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Legal Hoarder Tendencies: Do Your Contracts Show Your Age?

Litigation and Dispute Resolution



Some attorneys have hoarder tendencies. They hold on to outdated contract writing practices long after these practices no longer meet their original function or need. Most of us have embraced that fedoras and huge shoulder pads are never coming back (at least not any time soon). In the same way, we should embrace that our needs have changed since the Victorian era. Purging outdated practices from our contract templates, just like purging outdated clothing from our closets, is a way to stay relevant and in touch with reality. Below is a list of good starting points for updating your templates.

Legalese is dated at best and snobby at worst

Contracts will be more clear if "during such time as" is replaced with "while" or "during," "until such time as" is replaced with "until," "in the event that" is replaced with "if," "prior to" is replaced with "before," and "set forth in" is replaced with "in." There is absolutely no reason a layperson, including your business partner, should have to comb through archaic English to understand the business or legal terms of their agreements. The contract will be more self-explanatory, and hence more likely to be followed, if your business partners do not require a lawyer to decipher every sentence.

The emphatic, rhetorical emphasis belongs in Shakespearean English

Phrases such as "at no time," "wholly and fully," "under no circumstances," "in any manner whatsoever," and "of any kind" usually do not affect a sentence's meaning and should often be deleted. After all, there is no difference between "The user will at no time acquire a title to software" and "The user will not acquire a title to software." If you have a need to use emphatic, rhetorical emphasis, perhaps you should channel that energy into more creative writing endeavors. After all, many lawyers are closet writers. Case in point: I can't stop writing for the *ACC Docket* — online and in

print.

You only need one space after punctuation

Unlike people, spaces are not social creatures. They do well alone. The use of two spaces after punctuation used to be a norm with typewriters, but there is really no need to continue this Victorian habit. Microsoft Word (or your word processing software of choice) is not just a slightly improved version of the typewriter; now *only one* space is needed. Using an extra space is inefficient because it requires an extra keystroke for every sentence and creates a functionless hole between sentences.

Avoid references to outdated technology

We have entered the era of email and phones. It is time to acknowledge that faxes are no longer with us. Requiring a notice to be delivered by fax is at best eccentric and at worst burdensome. Today, in most contexts, requiring notice by fax is equivalent to requiring a party to provide notice using telegraph, Morse code, or Latin. "Are you kidding me?" is an appropriate response.

"Couplets," "doublets," and even "triplets" waste space and time

Lawyers enjoy saying the same thing twice or even three times in row. For example, why say "by and between" when "between" means the same thing? What about "null and void" when "void" captures the meaning? My favorites are "right, title, and interest" and "interpreted, construed, and governed." Why not simply say "interest" and "governed" instead? Saying the same thing twice or thrice does not make it more meaningful than saying it once. Again, words, unlike people, are not social creatures. Your couplets and triplets will be perfectly fine if you break them up.

Gender-specific language is dated

Using "he," "his," or "him" to refer to a member of a group may at best offend and at worst mislead. You have three options that are all (at least to some extent) dissatisfying. You may:

- (1) Use a plural pronoun,
- (2) Repeat the noun, or
- (3) Use a feminine pronoun in addition to a masculine pronoun (e.g. "he or she").

The most appropriate or satisfying option may change based on the context, but so long as you use one of the options consistently your contract prose won't be dated, offensive, or misleading.

Of course, these are generalities. In no way do I imply that you should be perfecting the templates of others, unless they are making their purpose and intent unclear. In fact, doing so may be annoying and in some cases may delay closing a deal. These are simply starting points for self-improvement. And there may always be exceptions. Depending on context, an emphatic emphasis or a "triplet" may be a great choice. These practices, however, are not modern day Standard English norms. You are allowed to use an old-fashioned writing style only if you have good reason, not because you failed to do your spring cleaning.

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