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"PLAIN ENGLISH" WILL SET THE UCC FREE

*Steven O. Weise**

I. INTRODUCTION

A. The Life of the UCC

A distressing number of decisions interpreting the Uniform Commercial Code (UCC) arrive at incorrect results.[1] Some portion of these decisions arise out of agreements that are difficult for businesspeople, courts, and fact finders to read and comprehend. Lawyers preparing documents for transactions governed by the UCC owe their clients and the UCC itself the obligation to take the time to prepare documents that describe the agreement in language the parties can read and understand. It is not sufficient that the lawyers can parse the documents. If a dispute arises it is likely that persons unschooled in the UCC will have the final say on who wins.

The drafting of documents in "Plain English" will:

- ❑ Reduce disputes among parties to agreements governed by the UCC
- ❑ Produce results in accordance with the expectations of the parties
- ❑ Resolve business disputes at the time of the business transaction, not at the time a dispute about performance arises
- ❑ Assist the courts in reaching results that conform to the UCC
- ❑ Improve attorney-client relations, as clients will not be put off by the density of contract provisions
- ❑ Force the lawyer preparing the agreement to think about what is being written

Plain English requires the person preparing an agreement to use only a few simple techniques:

- ❑ Active voice
- ❑ Lists and bullets

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1. *See* Survey, *Uniform Commercial Code*, 48 BUS. LAW. 1583 (1993).

- ❑ Short sentences
- ❑ Simple words
- ❑ One verb at a time
- ❑ Short paragraphs
- ❑ Captions
- ❑ Multiple columns
- ❑ Logical grouping
- ❑ Default rules
- ❑ Statutory language
- ❑ Functional statements
- ❑ Instructional language

B. What is Plain English?

Drafting a document in Plain English does not necessarily mean using pronouns or colloquial expressions. It means writing a document that opposing counsel, clients, courts, and juries can understand simply by reading it. Writing an understandable document requires using simple words and simple formatting techniques. It does not require that a lawyer draft a "fair" agreement or give up favorite overbearing clauses. The other party to a one-sided agreement written in Plain English, should, upon reading the agreement, understand it well enough to exclaim, "Why the hell should I sign this!"?

C. Plain English Movement

The Plain English approach to drafting documents arose in the consumer area as a device to assist consumers in understanding the meaning of documents they were asked to sign. Some states have adopted laws requiring the use of Plain English in certain consumer documents.[2] In addition, some federal laws require that persons preparing documents under those laws present information in understandable language.[3]

These rules generated Plain English insurance policies, residential leases, and other documents once thought, by definition, to be unreadable. However, the general requirement that persons preparing "consumer" documents use Plain English did not spread to all jurisdictions. For example, California, widely considered a consumer-oriented jurisdiction, has not adopted a requirement that all consumer documents

2. *See, e.g.*, N.Y. GEN. OBLIG. LAW § 5-702 (McKinney 1989).

3. *See, e.g.*, Magnuson-Moss Consumer Warranty—Federal Trade Commission Improvement Act §§ 101-112, 15 U.S.C. §§ 2301-2312 (1988).

appear in Plain English. In part, businesses engaged in consumer industries feared that the difficulty of defining Plain English, and the risk of statutory liability for noncompliance, would create an unworkable regulatory regime.

There are no statutes that impose sanctions for the failure of a commercial agreement to use Plain English. Commercial lawyers are free to use their best efforts to improve the understandability of their documents without fear of statutory retribution for failure to comply with a subjective rule.

D. Commercial Lawyers' Attitudes Towards Plain English

Commercial lawyers often scoff at the notion of adopting Plain English techniques in commercial documents. Some may think that drafting understandable documents in Plain English is reserved for lawyers who also eat quiche. Drafting a clear document routinely takes more time but, as discussed below, produces greater long-term benefits. Clients and courts should demand that lawyers take the time to prepare documents that clients and courts can understand. Clients do not want disputes. They want the other party to a transaction to perform its obligations under the parties' agreement. Lawyers will best serve their clients by drafting documents that state the parties' agreement in words the parties can read and understand.

E. Effect on the Proper Interpretation of the UCC

Courts and fact finders that do not have to devote time and energy to deciphering what the parties said in their written agreement are less likely to be distracted from the correct interpretation and application of the UCC. A court faced with opaque language may sense, or think it can divine, what the parties were trying to do and what a "fair" result might be. This can result in a court interpreting the UCC in a manner designed to achieve a fair result among the parties, but leaving in its wake a misguided interpretation of the UCC. Agreements that say what the parties mean, and mean what they say, should cause courts to interpret the UCC in a manner consistent with the policies and structure of the UCC.

F. Efforts to Foster Good Contract Drafting

1. Contract drafting is ignored in law school

Most law schools include moot court and brief writing in the required curriculum for first year law students. Rarely do law schools

require, or offer, courses on how to draft an agreement. Law students arrive in the real world without any notion of how to write or structure an agreement. Novice lawyers are encouraged to work from an existing form that may cover the type of transaction involved, but that precedent may not demonstrate good contract drafting techniques.[4]

2. Efforts to promote good drafting

Others have sought to encourage lawyers to draft consumer and commercial documents in understandable language.[5] Many of the techniques described below are discussed in these articles. These techniques apply with ease to commercial documents prepared under the UCC. This Essay will demonstrate that a commercial lawyer can draft a document that is both effective and readable.

II. REASONS FOR USING PLAIN ENGLISH

A. The Role of the Lawyer

Drafting documents in Plain English serves dual, reinforcing purposes:

- ❑ It makes the documents more understandable for those who read them.
- ❑ It forces the lawyer drafting the documents to face up to what is actually being written and ask: Does the document say what the parties want it to say? The very process of making the document understandable to the client and others makes it understandable to the person drafting it. It imposes on the writer discipline of clarity and thought.

B. Clarity for the Writer

Most discussions promoting documents drafted in Plain English concentrate on the benefits that clear writing will provide to the reader of the agreement. Drafting documents in Plain English also benefits the writer in two ways:

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4. For example, many agreements confuse and make a hash out of covenants, warranties, representations, indemnities, and the like. *See infra* part IV.A-I.

5. All learning in the area of good writing begins with WILLIAM STRUNK, JR. & E.B. WHITE, THE ELEMENTS OF STYLE (3d ed. 1979). An excellent discussion of the use of "plain English" in legal documents in general appears in Richard C. Wydick, *Plain English for Lawyers*, 66 CAL. L. REV. 727 (1978).

- ❑ The writer will understand the document better. This increases the chance that the writer will use words that implement the "deal."
- ❑ The process of writing an agreement in understandable English forces the writer to think about what needs to be said. Poorly drafted documents provide a greater opportunity for ambiguity and misstatement.

C. Clarity for the Reader

1. The parties

a. implement the deal

The parties want the documents to reflect the agreement they have made. If each party believes that it has agreed to something different, it may not discover that difference with a document prepared in the customary fashion. Clients confronted with documents that are difficult to read often cannot tell if the words in the agreement accurately state the agreement of the parties. The lawyer may have gotten it wrong. The parties should identify and attempt to resolve potential disputes at the time the agreement is formed, not after a dispute has already arisen from a misunderstanding. A clear understanding of the transaction, as written in the documents, will facilitate that goal.

Many agreement provisions vary the "default" terms of the UCC. These variations may, in some sense, operate as a waiver of the UCC's provisions. Courts frequently refuse to enforce provisions providing for such "waivers" of rights if the waiver is not readily understandable.[6] Long, complex provisions that are difficult to read may not satisfy this requirement.

b. illuminate the business issues

Preparing documents that the parties understand will also highlight issues the parties may not have considered. Using Plain English drafting techniques will push the lawyer drafting an agreement to consider issues inherent in the deal. Documents that are difficult to follow and understand may cover up issues that the parties should consider, but do not recognize, as present in the particular deal.

6. *See, e.g.*, Shumway v. Horizon Credit Corp., 801 S.W.2d 890, 893-94 (Tex. 1991) (stating that agreement that lender may accelerate payment of indebtedness "without prior notice or demand" is effective to waive presentment and notice of acceleration, but not notice of intent to accelerate, a separate right).

c. "why the hell should I sign this?!"

The party not represented by the lawyer preparing the document should be able to read it and understand what it means. The lawyer preparing the agreement does not want the other party to be able to argue that because no reasonable person could understand the provision's meaning, that party could not have known what was agreed to. Although "hiding the ball" may get the deal signed by shuffling the issues off to the side, this approach does not serve the deal in the long run. It results, instead, in an inefficient use of business and legal resources as time is consumed when a dispute does arise.

2. The judge and jury

A few states have business courts.[7] Most do not. As a result, most courts hear a mix of cases, and thus are unfamiliar with the UCC or the business environment in which UCC disputes arise. In addition it is likely that few judges had significant experience with the UCC in their practices prior to serving on the bench. Likewise, juries are unlikely to have any experience with the UCC.

In this environment, when parties to an agreement put themselves in circumstances where persons unfamiliar with the UCC and its commercial context will be interpreting their agreements, they risk inaccurate interpretations. Parties to contracts can reduce these risks by presenting courts and juries with documents that permit only one reasonable interpretation. The clearer the words on the piece of paper, the less important it is for courts and juries to have experience with commercial transactions or the UCC. When documents plainly say what they mean, courts can address any legal issue arising under the UCC, unencumbered by a desire to "fix" what the parties have done in their agreement.

D. Reduce Transaction and Litigation Costs

A significant part of litigation under the UCC involves efforts to determine what the parties meant in their agreement. Preparing documents in Plain English will decrease the number of good faith disputes over the meaning of the words of the agreement.

7. In Delaware, for example, the Court of Chancery has exclusive jurisdiction over corporate cases, commercial and contractual matters. WANT'S FEDERAL-STATE COURT DIRECTORY 128 (Robert S. Want & Amanda R. Adolph eds., 1994). However, even the Court of Chancery hears other equity matters such as guardianships, trusts, estates, and real property disputes. *Id.*

In addition, when the parties sign agreements that they understand, there is a greater chance of an actual "meeting of the minds" concerning the agreement's actual terms. This should reduce surprise, and therefore disputes. Contracts are designed to provide the parties with predictable performance from the other party. This permits each party to an agreement to order its affairs in the reasonable expectation that it will receive the bargained-for performance.

III. TECHNIQUES

A. Active Voice

English teachers have long told their students to write in the "active" voice.[8] Structuring sentences and using verbs that act on an object in the sentence promotes both clear writing and clear thinking. When forced by the sentence structure to consider the appropriate subject and object for the sentence, the writer must consider the agreement's purpose. This will frequently result in greater precision in the drafting of the agreement.

For example, an agreement for the sale of goods might require inspection of the goods. A statement in the passive voice might leave unsaid which party must perform the inspection. As worded below, the agreement could require the seller *or* the buyer to inspect the goods. The sentence, restructured to use the active voice, *requires* the person drafting the agreement to assign responsibility for that task and thereby removes an ambiguity:

Before	*After*
The Goods shall be inspected prior to delivery to the carrier.	*Buyer* shall inspect the Goods prior to delivery to the carrier.

B. Lists and Bullets: Think Vertically

Many agreements have provisions that run on at length, listing one item after another. It is not unusual for a paragraph containing a list to run on for a page or more. No one can read these provisions and follow them. It takes very little effort to convert a "horizontal" list into a readable, vertical one. The court considering the language used in the "before" column below held that it did not describe or

8. *See* STRUNK & WHITE, *supra* note 5, at 18 (Rule 14).

identify "collateral," as was intended.[9] The sentence continues for so long that it is close to impossible to read it for sense. The "after" column takes the same language and expresses it in a list. In addition to improving the sentence's readability, the flaw in the sentence is exposed.

Before	*After*
As security for . . . all present and any future . . . obligations debtor hereby grants . . . Bank a security interest in all of the following types or items of property ("Collateral" herein) in which the debtor now has or hereafter acquires any right, title, or interest, . . . wheresoever located and whether in the possession of the debtor, . . . or any other person, and all increases therein and products and proceeds thereof. Proceeds include but are not limited to inventory, returned merchandise, accounts, . . . and any other tangible or intangible property arising under the sale, lease or other disposition of collateral:[10]	As security for . . . all present and any future . . . obligations debtor hereby grants . . . Bank a security interest in: (i) all of the following types or items of property ("Collateral" herein) in which the debtor now has or hereafter acquires any right, title, or interest, . . . wheresoever located and whether in the possession of the debtor, . . . or any other person, and (ii) all increases therein and products and proceeds thereof. Proceeds include but are not limited to: (i) inventory, (ii) returned merchandise, (iii) accounts, . . . and any other tangible or intangible property arising under the sale, lease, or other disposition of collateral:

9. *In re* Softalk Publishing Co., 856 F.2d 1328, 1331-32 (9th Cir. 1988).
10. *Id.* at 1329.

Using a list also permits the writer to reduce the number of words by using the appropriate verb to introduce the list, rather than using it with each item in the list:

Before	*After*
This warranty *applies* to Buyer only, and not to Buyer's customers. This warranty *applies* only to Products which are returned for inspection within the applicable warranty period. This warranty *applies* only if Seller's inspection discloses that the Product has not been altered or repaired improperly, nor been subject to misuse, improper maintenance, negligence, accident.	This warranty *applies*: (i) to Buyer only, and not to Buyer's customers; (ii)]only to Products which are returned for inspection within the applicable warranty period; and (iii) only if Seller's inspection discloses that the Product has not been altered or repaired improperly, nor been subject to misuse, improper maintenance, negligence, or accident.

C. Short Sentences: One Thought Per Sentence

Not all long sentences are appropriate candidates for a listing approach. The writer can break many long sentences into shorter, bite-sized ones. This increases the opportunity for the reader to follow and understand the meaning of the sentence. The mind does not tire as quickly when it tries to follow the logic of a short sentence as compared to a long one. The "See Spot Run" approach has a purpose.

Before	*After*
Seller shall reimburse Buyer for any cost, loss, damage, and liability incurred by Buyer by reason of Seller's default, except that Seller shall not, however, be liable for any additional cost, loss, damage, or liability of Buyer resulting from any delay in delivery hereunder to the extent delivery is made impossible by reason of unforeseeable causes beyond the control of Seller which are not attributable in whole or in part to any act or failure to act by Seller, provided Seller uses its best efforts to effect delivery in a timely manner.	Seller shall reimburse Buyer for any cost, loss, damage, and liability Buyer incurs because of Seller's default. Seller shall not be liable for any delay in delivery to the extent delivery is made impossible because of unforeseeable causes beyond Seller's control. Seller will be liable to the extent a delay is caused by any act or failure to act by Seller. Seller will use its best efforts to effect delivery in a timely manner.

D. Death to Jargon: Use Plain Words

Sometimes it is a good idea to use jargon. No one would suggest drafting a security agreement that did not "grant" a security interest. However, many times jargon will get in the way of understanding and will introduce confusion. Clients may not understand legal jargon. Many jargon words have simple English equivalents that get the job done just as well as the technical legal term.

Before	*After*
Debtor grants a security interest in all contract rights it owns.	Debtor grants a security interest in all rights to payment for the sale of any property (tangible or intangible) or services.

E. *Once Is Enough: Use One Verb Instead of Many*

Lawyers often feel the need to say the same thing more than once just to be sure it will be understood. Thus, they may pile one verb on top of another. The excessive use of verbs clutters the document with unneeded words. This makes the document more difficult to read. Stockpiling verbs also creates a risk that the finder of fact may infer that the writer purposefully omitted yet one more verb and did not intend the sentence to cover the narrow circumstances that the extra verb would have described.

Before	*After*
Debtor conveys, assigns, transfers, sets over, pledges, hypothecates, demises and grants to Secured Party a security interest in the Property.	Debtor grants to Secured Party a security interest in the Property.

F. *Break Up Those Paragraphs: One Thought Per Paragraph*

Like the other techniques suggested in this Essay, breaking up paragraphs makes it easier for the eye to follow the wording of a document. A long paragraph is likely to attempt to carry too many thoughts. The writer may not accurately state what was intended when too much is attempted in one paragraph. The writer should mechanically express different thoughts in different paragraphs to force the creation of a de facto outline of the agreement. A thought that stands alone must justify the logic of its occupying space in the agreement. It cannot ride the coattails of another provision. This process helps to maintain the clarity of the agreement. It removes the meaning of the agreement from the field of dispute. The courts should then be free to address the relevant legal issues without refracting them through documentary factual disputes.

G. *Captions*

A businessperson scanning a document for a particular term will have a difficult time finding it in a sea of words unseparated by captions or other markers. Captions may be particularly important under the UCC where the UCC requires that a provision appear in a "con-

spicuous"[11] manner. The use of a caption or a heading takes the reader by the nose and leads the reader to the particular provision. Captions make it more difficult for the reader to deny having read those words. A judge or fact finder is more likely to find some order and logic in an agreement that leads the reader through with little bits of captioned guidance. They figure that if they can follow the agreement, the parties to the agreement were able to follow it as well. Captions are used in the examples in this article.

H. Double Columns

It is sometimes important for a document to jam many words onto a few pages. If this is necessary, the writer should consider setting up the document in two or more columns. The eye cannot follow small print across a standard-sized, eight-and-one-half-inch page and stay on the same line. Breaking the text into columns makes it possible for the reader's eye to stay on the right physical line on the page. A fact finder that cannot follow the words on the page may throw up its hands and conclude that if the writer did not want the other party to understand the words, there must be something wrong.

Before

Inspection and Testing. All materials and articles to be furnished hereunder are subject to final inspection and testing by Buyer after receipt thereof, and Buyer, in addition to any other rights of Buyer, may reject or revoke acceptance of all or any portion of such materials and articles which fail to conform to the requirements of this Purchase Order. Any materials or articles so rejected will be returned to Seller at Seller's sole risk and expense, and Seller will promptly refund any payment theretofore made by Buyer on account thereof, or, at Buyer's discretion, Seller will repair or replace such articles and materials. Buyer and Buyer's customers may inspect the materials and workmanship covered by this Purchase Order from time to time at any reasonable time, including during manufacture, and at any reasonable place, including Seller's works. Any inspection or approval at Seller's works or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Purchase Order, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of final inspection and approval or rejection after receipt of the materials or articles by Buyer. If materials or workmanship covered by this Purchase Order are subject, under agreements between Buyer and its customer or otherwise, to inspection and acceptance by Buyer's customer, acceptance by Buyer shall be contingent upon such inspection and acceptance by such customer.

11. "Conspicuous" is defined as "[a] term of clause . . . so written that a reasonable person against whom it is to operate ought to have noticed it." U.C.C. § 1-201(10) (1990).

The same text, placed in two columns becomes readable:

After

Inspection and Testing. All materials and articles to be furnished hereunder are subject to final inspection and testing by Buyer after receipt thereof, and Buyer, in addition to any other rights of Buyer, may reject or revoke acceptance of all or any portion of such materials and articles which fail to conform to the requirements of this Purchase Order. Any materials or articles so rejected will be returned to Seller at Seller's sole risk and expense, and Seller will promptly refund any payment theretofore made by Buyer on account thereof, or, at Buyer's discretion, Seller will repair or replace such articles and materials. Buyer and Buyer's customers may inspect the materials and workmanship covered by this Purchase Order from time to time at any reasonable time, including during manufacture, and at any reasonable place, including Seller's works.

Any inspection or approval at Seller's works or elsewhere during or after manufacture, whether or not such inspection or approval be provided for by the terms of this Purchase Order, shall be provisional only and shall not constitute final acceptance or be construed as a waiver of the foregoing right of final inspection and approval or rejection after receipt of the materials or articles by Buyer. If materials or workmanship covered by this Purchase Order are subject, under agreements between Buyer and its customer or otherwise, to inspection and acceptance by Buyer's customer, acceptance by Buyer shall be contingent upon such inspection and acceptance by such customer.

I. Logical Grouping

A reader has a greater chance of understanding a document if it proceeds in a logical order and tells the story of the deal. The recitals operate as the prologue. The next section generally tells the core of the story—the grant of the security interest, the promise to pay, or the sale of the goods. Readers who do not have to stop to figure out where they are in the overall story can better concentrate on the details. This will help the parties get the document right. It will also guide the fact finder to the correct understanding of the parties' agreement.

J. Consider Omitting Language that the UCC Will Provide as a Default Rule

The shorter the document, the greater the chance that a reader will understand it. Agreements often contain provisions stating that they will incorporate the UCC as a matter of law. The UCC invites parties to agreements to keep documents short by relying on the UCC's default rules. For example, security agreements frequently contain provisions that repeat the rules of UCC section 9-504 for the application of the proceeds of a disposition of collateral under that

section. Unless the parties intend that a different rule apply,[12] there is no need to include this provision. The inclusion creates a risk of misstating the statutory rule and causing an unintended result.

K. "Tracking" Statutory Language

When the person drafting a commercial document decides to incorporate statutory language, it is often prudent and efficient to use terms of art from the UCC. These words carry with them the meanings given in the UCC and court decisions. Terms of art may save the writer from using extra words. If a writer intends to use terms of art from the UCC, the agreement should say so. Otherwise, a court could apply non-UCC meanings to words, or the unintended use of UCC terminology could have other untoward effects.[13]

L. Functional Statements

The terms used in agreements may have meaning to a lawyer, but not to a layperson. A warranty may not be a statement of existing fact. Instead it is a promise that if the warranted item does not have the characteristics described, the person making the warranty will pay the other party damages because that characteristic is missing:

Before	*After*
Seller warrants that the goods are merchantable.	Seller agrees that if the goods do not work, Seller will replace them or repair them.

M. Instructional Language: Write a Cookbook

Agreements often have general language describing the result the parties want to reach. An agreement may be more effective if it provides simple, direct instructions to the parties on how to reach the result. Sometimes this will lengthen the document. This is a fair trade to achieve clarity.

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12. The right of the parties to vary the rules of Article 9 is limited in some respects. *See* U.C.C. § 9-501(3) (1990).

13. For example, the term "proceeds" in the UCC has a narrower meaning than the parties may intend. *See* U.C.C. § 9-306 (1990). Older forms of security agreements often use the phrase "contract rights," a term that disappeared from Article 9 in the 1972 revision. *See* U.C.C. §§ 9-102, 9-103 (1972). Courts interpreting the term "contract rights" may limit its meaning to that given to that term in the UCC.

Before	*After*
Upon Debtor's default, Secured Party will have all of the rights of a secured party under Article 9 of the UCC.	Upon Debtor's default, Secured Party will have all of the rights of a secured party under Article 9 of the UCC. Secured Party may: (i) take possession of the Collateral without Debtor's permission and without any court order; (ii) enter onto Debtor's property to get the Collateral, so long as Secured Party does so lawfully and peacefully; (iii) require Debtor to deliver the Collateral to Secured Party; and (iv) sell, lease, charter, operate, or otherwise use the Collateral. Secured Party's use of one remedy will not stop Secured Party from using any other available remedy.

IV. Application of Plain English to Sample UCC Transactions

A. General

The reader may not believe it is possible to create Plain English documents that work under the UCC. This portion of the article will demonstrate that a writer can use Plain English and draft standard UCC provisions.

B. Warranties

Warranty disputes notoriously generate a greater amount of litigation under Article 2 than any other type of agreement. Many of these disputes involve the scope of the warranty. Drafting a warranty in Plain English can reduce this type of litigation.

Provision	*Comment*
Warranty. Seller warrants that the Products (i) are free from defects in material and workmanship, and (ii) conform to Seller's specifications for the Products.	*This language is short, uses the active voice, uses a list, and is straightforward.*

C. Damage Limitations

Courts look with disfavor on damage limitation provisions.[14] They frequently find that the agreement's language fails to indicate clearly that the buyer *actually intended* to limit claims against the seller.[15] Agreements in Plain English can make it difficult for the buyer to make that claim with a straight face.

Provision	*Comment*
Limitation of Liability. (i) Seller's entire liability shall not exceed the purchase price for any defective Product. (ii) Seller shall not be liable for general, consequential, incidental, or special damages arising from a defect in any Product. (iii) These limitations apply even if (a) Seller cannot or does not repair or replace any defective Product, or (b) Buyer's exclusive remedy fails of its essential purpose.	*This language uses (i) a caption, (ii) the active voice, and (iii) short paragraphs. It states the rules in understandable language that the buyer cannot claim it did not comprehend.*

14. *See, e.g.*, Salt River Project Agric. Improvement & Power Dist. v. Westinghouse Elec. Corp., 694 P.2d 198, 213 (Ariz. 1984); Frank's Maintenance & Eng'g, Inc. v. C.A. Roberts Co., 408 N.E.2d 403, 411 (Ill. App. Ct. 1980).

15. *See, e.g.*, Cooley v. Big Horn Harvestore Sys., Inc., 813 P.2d 736, 748 (Colo. 1991) (holding that contract limiting warranty to repair or replacement of defective parts does not preclude buyer's recovery of consequential damages absent unambiguous recording of parties' intent to prohibit such recovery).

D. *Battle of the Forms*

UCC section 2-207 generates a great amount of controversy and is difficult for courts to apply. The following language attempts to make the court's job as easy as possible.

Provision	*Comment*
Terms of Agreement. Buyer limits its Seller's acceptance of this Purchase Order to the terms and conditions of this Purchase Order. Buyer objects to any additional or different terms or conditions proposed by Seller.	*This language uses the exact terminology of UCC section 2-207. This improves the possibility that the language will work and reduces the risk of a court finding an incorrect meaning from using synonyms.*

E. *Integration Clauses*

Parties to disputes often seek to introduce extrinsic evidence to explain or supplement the written terms of the agreement. A well-written agreement leaves less room for interpretation. In addition, a properly drafted integration clause can limit or preclude the introduction of extrinsic evidence.

Provision	*Comment*
(i) *Integration.* This Sales Agreement states the final expression of the agreement of the parties concerning its subject matter. It is intended as a complete and exclusive statement of the terms of the agreement between Seller and Buyer.	*This language uses a series of discrete, declarative sentences to convey several related thoughts. It tracks the language of UCC section 2-202.*
(ii) *Modifications.* This Sales Agreement may be modified only by a signed writing.	*This language tracks UCC section 2-209.*

F. Notes

Promissory notes should be simple documents. Sometimes they become too complicated. A note can do its job in a straightforward manner.

Provision	*Comment*
Maker agrees to pay Holder of this Note the amount of $1000. All principal is due two years from the date of this Note. This Note will accrue interest at the rate of 5% each year. Interest will compound annually. Maker will pay accrued interest on the first day of each month.	*A series of declarative sentences in the active voice provide all of the essential provisions of the note. Each sentence covers only one topic. Each sentence is understandable.*

G. Letters of Credit

A letter of credit is a mysterious document to many lawyers and their clients. A written letter of credit provides an especially useful opportunity for clear writing.

Provision	*Comment*
Bank agrees to pay any demand presented under this Letter of Credit. Beneficiary may draw only by presentation of the certificate attached to this Letter of Credit. The certificate must be signed by Beneficiary. This Letter of Credit is irrevocable. It expires on December 31, 1995.	*This series of simple sentences (i) avoids jargon, (ii) tells the beneficiary exactly what to do, and (iii) covers the principal points of a letter of credit.*

H. Collateral Descriptions

A secured party will frequently draft a description of collateral in a run-on sentence. This makes it difficult to read and may cause the secured party to lose its way. The use of a list will force the secured party to confront directly the scope of the collateral it seeks.

Provision	*Comment*
Collateral means all of the following property of Debtor, now owned or hereafter acquired: (i) Inventory; (ii) Accounts; (iii) Equipment; and (iv) Proceeds of each of the foregoing.	*This simple provision uses a list, UCC terms of art, and a direct statement of the scope of the collateral.*

I. Default Procedures

Once the debtor under a secured loan has defaulted, it is unlikely that the secured party and the debtor will agree on the secured parties' rights and remedies. The time to draft the rights and remedies provisions is when the parties enter into the secured transaction.

Provision	*Comment*
General. Upon any Event of Default, Secured Party may pursue any remedy available at law or in equity to collect, enforce, or satisfy any Secured Obligations then owing. *Concurrent Remedies.* Secured Party shall have the right to pursue any of the following remedies separately, successively, or concurrently: (i) File suit and obtain judgment. (ii) Take possession of any Collateral, without demand and without legal process. (iii) Sell, lease, or otherwise dispose of the Collateral at public or private sale in accordance with the Uniform Commercial Code.	*This provision states in a few direct sentences the range of remedies a secured party may use. The use of a list, short sentences, and a reference to remedies provided in the UCC covers a lot of ground in a brief space.*

V. CONCLUSION

Lawyers, their clients, and the UCC will benefit from documents written in Plain English. The elimination of disputes through clear writing will reduce transaction and litigation costs. Using Plain English will also permit courts to apply their energy to the interpretation of the UCC without being diverted by disputes over the meaning of an agreement.