Writing	67
Chapter 7 Basic Categories of Contract Provisions	75
Chapter 8 Word Choice	115
Chapter 9 Sentence Structure	145
Chapter 10 Core Provisions	177
Chapter 11 Exit Provisions	231
Chapter 12 Alternative Dispute Resolution Provisions	245
Chapter 13 Miscellaneous Provisions	267
Chapter 14 The End of the Contract	321
<i>Glossary of Terms</i>	327
<i>Index</i>	337

Table of Contents

<i>Preface</i>	xxiii
<i>Acknowledgements</i>	xxv
<i>About the Authors</i>	xxvii
Chapter 1 <i>Introduction</i>	1
1.1 Overview	1
1.2 Learning to draft from scratch and from precedents	1
1.3 Learning how to critically review contract provisions to create your own provision	3
1.4 Contract drafting for non-native English speakers	5
1.5 Final words of caution	6
Exercises	7
Exercise 1-1 Finding headings in a contract	7
Exercise 1-2 Drafting a provision	7
🌐 Exercise 1-3 Finding words in a contract I	7
🌐 Exercise 1-4 Finding words in a contract II	8
Exercise 1-5 The new deal—phone call with Cynthia Adler	8
Chapter 2 <i>Preliminary Drafting Concerns</i>	9
2.1 Authoring the draft and ethical drafting	10
2.2 Understanding the business deal	12
2.3 The contract’s audience	13
2.4 The importance of governing law	14
2.4.1 Contract law in the United States	14
2.4.2 Canons of contract interpretation	15
2.4.3 “Governing law” clauses	16


2.5 Using precedent	16
Exercises	20
Exercise 2-1 Drafting provisions that comply with governing law	20
Exercise 2-2 The new deal—second phone call with Cynthia Adler	22
Exercise 2-3 The new deal—making a list of questions	22
Chapter 3 <i>Contract Structure and Formatting</i>	23
3.1 Basic parts of a contract	23
3.1.1 The beginning of a contract	23
3.1.2 The middle of a contract	25
a. Core provisions	25
b. Exit provisions	26
c. Alternative dispute resolution provisions	27
d. Miscellaneous provisions	28
3.1.3 The end of a contract	29
3.2 Headings	29
3.3 Numbering formats	30
3.4 Font and white space	32
Exercises	33
Exercise 3-1 Comparing contract structures	33
Exercise 3-2 Brainstorming prior to drafting	34
Exercise 3-3 Drafting contract headings I	35
Exercise 3-4 Drafting contract headings II	36
Exercise 3-5 Reconstruct a contract	37
 Exercise 3-6 Add to your vocabulary list	38
Exercise 3-7 The new deal—first outline of the contract	38
Chapter 4 <i>Defined Terms</i>	41
4.1 Creating defined terms	42
4.2 Drafting definitions	44
4.2.1 Do not create one-shot definitions	44
4.2.2 Do not include substantive provisions in definitions	44
4.2.3 Do not use “circular” definitions	45
4.2.4 Do not provide a definition of a defined term within another definition	45
4.2.5 Use of <i>including</i> in the definition	45
4.2.6 Use of <i>excluding</i> in the definition	46
4.2.7 Precisely identify external documents, statutes, or treaties in definitions	46


4.3 Where to place a definition	47
4.3.1 Embedded definitions	47
a. Contextual definition	47
b. Definition sentence	47
4.3.2 A definition section	48
4.4 Consistently use the defined term	50
Exercises	50
Exercise 4-1 Defining <i>Person</i>	50
Exercise 4-2 Fill in the defined term	50
Exercise 4-3 Define a category I	52
Exercise 4-4 Define a category II	52
Exercise 4-5 Compose definitions	52
Exercise 4-6 Redrafting definitions	52
Exercise 4-7 Consistency check	53
 Exercise 4-8 Add to your vocabulary list	53
Exercise 4-9 The new deal—drafting defined terms	54
 Chapter 5 <i>The Beginning of the Contract</i>	 55
5.1 The title	55
5.2 The introductory statement	57
5.2.1 Referencing the contract	57
5.2.2 The date of the contract	57
5.2.3 Introducing the contracting parties	58
5.3 The recitals	61
5.4 The transitional clause	62
5.5 Note: Beginning a lengthy, complex contract	62
Exercises	63
Exercise 5-1 Phrasing of introductory statement	63
Exercise 5-2 Phrasing of recitals	63
Exercise 5-3 Content of recitals	63
Exercise 5-4 Entity names	65
 Exercise 5-5 Add to your vocabulary list	65
Exercise 5-6 The new deal—drafting the beginning of the contract	65
 Chapter 6 <i>The Importance of Clear and Concise Writing</i>	 67
6.1 The key principles for good drafting	68
6.2 Avoiding ambiguity	68
6.2.1 Semantic ambiguity	69








6.2.2	Syntactic ambiguity	69
6.2.3	Contextual ambiguity	70
6.3	Vagueness	70
	Exercises	72
Exercise 6-1	Ambiguity I	72
Exercise 6-2	Ambiguity II	72
Exercise 6-3	Ambiguity III	72
 Exercise 6-4	Add to your vocabulary list	73

Chapter 7 *Basic Categories of Contract Provisions* 75


7.1	Obligations and corresponding rights	77
7.1.1	Purpose of obligations	77
7.1.2	Drafting obligations	78
7.1.3	Obligations limited to the contracting parties	81
7.1.4	Corresponding rights	82
7.2	Discretionary powers	83
7.2.1	Use the operative word <i>may</i>	83
7.2.2	Attempting to expand or restrict a discretionary power	84
7.2.3	Using <i>is not required to</i>	84
7.3	Procedural statements	85
7.4	Conditions	86
7.4.1	The condition stated in a dependent clause or a phrase and the consequence stated in an independent clause	86
7.4.2	The consequence stated in a phrase and the condition stated in an independent clause	88
7.4.3	Sentence expressly stating the condition	88
7.5	Declarations	88
7.5.1	Representations	88
a.	Types of representations	89
b.	Drafting representations	89
7.5.2	Acknowledgements	91
7.6	Express warranties	91
7.7	Performatives	92
7.8	Exceptions	93
7.8.1	The rule and the exception stated in one sentence	93
7.8.2	The rule and the exception stated in separate sentences	94
7.8.3	General exceptions to the entire contract	94
	Exercises	95
Exercise 7-1	Understanding the use of modals	95
Exercise 7-2	Evaluating modals in the context of contracts	95





Exercise 7-3	Evaluating modals in a contract	100
Exercise 7-4	Turning right provisions into obligation provisions	101
Exercise 7-5	Discretionary powers I	102
Exercise 7-6	Discretionary powers II	102
Exercise 7-7	Conditions	103
Exercise 7-8	Rules and exceptions	104
Exercise 7-9	Adding provisions to a contract	106
 Exercise 7-10	Add to your vocabulary list	106
Exercise 7-11	The new deal—identifying basic provisions	106
Chapter 8	<i>Word Choice</i>	115
8.1	Choosing simple and concise words	115
8.1.1	Legalese	116
8.1.2	Coupled synonyms	117
8.1.3	Coupled words and numerals	120
a.	Generally	120
b.	Special considerations for expressing monetary amounts	121
8.2	Avoiding ambiguities arising from single words or phrases	122
8.2.1	Confusing words	122
8.2.2	Words and phrases conveying time standards and duration	124
a.	Time standards	124
b.	Miscellaneous expressions of duration	126
8.3	<i>Deem</i>	128
8.4	Phrases to avoid	128
8.4.1	And/or	129
8.4.2	Provisos	129
8.5	Avoiding contractions	131
8.6	Choosing words that allocate risk	131
Exercises		133
Exercise 8-1	Replacing legalese I	133
Exercise 8-2	Drafting a provision based on precedents	134
Exercise 8-3	Replacing legalese II	134
Exercise 8-4	Replacing coupled synonyms	135
Exercise 8-5	Numbers as numerals or words	135
Exercise 8-6	Composing provisions—time references	136
Exercise 8-7	Turning notes into provisions	138
Exercise 8-8	And/or	138
Exercise 8-9	Deem	139



Exercise 8-10	Provisos	139
Exercise 8-11	Notwithstanding	141
Exercise 8-12	Allocation of risk I	141
Exercise 8-13	Defining <i>adversely</i> in greater detail	142
Exercise 8-14	Allocation of risk II	143
 Exercise 8-15	Add to your vocabulary list	144
Exercise 8-16	The new deal—drafting the provisions	144
Chapter 9	<i>Sentence Structure</i>	145
9.1	Drafting simple and concise sentences	145
9.2	Subject, verb, and object placement	146
9.3	Active voice versus passive voice	147
9.4	Nominalizations	149
9.4.1	Generally	149
9.4.2	Empty verbs in nominalizations	149
9.5	Dangling participles	151
9.6	Drafting advice for non-native speakers	152
9.6.1	General rules for article usage	152
9.6.2	Count versus non-count nouns	154
9.6.3	Article usage in contract drafting	155
9.6.4	Use of pronouns	156
9.6.5	Non-defining use of the relative pronoun	157
9.6.6	Defining use of the relative pronoun	157
9.6.7	Choosing appropriate prepositions	159
9.6.8	Dictionaries	159
9.6.9	Large collections of legal text	160
9.7	Enumerating and tabulating complex sentences	160
9.7.1	Enumeration	160
9.7.2	Tabulation	162
a.	Sentence form	163
b.	List form	164
9.7.3	Sub-tabulation	166
9.7.4	Avoid overusing enumeration and tabulation	166
Exercises		166
Exercise 9-1	Sentence length	166
Exercise 9-2	Subject, verb, and object placement	167
Exercise 9-3	Use of active voice versus passive voice I	167
Exercise 9-4	Use of active voice versus passive voice II	169
Exercise 9-5	Nominalizations	169
Exercise 9-6	Empty subjects	170

Exercise 9-7	Restrictive and non-restrictive use of relative clauses	171
Exercise 9-8	Dangling participles	173
Exercise 9-9	Tabulation	173
 Exercise 9-10	Prepositions I	174
 Exercise 9-11	Prepositions II	174
 Exercise 9-12	Using the correct article	175
 Exercise 9-13	Using the indefinite or definite article I	175
 Exercise 9-14	Using the indefinite or definite article II	175
 Exercise 9-15	Explaining the use or omission of the indefinite or definite article	176
 Exercise 9-16	Add to your vocabulary list	176
Exercise 9-17	The new deal—drafting the provisions	176
Chapter 10	<i>Core Provisions</i>	177
10.1	Primary performance or primary obligation provisions	178
10.1.1	Primary performatives	179
10.1.2	Exchanging primary obligations	180
10.2	Term of the contract	181
10.2.1	Effective date	181
10.2.2	Duration	182
10.2.3	Extension or renewal	182
10.3	Monetary provisions	183
10.4	Closing provisions	185
10.4.1	Place, date, and time	185
10.4.2	Deliveries	186
10.5	Representations and risk-shifting	187
10.5.1	Knowledge qualifiers	187
10.5.2	Materiality qualifiers	188
10.5.3	Exclusions	189
10.5.4	Timing	190
a.	When the accuracy of a representation is determined	190
b.	“Bring-down” provisions	191
c.	Survival clause	192
10.6	Warranties	195
10.6.1	Express warranties	196
10.6.2	Implied warranty of merchantability	198
10.6.3	Implied warranty for a particular purpose	199

10.7 Warranty disclaimer clauses	199
10.7.1 Disclaimers of express warranties	199
10.7.2 Disclaimers of implied warranties	200
10.7.3 “Conspicuous” requirement	201
10.8 Non-competition clauses	202
10.9 Confidentiality clauses	205
10.9.1 Confidential information: trade secrets versus non-trade secrets	206
10.9.2 Basic components of a confidentiality clause	207
10.9.3 Defining confidential information	208
10.9.4 The receiving party’s restrictive obligation	211
10.9.5 The receiving party’s duty to notify of unauthorized use or disclosure	213
10.9.6 The receiving party’s duty to return information	213
10.9.7 The holding party’s remedies	214
10.9.8 Summary	214
10.10 Indemnifications	214
10.10.1 Indemnification clauses	214
10.10.2 Escrow or insurance clauses	218
Exercises	219
Exercise 10-1 Performatives	219
Exercise 10-2 Exchanging primary obligations	219
Exercise 10-3 Analyzing effective date and duration clauses	220
Exercise 10-4 Extension/renewal clauses I	220
Exercise 10-5 Extension/renewal clauses II	220
Exercise 10-6 Effective date—duration—extension	221
Exercise 10-7 Monetary provisions	222
Exercise 10-8 Closing provisions	223
Exercise 10-9 Representations: knowledge-shifting qualifiers	224
Exercise 10-10 Representations: materiality qualifiers	225
Exercise 10-11 Warranties: disclaimers	225
Exercise 10-12 Non-competition clauses	225
Exercise 10-13 Confidentiality clauses	225
Exercise 10-14 Indemnifications	226
🌐 Exercise 10-15 Term—effective date	229
🌐 Exercise 10-16 Add to your vocabulary list	229
Exercise 10-17 The new deal—drafting the core provisions	229

Chapter 11	<i>Exit Provisions</i>	231
11.1	Events triggering a premature ending	232
11.2	Premature ending by mutual consent	232
11.3	Premature ending by a change in law	232
11.4	Drafting “event of default” clauses	233
11.4.1	Immediate event of default	233
11.4.2	Potential event of default	233
11.4.3	Remedies	235
a.	Termination	235
b.	Acceleration	235
c.	Money damages and “limitation on damage” clauses	236
d.	Indemnifications	237
e.	Liquidated damages	237
f.	Specific performance	237
g.	Attorneys’ fees	237
h.	Punitive damages	237
11.5	Post-termination obligations and survival clauses	238
	Exercises	238
Exercise 11-1	Comparing termination clauses	238
Exercise 11-2	Revising a termination clause	239
Exercise 11-3	Comparing “right to cure” provisions	239
Exercise 11-4	Revising a “right to cure” provision	241
Exercise 11-5	Termination clauses—bankruptcy	241
Exercise 11-6	Comparing termination clauses	241
Exercise 11-7	Attention to detail in termination clauses	242
Exercise 11-8	Identifying effects of termination on contracting parties	242
Exercise 11-9	Comparing survival clauses	243
Exercise 11-10	Revising a survival clause	243
 Exercise 11-11	Add to your vocabulary list	243
Exercise 11-12	The new deal—drafting the exit provisions	243
Chapter 12	<i>Alternative Dispute Resolution Provisions</i>	245
12.1	Overview	245
12.2	Informal negotiation provisions	248
12.3	Mediation provisions	249
12.4	Arbitration provisions	252

Exercises		257
Exercise 12-1	Mediation clauses I	257
Exercise 12-2	Negotiation clauses I	259
Exercise 12-3	Negotiation clauses II	259
Exercise 12-4	Arbitration clauses I	259
Exercise 12-5	Arbitration clauses II	262
Exercise 12-6	Arbitration clauses III	262
Exercise 12-7	Arbitration clauses IV	262
Exercise 12-8	Arbitration clauses V	263
 Exercise 12-9	Mediation clauses II	264
 Exercise 12-10	Mediation clauses III	264
 Exercise 12-11	Arbitration clauses VI	264
 Exercise 12-12	Add to your vocabulary list	265
Exercise 12-13	The new deal—drafting the ADR provisions	265
Chapter 13	<i>Miscellaneous Provisions</i>	267
13.1	“Governing law” clause	269
13.2	“Forum selection” clause	274
13.3	“Choice of language” clause	276
13.4	“Force majeure” clause	277
13.4.1	Defining the force majeure event	278
13.4.2	Exceptions to excusing non-performance	282
13.4.3	Giving notice of the force majeure event	282
13.4.4	Giving proof of the force majeure event	282
13.4.5	Overcoming the force majeure event	283
13.4.6	Update reports	283
13.4.7	Notice of the end of a force majeure event	283
13.4.8	Termination or renegotiation of the contract	283
13.4.9	Remedies	283
13.4.10	Example “force majeure” clause	284
13.5	“Notice” clause	284
13.6	“Assignment” and “delegation” clauses	287
13.6.1	“Assignment” and “anti-assignment” clauses	288
13.6.2	“Delegation” and “anti-delegation” clauses	292
13.7	“Successors and assigns” clause	295
13.8	“Merger” clause	298
13.9	“No oral modification” and “no oral waiver” clauses	300
13.10	“Severability” clause	303
13.11	“Counterparts” clause	306

Exercises		306
Exercise 13-1	“Force majeure” clauses I	306
Exercise 13-2	“Force majeure” clauses II	308
Exercise 13-3	“Force majeure” clauses III	309
Exercise 13-4	“Notice” clauses	309
Exercise 13-5	“Governing law” and “forum selection” clauses	310
Exercise 13-6	“Governing law” clauses I	311
Exercise 13-7	“Choice of language” clauses	312
Exercise 13-8	“Anti-assignment” and “anti-delegation” clauses	313
Exercise 13-9	“Assignment” and “anti-assignment” clauses	314
Exercise 13-10	“Successors and assigns” clauses	314
Exercise 13-11	“Severability” clauses I	314
Exercise 13-12	“Severability” clauses II	316
Exercise 13-13	“Waiver” clauses	316
Exercise 13-14	“Counterparts” clauses I	317
Exercise 13-15	Mind-mapping	318
 Exercise 13-16	“Counterparts” clauses II	318
 Exercise 13-17	Add to your vocabulary list	318
Exercise 13-18	The new deal—drafting the miscellaneous provisions	319
Chapter 14	<i>The End of the Contract</i>	321
14.1	Drafting the concluding statement	321
14.2	Signature blocks	322
14.3	Seals	324
14.4	Attachments	325
Exercise		325
Exercise 14-1	The new deal—drafting the end of the contract	325
<i>Glossary of Terms</i>		327
<i>Index</i>		337

Preface

Years ago, as we sat in a coffeehouse having a friendly chat, the conversation turned to our shared professional passion—teaching law students—and we made the decision to apply our combined knowledge of law, linguistics, teaching, and transactional practice to the project of writing a book. The result, *Drafting Contracts in Legal English*, was widely read by foreign-trained lawyers and international law students, as we had intended, but we were pleased to discover that it was also being successfully used in mainstream law school courses.

For this reason, we have retitled the second edition, *A Practical Guide to Drafting Contracts*. We have added more text and exercises geared toward American law students and lawyers, while continuing to include text and exercises (signposted with a globe icon) specifically written for ESL readers.

The reality of law practice is that lawyers must have the expertise to review contract drafts and their precedents. They must be able to identify issues and remove or modify problematic text for various types of contracts and transactions. They must be able to draft a contract that complies with the governing law, addresses the specific goals of contracting parties, and preserves the interests of their client.

A Practical Guide to Drafting Contracts, Second Edition, conveys all of these essential skills by focusing on the *process of drafting contracts* and on *phrasing contract provisions clearly and concisely*. Lucid text and helpful annotations define and explain the language of contracts, as well as business and legal terminology. Extensive end-of-chapter exercises give readers a working knowledge of contract provisions, drafting strategies, and contract law. Exercises that reference contracts (which can be found online at <https://www.AspenPublishing.com/Adams-Contracts2>) build the lawyering skills that are so necessary to legal practice: the ability to draft a contract from scratch, or to revise and adapt a precedent contract for a new purpose.

Peter K. Cramer & Cynthia M. Adams
November 2019

