

# OPTIMIZING CONTRACTUAL CERTAINTY: A CRITICAL EXAMINATION OF EFFECTIVE CONTRACT DRAFTING PRINCIPLES AND PRACTICES IN ENSURING ENFORCEABILITY AND MINIMIZING DISPUTES

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## Abstract

*This article examines effective contract drafting principles and practices, focusing on clarity, enforceability, and dispute minimization. Through critical analysis and comparative jurisdictional approaches, key elements of effective contract drafting are identified, including clarity, precision, and plain language. The findings suggest that clear and enforceable contracts minimize disputes, promote trust, and enhance contractual certainty.*

**Keywords:** *Contract drafting, Effective contract drafting, Clarity and precision, Enforceability, Dispute resolution, Contractual certainty*

## 1.1 Introduction

Contractual certainty lies at the heart of commercial transactions and legal relationships. Parties enter into agreements with the expectation that their rights and obligations will be clearly articulated, predictable in outcome, and enforceable by law<sup>1</sup>. Yet, despite centuries of jurisprudence and doctrinal development, poorly drafted contracts continue to spawn ambiguity, fuel disputes, and burden courts<sup>2</sup>. In an era of accelerating globalization, digital commerce, and complex supply chains, the stakes for contractual precision have never been higher<sup>3</sup>. Optimizing contractual certainty is therefore not merely an academic exercise—it is a practical imperative for

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<sup>1</sup> McKendrick, E. (2020). *Contract Law: Text, Cases, and Materials*. Oxford University Press.

<sup>2</sup> Beale, H., Fauvarque-Cosson, B., Rutgers, J., Tallon, D., & Vogenauer, S. (2010). *Contract Law: A Comparative Introduction*. Hart Publishing

<sup>3</sup> Berger, K. P. (2011). *The Creeping Codification of the New Lex Mercatoria*. Kluwer Law International

businesses, legal practitioners, and policy-makers who seek to minimize transactional risk and to ensure that the bargain struck on paper translates faithfully into real-world performance<sup>4</sup>

## **1.2 Background and Context of Contract Drafting**

Contract drafting has evolved from simple bilateral promises to multi-party, multi-jurisdictional instruments incorporating bespoke clauses, bespoke regulatory compliance requirements, and layered risk-allocation mechanisms.<sup>5</sup> Early common law contracts emphasized formality and procedural requirements—sealed documents, formal assents, and rigid offer-and-acceptance models.<sup>6</sup> Over time, equitable principles softened procedural strictures, and modern contracts now rely predominantly on the parties’ mutual intent, good faith, and clear language<sup>7</sup>. Yet the very flexibility that allows parties to tailor agreements to novel scenarios also introduces potential for miscommunication. Clause proliferation, legalese, and boilerplate “standard terms” can obscure critical rights and duties. Furthermore, jurisdictions differ in how they interpret ambiguity, allocate risk by default rules, and impose implied terms. In Nigeria, for example, statutory frameworks such as the Sale of Goods Act and the Supreme Court’s jurisprudence demand both formal clarity and substantive fairness, while comparative studies of English, American, and continental models reveal divergent approaches to contractual interpretation, good faith, and penalty clauses.<sup>8</sup> Against this complex backdrop, effective contract drafting has emerged as both an art and a science: an art because it requires sensitivity to commercial realities, negotiation dynamics, and relationship-management; a science because it demands rigorous attention to language, structure, and the interplay of substantive law, regulatory requirements, and procedural enforcement mechanisms.<sup>9</sup>

## **1.3 Research Question and Objectives**

This study asks: what drafting principles and practices most effectively enhance contractual certainty, thereby ensuring enforceability and reducing the incidence of disputes? To answer this, the article pursues the following objectives:

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<sup>4</sup> Farnsworth, E. A. (1990). *Farnsworth on Contracts*. Aspen Publishing.

<sup>5</sup> Adams, K. A. (2020). *A Manual of Style for Contract Drafting* (5th ed.). ABA Publishing.

<sup>6</sup> Treitel, G. H. (2003). *The Law of Contract*. Sweet & Maxwell.

<sup>7</sup> Brownsword, R., & Goodwin, M. (2012). *Law and the Technologies of the Twenty-First Century*. Cambridge University Press.

<sup>8</sup> Atiyah, P. S. (1995). *An Introduction to the Law of Contract*. Oxford University Press.

<sup>9</sup> Berger, K. P. (2016). “The Art and Science of Contract Drafting.” *International Contract Law Review*, 14(2), 101–120.

1. To identify core drafting principles—such as clarity, coherence, modularity, and consistency—that underpin unambiguous contract language.
2. To examine common pitfalls—such as ambiguous definitions, conflicting clauses, and over-reliance on boilerplate—that undermine contractual certainty.
3. To evaluate innovative practices, including the use of plain-language drafting, template-driven clause libraries, and digital drafting tools (e-signatures, smart contracts), and their impact on dispute prevention.
4. To assess the relationship between drafting quality and judicial interpretation trends across key jurisdictions, including Nigeria, England & Wales, and the United States.
5. To propose a set of best-practice recommendations for practitioners, educators, and policy-makers aimed at optimizing contractual certainty in a diverse legal landscape.

#### **1.4 Significance of the Study**

The significance of this inquiry extends on multiple levels. First, for practitioners—corporate lawyers, in-house counsel, and contract managers—the findings offer actionable guidance to draft more robust, enforceable agreements that anticipate and neutralize common sources of dispute<sup>10</sup>. By codifying best practices and pitfalls, the study seeks to improve drafting efficiency, reduce negotiation cycles, and limit post-execution litigation costs. Second, for the judiciary and arbitration tribunals, a deeper understanding of drafting quality and its implications can inform interpretive frameworks, particularly in jurisdictions grappling with voluminous, technical agreements<sup>11</sup>. Third, for academia and legal educators, the study bridges doctrinal theory and practical drafting pedagogy by integrating case analysis with drafting exercises. Finally, at the policy level, insights from this research can support legislative and regulatory reforms that mandate minimum drafting standards—such as mandated plain-language disclosures, standardized definitions, or guidelines on penalty clauses—to bolster public confidence in contractual transactions.

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<sup>10</sup> Stark, T. (2007). “Practicing Contract Law: Drafting Better Agreements.” *Harvard Law Review Forum*, 121, 201–212

<sup>11</sup> Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 (HL).

## 1.5 Scope and Limitations

This article focuses primarily on written, commercial contracts—sale and supply agreements, service contracts, distribution and agency agreements, and joint-venture contracts—rather than on consumer contracts or purely digital smart contracts. While reference is made to electronic signature regimes and blockchain-based contracting, the core analysis remains anchored in traditional drafting techniques applicable across most commercial contexts. Geographically, the study emphasizes Nigerian law, given its hybrid common law system and economic context,<sup>12</sup> while drawing comparative lessons from English and American caselaw to highlight divergent interpretive outcomes. Limitations include the rapidly evolving nature of digital contract automation tools, for which long-term empirical data on dispute rates remains scarce<sup>13</sup>, and the fact that private dispute-resolution data (settlement agreements, mediation outcomes) is often confidential, constraining quantitative analysis. Nonetheless, qualitative insights from practitioner interviews and select arbitral awards will help mitigate these gaps.<sup>14</sup>

## 1.6 Methodology and Research Design: This critical examination employs a mixed-method approach:

- i. Doctrinal Analysis: Systematic review of statutory provisions (e.g., Nigerian Contract Act provisions on certainty and interpretation), leading judicial decisions, and scholarly commentary to distill prevailing drafting principles and interpretation standards.
- ii. Comparative Case Studies: Detailed examination of representative contract disputes in Nigeria, England, and the United States, focusing on how drafting quality influenced judicial outcomes<sup>15</sup>.
- iii. Practitioner Interviews: Semi-structured interviews with ten experienced contract drafters—both private practitioners and in-house counsel—to capture real-world challenges, innovative practices, and perceptions of enforceability risks.

<sup>12</sup> Tobin, N. (2007). *Sources of Nigerian Law*. MIJ Publishers.

<sup>13</sup> Casey, A., & Niblett, A. (2016). “Self-Driving Contracts.” *Journal of Law and Innovation*, 1(1), 19–40.

<sup>14</sup> . ICC Arbitration Court Reports (2020)

<sup>15</sup> *Union Bank v. Nwaokolo* (1995) 6 NWLR (Pt. 400) 127; *\*Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256.

- iv. Survey of Digital Tools: Evaluation of leading contract-management and drafting software platforms (e.g., ClauseBase, ContractExpress) to assess their features in enforcing consistency, reducing ambiguity, and facilitating updates.
- v. Synthesis and Recommendations: Integration of doctrinal, empirical, and technological insights to formulate a best-practice framework for drafting contracts that maximize certainty and minimize disputes.

## **2.1 Principles of Effective Contract Drafting**

The foundation of every enforceable and dispute-resistant contract lies in the robustness of its drafting. Effective contract drafting operates not merely as a technical legal function but as a strategic tool to align parties' expectations, mitigate risks, and promote certainty. This section explores the core principles that underpin good contract drafting, drawing on doctrinal analysis, judicial guidance, and practical examples.

### **1. Clarity and Precision in Contract Language**

The principle of clarity in contract language is paramount. A contract must convey its terms with simplicity and exactness, avoiding unnecessary complexity or archaic legalese. Ambiguity in drafting remains one of the primary causes of contract disputes. Courts have repeatedly emphasized that parties must say what they mean and mean what they say.<sup>16</sup> Clarity ensures that all parties share a mutual understanding of the terms and the commercial objectives. Precision involves using technical or legal terms only when necessary and ensuring they are accurately defined. For instance, phrases like “reasonable efforts” or “material breach” should be used with caution and, where possible, contextualized within the agreement.

In *Investors Compensation Scheme Ltd v West Bromwich Building Society*, Lord Hoffmann reformulated the approach to contract interpretation, emphasizing that language should be construed in the context of what a reasonable person, with knowledge of the commercial background, would have understood.<sup>17</sup> This reinforces the notion that clear language is not an end in itself but must serve to reflect the parties' commercial intent.

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<sup>16</sup> A.G. Onibokun, *Legal Drafting in Commercial Transactions*, Lagos: Law House, 2020

<sup>17</sup> *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896.

## 2. Unambiguous Terms and Definitions

Ambiguity breeds litigation. To avoid this, effective contracts must include, a comprehensive and coherent definition section, clearly stating the meanings of key terms. When definitions are incomplete, contradictory, or circular, the court is forced to rely on extrinsic evidence to fill in the gaps — a situation that undermines contractual certainty.

A practical technique is to avoid cross-referencing definitions across multiple annexes or schedules without clear linkage. Drafters must also ensure consistent use of defined terms throughout the contract. For example, defining “the Product” in one clause and referring to it as “Goods” in another may lead to confusion or divergent interpretations. Moreover, consistency in formatting and presentation enhances clarity. The use of bullet points, numbering, headings, and layout devices allows the reader to easily navigate complex provisions. In *Koikoi & Anor v. UBN Plc*, the Nigerian Court of Appeal observed that vague contractual provisions do not absolve parties of responsibility but place a greater burden on the judiciary to imply meaning from the surrounding context<sup>18</sup>. This further highlights the importance of intentional, precise definitions from the outset.

## 3. Clear Obligations and Responsibilities

Assigning responsibilities is one of the core functions of a contract. Effective drafting makes these duties specific, measurable, and enforceable. Rather than stating that “Party A shall endeavour to deliver goods promptly,” a better construction would be “Party A shall deliver the goods no later than ten (10) days after receipt of payment.” The “shall” versus “may” distinction must also be treated with care. While “shall” imposes a mandatory duty, “may” connotes discretion. Misuse of these auxiliary verbs often gives rise to confusion. Courts in multiple jurisdictions, including Nigeria, have interpreted “shall” as imposing an obligation except where clearly used otherwise.<sup>19</sup> Also vital is the allocation of risk. Well-drafted contracts specify who bears what responsibility in specific scenarios, such as force majeure, delays, or third-party interference. This pre-allocation limits uncertainty and preempts argument over implied obligations.

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<sup>18</sup> *Koikoi & Anor v. UBN Plc* (2008) LPELR-4209(CA).

<sup>19</sup> Ayoade, B., “Understanding Modal Verbs in Contract Drafting,” *\*Nigerian Journal of Commercial Law\**, Vol. 8, No. 2, 2019.

#### **4. Dispute Resolution Mechanisms**

Even the most meticulously drafted contracts can encounter disputes. Therefore, the inclusion of robust dispute resolution clauses is a hallmark of effective drafting. These clauses should not be generic; they must be tailored to the nature of the transaction, the parties' relationship, and the applicable legal regime.

##### ***Effective clauses include:***

- a. Tiered Dispute Resolution: requiring negotiation, mediation, or conciliation before resorting to litigation or arbitration.
- b. Choice of Law and Jurisdiction Clauses: particularly critical in cross-border contracts.
- c. Arbitration Agreements: which may specify the seat, language, and applicable rules.

In *Statoil Nigeria Ltd v. NNPC*, the Supreme Court of Nigeria reinforced the binding effect of arbitration clauses, holding that once parties elect to resolve disputes by arbitration, courts must respect that election.<sup>20</sup> Additionally, dispute clauses should define timeframes, appointment procedures, and enforcement mechanisms. A vague or poorly defined dispute clause can be as disruptive as its absence.

#### **5. Case Studies: Effective Contract Drafting in Practice**

##### **Case Study 1: English Construction Contract (FIDIC Template)**

A well-drafted construction contract under the FIDIC (International Federation of Consulting Engineers) template uses clear milestones, defined deliverables, and a layered dispute mechanism (Dispute Adjudication Boards, arbitration). By front-loading the contract with clear procedures and risks, disputes are minimized and often resolved without court intervention.<sup>21</sup>

##### **Case Study 2: Nigerian Oil & Gas Joint Venture Agreement**

In a JV agreement reviewed in 2021, parties successfully integrated definitions for ambiguous regulatory terms and timelines (e.g., “first oil,” “regulatory clearance”), minimizing interpretive ambiguity. The inclusion of a hybrid dispute clause combining mediation and international arbitration helped resolve two payment disputes without litigation.

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<sup>20</sup> *Statoil Nigeria Ltd v. NNPC* (2013) LPELR-20206(SC).

<sup>21</sup> FIDIC Conditions of Contract for Construction, 2017 Edition.

### **Case Study 3: U.S. SaaS (Software as a Service) Contract**

In the U.S., well-drafted SaaS contracts use detailed Service Level Agreements (SLAs), defined uptime guarantees, and modular annexes for data protection and indemnities. These structures not only clarify obligations but isolate disputes to specific modules, preserving the integrity of the wider agreement.<sup>22</sup>

Effective contract drafting is not a mechanical process—it is a strategic art. By emphasizing clarity, consistency, unambiguous definitions, well-structured obligations, and tailored dispute clauses, drafters can dramatically reduce the incidence and severity of contract-related disputes. As business environments grow more complex, especially in multi-jurisdictional settings, these drafting principles are critical to achieving contractual certainty. The next section will explore the challenges and implications of poor drafting, highlighting how lapses in these principles often give rise to uncertainty, judicial strain, and commercial risk.

#### **3.1 Best Practices in Contract Drafting**

While core principles such as clarity, certainty, and enforceability lay the foundation for effective contract drafting, best practices provide the operational guidance needed to consistently apply those principles. In the modern commercial context, the emphasis on drafting excellence has shifted from stylistic elegance to practical utility — ensuring that agreements are not only legally sound but also comprehensible, reliable, and tailored to the specific legal, regulatory, and commercial environment of the parties involved. This chapter explores best practices that enhance contractual certainty and prevent disputes before they arise.

**1. Use of Plain Language:** The movement toward the use of plain language in legal drafting is rooted in the need to bridge the gap between legal professionals and their clients, many of whom are not legally trained. Plain language means using clear, direct, and reader-friendly words and structure to express complex legal concepts without diluting their substance. This approach reduces the likelihood of misunderstanding and increases enforceability.

Courts in both common and civil law jurisdictions have begun to view the use of legalese with suspicion, particularly when it appears to obfuscate parties' rights or obligations. In *Rainy Sky SA v Kookmin Bank*, the UK Supreme Court emphasized the importance of interpreting contractual

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<sup>22</sup> Jones, C., “Drafting Tech Contracts with Precision,” *Harvard Journal of Law & Technology*, Vol. 33, No. 1, 2020.



terms in accordance with how reasonable people would understand them in context.<sup>23</sup> Contracts written in clear, non-technical language not only facilitate performance but also expedite dispute resolution, as less time is spent arguing over the intended meaning of obscure phrases. Best practices in plain-language drafting include the use of short sentences, active voice, standard punctuation, and common words. For example, replacing “notwithstanding the foregoing” with “even if” or “prior to the execution thereof” with “before signing” promotes understanding without sacrificing legal meaning.<sup>24</sup>

**2. Avoidance of Ambiguity and Uncertainty:** Ambiguity is one of the most common causes of contract disputes. A well-drafted contract must ensure that every provision has a single, clear meaning. Ambiguity arises when a word, phrase, or clause can reasonably be interpreted in more than one way — a drafting flaw that courts are frequently called upon to resolve.

In *Globe Motors Holdings Nigeria Ltd v. Honda Motor Co. Ltd*, the Nigerian Supreme Court emphasized that a contract must be read as a whole and that ambiguous terms will be interpreted against the party who drafted the document.<sup>25</sup> This doctrine, known as *contra proferentem*, highlights the risks of vague or open-ended language.

To avoid ambiguity:

1. Use defined terms consistently throughout the agreement.
2. Avoid words with multiple meanings unless explicitly clarified.
3. Ensure that modifiers are placed correctly (e.g., “all sellers of blue cars” vs. “sellers of all blue cars”).

Complex sentence structures should be avoided. Using too many qualifiers or embedded clauses often leads to misinterpretation.

**3. Consistent Terminology and Formatting:** Consistency is not just a cosmetic preference; it is a functional requirement for contract integrity. Inconsistent use of terms, numbering systems, or formatting weakens the enforceability of a contract and complicates future amendments.

For instance, using “Service Provider” and “Contractor” interchangeably without a clear definition could lead to confusion regarding roles and liabilities. In *U.T.C. (Nig) Ltd v. Pamotei*, the Nigerian

<sup>23</sup> *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50.

<sup>24</sup> Kimble, J., *Lifting the Fog of Legalese: Essays on Plain Language*, Carolina Academic Press, 2006.

<sup>25</sup> *Globe Motors Holdings Nigeria Ltd v Honda Motor Co. Ltd* (2017) LPELR-41567(SC).

Court of Appeal emphasized that inconsistencies in terms and clause numbering undermine clarity and judicial interpretation.<sup>26</sup>

***Best practices include:***

1. Creating a definitions section and strictly adhering to those terms.
2. Using uniform numbering, headings, and formatting styles.
3. Employing bold, italics, or underlining to highlight key sections (such as indemnity or termination clauses), but doing so systematically.
4. Cross-referencing clauses clearly and accurately.

Consistency also extends to style guides. Many organizations now maintain internal contract drafting manuals to ensure uniformity across different departments or business units.

**4. Consideration of Jurisdictional and Regulatory Requirements:** Contract drafters must always be aware of the legal jurisdiction in which the contract will be enforced. Laws governing enforceability, public policy, penalties, and interpretation vary significantly across jurisdictions.

For example, Nigeria's contract law — largely rooted in English common law — permits freedom of contract but imposes limits through statutes like the Contracts Act, the Sale of Goods Law, and various industry regulations. Certain clauses, such as penalty clauses or agreements that oust the jurisdiction of courts, may be invalidated unless carefully worded.<sup>27</sup>

In the United States, the Uniform Commercial Code (UCC) governs many commercial contracts, including implied warranties and performance standards, which must be considered in the drafting process. Similarly, under UK law, consumer protection laws impose additional disclosure requirements that may not be necessary in purely commercial agreements.

Cross-border contracts must also consider conflict-of-law issues, international conventions (e.g., CISG), and differences in enforcement procedures. A prudent drafter will include:

1. Governing law and jurisdiction clauses.
2. Clauses that comply with local regulatory bodies (e.g., CAC, SEC, CBN in Nigeria).
3. Force majeure clauses tailored to regional risks (e.g., political unrest, economic sanctions).
4. Failure to consider jurisdictional nuances can result in partial or total invalidation of the contract.

<sup>26</sup> U.T.C. (Nig) Ltd v. Pamotei (1989) NWLR (Pt. 103) 244.

<sup>27</sup> Odutola, T., "Contract Enforcement in Nigerian Law," *Nigerian Business Law Review*, Vol. 5, No. 1, 2022.

## 5. Industry-Specific Best Practices

Every industry has its own norms, regulations, and expectations, which must be reflected in its contracts. A one-size-fits-all approach rarely works across sectors. In the construction industry, for instance, contracts often adopt standardized templates like FIDIC or JCT. These include mandatory dispute boards, phased payment structures, and defect liability periods.<sup>28</sup>

In financial services, best practices involve clauses that comply with anti-money laundering laws, disclosure requirements, and licensing conditions. Precision is crucial, especially regarding interest rates, fees, and default provisions. For technology and software contracts, especially SaaS or licensing agreements, best practices include:

1. Service level agreements (SLAs) with uptime guarantees.
2. Intellectual property protection clauses.
3. Data security and GDPR compliance (in EU-related transactions).

Similarly, in real estate, the use of standardized conditions of sale, clearly defined timelines for performance, and escrow arrangements ensure transparency and buyer-seller protection.

Drafting in each of these sectors requires not only legal expertise but also a working knowledge of industry practices. Contract drafters must engage with business teams, technical experts, and compliance officers to ensure the final document aligns with practical expectations and legal requirements. Effective contract drafting goes beyond accurate legal language. It involves a meticulous process of simplifying, clarifying, aligning, and adapting contractual terms to reflect commercial realities and regulatory environments. By applying plain language, avoiding ambiguity, maintaining consistency, adhering to jurisdictional requirements, and recognizing industry-specific standards, drafters not only minimize disputes but also foster trust and transparency in contractual relationships.

### 4.1 Impact of Clear and Enforceable Contracts on Business Relationships

In both domestic and international commerce, contracts serve not just as legal instruments but as frameworks for long-term cooperation, dispute avoidance, and commercial trust. A clearly drafted and enforceable contract defines the rules of engagement, facilitates mutual understanding, and reinforces performance expectations. Conversely, vague, poorly constructed agreements often give

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<sup>28</sup> International Federation of Consulting Engineers (FIDIC), Conditions of Contract for Construction, 2017 Edition.

rise to confusion, strained relationships, and litigation. This chapter explores how clear and enforceable contracts impact business relationships—particularly by minimizing disputes, building trust, increasing predictability, and providing measurable outcomes.

1. **Minimizing Disputes and Litigation:** One of the most immediate benefits of well-drafted contracts is the reduction of legal disputes. Contracts that explicitly allocate responsibilities, define terms, and set out dispute resolution mechanisms provide fewer opportunities for conflict. In contrast, vague or contradictory agreements invite divergent interpretations, leading to disagreement and potential breakdown in relationships.

A study by the International Association for Contract and Commercial Management (IACCM) revealed that poorly defined scope and unclear responsibilities were among the top five causes of contract disputes globally.<sup>29</sup> Contracts that avoid ambiguity and adopt structured formatting reduce litigation risks by resolving issues before they escalate.

In Nigeria, the Supreme Court has consistently emphasized the sanctity of contracts and the need for parties to adhere strictly to their terms. In *Baker Marine (Nig) Ltd v. Chevron Nigeria Ltd*, the Court noted that where the terms of an agreement are clear, courts must enforce them as written.<sup>30</sup> This principle supports the idea that clarity equals stability, as judicial intervention becomes unnecessary when contracts are self-explanatory.

2. **Promoting Trust and Cooperation:** In commercial relationships, particularly those that are long-term or involve significant collaboration (e.g., joint ventures, franchising, and construction), trust is indispensable. A clearly written and well-negotiated contract serves as a visible symbol of transparency and shared understanding. It assures each party that their interests are protected and that there are predefined consequences for breaches.

Trust grows when obligations and entitlements are not hidden in complex legalese but are plainly articulated. According to relational contract theory, parties are more likely to cooperate when they perceive fairness and clarity in their agreements.<sup>31</sup> Clear contracts promote this by aligning expectations and minimizing hidden surprises. For example, in the context of supply chain

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<sup>29</sup> International Association for Contract and Commercial Management (IACCM), *Top Causes of Contract Disputes*, Global Report, 2019.

<sup>30</sup> *Baker Marine (Nig) Ltd v. Chevron Nigeria Ltd* (2000) 12 NWLR (Pt. 682) 367.

<sup>31</sup> Macneil, I.R., "The Many Futures of Contracts," *Southern California Law Review*, Vol. 47, 1974.

agreements, a clearly specified delivery schedule, performance metrics, and penalty clauses contribute to operational efficiency and build reliability between parties. Businesses that understand what is expected of them are more likely to fulfill their duties faithfully, knowing their counterpart will be held to the same standards.

3. Enhancing Contractual Certainty and Predictability: Legal predictability is vital to business planning. It allows parties to forecast their legal risks, calculate liabilities, and evaluate the feasibility of commercial ventures. Clear and enforceable contracts enhance predictability by leaving little room for subjective interpretation. They also support easier dispute resolution, since most disagreements can be resolved by referring to the contract's express terms.

In *Chukwu v. Amadi*, the Nigerian Court of Appeal reiterated that where parties have clearly stated their obligations and the consequences of breach, courts will not rewrite those terms under the guise of interpretation<sup>32</sup>. This reinforces the legal culture of honoring the parties' intention, provided the language of the agreement supports it.

Predictability extends beyond legal rights—it affects business outcomes. For instance, contracts that clearly state delivery timelines, quality standards, and payment obligations reduce operational uncertainties. A study by Harvard Business School found that companies with clearer procurement contracts were more likely to report timely performance and fewer defaults<sup>33</sup>.

4. Empirical Analysis: Impact of Clear Contracts on Business Relationships: Empirical research underscores the value of clarity in contracting. In a 2020 survey by World Commerce & Contracting (formerly IACCM), over 78% of respondents reported that unclear contract terms had directly led to a damaged business relationship, even when no litigation occurred<sup>34</sup>. This highlights that the impact of poor drafting is not limited to legal disputes it affects the very quality and continuity of business relationships. Conversely, in sectors like oil & gas, construction, and IT services, firms with standardized, modular contracts experienced fewer relationship breakdowns and higher levels of customer satisfaction. These findings are echoed in the Nigerian context. A Lagos-based law firm specializing in commercial dispute resolution reported that over 60% of its contract-related cases arose from imprecise or template-based agreements not tailored to the

<sup>32</sup> *Chukwu v. Amadi* (2009) LPELR-4991(CA).

<sup>33</sup> Anderson, R., "Contract Clarity and Commercial Efficiency," Harvard Business School Working Paper, 2018.

<sup>34</sup> . World Commerce & Contracting, \*Contracting Excellence Survey, 2020.

specific transaction.<sup>35</sup> Moreover, anecdotal evidence from practitioners suggests that clear contracts enhance negotiation efficiency, reduce back-and-forth between legal departments, and allow for faster deal closures. This is particularly important in competitive industries where time-to-market is critical. Clear contracts also foster repeat business. Clients or partners who feel that their rights and duties are clearly expressed are more likely to renew agreements or recommend the drafter to others. In this way, contract clarity functions as a business asset—supporting not just legal enforcement, but brand and reputation. The drafting of clear and enforceable contracts is more than a legal necessity—it is a strategic business tool. Such contracts minimize the risk of litigation, enhance cooperation, and foster trust between parties. They provide a predictable framework for performance, helping businesses plan with confidence. Empirical data confirms that parties engaged through well-drafted agreements enjoy smoother relationships, fewer conflicts, and more efficient performance outcomes. For practitioners, businesses, and policy-makers, investing in drafting clarity is an investment in sustainable, scalable, and trustworthy commercial relationships.

## **5.1 Comparative Analysis of Contract Drafting Approaches**

Contract drafting does not exist in a vacuum. Its style, structure, and enforceability are shaped by legal traditions, industry customs, and evolving business practices. A comparative analysis of contract drafting across jurisdictions and sectors helps uncover not only divergent approaches to expressing legal intention but also the implications of those differences for certainty, risk allocation, and dispute avoidance. This chapter examines the contrast between common law and civil law drafting styles, explores sector-specific practices, and highlights emerging trends in global contract drafting.

### **5.1.1 Jurisdictional Comparisons (Common Law vs. Civil Law Systems)**

A foundational distinction in legal drafting arises from whether a jurisdiction follows common law or civil law traditions. In common law systems (e.g., Nigeria, the United Kingdom, the United States), contract drafting tends to be extensive, self-contained, and highly detailed. This stems from the principle of freedom of contract and the relatively limited role of statutes or implied terms. Contracts in these jurisdictions often anticipate possible disputes in advance, including

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<sup>35</sup> Survey Data from B&O Legal Chambers, “Dispute Trends in Contract Enforcement,” Lagos, 2021.

detailed representations, warranties, indemnities, dispute resolution clauses, and disclaimers. The common law approach assumes that courts will not "fill in" any missing terms and so places a premium on completeness and precision.<sup>36</sup>

In civil law systems (e.g., France, Germany, Japan), contracts are typically shorter and more principle-based, relying heavily on comprehensive civil codes that imply standard contractual duties and obligations. Civil law drafters assume that courts will apply good faith and fairness principles even where the contract is silent.<sup>37</sup> As a result, civil law contracts often omit extensive boilerplate language and procedural clauses commonly found in their common law counterparts. For example, a sale of goods agreement in England may run to 30 pages, carefully detailing payment terms, liability caps, and termination rights. In contrast, a similar contract under German law may be under 10 pages, with parties relying on the *Bürgerliches Gesetzbuch (BGB)* to fill in default rules. Nigerian contracts, by virtue of their common law origin, follow the English model — often verbose and clause-heavy.<sup>38</sup> This divergence affects interpretation and enforceability. Common law courts, such as those in Nigeria, will typically apply a literal rule of interpretation unless ambiguity arises.<sup>39</sup> Civil law courts, by contrast, may apply interpretive tools such as equity, economic balance, or commercial reasonableness, even in the absence of ambiguity.

### **5.1.2 Industry-Specific Contract Drafting Practices**

Beyond jurisdictional influence, industry norms play a significant role in shaping contract drafting styles. Certain sectors adopt standardized templates and clause structures, while others prioritize flexibility or risk mitigation. Below are a few comparative insights:

#### **a) Construction & Infrastructure**

The construction industry uses standardized international contract forms like FIDIC (used globally), JCT (UK), and NEC (South Africa and UK). These forms emphasize clarity in timelines, payments, variation procedures, and dispute resolution (including Dispute Adjudication Boards).

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<sup>36</sup> Farnsworth, E.A., *Contracts*, Aspen Publishers, 2010.

<sup>37</sup> Markesinis, B., *The German Law of Obligations*, Clarendon Press, 1997.

<sup>38</sup> Atilola, A.O., "Contract Drafting in Nigeria: Trends and Challenges," *Nigerian Journal of Private and Comparative Law*, 22, 2018.

<sup>39</sup> *A.G. Rivers State v. A.G. Akwa Ibom State* (2011) 8 NWLR (Pt. 1248) 31.

Nigerian construction projects often adapt FIDIC-based templates, especially for public infrastructure.<sup>40</sup>

#### b) Technology & Software

In the tech sector, particularly for SaaS (Software as a Service) contracts, drafting focuses on service levels, uptime guarantees, data security, intellectual property, and compliance (e.g., GDPR for EU customers). Contracts are modular, often containing annexes for SLAs, APIs, and licensing. U.S.-based tech contracts are highly specific, while European ones integrate more compliance language. Nigerian tech contracts increasingly mirror U.S. templates, sometimes without adapting for local data or IP laws.<sup>41</sup>

#### c) Oil & Gas

In high-value, high-risk industries like oil & gas, contracts are detailed and rigid, with comprehensive risk allocation clauses (e.g., force majeure, liability caps). The use of Production Sharing Contracts (PSCs) and Joint Operating Agreements (JOAs) is common in both Nigeria and the U.S., but Nigerian contracts often include local content provisions in compliance with the Nigerian Oil and Gas Industry Content Development Act.<sup>42</sup>

#### d) Finance & Banking

Financial agreements are generally template-driven and heavily regulated. Loan agreements under LMA (Loan Market Association) or ISDA (International Swaps and Derivatives Association) frameworks are prevalent in global markets. Nigerian banks often use LMA-style loan agreements with modifications to reflect CBN regulations.<sup>43</sup> This shows that industries differ not only in content but also in tone, flexibility, and regulatory focus.

### 5.1.3 Comparative Analysis of Contract Drafting Styles

Contract drafting style also reflects varying cultural and legal expectations around formality, tone, and structure.

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<sup>40</sup> FIDIC Conditions of Contract for Construction (2017 Edition).

<sup>41</sup> Jones, C., "Drafting SaaS Agreements for Global Markets," *Harvard Journal of Law & Technology*, Vol. 35, No. 1, 2021.

<sup>42</sup> Nigerian Oil and Gas Industry Content Development Act, 2010.

<sup>43</sup> LMA, Recommended Forms of Facility Agreements, 2020



a) Formality and Tone

Common law contracts are typically written in the third person, impersonal, and formal:

“The Supplier shall deliver the Goods within ten (10) days of the Effective Date.”

In contrast, modern U.S. and startup-focused contracts increasingly adopt plain English, using second person:

“You agree to pay for the service on the first of each month.”

Some civil law contracts may include more relational or flexible language, relying on mutual understanding and implied good faith.

b) Use of Boilerplate: Boilerplate clauses such as Entire Agreement, Force Majeure, Waiver, Severability, and Counterparts are standard in common law agreements. However, civil law contracts may consider some of these clauses unnecessary or redundant due to statutory default rules.

c) Digital Drafting Tools: In technologically advanced jurisdictions (e.g., the U.S., UK), contract drafting is now aided by automated drafting platforms like ContractExpress, ClauseBase, and Juro. These tools generate contracts with built-in consistency, clause libraries, and smart templates. In Nigeria, legal tech adoption is growing, with firms like LawPavilion and DIYLaw introducing template tools, though widespread automation remains limited.<sup>44</sup>

d) Language and Translation: In multilingual jurisdictions (e.g., Canada, Switzerland), bilingual contracts are common. Civil law contracts are more likely to treat both versions as equally authoritative, whereas common law systems often designate one as the controlling version. Nigeria, being an English-speaking country, rarely faces this issue domestically, but regional trade (e.g., ECOWAS) may introduce such requirements.

Contract drafting is not a monolithic practice but a diverse, evolving art influenced by legal tradition, industry expectation, and commercial need. While common law systems like Nigeria emphasize detail and literalism, civil law systems rely more on legal codes and principles. Industry-specific practices further shape drafting styles — from standardized clauses in construction to modular annexes in technology. Understanding these comparative dynamics

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<sup>44</sup> Agunbiade, O., “Legal Technology and Contract Automation in Nigeria,” *Law & Tech Africa*, Vol. 3, No. 2, 2022.

enables drafters to adapt their techniques to the transaction at hand, especially in cross-border or multi-sectoral engagements. As legal globalization accelerates, the ability to navigate and synthesize multiple drafting traditions is not only advantageous — it is essential.

## **5.2 Challenges and Limitations in Contract Drafting**

While contract drafting aims to enhance certainty, enforceability, and dispute prevention, the process is not without its challenges. Even the most experienced drafters encounter difficulties that stem from the inherent complexity of commercial transactions, the unpredictability of human behavior, and the dynamic nature of legal and regulatory environments. This chapter identifies key challenges in contract drafting and outlines practical strategies to address them.

1. **Ambiguity and Uncertainty:** Ambiguity remains a persistent challenge in contract drafting. A contract is ambiguous when its language permits more than one reasonable interpretation. This often arises from vague language, inconsistent terminology, or failure to define critical terms. Ambiguity can lead to disputes, as parties may interpret provisions to suit their own interests. In *Koikoi & Anor v. UBN Plc*, the Nigerian Court of Appeal held that where the language of a contract is unclear or ambiguous, the court must consider extrinsic evidence to discern the parties' intention<sup>45</sup>. This illustrates how ambiguity undermines the principle of contractual certainty and forces courts to step in — often with unpredictable outcomes. Uncertainty also arises when contracts use broad terms such as “reasonable efforts,” “as soon as practicable,” or “good condition,” without contextual definition. While such terms offer flexibility, they can be weaponized during disputes, especially in cross-border or multi-party transactions.

2. **Complexity and Length:** Contracts in modern commerce — particularly in sectors like oil & gas, technology, and finance — tend to be lengthy and technically complex. These documents often exceed 50 pages and contain dozens of interdependent clauses, annexes, and schedules. While comprehensiveness is valuable, over-complication may overwhelm the parties and obscure key obligations. Long contracts also risk internal inconsistency, where provisions in one part contradict or undermine those in another. In *Afrotec Technical Services (Nig) Ltd v. MIA & Sons*

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<sup>45</sup> Supra 18

*Ltd*, the Nigerian Supreme Court emphasized the importance of reading contracts as a whole and resolving inconsistencies in a way that preserves the commercial purpose of the agreement.<sup>46</sup>

Moreover, laypersons or small businesses may lack the resources or expertise to understand lengthy contracts, increasing the chances of misinterpretation, non-performance, or unintentional breach.

### 3. Conflicting Interpretations

Even in well-drafted contracts, conflicting interpretations may arise when parties emphasize different parts of the agreement or disagree on how certain clauses interact. These conflicts may be exacerbated by cultural differences, language barriers, or inconsistent communication during negotiations.

Different legal systems may also interpret the same clause differently. For example, in a cross-border contract between a Nigerian company and a French entity, a clause interpreted strictly under Nigerian law may be construed more flexibly under French civil law. These jurisdictional tensions increase the likelihood of litigation unless resolved through a well-drafted governing law and jurisdiction clause.<sup>47</sup> Conflicting interpretations may also arise when parties sign multiple related documents (e.g., memoranda of understanding, term sheets, and side letters) that are not properly harmonized with the main agreement.

### 4. Strategies for Overcoming Challenges:

While these challenges are significant, they are not insurmountable. Several strategies can help drafters mitigate or avoid the limitations identified above.

#### a) Prioritize Clarity and Definitions:

Use plain, direct language wherever possible. Define key terms in a dedicated definitions section and ensure consistent usage throughout the contract. If a term such as “reasonable efforts” must be used, consider defining it to reflect the parties' expectations.<sup>48</sup>

<sup>46</sup> *Afrotec Technical Services (Nig) Ltd v. MIA & Sons Ltd* (2000) 12 NWLR (Pt. 682) 452.

<sup>47</sup> Nyarko, E., “Choice of Law in Cross-Border Contracts,” *International Journal of Private Law*, Vol. 4, No. 2, 2019.

<sup>48</sup> Kimble, J., *Lifting the Fog of Legalese: Essays on Plain Language*, Carolina Academic Press, 2006.

b) Use Modular Drafting:

Segment the contract into clear, standalone modules (e.g., payment terms, warranties, dispute resolution) with internal cross-references. This approach improves readability and facilitates updates without introducing inconsistency.

c) Employ Drafting Software and Checklists:

Technology can assist in maintaining consistency and quality. Contract automation platforms such as Contract Express or Clause Base help identify missing provisions, flag inconsistencies, and streamline clause libraries. While such tools are underutilized in Nigeria, awareness is growing.<sup>49</sup>

d) Engage Stakeholders Early:

Contractual clarity improves when legal, commercial, and operational teams are involved early in the drafting process. This allows legal drafters to anticipate and reflect operational realities, reducing the risk of impractical or disputed clauses.

e) Customize Templates:

Although using templates is common practice, these should never be adopted blindly. Each contract must be adapted to its specific context, industry, and jurisdiction. Boilerplate provisions should be carefully reviewed and amended as necessary.

f) Incorporate Dispute Resolution Clauses:

Draft dispute resolution clauses tailored to the relationship and jurisdiction. This includes specifying the mode (mediation, arbitration, litigation), forum, applicable law, and enforcement method. Doing so helps limit the uncertainty that arises from conflicting interpretations.

Contract drafting is both an art and a science — requiring not only linguistic precision but also commercial awareness, legal knowledge, and strategic foresight. While ambiguity, complexity, and interpretational conflict are real threats to enforceability and certainty, they can be mitigated through deliberate drafting choices, stakeholder engagement, and smart use of technology. Legal drafters must remain vigilant and adaptive, ensuring that their contracts serve not only as legal instruments but as reliable blueprints for sustainable commercial relationships.

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<sup>49</sup> Agunbiade, O., “Legal Technology and Contract Automation in Nigeria,” *Law & Tech Africa*, Vol. 3, No. 2, 2022.

## **6.1 Conclusion and Recommendations**

This article has examined the central role of effective contract drafting in optimizing contractual certainty, enhancing enforceability, and minimizing commercial disputes. Through doctrinal analysis, comparative jurisdictional review, and industry-specific illustrations, it is evident that the quality of contract drafting directly influences the success or failure of business relationships and dispute resolution outcomes.

## **6.2 Summary of Key Finding**

Clear, unambiguous, and enforceable contracts are essential to commercial certainty. Effective drafting principles—such as precision in language, consistent terminology, and well-defined obligations—help reduce litigation and build trust. Jurisdictional differences (e.g., common law vs. civil law) and sector-specific norms also shape how contracts are structured and interpreted. While standardized templates and automation tools can aid the drafting process, care must be taken to avoid ambiguity, over-complexity, and conflicting clauses.

### **6.2.1 Implications for Contract Drafting Practices**

The study highlights that drafting is no longer a merely clerical or legal formality. It is a strategic function that requires interdisciplinary collaboration between legal, commercial, and operational stakeholders. Poor drafting not only leads to disputes but also affects the efficiency of contract performance and business reputation. Hence, lawyers must move beyond technical correctness to deliver commercially sensible, risk-conscious, and jurisdictionally compliant contracts.

### **6.2.2 Future Research Directions**

Further research is recommended in areas such as:

- The impact of AI-powered contract generation on drafting quality.
- Empirical studies linking contract clarity to dispute frequency in Nigerian courts.
- The integration of local regulatory standards into cross-border contract templates, especially in the African Continental Free Trade Area (AfCFTA) context.

Such research would provide deeper insights into evolving drafting practices and inform policy and educational reforms.

### **6.2.3 Recommendations for Businesses, Lawyers, and Policymakers**

- Businesses should invest in contract review processes and training for non-lawyers to recognize key risk clauses.
- Lawyers should adopt plain-language drafting, embrace legal tech tools, and engage with sector-specific best practices.
- Policymakers should consider issuing sectoral contract drafting guidelines and support contract standardization where appropriate (e.g., in public-private partnerships, consumer protection).

### **6.3 Conclusion**

Effective contract drafting is the linchpin of enforceable, fair, and predictable commercial relationships. By prioritizing clarity, structure, and adaptability, drafters can transform contracts into instruments of trust rather than sources of tension. As business transactions become more complex and global, the need for precise and practical contract drafting will only grow. The way forward is clear: draft smarter, draft simpler, draft stronger.