Clarity Through Format

Sections and Subsections
- One of the easiest ways of formatting a contract is to use sections and subsections. **EXAMPLE OUTLINE:**

2.1 **The appointment of Board Members**

   2.1.1 Educational Requirements for Appointment.

   2.1.2 Experience Requirements for Appointment.

   2.1.3 Voting for the Board Members.
   » **2.1.3.1 Recording the Vote**

   » **2.1.3.2 Proxy Voting**

   » **2.1.3.3 Abstention**

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TABULATION

- With tabulation, a long sentence is broken down into 2 subsections, <u>each of which is grammatically independent of the other</u>, although conceptually related.

- Subsections can also be used to join two or more related sentences.

- This reduces the length of the contract and aids the reader by showing how the sentences are related.

EXAMPLE:

Non-competition. For a one-year period after the Term, the Executive

   (a)   shall not employ any person who was an employee during the Term;

       and

   (b)   shall not interfere with the relationship between the Company and any of its employees.

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When to use tabulation: A judgment call

- **Remember:** To join 2 or more sentences through tabulation, the subject matter of the sentences should be related.

- If the subject matter is not related, create separate sections and insert them in the appropriate place in the contract.

- When deciding if you should break down 1 sentence into a tabulated format, any sentence with a compound or a series is a candidate.

- ❖ **Compound-** 2 items in a sentence joined by *and* or *or*.
- ❖ **Series-** 3 or more items in a sentence in a sentence joined by *and* or *or*.

- The ultimate deciding factor is whether tabulation makes it easier for a reader to assimilate the information.

- Everything does not need to be tabulated. EX: Heather likes to swim, read, dance, and go to the movies.

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Tabulation Guideline #1

❖ **Use parallel drafting to construct the tabulated sentence.**

- To test whether the tabulation makes sense, read the introductory language (in red) with each of the subsections to see if they make sense.

EXAMPLE 1:

Each time an employee is late to work, his supervisor shall
      (a) issue a verbal warning,
      (b) place a notation in the employee's file, and
      (c) inform the managing partner that the employee was late.

EXAMPLE 2:

Each time an employee is late to work, his supervisor shall
      (a) issue a verbal warning,
      (b) **may** place a notation in the employee's file, and
      (c) inform the managing partner that the employee was late.

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Tabulation Guideline #2

❖ **The grammar of the sentence determines its punctuation.**

- **Sentence Format-** Each tabulated subsection creates a full sentence when joined with the introductory language.
  EXAMPLE:
  Each time an employee is late to work,
     (a) his supervisor shall issue a verbal warning.
     (b) his supervisor shall place a notation in the employee's file.
     (c) his supervisor shall inform the managing partner that the employee was late.

- **List Format-** The introductory language is a complete sentence and each tabulated subsection is part of an enumerated list. **NOTE:** Often, the introductory language includes some form of the word *follow.*
  EXAMPLE:
  Each time an employee is late to work, his supervisor shall do the following:
     (a) His supervisor shall issue a verbal warning.
     (b) His supervisor shall place a notation in the employee's file.
     (c) His supervisor shall inform the managing partner that the employee was late.

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Guidelines for Sentence Format Tabulation

1.　In the introductory language, include all the words common to each tabulated subsection. There are 4 exceptions to this rule:

　　1. do not separate an article (the, a, an) from the noun it precedes.

　　2. (*stylistic, not all drafters do this*) if the tabulated subsections are a series of negative covenants introduced with <u>*shall not,*</u> put *shall not* with each subsection, rather than the introductory language.

　　3. (*stylistic, not all drafters do this*) sometimes a provision is easier to read if the *to* of an infinitive is kept together with the present form of its verb (e.g., to see, to walk, to draft)

　　4. If putting all the common words in the introductory language affects a subsection's substantive meaning, then repeat the words in each subsection.

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Guidelines for Sentence Format Tabulation

2.   Punctuate the introductory language as you would if the sentence were untabulated.

3.   Begin each tabulated subsection with a lowercase letter.

4.   If no concluding language is common to each subsection, do the following:

      (a)   End each tabulated subsection (*other than the last*) with a semicolon.

      (b)   Insert and *or* or as appropriate after the semicolon of the next to last subsection.

      (c)   End the last tabulated subsection with a period.

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Guidelines for Sentence Format Tabulation

5.   If concluding language is common to each subsection, do the following:

> (a)   End each tabulated subsection with whatever punctuation would be used (*if any*) if the sentence were untabulated.
>
> (b)   Insert and *or* or as appropriate after the punctuation of the next to last subsection.
>
> (c)   Begin the concluding language at the left margin so that it has the same margin as the introductory language.
>
> (d)   End the concluding paragraph with a period.

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- **Guidelines for Sentence Format Tabulation**

1. Draft the introductory language so that it includes the phrase *as follows* or *the following* or otherwise incorporates that concept and end it with a colon (:).

2. Draft the introductory language if appropriate, so that it signals whether the items in each subsection are cumulative or alternative.

3. Begin each subsection with a capital letter and end it with a period.

4. Do not insert and *or* or after the next to last subsection.

Clarity Through Format

Multilevel and Double Tabulation

- This occurs in a sentence that has two or more <u>independent </u>sets of subsections at the same level.

  EXAMPLE:

Each time an employee is late to work, his supervisor shall

      (a) issue a verbal warning,

      (b) place a notation in the employee's file, and

      (c) inform the managing partner that the employee was late,

except for those instances where:

      (i) the employee calls to say that he will be late,

      (ii) the employee has a medical emergency,

      (iii) the employee has a familial emergency, or

      (iv) the employee is taking one-half day of leave time.

Clarity Through Format

Numbering Systems

- Contracts can be organized into main ideas and subsidiary ideas just like briefs and memorandums (See Class 9, Slide 1).

Headings

- Headings that accurately relate a provision's substance facilitate a reader's review.

- When choosing a heading, make sure that it accurately describes the provision's contents.

Table of Contents

- If the contract is long, a table of contents is helpful as it helps a reader to find a specific section or provision quickly.

  NOTE: Most sophisticated word-processing applications can automatically create a table of contents if you use its numbering system.

Clarity Through Sentence Structure

- Any sentence longer than 3 lines is a good candidate for tabulation, **or** for being broken down into 2 or more sentences.

- Every sentence has *core* words: the subject, verb, and object. Keep these words together.

  EX: Bart (<u>subject</u>) ate (<u>verb</u>) a (<u>article</u>) Butterfinger (<u>object</u>).

- The core words should be as close to the beginning of a sentence as possible.

  EX: <u>Bart ate</u> a <u>Butterfinger</u> every day for the past month, and has not yet had a stomach ache from eating so much chocolate.