

New Jersey Law Journal

VOL. CLXXX- NO. 11 - INDEX 1008

JUNE 13, 2005

ESTABLISHED 1878

Precision Brings Your Idea to a 'Point'

Save the reader the trouble of sorting through multiple meanings

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Except in the rare instance where you wish to avoid an issue rather than confront it, be precise. Precision narrows your focus; it helps you home in, which is necessary if you wish to arrive at, and thus make, a "point."

Imprecision, in contrast, generates ambiguity, which burdens and may confuse the reader. If the burden or the confusion becomes too great, the reader may lose confidence in the story and in you.

Suppose you represent a company that bought a data processing business, including software. The company contends that it bought not only the "applications," such as spreadsheet programs, but the source code as well (proprietary code written in letters, numbers and symbols). With source code, one can modify an application. The seller contends that the contract price was far too low for source code to have been included in the sale and that the buyer didn't need the source code anyway because the seller would continue to service the system.

You rely on a clause in the contract stating that the transferred assets included "computer programs," a term that may be broad enough to encompass source code as well as applications. Which sentence is better for your client

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ABC Co., Version A or Version B?

Version A: The contract for the sale of XYZ Corp's. data processing system to ABC Co. covered "computer programs."

Version B: Under the contract for the sale of XYZ Corp's. data processing system to ABC Co., the assets sold included



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"computer programs."

Version B is better because it more strongly suggests that source code was sold. The reference to "assets sold" reinforces the idea of a transfer, and the word "included" brings computer programs within the set "assets sold."

In Version A, "covered 'computer programs'" could mean that computer programs were sold or merely that computer programs were discussed. The reader may figure you mean the former, but that's the problem — "may" and "figure." Figuring requires work and

does not ensure that the reader will draw the conclusion you intend.

I'm not an expert in the psychology of wordsmithing, but I notice that I tend to select the general before the specific. I think "contract covered" before I think "assets sold included." In other words, I think of the set before the subset. To improve precision, I consider a concept (a set) until I find a subset helpful to my argument, and then I look for an even better subset.

Here, the intent is to reinforce the likely inclination of the reader to agree that source code was sold because "computer programs" were sold. By asserting that "assets sold included 'computer programs,'" the writer dares the reader to deny that source code is a "computer program" and lays the groundwork for invoking the doctrine that contracts should be given their plain meaning.

A Second Example

Contracts are about risk. If the parties correctly evaluate the risks, they will probably make money. If they are wrong, they may lose money. The strength of our economic system is in that risk. Through it, the parties extend themselves and grow. As they grow, so grows the economy.

Generally, the law does not insulate contracting parties from risk. But the "frustration of purpose" doctrine may excuse performance where contracting parties did not anticipate, and thus did not provide for the consequences of, an extraordinarily destructive event. The doctrine provides that in fairness, neither side should bear the consequences where neither side knew or should have

known of the risk.

Which of the following versions of a statement regarding the frustration of purpose doctrine is better for the party that wishes to invoke the doctrine?

Version A: Under the frustration of purpose doctrine, a condition is implied into the contract to account for something the parties overlooked.

Version B: Under the frustration of purpose doctrine, a condition is implied into the contract to account for a risk the parties did not allocate.

Both statements are true. Something the parties “overlooked” and “a risk the parties did not allocate” both address foreseeability, which is an element of the frustration of purpose doctrine. But “overlooked” is broader than “did not allocate the risk” because risk is only one item (one subset) that can be overlooked. “A risk the parties did not allocate” is more precise.

“Overlooked” has bad connotations. It suggests that something visible was missed. Courts won’t excuse contract performance just because a party overlooked something. Overlooking is a moral failing for which a person

deserves to suffer the consequences.

On the other hand, if both parties failed to account for a significant risk, then arguably the court should not burden one party with the entire loss. If a risk was not foreseeable, neither party can be faulted for failing to account for it.

In Sum

Writers sometimes rationalize that attention to precision is unnecessary because the reader will get the point from the broad strokes. Sometimes, they are right, especially if they have done a good job theming and organizing their piece. Nevertheless, because your job is to maximize your chances of victory, you should put your writing through at least one precision revision. Subject every word to the question, “Is this the most precise word possible?”

In a sense, recommending that you begin with one precision revision is like recommending that a healthy person begin an exercise program with one pushup. Nevertheless, you have to start somewhere. If you see progress, maybe you will make precision a habit.

Puzzler

How would you tighten and sharpen the following sentence?

The rule accepted by the overwhelming majority of courts is that appeal does not deprive the trial court of jurisdiction as to matters collateral to the issues on appeal.

Favor the active and the affirmative over the reactive and the passive. Replace “The rule accepted by the overwhelming majority of courts is” with “The overwhelming majority of courts hold.” The active “courts hold” is more forceful than “The rule ... is.”

To emphasize the continuing power of trial courts over matters collateral to an appeal, state affirmatively that trial courts “retain” jurisdiction rather than that the appeal “does not deprive” them of it. For the same reason — to establish power and control — say that the courts retain jurisdiction “over” rather than “as to” such matters.

“Issues” can be deleted because their presence is implicit.

The new version: The overwhelming majority of courts hold that trial courts retain jurisdiction over matters collateral to an appeal. ■