

Drafting Engineering Contracts, by Henry Henkin, Elsevier Applied Science, London, 1988, 240 pp.

In an increasingly litigious society, such as the United States, a book on the design and writing of engineering contracts is a welcome addition to the literature on the legal aspects of engineering. A number of books address the content and preparation of engineering contract documents from the legal point of view, some of which I reference below, but none to my knowledge primarily address the writing or, as Henry Henkin terms it, the drafting of engineering contract documents. There are books on legal drafting in general, which Henkin references, whose principles apply to the writing of engineering contract documents. However, I suspect few engineers involved in the writing of such documents would be able to use them effectively.

Drafting Engineering Contracts is a book by an engineer with considerable professional experience in writing contract documents. It is written for engineers, especially junior engineers often charged with some of the writing tasks, who have to write contract documents, contribute to contract documents, or revise contract documents. It does not assume that the engineer know contract law or be familiar with contract documents. It is concerned with engineering practice, not legal practice. It has, unfortunately, certain limitations that restrict its usefulness in many contexts.

The book is logically and usefully organized. Chapter 1 introduces the reader to the function of contracts and the process of drafting contracts: it explains the communication context. Several sections on clarity and vagueness probably belong in Chapter 2, which deals with sentence-level concerns of grammar, mechanics, and style, although in Chapter 1 these sections on style serve to emphasize the importance of careful writing of contracts. Chapter 3 deals with the organization of documents and, primarily, of sections and subsections of documents. (I think that Chapters 2 and 3 should be reversed, as the following four chapters focus primarily on the presentation of information in sections, subsections, and smaller units of specific types of documents and only secondarily on sentence-level concerns in those documents. However, the author might well disagree with me given the importance of precision in contract documents.)

Chapters 4, 5, 6, and 7 explain how to write specific types of documents: Conditions of Contract (Chapter 4); Specifications (Chapter 5); Payment Documents (Chapter 6); and Miscellaneous Documents (Chapter 7). The order of these chapters essentially is from general to particular, for the most part following the contract process except that the Agreement is covered as a Miscellaneous Document. As I mentioned above, the author discusses these types of documents in terms of the various topics or sections that they typically include. Under Conditions of Contract, for example, the author discusses over 17 sections, such as "Quality of the work" and "Transport of exceptional loads" under "General Obligations".

Given the design of the book, the drafting principles and guidelines discussed in the first three chapters should be applied systematically to the drafting of the specific types of documents discussed in chapters four through seven. However, this is not how the author always proceeds. In Chapter 4, Conditions of Contract, except for some relevant comments on the basic arrangement of the sections of the document, the focus is on the function and contents of the sections and units rather than the drafting of the sections and units. The author tells us what to be sure to include in them rather than how to write them. In Chapter 5, Specifications, the discussion primarily concerns the content of the various sections of the document, with only some secondary comments on arranging and subdividing the sections. There are very few suggestions on how to write specifications. In Chapter 6, Payment Documents, the discussion almost exclusively concerns the content of the documents. However, this is the only chapter in which there are actual examples of sections or extended passages of contract documents. Chapter 7 briefly discusses the contents of miscellaneous documents such as "Tender Forms" and "Formal Agreements". Because of the focus on function and content in these core chapters, the book considerably overlaps books that discuss the preparation of engineering contract documents from the legal point of view.

Insofar as guidelines for writing goes, then, the book is uneven. The reader usually has to infer how to apply the guidelines, discussed in Chapter 2 and Chapter 3, to the writing of the specific types of documents discussed in Chapters 4, 5, 6, and 7. A book on writing should have explicit applications of those guidelines to the writing of the documents. It also should have examples from the sentence level to the document as a whole to illustrate how that is done.

This book primarily is concerned with drafting contracts in the field of civil engineering, as the writer is a civil engineer. The writer says the principles of drafting apply to all fields of engineering, such as mechanical, electrical, and chemical, and of course they do. However, with almost all of the examples taken from the field of construction engineering the book will be most useful for civil engineers.

The book also is devoted exclusively to drafting engineering contracts in the United Kingdom. The terminology and the legal references are to English contract law. For example, the types of contracts are not exactly the same in the United States, although Conditions of Contract and Specifications are generic types of documents. Again, most of the general principles discussed in this book apply to the writing of engineering contracts in the United States as well (and perhaps in other countries, although I am unfamiliar with practices in other countries). However, because the legal and contractual context is exclusively English, the book will be most useful for engineers and engineering firms working in the U.K. and perhaps in other Commonwealth countries. The book could be a useful reference for engineers and engineering firms from other countries who contract to do work in the U.K.

To my knowledge there is no comparable book on the writing of engineering contracts in the United States. However, a very useful reference is *Construction Contract Documents and Specifications* (Thomas C. Jellinger, Addison-Wesley, 1981). This is written by a civil engineer for civil engineers, but is a clear introduction to construction engineering contracts. In addition to a discussion of the legal aspects of engineering contracts, it presents complete descriptions of the contract documents along with complete examples of those documents. The book explains how the documents are organized, and even presents guidelines on language, such as a section on "Specification Language" in the chapter on "Specification Writing". A more general reference is *Legal Aspects of Engineering* (Richard C. Vaughn, Kendall/Hunt, 1983), which has a section on engineering contracts and devotes some attention to the writing of specifications.

As I mentioned, a book on writing engineering contract documents is a worthwhile addition to the literature despite any limitations. In the United States, at least, all engineers need to be aware of the legal context of engineering. A book such as *Drafting Engineering Contracts* sensitizes them to those concerns.

However, in the United States, just because of the importance of the legal context, most contracts are written and reviewed by lawyers who specialize in construction law. (A legal reference for those interested is *Legal Aspects of Architecture, Engineering, and the Construction Process*, Justin Sweet, West Publishing, 1985; Sweet is a Professor of Law. A reference written for the engineer rather than the lawyer is *Construction Law*, Bruce Jervis and Paul Levin, McGraw-Hill, 1988.) Engineers now probably do very little actual writing of contract documents. When they do, for the most part they use standard forms and just change items and clauses to make the documents directly applicable to a specific job. In fact, standard forms are preferable because the organization, format, and language of these contract documents have come to be expected and understood by all parties as well as in courts of law.

Regardless of whether or not they have to write engineering contracts, however, engineers should be familiar with engineering contracts and know how to read them. For engineers working in the U.K., *Drafting Engineering Contracts* will be a useful reference.

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