Drafting Exercises

Introduction

Content

This document contains ten drafting exercises for use when teaching legal English to lawyers and other legal professionals. The exercises reflect situations encountered in everyday legal writing.

The appendix contains model answers for the exercises.

Further assistance

Please do not hesitate to contact the author of this exercise, Rupert Haigh, by email (rupert.haigh@forum-legal.com) if you require further assistance or information. You may also wish to visit our online Legal English Store at www.legalenglishstore.com for further legal English products.

1 Redrafting Exercise: Basic Linguistic Elements

Each of the paragraphs below contains one or more serious errors or omissions. These errors generally relate to issues of grammar, spelling and word choice rather than style. Find the errors or omissions and correct the paragraphs. Award one mark for each correctly identified and corrected error or omission.

(1) If the Vendor fails or is unable to perform any obligation what the Vendor has agreed to carry out in accordance to paragraph 4 hereat, the Purchaser shall not be obliged to complete the sale and purchase of the shares.

(2) Dear Sir,

Thank you for Your letter of 16 May.

With regard to the question of the share sale. Our clients advise us that there are a number or outstanding issues to be resolved.

(3) The parties of this contract agree that the price list set out at Schedule 2 can not be varied without written consent of all the parties hereto.

(4) Canford Ltd stipulate that the good must be taken directly in the wearhouse situate at 4 London Drive, Wallingford.

(5) It is hereby agreed that, this agreement may just be terminated with written notice delivered as normally to an representative to the purchaser.
(6) It is our belief that this agreed is not only unvalid but it is also unlawful. In our view, clause 4 is not at all how it looks like on first appearance.

(7) In the event that the purchasers payments are late by more than twenty-eight days, he will be subject to a penalty of $3,500,000.

(8) We are sorry that the MD of the plc was unable to make the AGM this pm. Unfortunately he was in a hangover, and was unable to supervise the proceedings.

(9) The company who will be responsible for the factoring operation is headed by Claus Peterson, whom is an experienced practiser in this field.

(10) The Purchaser agrees to affect a purchase of not less than 20 units for each order.

(11) It is our view that Ms. Hopkins has showed considerable flare in this area, and that she is certainly the principle authority on these matters within the company.

(12) The party to this agreement who’s interests are compromised will be illegible to compensation for loss of value of factory sight.

2 Colloquial to Formal

Rewrite the following colloquial sentences in a formal manner appropriate to legal drafting.

1) Because you have signed this document you have given up your right to sue for any breaches.

2) Both the parties which have signed this agreement can bring it to an end if it turns out that the other party is not able to pay its debts.

3) Party A agrees that if party B gets sued by anyone for a reason to do with the distribution or sale of the products then party A will be responsible for any costs that result from this.

4) Party A has to pay all invoices sent by party B by 30 days after the day the goods which the invoices are for arrive at party A’s depot. If party A hasn’t paid the invoices in time, party B is allowed to charge penalty interest at the rate of 20%.

5) This agreement will last for a period of two years from the date on which it was signed by the parties, but unless either party ends it for one of the reasons set out in clause 5, it will be automatically renewed for further periods of two years.
3 Redrafting Exercise: Style

The following extracts from lawyers’ letters contain significant errors of style. Find the errors, then redraft the extracts.

(1) In the event that there is a waiver of the indemnity provisions by the vendor, a letter confirming the waiver must be produced by the vendor’s solicitor for the purpose of inspection by the purchaser.

(2) The first case was settled for £2,000, the second piece of litigation was disposed of out of court for £2,500, while the price of the agreement reached in the third suit was £5,500.

(3) Endeavours will be made to effect a settlement of this matter expeditiously.

(4) The exclusionary clause is already null and void by reason of the prior order and direction of the court. This being the case, the exclusionary clause can have no further force or effect.

(5) We acknowledge receipt of your letter of 12th March and the copy of the Lease Agreement enclosed therewith, and thank you for your prompt attention in this regard.

(6) My client has discussed your proposal to fill the drainage ditch with his partners.

(7) You may wish to give consideration to the fact that in all likelihood the anticipated legal costs incurred in the prosecution of this action may well be in excess of the amount recoverable from the defendant.

(8) My client is willing to settle this case for £7,500, to be paid to your client, and your client must immediately return the blueprints and specifications and must remove all his equipment from the property. Moreover, my client insists upon having replacement of the entire section of fence which your client took down, the replacement to be at your client’s expense.

It would be appreciated receiving communication of your instructions by no later than 12th March, however should you have any queries and/or comments, please do not hesitate to contact the undersigned. Thanking you in advance for your anticipated cooperation in this matter, we remain,

Yours faithfully,

(9) Mr Brown hit the windscreen of the car with his head, but as it was composed of celluloid he was unhurt.
Parliament was asked to enact a law providing for the annulment of the marriages of all couples who do not within three years of marriage have one or more children by Reverend Smythe, who is a bachelor.

It has been agreed between us that these payments will be made on their due dates and you will hand over a series of post-dated cheques to secure the same and there will be no question of any kind whatsoever that these payments will not be met that the cheques will be dishonoured for any reason and that this agreement will effectively clear up on the payments being made all the past situations regarding costs and disbursements provided of course we deliver to you VAT accounts for these payments that you are now making.

4 Letter-Writing Exercise: Repossession of Rented Property

The letters that follow relate to a situation in which a law firm called Ellis & Baxter act for the Tranmere Property Company Ltd, which is the landlord of leased commercial property at 10B Sinkley Avenue. The tenant of the property, Grange Tools Ltd, has fallen so far in arrears with the payment of rent that the landlord has no option but to commence legal proceedings. Such proceedings have now been issued.

Non-payment of rent is of course a fundamental breach of a lease agreement, and therefore the landlord is entitled to rescind the agreement. The aim of the legal proceedings will be to regain possession of the property and obtain a money judgement against the tenant. The money judgement will secure repayment of the accrued arrears of rent.

Your task is to read through the two letters and then compose a letter to Mr G Talbot of Grange Tools Ltd, which should:

- indicate to the tenant that his proposals are accepted;
- explain the procedure that will be followed;
- point out the consequences of non-compliance with the order that the landlord is seeking;
- enclose the schedule of arrears;
- ask him to confirm whether he is willing to accept such an order being made.

Letter 1: from tenant to landlord’s lawyer containing proposal

In this letter, the tenant produces some concrete proposals for settlement. These will have a significant bearing on the way in which the landlord approaches the proceedings, as the following letter from the solicitor to the landlord shows.

Mr G Talbot
Grange Tools Ltd
10B Sinkley Avenue
Dear Sirs

Re: lease of 10B Sinkley Avenue

I write further in this matter, and am now in a position to put forward proposals for settlement. As a token of my good faith, I enclose a cheque in the sum of £4,000.

My proposal is to pay double rent for the next three months, and then make three payments of £4,000, which will clear the arrears within six months.

I would like to clarify that my recent difficulties with paying the rent have been entirely the fault of difficult business conditions. Business is now improving markedly. However, I would stress that I will only be able to make these payments if a possession order is not made, and therefore my potential to earn income to clear the arrears is not destroyed.

I look forward to hearing from you on this proposal.

Yours faithfully

Mr G Talbot

Enc
Cheque

Letter 2: letter of advice from lawyer to landlord advising on tenant’s proposal

In this letter, the lawyer provides advice to the client in the light of the offer received from the tenant. He points out that the court will be unwilling to make an outright possession order given that the tenant has now made clear and concrete proposals for settlement, and suggests an alternative solution.
Dear Anna

Re: lease of 10B Sinkley Avenue

I have now received a letter from Mr Talbot (copy enclosed) in which he offers to clear the arrears within six months.

It is likely that the court would be sympathetic to this proposal. The judge would balance the long history of arrears against the offer to clear the arrears within a relatively short period of time. The argument Mr Talbot raises to the effect that he would lose his potential to earn income if an outright possession order were made would also be likely to prove persuasive. In the light of these factors, it is highly unlikely that the court would be prepared to make an outright possession order as previously contemplated.

In the circumstances, I suggest the correct approach would be to request an order for possession suspended on terms that Mr Talbot must comply with the terms of his proposed schedule of repayments. Of course, this means that you would not get possession of the property provided Mr Talbot kept up the payments specified in the order. However, if such an order were made, and Talbot subsequently defaulted, you would be able to ask the court bailiff to enforce the order without further notice. Talbot would then have to apply to the court again to suspend the bailiff’s warrant – which the court would only do if payment were shown to be forthcoming.

Please let me know if you are prepared to accept a suspended order as outlined above. Provided you agree, I will prepare a detailed schedule of the arrears and inform Mr Talbot that we will be asking the court to make a suspended possession order.

While writing, I also enclose your statement for signature.

Yours sincerely

Roland Carter

Enc

Copy letter
Statement
5. Drafting a Memo: Share Purchase Agreement

Read the following extract from a share purchase agreement. Then do the exercise below.

5.1 Neither of the Vendors shall (whether alone or jointly with another and whether directly or indirectly) carry on or be engaged or (except as the owner for investment of securities dealt in on a stock exchange and not exceeding 5 per cent in nominal value of the securities of that class) be interested in any Competing Business during a period of one year after Completion. For this purpose, Competing Business means a business:

(a) which involves any business carried on by the Company as at Completion; and

(b) which is carried on within the area in which the Company carries on business as at Completion.

5.2 Neither of the Vendors shall within a period of two years after Completion, directly or indirectly, solicit or endeavour to entice away from the Company, offer employment to or employ, or offer or conclude any contract for services with, any person who was employed by the Company at any time during the year prior to Completion.

5.3 Except so far as may be required by law and in such circumstances only after prior consultation with the Purchaser, neither of the Vendors shall at any time disclose to any person or use to the detriment of the Company any trade secret or other confidential information of a technical character which he or she holds in relation to the Company or its affairs.

5.4 Any provision of this Agreement (or of any agreement or arrangement of which it forms part) by virtue of which such agreement or arrangement is subject to registration under the Restrictive Trade Practices Act 1976 shall only take effect the day after particulars of such agreement or arrangement have been furnished to the Director General of Fair Trading pursuant to section 24 of that Act.

6.1 Each of the Vendors:

(a) Represents and warrants to the Purchaser in the terms of the Warranties and acknowledges that the Purchaser has entered into this Agreement in reliance upon the Warranties;

(b) Undertakes, without limiting the rights of the Purchaser in any way, if there is a breach of any Warranty in respect of the Company, to pay in cash to the Purchaser (or, if so directed by the Purchaser, to the Company) on demand a sum equal to the aggregate of:
I. the amount which, if received by the Company, would be necessary to put the Company into the position which would have existed had there been no breach of the Warranty in question; and
II. all Costs suffered or incurred by the Purchaser or the Company directly or indirectly, as a result of or in connection with such breach of warranty;

(c) agrees to waive the benefit of all rights (if any) which he or she may have against the Company, or any present or former officers or employee of the Company, on whom the Vendor may have relied in agreeing to any term of this Agreement or any statement set out in the Disclosure Letter and the Vendor undertakes not to make any claim in respect of such reliance.

6.2 Each of the Warranties shall be construed as a separate Warranty and (save as expressly provided to the contrary) shall not be limited or restricted by reference to or in inference from the terms of any other Warranty or any other term of this Agreement.

6.3 The rights and remedies of the Purchaser in respect of the Warranties shall not be affected by (i) Completion (ii) any investigation made into the affairs of the Company or any knowledge held or gained of any such affairs by or on behalf of the Purchaser (except for matters fairly and reasonably disclosed in the Disclosure Letter) or (iii) any event or matter whatsoever, other than a specific and duly authorised written waiver or release by the Purchaser.

6.4 The Vendors shall procure that (save only as may be necessary to give effect to this Agreement) neither the Vendors nor the Company shall do, allow or procure any act or omission before Completion which would constitute a breach of any of the Warranties if they were given at any and all times from the date hereof down to Completion or which would make any of the Warranties inaccurate or misleading if they were so given.

Exercise: write a memorandum

Write a memorandum, in language that a layperson can understand, setting out the answers to the questions posed below.

a) What limitations exist in respect of the vendors’ ability to recruit personnel employed by the Company?
b) What restrictions, prohibitions, and exceptions exist in relation to the vendors participating in a ‘competing business’?
c) What does the agreement say about the duty of confidentiality in respect of trade secrets?
d) What are the vendors’ responsibilities if a breach of warranty occurs?
What exceptions exist in relation to this duty?

Appendix: Model Answers

1 Redrafting Exercise: Basic Linguistic Elements

MARKED-UP ANSWERS

(1) If the Vendor fails or is unable to perform any obligation which/that what the Vendor has agreed to carry out in accordance with to paragraph 4 herein bascial, the Purchaser shall not be obliged to complete the sale and purchase of the shares.

(2) Dear Sir,

Thank you for Your your letter of 16 May.

With regard to the question of the share sale, Our our clients advise us that there are a number of outstanding issues to be resolved.

(3) The parties to this contract agree that the price list set out in Schedule 2 cannot be varied without the written consent of all the parties hereto.

(4) Canford Ltd stipulate stipulates that the good must be taken directly to the warehouse warehouse situated at 4 London Drive, Wallingford.

(5) It is hereby agreed that, this agreement may only be terminated by written notice delivered in the usual way as normally to a representative of the purchaser.

(6) It is our belief that this agreement is not only invalid but it is also unlawful. In our view, clause 4 is not at all as it first appearing.

(7) In the event that the purchaser’s payments are late by more than twenty-eight days, he the purchaser will be subject to a penalty of $3.5 million.

(8) We are sorry that the Managing Director of the plc company was unable to make the AGM annual general meeting this afternoon pm. Unfortunately he was indisposed in a hangover, and was unable to supervise the proceedings.

(9) The company who will be responsible for the factoring operation is headed by Claus Peterson, whom who is an experienced practitioner in this field.

(10) The Purchaser agrees to affect effect a purchase of no fewer than 20 units per each order.

(11) It is our view that Ms. Hopkins has shown considerable flair in this area, and that she is certainly the principal authority on these matters within the company.

(12) The party to this agreement whose interests are compromised will be eligible for compensation for loss of value of the factory site.

2 Colloquial to Formal

SUGGESTED SENTENCES

(1) By signing this document you agree to relinquish any right to bring claims in respect of any breaches.

(2) Either party may terminate this agreement in the event that the other party becomes insolvent.

(3) Party A agrees to indemnify party B in respect of any claims relating to the distribution or sale of the products.

(4) Party A must pay all invoices sent by party B in full within 30 days of receipt at Party A’s depot of the goods to which such invoices relate. In the event that any invoice remains unpaid, in whole or in part, following the expiration of the specified period, Party B is entitled to add penalty interest at the rate of 20% to the unpaid sums.

(5) This agreement shall remain in force for a period of two years from the date of signature and shall thereafter be renewed for further successive periods of two years unless terminated by either party under the provisions of clause 5 of this agreement.

3 Redrafting Exercise: Style
SUGGESTED SENTENCES

(1) Any waiver of the indemnity provisions by the vendor must be notified in writing to the purchaser.
(2) The first case was settled for £2,000, the second for £2,500, and the third for £5,500.
(3) We will try to settle this matter swiftly.
(4) The exclusion clause is void because of the previous order of the court.
(5) Thank you for your letter of 12 March and the enclosed lease agreement.
(6) My client has discussed with his partners your proposal to fill the drainage ditch.
(7) Please note that this case will be uneconomic. The legal costs involved will be higher than the amount you can expect to get from the defendant if your case succeeds.
(8) My client is willing to settle this case for £7,500 on condition that your client:
   a. immediately returns the blueprints and specifications;
   b. removes all his equipment from the property;
   c. undertakes responsibility for replacing at his (her) own expense the entire section of fence which he (she) took down.

   This offer remains open until 12 March.
(9) Mr. Brown hit the windscreen of the car with his head, but as the windscreen was composed of celluloid he was unhurt.
(10) Parliament was asked by Reverend Smythe, a bachelor, to enact a law providing for the annulment of the marriages of all couples who do not within three years of marriage have one or more children.
(11) It is agreed that these payments shall be made on their due dates by means of post-dated cheques, and we will deliver VAT accounts for these payments to you. This agreement covers all previous arrangements regarding costs and disbursements.

4 Letter-Writing Exercise: Repossession of Rented Property

MODEL LETTER

Ellis & Baxter
15 Sanderson Way
Bromsfield

25 April 20__

Mr G Talbot
Grange Tools Ltd
10B Sinkley Avenue
Bromsfield

Dear Sir

Re: lease of 10B Sinkley Avenue
Our client: The Tranmere Property Company Ltd

Thank you for your letter of 16 April, on which we have now had the opportunity of taking our client’s instructions.

Our clients are prepared to accept your offer on the basis that they will be seeking a suspended order for possession under which you will be required to pay our client’s costs.

We now enclose a draft order. As you will see this gives our client possession of the property but suspends it provided the payments set out in the order are made. If an order in these terms were made by the court, it would mean that if
any of the payments specified in the order were not made, our client would be entitled to instruct bailiffs to recover possession of the property without further notice to you.

Conversely, if all the payments are made in accordance with the order, the claim will eventually be dismissed.

We propose to ask the court to make an order in the terms of the enclosed draft at the hearing on 5 May. Kindly confirm that you are in agreement with this course of action.

Yours faithfully

Sanderson Solicitors

Enc

Draft order

5 Drafting a Memo: Share Purchase Agreement

MODEL MEMO

Memorandum

Date: 13 February 2008

Subject: Share purchase agreement

(1) Recruitment

Clause 5.2 sets out certain limitations on the vendors’ ability to recruit personnel employed by the Company. The vendors are barred for a period of two years from completion from offering employment or purchasing services from anyone employed by the company for a period of one year prior to completion.

(2) Involvement in competing businesses

Clause 5.1 defines a competing business as one involving any business carried on by the company at the date of completion and in the same area as the company carries on business. It sets out a general prohibition on the vendors being involved in any competing business for a period of one year from completion, but there is an exclusion in respect of investments of up to 5% in nominal value.

(3) Confidentiality

Clause 5.3 sets out a general duty of confidentiality in relation to trade secrets and to confidential information ‘of a technical character’. This duty is not time-limited, and it extends to use of such information to the detriment of the company as well as non-disclosure. There is an exception for situations in which disclosure is required by law, but in such cases the purchaser must be consulted before the information is disclosed.

(4) Vendors’ responsibilities on breach of warranty

Under clause 6.1(b), if there is a breach of warranty the vendors are obliged to pay compensation in the amount necessary to put the company into the position it would have been in if no breach of warranty had occurred, together with costs.

(5) Exceptions to vendors’ responsibilities
There is a general exception in relation to matters that would amount to a breach of warranty but have been 'fairly and reasonably disclosed' in the disclosure letter.