

Test Your Knowledge of Contract Language!

We thought it appropriate to mark the recent publication of the second edition of Ken Adams's *A Manual of Style for Contract Drafting*, or *MSCD*. And what better way to do so than to offer a contract-drafting quiz! So try your hand at the following three questions—select the correct answer out of the three alternatives offered.

Questions

1. A U.S. court would likely consider that the phrase *commercially reasonable best efforts*, as used in a contract obligation,
 - A represents a more demanding standard than does the phrase *reasonable efforts*
 - B represents a less demanding standard than does the phrase *best efforts*
 - C in effect means essentially the same thing as all other *efforts* standards
2. As used in contracts, the word *material*
 - A means “of such a nature that knowledge of the item would affect a person’s decision-making”
 - B means “significant,” in other words “important enough to merit attention”
 - C could be used by practitioners to express, in any given context, either of the above meanings—that’s what makes *material* problematic
3. In the contract provision *Acme represents and warrants to Widgetco as follows*, the phrase *represents and warrants*
 - A reflects that representations are statements of past or existing facts and warranties are promises that existing or future facts are or will be true
 - B ensures that if any of Acme’s assertions of fact are incorrect, Widgetco would be able to bring an action for misrepresentation or an action for breach of warranty, or both
 - C is pointless and confusing, in that it reflects an unhelpful “magic words” approach to contract language—your best bet would be to use just *represents*

Answers

Question 1—C (see *MSCD* 7.1–33)

Question 2—C (see *MSCD* 8.1–30)

Question 3—C (see *MSCD* 12.285–315)

How Did You Do?

You Got Three Answers Right: Congratulations—you're a clear-eyed contract-drafting maverick! We suspect that you have a copy of *A Manual of Style for Contract Drafting* on your nightstand.

You Got One or Two Answers Right: Good going! But you might want to consult *MSCD* regarding what you missed.

You Got No Answers Right: Well, you're in good company! Given the rigors of transactional practice, mainstream contract drafting often consists of regurgitating, on a wing and a prayer, the language of precedent contracts. As a result, contracts are full of redundancies, archaisms, and other glitches, and practitioners traffic in urban legends. *MSCD* helps counteract the fog of drafting.

So if you value clear and efficient contract language and want to control your drafting rather than draft on autopilot, get hold of a copy of *A Manual of Style for Contract Drafting*; click [here](#) to go to the ABA's Web Store. And you might want to check out [Ken Adams's blog](#), where you'll find the raw material of future editions of *MSCD*, as well as a special offer for members of the Section of Business Law.