

# Taming the Jabberwock: A Plain Redraft of Lewis Carroll's 1883 Publishing Contract

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## All in the Golden Afternoon

Eight miles north of the University of Surrey, in the city of Woking, England, is an archive of personal papers that once belonged to the Reverend Charles Lutwidge Dodgson, a mathematician, logician, and scholar at Christ Church College, Oxford.<sup>1</sup> Dodgson penned such works as *A Syllabus of Plane Algebraical Geometry* (1860) and *Euclid and His Modern Rivals* (1879).<sup>2</sup> But his pseudonymous alter ego, Lewis Carroll, left a more indelible legacy, inhabiting a sunny corner of our imagination with his *Alice's Adventures in Wonderland* (1865) and *Through the Looking-Glass, and What Alice Found There* (1872).<sup>3</sup>

Immediately after Dodgson's 1898 death — and for decades to follow — his papers were in various parts burned (possibly at his direction), mutilated by razor or scissor, lost under clouds of

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<sup>1</sup> 8 Encyclopaedia Britannica *Dodgson, Charles Lutwidge* 369 (11th ed. 2010), <http://www.gutenberg.org/files/32689/32689-h/32689-h.htm#ar169> (last visited Sept. 19, 2019).

<sup>2</sup> John J. O'Connor & Edmund F. Robertson, *Charles Lutwidge Dodgson*, MacTutor History of Mathematics Archive, School of Mathematics and Statistics, University of St. Andrews, Scotland (2002), <http://www-history.mcs.st-and.ac.uk/Biographies/Dodgson.html> (last visited Sept. 19, 2019); 8 Encyclopaedia Britannica *Dodgson, Charles Lutwidge* 369.

<sup>3</sup> O'Connor & Robertson, note 2 above; 8 Encyclopaedia Britannica *Dodgson, Charles Lutwidge* 369.

suspicion, or sold.<sup>4</sup> So the collection archived in the Surrey History Centre is a small miracle of sorts — a delightful mishmash that chronicles, among other things, Dodgson’s attempts at an active yet anonymous literary life.<sup>5</sup>

My hope in visiting the Centre was to find my own little miracle. Let the historians and Carrollians mine for clues to Dodgson’s inspirations, fancies, or melancholia.<sup>6</sup> This lawyer was looking for publishing contracts. And the Centre’s online inventory register included a tantalizing entry for “[c]orrespondence concerning publication, or translation of [Dodgson’s] works, and agreements with Macmillans.”<sup>7</sup>

Once through the revolving doors and to the lobby’s front desk, I presented identification, filled out a form, and got a Record Office Reader’s Ticket. This ticket allowed me to pass, with an amiable escort, through the great glass door and into the Centre’s spacious research room.

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<sup>4</sup> Karoline Leach, *The Dodgson Family and Their Legacy*, *The Victorian Web: Literature, History, & Culture in the Age of Victoria* (2000), <http://www.victorianweb.org/authors/carroll/dreamchild/dreamchild5.html>; Surrey History Centre, <https://www.surreycc.gov.uk/culture-and-leisure/history-centre/researchers/guides/lewis-carroll> (updated Jan. 4, 2017).

<sup>5</sup> Isabel Sullivan & Mary Mackey, *Brief Guide to the Archives of Charles Lutwidge Dodgson (1832–1898) Held at Surrey History Centre*, Surrey History Centre, 4 (2002), [https://www.surreycc.gov.uk/\\_\\_data/assets/pdf\\_file/0005/36482/Guide-to-the-archives-of-Lewis-Carroll-at-Surrey-History-Centre.pdf](https://www.surreycc.gov.uk/__data/assets/pdf_file/0005/36482/Guide-to-the-archives-of-Lewis-Carroll-at-Surrey-History-Centre.pdf) (itemizing “a copy of [Dodgson’s] standard letter disclaiming association with Carroll, referring his correspondent to Macmillans, publishers”); Surrey History Centre, note 4 above (describing archive contents, including archival letters reflecting Dodgson’s desire for anonymity).

<sup>6</sup> See, e.g., *Charles Dodgson’s Diaries: Volume by Volume*, The Lewis Carroll Society (last updated July 10, 2017), <http://lewiscarrollsociety.org.uk/pages/aboutcharlesdodgson/diaries/volumes.html> (summarizing Dodgson’s personal diaries, including references to his interests in photography, art, and theatre, along with his “moments of great self-doubt and guilt,” “feelings of slothfulness,” and “inability to come to terms with the troubles in his mind”).

<sup>7</sup> Sullivan & Mackey, note 5 above.

After a few more rounds of instructions and paperwork, I found myself reverently inspecting Dodgson's original 1883 publishing contract with Macmillan & Co. for a series of quirky children's books, including two about a girl named Alice. The elegantly handwritten contract — an aesthetic artifact in its own right — covered three books, referred to in shorthand as “Alice's Adventures,” “Through the Looking Glass,” and “Rhyme and Reason.” Dodgson's 135-year-old signature looked as if he'd inked it that morning. And the contract, signed almost two decades before the end of Queen Victoria's reign, was likewise pristine. I gently manipulated it with a sheet of plain paper, rather than my fingers, and happily paid the 13-pound photography fee to secure a lasting record.

In Appendix A, you'll find the entire contract, verbatim — reproduced by kind permission of the Dodgson estate's executors. All omissions, whether forgone punctuation or blank party designations, are exactly as in the original.

The contract was on Macmillan's high-quality, watermarked stock and, from all indications, had been drafted by Macmillan or its lawyers. The provision requiring Dodgson to foot the bill for binding and paper might suggest that these Alice books, which had appeared in various forms since the mid-1860s and early 1870s,<sup>8</sup> had not yet won over a cautious Macmillan. But that wasn't the case. As Dodgson biographer Morton Cohen noted, Dodgson's “unusual relationship” with Macmillan reflected Dodgson's wish to control the publication process:

Dodgson sought always to provide his readers with books of the finest quality, and because of an unusual relationship with his publisher, Macmillan, he achieved exceptional results. Macmillan arranged for printing and distribution of

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<sup>8</sup> Selwyn Goodacre et al., *The Works of Charles Dodgson: Alice*, The Lewis Carroll Society, <http://lewis Carroll society.org.uk/pages/aboutcharlesdodgson/works/alice.html> (last updated July 10, 2017).

his books in exchange for a 10 per cent commission, but Dodgson paid all costs of printing, illustrating, and advertising, retaining control and making all decisions.<sup>9</sup>

A few terms in the 1883 contract stray from what Cohen described. But 1883 was just the midpoint of the parties' decades-long relationship. That relationship was, as one Macmillan archivist put it, a "long alliance of a brilliant author and enabling publisher who together created a world tale."<sup>10</sup> Since first publishing *Alice's Adventures* in 1865, Macmillan has never let the book go out of print.<sup>11</sup>

Dodgson's exacting standards tested Macmillan's patience, as Dodgson readily admitted in his pamphlet *The Profits of Authorship*:

The publisher contributes about as much as the bookseller in time and bodily labour, but in mental toil and trouble a great deal more. I speak . . . having myself, for some twenty years, inflicted on that most patient and painstaking firm, Messrs. Macmillan and Co., about as much wear and worry as ever publishers have lived through. . . . To say that every question gets a courteous and thoughtful reply — that they are still outside a lunatic asylum — and that they still regard me with some degree of charity — is to speak volumes in praise of their good temper and of their health, bodily and mental.<sup>12</sup>

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<sup>9</sup> Morton N. Cohen, *Dodgson, Charles Lutwidge [pseud. Lewis Carroll]*, Oxford Dictionary of National Biography (2004), <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-7749> (last visited Sept. 19, 2019).

<sup>10</sup> Alysoun Sanders, *The Making of Alice, A View From the Bridge* (Nov. 19, 2015), <http://blogs.nature.com/aviewfromthebridge/2015/11/19/the-making-of-alice/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; see also Stuart Dodgson Collingwood, *The Life and Letters of Lewis Carroll* ch. 6 (2004) (e-book), <https://www.gutenberg.org/files/11483/11483-h/11483-h.htm>.

## A Mad Tea-Party

The 1883 contract is refreshingly succinct. Yet it occasionally bogs down in legalese. And a few of its provisions would tax even the most careful reader. For instance, test your mettle against the 113-word sentence that is clause 4:

It is however further agreed that Macmillan & Co. shall have the option of purchasing from the said Rev<sup>d</sup> C.L. Dodgson copies of the said works at the prices they agree to account to him for as mentioned in clause 3 of this agreement subject to a discount of five per cent the account to be made up half yearly and settled within two months from the date to which the account is made up or they made purchase in advance from the said Rev<sup>d</sup> C.L. Dodgson copies of any or either of the said works at a discount of ten per cent from the prices mentioned in clause 3 of this agreement.

This provision's elusiveness calls to mind Dodgson's deliciously nonsensical poem *Jabberwocky*, which appears in the *Looking-Glass* book: "Twas brillig, and the slithy toves [d]id gyre and gimble in the wabe . . ."<sup>13</sup>

I can safely speak for the plain-language community when I say that 19th-century documents are not in our crosshairs. Instead, we aim our clarity message at present-day drafters who cling, more than a century later, to a style caked in Victorian soot. Still, I found myself drawn irresistibly to the idea of redrafting Dodgson's contract in a plain, modern style.

I'll take some liberties here, and I do so safely, knowing that the only person who could refute my speculation passed on in 1898: if Dodgson were alive today, he'd prefer a plain-language contract to one chained to antiquity. Indeed, Dodgson's writings were nothing if not fresh and daring. No author, it would seem,

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<sup>13</sup> Lewis Carroll, *Jabberwocky*, Poetry Foundation, <https://www.poetryfoundation.org/poems/42916/jabberwocky> (last visited Nov. 7, 2019) (sourced from *The Random House Book of Poetry for Children* (1983)).

has felt less confined to rote conventions. So it's with his literary spirit's fanciful blessing that I redraft his 1883 publishing contract in plain language. I do so affectionately, mindful of the document's historical significance and calligraphic charm.

I'll flesh out my changes to selected components below. My final, complete redraft appears in Appendix B.

## Advice from a Caterpillar

### *A. Title*

The original contract's title, "Memorandum of Agreement," is uninformative. Given that Macmillan appears to have prepared the document, the title's failure to even hint at the publishing context is curious. Contract users benefit from a title that's concise yet makes the document's subject matter obvious.<sup>14</sup> I've chosen "Publishing Agreement."

### *B. Introduction*

The original's introduction reads as follows:

Memorandum of Agreement made the twenty third day of June 1883 between Rev<sup>d</sup> C.L. Dodgson of the one part and Messrs. Macmillan & Co. of the other part.

You noticed the variation on a legalese classic: the party "of the one part" and the party "of the other part." I've removed that.<sup>15</sup> I've left the date but simplified it, using British rather than

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<sup>14</sup> Kenneth A. Adams, *A Manual of Style for Contract Drafting* 11 (4th ed. 2017); Tina L. Stark, *Drafting Contracts: How and Why Lawyers Do What They Do* 68 (2d ed. 2014).

<sup>15</sup> Bryan A. Garner, *Garner's Guidelines for Drafting & Editing Contracts* 179 (2019) ("Banish *party of the first part*, etc.").

American style.<sup>16</sup> I’ve also infused language reflecting the contract’s subject matter without lapsing into substance.<sup>17</sup>

I’ve bucked the common but stiff “This Agreement is made and entered into this \_\_\_ day of” start in favor of a streamlined active-voice style, with the parties performing the action up front — in other words, entering into the contract:

The Reverend C.L. Dodgson and Macmillan & Co. enter into this publishing agreement on 23 June 1883.

This simple sentence checks the fundamental boxes for a modern introduction: it identifies the parties and captures the nature of the contract.<sup>18</sup> I held off on the lead-in (or “language of agreement”) until later, after the background recitals.<sup>19</sup>

For my initial party references, I’ve used the parties’ actual names,<sup>20</sup> as the original did. I declined to add that Dodgson is “an individual” because it felt painfully self-evident and would have made my redraft less plain than the original. As for Macmillan, I used the vintage-1883 company name that I encountered in my research.<sup>21</sup> UK law — the Companies Act of 2006 and related regulations — requires disclosure of an entity’s registered name in a

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<sup>16</sup> Because the date appears in the introduction, I didn’t include date lines in the signature blocks, which would invite possible confusion. Adams, *A Manual of Style* at 15; Garner, *Guidelines for Drafting* at 194; Stark, *Drafting Contracts* at 69.

<sup>17</sup> Adams, *A Manual of Style* at 13.

<sup>18</sup> *Id.*; Stark, *Drafting Contracts* at 67, 68.

<sup>19</sup> Adams, *A Manual of Style* at 35.

<sup>20</sup> Garner, *Guidelines for Drafting* at 16 (“When you can, you ought to use the parties’ actual names.”).

<sup>21</sup> See, e.g., *Macmillan Publishers, Ltd.*, Encyclopedia Britannica, <https://www.britannica.com/topic/Macmillan-Publishers-Ltd> (last updated Mar. 21, 2016).

wide variety of business documents,<sup>22</sup> and I’ve done my best to comply some 137 years after the fact.

I’ve resisted conventions by forgoing party-name parentheticals (especially those in the stilted,<sup>23</sup> redundant<sup>24</sup> *hereinafter* style). They’d feel obvious and overwrought here; no good-faith reader would question later shorthand references to *Dodgson* and *Macmillan*.

Finally, I’ve opted against a definitional capital-A (“the Agreement”) parenthetical. At least one expert has made a strong case that this reflexive technique is usually unnecessary.<sup>25</sup>

### *C. Headings*

In some ways, the original 1883 contract is more reader-friendly than many of today’s contracts. For example, its numbered provisions are relatively brief, and it has friendly spacing — 19th-century handcrafted double-spacing, in fact. Yet it lacks informative headings and subheadings. I’ve inserted them to ease navigation.<sup>26</sup> And I’ve left ample white space to enhance readability.<sup>27</sup>

### *D. Background Recitals*

The original contract has no recitals. Recitals, often found in a “Background” section, aren’t always necessary or helpful.<sup>28</sup> Yet

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<sup>22</sup> The Companies, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015, c 17, pt 6, reg 24 (found at <https://www.legislation.gov.uk/uksi/2015/17/regulation/24/made>).

<sup>23</sup> Garner, *Guidelines for Drafting* at 90.

<sup>24</sup> Adams, *A Manual of Style* at 175.

<sup>25</sup> *Id.* at 13, 14, 30, 165 (noting an exception for a master-agreement structure that features schedules not mentioned in the body).

<sup>26</sup> Joseph Kimble, *Seeing Through Legalese: More Essays on Plain Language* 81 (2017) (noting that “[g]ood headings and subheadings are vital navigational aids for the reader”).

<sup>27</sup> Garner, *Guidelines for Drafting* at 37, 148.

<sup>28</sup> Stark, *Drafting Contracts* at 83.



experts see value in recitals if the parties want to signal a special area of concern or give a backstory that could help later-arriving eyes (especially judicial eyes) interpret the contract.<sup>29</sup> This unique piece of a contract “serve[s] a storytelling function” and thus “calls for simple narrative prose.”<sup>30</sup>

Here, Dodgson and Macmillan’s agreement had some unique background elements, including the parties’ preexisting relationship and Dodgson’s desire for artistic control. Plus, who could resist infusing a little storytelling into a Lewis Carroll contract? So I’ve taken a stab at recitals, which appear here and in my full redraft:

Under the pen name Lewis Carroll, Dodgson has authored a new book and updated two books that Macmillan has published before. Dodgson wants to renew his relationship with Macmillan under terms that give him artistic control and ensure high-quality products. Macmillan wants to publish the books with Dodgson’s artistic oversight.

The parties therefore agree as follows: . . . .

Note that these recitals avoid substantive terms: no duties, promises, policies, conditions, or warranties.<sup>31</sup> Instead, it’s pure background information to lend a bit of Technicolor to the black-and-white substance that follows in the body.<sup>32</sup>

I waited until after the recitals for my lead-in language expressing mutual assent.<sup>33</sup> This makes it clearer that the recitals are not themselves substantive terms. And because the recitals’ content, style, and location signal their character, I’ve gone without

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<sup>29</sup> Adams, *A Manual of Style* at 30–31; Garner, *Guidelines for Drafting* at 90, 93; Stark, *Drafting Contracts* at 80–81, 83.

<sup>30</sup> Adams, *A Manual of Style* at 32.

<sup>31</sup> *Id.* at 31; Garner, *Guidelines for Drafting* at 94; Gerald Lebovits, *Making Offers No One Can Refuse: Effective Contract Drafting—Part 2*, 88 N.Y. St. B. Ass’n J. 64, 58 (Feb. 2016).

<sup>32</sup> Adams, *A Manual of Style* at 30–31; Lebovits, 88 N.Y. St. B. Ass’n J. at 58.

<sup>33</sup> Adams, *A Manual of Style* at 32, 35; Stark, *Drafting Contracts* at 85.

the common *Background* heading,<sup>34</sup> though I have no aversion to it. I've also avoided two legalese standbys: *Whereas*-clauses in “tedious succession”<sup>35</sup> and the “ludicrously archaic” *Witnesseth*.<sup>36</sup>

Finally, I've opted against the ceremonial adverb *mutually* (as in *mutually agree*) in favor of the simpler *agree*.

### E. Definitions

The original contract has no definitions, and I see no need for them either.<sup>37</sup> I was tempted to create a shorthand reference for the three books by using a stipulative naming-a-concept definition.<sup>38</sup> But many terms, such as the pricing terms, are specific to particular books, so a collective shorthand reference would serve little purpose. And my occasional references to “the books” are obvious lexical plurals that pose no realistic risk of ambiguity.<sup>39</sup>

### F. Body

Besides adding informative headings and subheadings, I made a number of style changes in the contract's body. I eliminated the adjectival *said* and other stuffy legalese, such as *therefor* (as in “the market price therefor”). I minimized passive voice, such as the potentially ambiguous passage indicating that “a discount . . . shall be allowed.” (Who's allowing?)<sup>40</sup>

I also eliminated redundant statements of agreement, such as the “It is however further agreed” language toward the contract's

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<sup>34</sup> Adams, *A Manual of Style* at 32.

<sup>35</sup> Garner, *Guidelines for Drafting* at 94.

<sup>36</sup> Adams, *A Manual of Style* at 32; see also Garner, *Guidelines for Drafting* at 93, 94; Lebovits, 88 N.Y. St. B. Ass'n J. at 58.

<sup>37</sup> See Richard K. Neumann Jr. & J. Lyn Entrikin, *Legal Drafting by Design: A Unified Approach* 153 (advising drafters to use definitions sparingly).

<sup>38</sup> See Barbara Child, *Stipulative Definitions*, 68 Mich. B.J. 54, 54 (Jan. 1989).

<sup>39</sup> See Neumann & Entrikin, *Legal Drafting* at 161 (noting that lexical definitions reflect a word's ordinary “commonly understood meaning” and thus are usually “superfluous”).

<sup>40</sup> Garner, *Guidelines for Drafting* at 208–09.

end.<sup>41</sup> As a veteran transactional attorney once quipped, contracts tend to agree too much.<sup>42</sup> Whether in the introduction or just after the recitals, the parties explicitly agree, at the outset, to all that follows. No need to repeat it.<sup>43</sup>

### G. *To Shall or Shall Not?*

My most vexing dilemma was where to fall in the Great *Shall* Debate.<sup>44</sup> Do I use the antique-yet-still-entrenched *shall* (found in the original here) or the relative upstart *must* to impose contractual duties? Or since this is a contract and not a rule or a code, perhaps the promise word *will* instead?<sup>45</sup>

*Shall* critics worry that the word's varied meanings invite misuse.<sup>46</sup> In Dodgson's 1883 contract with Macmillan, for example, the drafter used *shall* to impose a duty (six times), to state a policy (two times), and to grant discretion (one time). *Shall* defenders point out that the word isn't the problem — loose drafting is.<sup>47</sup> But the indiscriminate *shall* is so ingrained that its misuse remains

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<sup>41</sup> *Id.* at 168.

<sup>42</sup> Duke McDonald, *The Ten Worst Faults in Drafting Contracts*, 11 *Scribes J. Legal Writing* 25, 27–28 (2007).

<sup>43</sup> *Id.*; see also Garner, *Guidelines for Drafting* at 168.

<sup>44</sup> See generally Chadwick C. Busk, *Using Shall or Will to Create Obligations in Business Contracts*, 96 *Mich. B.J.* 50 *passim* (Oct. 2017).

<sup>45</sup> See *id.* at 50–51 (listing Bryan Garner, Wayne Schiess, Barbara Child, and Andy Mergendahl among those who embrace *will* for expressing contractual promises, along with D.C. Toedt III, who qualifies his endorsement with advice to define *will* in the contract); see also Garner, *Guidelines for Drafting* at 159, 161 (recommending *will* to express contractual promises).

<sup>46</sup> Bryan Garner, *Shall We Abandon Shall?*, 98 *A.B.A. J.* 26 *passim* (Aug. 2012); Michele M. Asprey, *Shall Must Go*, 3 *Scribes J. Legal Writing* 79 *passim* (1992); Kimble, *Seeing Through Legalese* at 87–88, 91.

<sup>47</sup> Adams, *A Manual of Style* at 59.

a transactional tic despite experts' best efforts.<sup>48</sup> And there's no getting around *shall*'s antiquated feel.<sup>49</sup>

Yet *must* and *will* have critics, too. Some worry that *must* feels too pushy for contracts, which are supposed to embody the optimism of a new venture.<sup>50</sup> Others say that *must* invites the same multifariousness as *shall*, establishing conditions and imposing duties within the same pages.<sup>51</sup> As for *will*, critics worry that it signals "future time rather than obligations."<sup>52</sup>

Some forward-thinking UK drafters have discarded all these in favor of *is to*.<sup>53</sup> For instance, The Law Society's *Standard Conditions of Sale* provides that "the seller *is to* give the buyer written details without delay" and that "[t]he buyer *is to* bear the cost of complying with any outstanding public requirement."<sup>54</sup>

None of these choices is an elixir. Perhaps the real victory for anybody wading into the drafting waters is knowing that this debate exists and what the arguments are. After all, whatever your choice, one expert or another will disagree with it. Most

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<sup>48</sup> *Id.* at 57 ("This manual recommends not using *shall* in contract drafting to express any other meaning" than to impose a duty); and at 62 ("In most jurisdictions, *shall* remains overused in contracts."); Garner, *Guidelines for Drafting* at 156 (After being "barraged by *shalls*," lawyers "come to feel as if *shall* is the 'drafting verb'" and "begin to use it indiscriminately in all sorts of sentences, not just those in which the subject of the verb is the duty-bearing agent."); Stark, *Drafting Contracts* at 183 ("[Y]ou should use *shall* only to signal an obligation. But drafters incorrectly use *shall* so frequently that they think they are using it correctly, even when they are not.").

<sup>49</sup> Garner, *Guidelines for Drafting* at 156; Mark Adler & Daphne Perry, *Clarity for Lawyers: Effective Legal Language* 143 (3d ed. 2017).

<sup>50</sup> Adams, *A Manual of Style* at 61.

<sup>51</sup> *Id.* at 60; Neumann & Entrikin, *Legal Drafting* at 133, 135; Adler & Perry, *Clarity for Lawyers* at 46.

<sup>52</sup> Adams, *A Manual of Style* at 61; see also Neumann & Entrikin, *Legal Drafting* at 142; Stark, *Drafting Contracts* at 181–82.

<sup>53</sup> Adler & Perry, *Clarity for Lawyers* at 46.

<sup>54</sup> Sections 3.1.3 and 3.1.4 in the pdf document located at <https://www.lawsociety.org.uk/topics/property/standard-conditions-of-sale> (emphasis added).

commentators fall back to the need for care and consistency, whatever the choice.<sup>55</sup>

I've made my choice. Given that I'm redrafting a quintessentially English document, and given the contract's subject and the spirit of Dodgson's works, the choice became easy: I'm going down the rabbit hole with the newfangled *is to*.

For language of prohibition, I initially leaned toward *may not* despite some experts' reservations. Critics worry that *may not* could be mistaken for *might not* or for mere authority to refrain from acting.<sup>56</sup> To me and others, *may not*'s prohibition signal is clear when drafters are careful and consistent.<sup>57</sup> Even critics acknowledge that readers would likely "derive the intended meaning" of prohibition from *may not*.<sup>58</sup> The *may not* choice is also in keeping with The Law Society's *Standard Conditions of Sale*.<sup>59</sup>

Yet because I've elected *is to* for imposing a duty, I ultimately chose its flip side — *is not to* — for my prohibition signal. This is unconventional. But it delivers clear meaning and promotes style consistency. Picture, for instance, "Macmillan *is not to* disclose Dodgson's true identity." What could this be other than a prohibition? And the single extra word barely registers.

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<sup>55</sup> Busk, 96 Mich. B.J. at 51.

<sup>56</sup> See Adams, *A Manual of Style* at 90; Garner, *Guidelines for Drafting* at 172.

<sup>57</sup> See, e.g., Office of the Legislative Counsel, U.S. House of Representatives, *House Office of Legislative Counsel Guide to Legislative Drafting* § VII.B., [https://legcounsel.house.gov/HOLC/Drafting\\_Legislation/Drafting\\_Guide.html#VIIB](https://legcounsel.house.gov/HOLC/Drafting_Legislation/Drafting_Guide.html#VIIB) (last visited Nov. 11, 2019) (clarifying that *may not* "is mandatory and is the preferred language for denying a right, power, or privilege"); Melissa A. Lovell & Katherine Reynolds, *Ruminations on Contract Drafting: Best Practices in Drafting Offshore and Onshore Form Agreements*, 55 Ann. Inst. Mineral Law 151, 154 (2008) (suggesting *may not* to express "is not permitted to" or "is disallowed from").

<sup>58</sup> Adams, *A Manual of Style* at 90.

<sup>59</sup> <https://www.lawsociety.org.uk/topics/property/standard-conditions-of-sale> ("The buyer may not raise requisitions . . .").

### ***H. Cost-of-Printing Provision***

The original contract's first numbered provision reflects the intriguing arrangement described earlier, with Dodgson paying for printing supplies:

1. The said Rev<sup>d</sup> C.L. Dodgson shall bear the expenses of printing paper and binding paying the market price therefor.

As noted earlier, I've dispensed with the antiquated *the said* and *the price therefor*, and I've also substituted my *is to* duty signal for *shall*.

But after I made those small-scale changes, a large-scale organizational curiosity caught my attention. Although this provision — clause 1 — purports to begin the original contract's body, an unnumbered substantive provision appears before it. In fact, the original contract disguises Macmillan's core promise to publish as mere lead-in language:

It is agreed that after the 1<sup>st</sup> July 1883 Macmillan & Co. shall publish "Alice's Adventures" "Through the Looking Glass" and "Rhyme and Reason"<sup>60</sup> of which the said Rev<sup>d</sup> C.L. Dodgson is the author on the following terms: . . . .

I've reorganized the contract so that this fundamental promise is in the body, where it belongs. In a new "Publication" section, I've gathered this promise and the cost-of-printing provision in one place, along with a few other relevant subsections:

## **1. Publication**

### **1.1 Works to Be Published**

Macmillan is to publish three books written by Dodgson:

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<sup>60</sup> This book was eventually published with the revised title *Rhyme? and Reason?*

- (1) *Alice's Adventures in Wonderland*;
- (2) *Through the Looking-Glass, and What Alice Found There*; and
- (3) *Rhyme and Reason*.

## 1.2 Delivery of Manuscripts

Dodgson has finished the books and delivered the manuscripts to Macmillan.

## 1.3 Timing of Publication

Macmillan is to begin publishing the books before August 1883.

## 1.4 Cost of Printing

Dodgson is to pay for binding and printing paper.

### *I. Royalties Provision*

Besides lacking an informative heading, the original's royalties provision is a complex 84-word sentence. It gives the royalties rate for three different books in a horizontal series. But that's not all. In the same sentence, it imposes a duty to advertise, indicates which party will pay for advertising, and gives the publisher's accounting deadlines. That's a lot to cram into a single sentence:

3. Macmillan & Co. shall account to the Rev<sup>d</sup> C.L. Dodgson for copies sold of "Alice's Adventures" and "Through the Looking Glass" at four shillings and three pence per copy and for copies sold of "Rhyme and Reason" at five shillings each per copy it being understood that Macmillan & Co. shall bear the expense of advertising the said books and that accounts shall be made up annually to Midsummer delivered on or before October 1<sup>st</sup> and settled by cash in the ensuing January.

My redraft divides and reclassifies this information, adding informative headings and subheadings for easier navigation. It also

uses a vertical list to improve readability. I've used the traditional British abbreviations for shillings and pence:

## **6. Royalties**

### **6.1 Amount**

Macmillan is to pay Dodgson royalties at the following rates:

- (1) 4s 3p per copy sold of *Alice's Adventures in Wonderland*;
- (2) 4s 3p per copy sold of *Through the Looking-Glass*; and
- (3) 5s per copy sold of *Rhyme and Reason*.

### **6.2 Annual Accounting**

Each year, Macmillan is to give Dodgson an accounting of royalties on or before October 1.

### **6.3 Payment**

Macmillan is to pay royalties in cash before the February that follows an annual accounting.

To avoid commingling related yet distinct provisions, I've created a separate section for promotion. And I've added language that protects against disclosing Dodgson's identity:

## **5. Promotion**

### **5.1 Advertising**

Macmillan is to advertise the books according to industry customs.

### **5.2 Cost**

Macmillan is to pay for advertising.



### 5.3 Author's Identity

Macmillan is to use the name Lewis Carroll, exclusively, when referring to the books' author.

#### *J. Publisher's Purchase Option*

Redrafting the next provision was daunting. Clause 4, which I shared with you earlier, was apparently designed to let Macmillan buy additional books from Dodgson (who paid for printing) at discounted prices. But given the clause's wanderings, the details are fuzzy:

4. It is however further agreed that Macmillan & Co. shall have the option of purchasing from the said Rev<sup>d</sup> C.L. Dodgson copies of the said works at the prices they agree to account to him for as mentioned in clause 3 of this agreement subject to a discount of five per cent the account to be made up half yearly and settled within two months from the date to which the account is made up or they made purchase in advance from the said Rev<sup>d</sup> C.L. Dodgson copies of any or either of the said works at a discount of ten per cent from the prices mentioned in clause 3 of this agreement.

I've tried my best to discern the intended meaning and make that meaning clear in my redraft. To my eyes, this provision allows Macmillan to buy copies at the royalty rate stated in the previous (royalties) section, but at a discount. In a real transaction, I'd of course speak to my client to ensure substantive accuracy. I didn't have that luxury here.

As for style, I've eliminated the redundant statement of agreement. I replaced the misused *shall* (there is no duty here). And I replaced the wordy *have the option of* with the simple, direct *may*. *May* signals discretion all by itself.<sup>61</sup> I've used a vertical list to

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<sup>61</sup> Adams, *A Manual of Style* at 76; Neumann & Entrikin, *Legal Drafting* at 144; Stark, *Drafting Contracts* at 174.

prevent ambiguity and for reader ease. And I've again removed lawyerisms like *the said* and discarded surplus. The result might read like this:

### 7. Purchases by Macmillan

Macmillan may buy copies of the books from Dodgson at Dodgson's royalty rate, with the following discount:

- (1) 5% if Macmillan gives a half-year account and pays no later than two months after the account date; or
- (2) 10% if Macmillan pays cash in advance.

### *K. Modern Additions*

As suggested by this article's title, my chief aim was to create a plain-language redraft of the 1883 original. I didn't set out to create a substantively new contract. So my redraft naturally lacks provisions that are expected in the modern publishing world.

Yet I've modernized the original just a bit by adding a few substantive provisions. For instance, I've added provisions on copyright (with a UK flavor), editorial control, and manuscript delivery. I've also added just a few housekeeping provisions. But the original contract was refreshingly succinct. I tried not to stray from that.

### **"It's My Own Invention"**

After the restyling efforts described above (and similar edits to other provisions), Dodgson's 1883 contract with Macmillan might look something like Appendix B.

Where the original bogged down in legalese or crammed too much information into long, complex sentences, I revised. And I

reorganized, dividing and classifying information in a reader-centered way, using informative headings and subheadings.

Again, I tried to remain true to the original substance and succinctness, while adding just a few provisions that are now commonplace. My modest, straightforward additions may or may not keep the more bloodthirsty intellectual-property attorneys at bay. Surely attorneys working in the publishing world will cry foul over my redraft's failure to address certain aspects of modern publishing — territorial rights, subsidiary rights, forms and formats (including electronic), and so on. This is a sophisticated practice area; I neither presume nor claim expertise.

But this article isn't about intellectual-property law. It's about legal-drafting technique — framed within a wonderfully unique historical document. So in that spirit, I offer my redraft.

## Appendix A: The Original 1883 Contract

[Reproduced by kind permission of the  
Dodgson estate's executors.]

### **Memorandum of Agreement**

*Dated* June 23, 1883

BETWEEN

---

AND

MACMILLAN & CO.

FOR THE PUBLICATION OF

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Memorandum of Agreement made the twenty third day  
of June 1883 between Rev<sup>d</sup> C.L. Dodgson of the one part  
and Messrs. Macmillan & Co. of the other part.

It is agreed that after the 1<sup>st</sup> July 1883 Macmillan & Co. shall pub-  
lish "Alice's Adventures" "Through the Looking Glass" and  
"Rhyme and Reason" of which the said Rev<sup>d</sup> C.L. Dodgson is the  
author on the following terms: —

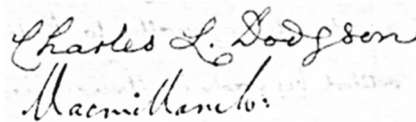
1. The said Rev<sup>d</sup> C.L. Dodgson shall bear the expenses of  
printing paper and binding paying the market price therefor.
2. The retail prices of the said books shall be for "Alice's Ad-  
ventures" and "Through the Looking Glass" six shillings each per  
copy for "Rhyme and Reason" seven shillings per copy and the  
prices charged to the trade shall be for "Alice's Adventures" and  
"Through the Looking Glass" five shillings each per copy for  
"Rhyme and Reason" five shillings and ten pence per copy (no

odd books) but a discount of five per cent for payment within six months and ten per cent for cash shall be allowed.

3. Macmillan & Co. shall account to the Rev<sup>d</sup> C.L. Dodgson for copies sold of “Alice’s Adventures” and “Through the Looking Glass” at four shillings and three pence per copy and for copies sold of “Rhyme and Reason” at five shillings each per copy it being understood that Macmillan & Co. shall bear the expense of advertising the said books and that accounts shall be made up annually to Midsummer delivered on or before October 1<sup>st</sup> and settled by cash in the ensuing January.

4. It is however further agreed that Macmillan & Co. shall have the option of purchasing from the said Rev<sup>d</sup> C.L. Dodgson copies of the said works at the prices they agree to account to him for as mentioned in clause 3 of this agreement subject to a discount of five per cent the account to be made up half yearly and settled within two months from the date to which the account is made up or they made purchase in advance from the said Rev<sup>d</sup> C.L. Dodgson copies of any or either of the said works at a discount of ten per cent from the prices mentioned in clause 3 of this agreement.

5. It is further understood that either party is at liberty to withdraw from this agreement by giving three months notice in writing.



Charles L. Dodgson  
Macmillan & Co.

## Appendix B: The Redraft

### Publishing Agreement

The Reverend C.L. Dodgson and Macmillan & Co. enter into this publishing agreement on 23 June 1883.

Under the pen name Lewis Carroll, Dodgson has authored a new book and updated two books that Macmillan has published before. Dodgson wants to renew his relationship with Macmillan under terms that give him artistic control and ensure high-quality products. Macmillan wants to publish the books with Dodgson's artistic oversight.

The parties therefore agree as follows:

#### 1. Publication

##### 1.1 Works to Be Published

Macmillan is to publish three books written by Dodgson:

- (1) *Alice's Adventures in Wonderland*;
- (2) *Through the Looking-Glass, and What Alice Found There*; and
- (3) *Rhyme and Reason*.

##### 1.2 Delivery of Manuscripts

Dodgson has finished the books and delivered the manuscripts to Macmillan.

##### 1.3 Timing of Publication

Macmillan is to begin publishing the books before August 1883.

##### 1.4 Cost of Printing

Dodgson is to pay for binding and printing paper.

## 2. Edits

Macmillan is not to change a manuscript, unless Dodgson consents.

## 3. Pricing

### 3.1 Retail Price

Macmillan is to charge the following retail prices:

- (1) 6s per copy of *Alice's Adventures in Wonderland*;
- (2) 6s per copy of *Through the Looking-Glass*; and
- (3) 7s per copy of *Rhyme and Reason*.

### 3.2 Trade Price

Macmillan is to charge the following trade prices:

- (1) 5s per copy of *Alice's Adventures in Wonderland*;
- (2) 5s per copy of *Through the Looking-Glass*; and
- (3) 5s 10p per copy of *Rhyme and Reason*.

If paid in six months or less, Macmillan is to allow a 5% discount, increased to 10% for cash.

## 4. Copyright

Before August 1883, Macmillan is to deposit copies of Dodgson's manuscripts with its solicitor for proof of Dodgson's copyright.<sup>62</sup> Macmillan is to use Dodgson's pen name, Lewis Carroll, on the books' copyright pages.

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<sup>62</sup> Unlike the United States, the United Kingdom has no official copyright office. *How Copyright Protects Your Work*, Gov.UK, <https://www.gov.uk/copyright> (last visited Nov. 11, 2019). The British Library's Business & IP Centre advises authors to deposit dated manuscripts "with a bank or solicitor" — or to use the so-called poor-man's-copyright technique of mailing manuscripts to themselves and "leaving the envelope unopened." <https://www.bl.uk/business-and-ip-centre/articles/what-is-copyright> (last visited Nov. 11, 2019).

## 5. Promotion

### 5.1 Advertising

Macmillan is to advertise the books according to industry customs.

### 5.2 Cost

Macmillan is to pay for advertising.

### 5.3 Author's Identity

Macmillan is to use the name Lewis Carroll, exclusively, when referring to the books' author.

## 6. Royalties

### 6.1 Amount

Macmillan is to pay Dodgson royalties at the following rates:

- (1) 4s 3p per copy sold of *Alice's Adventures in Wonderland*;
- (2) 4s 3p per copy sold of *Through the Looking-Glass*; and
- (3) 5s per copy sold of *Rhyme and Reason*.

### 6.2 Annual Accounting

Each year, Macmillan is to give Dodgson an accounting of royalties on or before October 1.

### 6.3 Payment

Macmillan is to pay royalties in cash before the February that follows an annual accounting.

## 7. Purchases by Macmillan

Macmillan may buy copies of the books from Dodgson at Dodgson's royalty rate, with the following discount:

- (1) 5% if Macmillan gives a half-year account and pays no later than two months after the account date; or
- (2) 10% if Macmillan pays cash in advance.



**8. Cancellation**

A party may cancel this agreement by giving three months' written notice to the other party.

**9. Assignment**

A party is not to assign this agreement without the other party's written consent.

**10. Waiver**

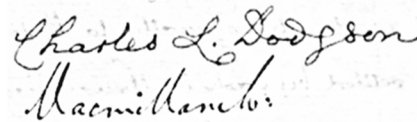
A party does not waive a right under this agreement by declining to enforce or exercise that right.

**11. Modification**

A party may change this agreement if both parties agree to the change in writing.

**12. Complete Agreement**

This is the parties' complete agreement. No other agreement exists.



Charles L. Dodgson  
Macmillan Co.