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F. Reed Dickerson

Indiana University School of Law

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Definitions in

definition (dɛfəˈnɪʃən), n. 1. act of making definite or clear. 2. the formal state meaning or signification of a word, phrase, edition of being definite. 4. Optics. sharpness of image formed by an optical system. 5. Radio. accuracy of sound reproduction through a receiver reproduction in a television receiver.

Legal Instruments

By F. Reed Dickerson
Professor of Law, Indiana University School of Law

THE ROLE OF DEFINITIONS

In a legal instrument a definition should be used only to explain the meaning that a term is intended to carry. Although this advice might seem to be obviously sound, many draftsmen disregard it.

The first thing to remember about definitions in legal instruments is that they should be used only when necessary and should be only as full as necessary. It is difficult, and often risky, to try to formulate definitions that describe the ways in which the draftsman actually uses the defined terms elsewhere in the same instrument. (It is apparently easier to use words properly than to define them accurately.) Draftsmen are prone to define a word in one sense and then,

without realizing it, use it in a very different sense.

The main use of definitions in legal instruments is, of course, to achieve clarity and consistency without burdensome repetition. Just as every word in any legal instrument ought to pay its own way, every definition ought to be limited to filling a real need. Fortunately, definitions "are seldom used in simple private documents." COOK, LEGAL DRAFTING 37 (1951).

KINDS OF DEFINITIONS

Real and Nominal

Some authorities divide definitions into "real" and "nominal." Because the former relate to the refinement and crystallization of concepts rather than to the meanings of words, many persons do not consider them to be definitions at all. ROBINSON, DEFINITION 7-11 (1954). This discussion concerns for the most part the latter, which do relate to the meanings of words.

Lexical and Stipulative

Nominal definitions are called "lexical" insofar as they assert a meaning corresponding to actual usage in the given speech community. ROBINSON, op. cit. supra, ch. 3. They are called "stipulative" insofar as they declare a meaning different from actual usage in that speech community. ROBINSON, op. cit. supra, ch. 4. Lexical definitions attempt to record usage. Stipulative definitions attempt to create it. Because they describe actual use-patterns, the former have truth value. The latter do not. ROBINSON, op. cit. supra at 35-39 and 62-66.

Classification by Method

Definitions may be usefully classified also in terms of their methods. Whether lexical or stipulative, the following kinds of definitions are useful in legal instruments.

Definition by Synonym

The first, definition by synonym, although infrequent, is occasionally useful. A term is defined by equating it to a more familiar term whose meaning is presumably sufficiently clear to the audience to whom the instrument is addressed. ROBINSON, op. cit. supra at 94. For example: "The term 'fracture' means break."

Definition by Analysis

A second kind of definition is definition by analysis. The draftsman defines the subject in terms of a parent class, a subclass, and the features that distinguish the subclass from others of the same parent class. ROBINSON, op. cit. supra at 96. For example: "The term ‘cosmetic’ means an article intended to be applied to the human body to cleanse or beautify it or change its appearance." Such a definition must apply to all the individual members included in the subject and to nothing else.
DEFINITIONS IN LEGAL INSTRUMENTS

Definition by Synthesis

A third (and very similar) kind of definition is definition by synthesis. The draftsman defines the subject by its relation to something of which it is a part. ROBINSON, op. cit. supra at 98. For example: "The term 'carburetor' means a part of a motor vehicle."

While the analytical definition speaks in terms of parent class, subclass, and distinguishing characteristics, the synthetic definition speaks in terms only of parent class and subclass. It is correspondingly less informative. Both kinds are connotative in that they define in terms of significant characteristics. All three methods presume that the described meaning is exhaustive in the sense that it purports to give the full sweep of the term (none of the three is necessarily detailed). Because equivalence is assumed, the word "is" may be substituted for the normal connective "means."

Denotative Definition

A fourth kind of definition useful to lawyers is denotative definition, that is, definition by listing all or some of the things to which the term refers. ROBINSON, op. cit. supra at 108. Here, particular characteristics are ignored. Such a definition may be exhaustive (e.g., "The term 'narcotic drug' means opium, coca leaves, cocaine, isopecaine, opiate, or a salt, derivative, or preparation of any of those products") or partial (e.g., "The term 'narcotic drug' includes coca leaves"). Other kinds of definitions, which are of interest mainly to logicians and the philosophers of language, need no consideration here.

Making a Choice

What kind of definition should the draftsman choose in a particular case? Should he choose the method of synonym, analysis, synthesis, or denotation? If denotation, should he make the definition exhaustive or partial? The problem in each case is the purely practical one of selecting a method that is no more complicated or elaborate than necessary to deal with the relevant doubt or uncertainty in the minds of his audience.

If he is creating a new technical term for a complicated idea, he will probably choose a comparatively detailed analytic definition. If the problem is merely to put to rest several specific doubts in the margin of uncertainty surrounding a modestly vague but generally adequate term, he will probably choose a partially denotative definition (e.g., "The term 'income' includes [or does not include] capital gain"). In each case he tells his audience all that he thinks it needs to know, but no more. Definition for its own sake has no place in legal instruments.

"Freedom of Stipulation"

For many years philosophers like Mill and others have beat the drums for what they call "freedom of stip-
ulation." Mill, A System of Logic 18 (8th ed. 1900). MacKaye has stated this freedom succinctly as follows: "Any person is free to stipulate any meaning he pleases for a word and his meaning shall always be accepted." MacKaye, The Logic of Language 61 (1939). Although MacKaye was not a lawyer, he could not have stated more accurately a principle that has been dear to the heart of the traditional legal draftsman.

The appeal of this position has come from both a desire to have language grow fruitfully and a rebellion against the now generally repudiated notion that words have inherently proper meanings, that is, that there is some natural affinity between a word and the thing to which it refers. The possible outcome of this outmoded view is found in the statement of the lady who said to an astronomer: "I feel such an admiration for you astronomers because of your many wonderful discoveries about the universe. But the most wonderful of all it seems to me is your discovery of the names of the planets. How for instance did you ever manage to find out that the red planet named Mars really is Mars?" MacKaye, op. cit. supra at 95.

With the thorough repudiation of this point of view, it has been easy to go the whole hog in exercising the freedom of stipulation. As early as Plato's Cratylus, we find Hermogenes saying: "I . . . cannot con-

vince myself that there is any principle of correctness in names other than convention and agreement; any name which you give, in my opinion, is the right one, and if you change that and give another, the new name is as correct as the old." Page 174 (Jowett trans. 1892).

Ultimate Expression

This point of view found perhaps its ultimate expression in the famous exchange between Humpty Dumpty and Alice in Lewis Carroll's Through the Looking-Glass (ch. 6), which has been quoted so often that it needs no repetition here. What may surprise some, however, is that the world of legal draftsmanship has produced the lawyer's counterpart of Humpty Dumpty in a group of bills that stated that for their purposes the term "September 16, 1940," meant "June 27, 1950"! E.g., H.R. 353, 474, 1624, 1882, 2335, 4171, 6391, 6757, 82d Cong., and several other bills culminating in the enactment of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 663. This feat of legal draftsmanship is not likely to be equaled, let alone excelled, in this century.

Less spectacular but more insidious is the instrument that says that, for its purposes, the term "supplies" includes buildings. ["Seldom has this gone farther than the English statute which, it is said, provided: 'Whenever the word "cows" occurs in this Act it shall be construed to
include horses, mules, asses, sheep and goats." Cooper, Writing in Law Practice 7 (1963).] In a short, isolated legal instrument this may do little harm. But confusion is certain in a long, complicated one in which well accepted and clearly delineated terms are twisted to extend or restrict its coverage. The problem is even more acute when an instrument must be read in relation to other instruments using different terminology. Here we have the modern Tower of Babel.

**Relationship of Convention and Communication**

Hermogenes, Humpty Dumpty, and a long line of generally respectable legal draftsmen went wrong in falsely assuming that, because language is for the most part conventional, its users have carte blanche to attach whatever meanings they like. What they failed to grasp is the nature of convention and its relation to effective communication. Berenson has perhaps best expressed for us the relationship between convention and communication. The fact that he was talking about modern art makes his comments no less apt.

*Representation is a compromise with chaos.* . . . The compromise prolonged becomes a convention. . . . The alphabet is a convention. So is all arithmetical notation. So is mathematics. . . .

. . . And the joy of creative art comes when one is lured to hope that he has found the cypher, the symbol, the generic shape or scrawl, the hieroglyph, the convention, in short, that will do it. . . .

So long then as we want to have . . . contact with others of our own species, we can have it only through conventions. If we shed any instinctively or throw them over deliberately, either they are replaced before too long or we fall back into private universes, self-immured *incommunicado*. . . .

Literature, Anglo-American literature certainly, is now overshadowed by the glossolaly of Gertrude Stein and still more by the polyglot etymological puns and soap-bubbles of James Joyce. . . . It is worse in the visual arts. Words drip with sub-meanings. Take a word out of the colour-vat in our own minds where it soak; do what you can to wring it clean, to dry it, to harden it, to crystallize it, as the French have done with their language for three whole centuries until the other day: yet some trace of meaning, besides what is intended, sticks. . . .

A tradition, a convention, needs constant manipulation to vivify it, to enlarge it, to keep it fresh and supple, and capable of generating problems and producing their solution. To keep a convention alive and growing fruitfully requires creative genius, and when that fails it either becomes mannered and academic or runs "amok." . . . Seeing and Knowing 7, 9-13 (1953).

Why the link between language and convention has a psychological basis is suggested by Cherry's com-
ment that the fact that communication works at all "depends principally upon the vast store of habits which we each one of us possess." On Human Communication 12 (1957). The key word here is "habit," and anyone familiar with Pavlov's dogs knows that the basis of language convention is something akin to the conditioned reflex. This is not to say that meaning is necessarily "behavioral." It says merely that communication is based on shared psychological habits and that these habits are not easily or quickly unlearned. Robinson summed it up neatly when he said that "it is not possible to cancel the ingrained emotion of a word merely by an announcement." Robinson, op. cit. supra at 77.

Lesson for Draftsman

The lawyer who defines "wheat" as including rye is laying a trap not only for his readers but also for himself. Even a legislature is powerless to repeal the psychological law on which this is based. Like ghosts returning to a haunted house, established connotations return to haunt the user who attempts to banish them. The draftsman who has resorted to this slovenly device has often forgotten his special definition and reverted unconsciously to the established sense, thus introducing either an unintended result or an intended result disguised as something else.

The temptation to use a Humpty Dumpty definition is, of course, strong. If a long and complicated instrument makes many references to wheat, and it becomes desirable to extend the instrument to include rye, it is far simpler to make a single insertion in the definition section ("The term 'wheat' includes rye") than it is to insert the words "and rye" after each appearance of the word "wheat." At the same time it would be hard to find a better example of the penny-wise-pound-foolish approach.

For these reasons it is important for the legal draftsman not to define a word in a sense significantly different from the way it is normally understood by the persons to whom it is primarily addressed. This is a fundamental principle of communication, and it is one of the shames of the legal profession that draftsmen so flagrantly violate it. Indeed, the principle is one of the most important in the whole field of legal drafting.

Nicknames and Fictions

This injunction, of course, does not rule out the use of nicknames, e.g., "the Great American Corporation (called 'the Corporation' in this lease)," or appropriate fictions. When a fiction is appropriate, the draftsman should continue to use his words in their normal senses and label the fiction plainly by using "as if" language.
Do not say

The terms "child" and "issue" include an adopted child.

Say

A child adopted by any person shall be treated as if he were a child of the blood.

But even before turning to fictions such as this, the draftsman should exhaust the possibilities of amending each relevant provision to make it say expressly what it is intended to mean. More of his time is required, but in the long run it often saves the time of many more readers and avoids unnecessary confusion.

USES OF STIPULATIVE DEFINITION AND LEXICAL DEFINITION

Lexical Definition

Though Humpty Dumptyism is out, freedom of stipulation and stipulative definition have legitimate uses, which can best be understood by examining the true purpose of definitions in legal instruments. Because a legal instrument is not intended to supplant the dictionary, one that hews as closely as possible to accepted usage need not define the great bulk of the terms that it uses. Instead, it need define only those terms for which accepted usage in the given speech community is inadequate to carry the intended message. A lexical definition is thus necessary only where a partially established usage is still gaining currency, competing usages pose the threat of ambiguity, or a critical element of established usage is not sufficiently plain.

Stipulative Definitions

New Concept

Stipulative definitions, on the other hand, are necessary on two general kinds of occasions. One is when the instrument deals with a new concept for which usage has not yet established a name. Here the draftsman may even have to create a term. If he does, he is well advised to choose one that puts no greater strain on the reader than the burden of facing the unfamiliar. He should avoid a term whose established connotations are sufficiently similar to, and at variance with, the intended meaning to create the strong likelihood of confusion.

Resolution of Uncertainty

A second, and more often necessary, use of stipulative definitions is to resolve uncertainties in the cloudy areas surrounding vague terms. A full and more precise definition may be substituted for the looser meaning of accepted usage, in which case it is partly lexical and partly stipulative ("In this ordinance, 'mobile home' means a vehicle or other portable structure more than 30 feet long that is designed to be moved on the highway and designed or used as a dwelling").

Or a partial definition may be used to resolve a specific marginal uncertainty, in which case it is
wholly stipulative (e.g., “In this Act, ‘automobile’ includes an amphibious passenger motor vehicle”). In neither case is the reader called on to make a significant adjustment in his normal response habits.

**Real Definition**

Much of the need for stipulative definition grows out of what some philosophers of language have called “real definition,” that is, the improvement and perfection of underlying concepts, rather than out of the need to explain how a term is being used. As Robinson has said,

To “analyse” a concept sometimes means to improve it, that is, to substitute for it a very similar concept which is superior. . . . Concepts are improved, other things being equal, when they are altered so as to fit into a system, or into a better or larger system. Thus the famous definition of implication in Principia Mathematica, “p implies q if and only if either p is false or q is true,” while inconvenient in many respects, had the great advantage of building the notion of implication into a large and detailed system of ideas. Robinson, op. cit. supra at 180, 184.

On the other hand, if the new concept could not be called by the old name without forcing the reader to make a substantial semantic re-adjustment, the wiser course is to find a different name. Whether such a name requires a stipulative definition of its own depends on what that name suggests to the mind of the ordinary reader in the particular speech community.

**Conclusion**

This, then, is the proper scope of stipulative definition. Indeed, if the foregoing analysis is correct, the competent draftsman has occasion to define only sparingly. When he does, most of his definitions are appropriately stipulative in whole or in part. Not often does he need a purely lexical definition.

We see the legal draftsman operating on two planes. On the conceptual plane, he is the selector or sculptor of concepts appropriate to
carrying out his client's purposes. On the verbal plane, he is the selector or sculptor of words. The two planes are as closely interrelated as two adjoining layers of plywood.

**FORMAL ASPECTS OF DEFINITIONS**

**Exhaustive or Partial**

A legal definition should show whether it is intended to be exhaustive or partial. In the former case, the draftsman should use the word "means"; in the latter, the word "includes." Although he should never use the ambiguous expression "means and includes," he may follow an exhaustive definition in which he uses the word "means" with a supplementary partial one in which he uses the word "includes."

*Example:*

In this agreement, "mobile home park" means an area of land on which two or more mobile homes are regularly accommodated with or without charge. It includes any building or other structure, fixture, or equipment that is used or intended to be used in providing that accommodation.

**Comparable Equivalent**

The word "means" is normally followed by a comparable equivalent to what precedes it. Martin, The Logic and Rhetoric of Exposition 32 (1958). Thus in the definition, "'Settle' with respect to a claim means consider, ascertain, adjust, and dispose of, whether by full or partial allowance or by disallowance," what follows the verb "means" exactly equals what precedes it. If the defined word is a verb, the explanatory equivalent should carry the comparable verb form. If it is a noun, the explanatory equivalent should carry the noun form.

Sometimes it is not feasible to use a comparable equivalent. In this situation, the words "refers to" may often be used.

*Example:*

In this lease, "settle" and "settlement" refer to the consideration, ascertainment, adjustment, determination, and disposition of a claim, whether by full or partial allowance or by disallowance.

Another contingency is illustrated by the following example:

In this indenture:

(1) "Shall" is used in an imperative sense.

(2) "May" is used in a permissive sense.

**Placement**

Definitions should be placed where they are the most easily found. A term that is used only in one section should be defined in that section. A term that is used only in one title should be defined at the beginning of the title. A term that is used throughout an instrument should be defined at or near the beginning of the instrument.
Kinds of Definitions To Avoid

In general, the draftsman should avoid every definition that he does not need. In particular, he should avoid definitions of the kinds described below.

- Definitions that recite the obvious. Several years ago, the following section appeared in the regulations of the Atomic Energy Commission:

  **041 Form.** A form is a piece of paper containing blank spaces, boxes, or lines for the entry of dates, names, descriptive details or other items.

  What significant problems of state this definition helped to solve would be hard to imagine. Further comment on the obvious and useless seems unnecessary.

- Humpty Dumpty definitions. For reasons already stated with some vigor, Humpty Dumpty definitions should be assiduously avoided. Although a militant opposition to such atrocities often attracts charges of "fanatic" and "pedantic quibbler," the battle is worth the winning for clarity of communication and for clarity of thought.

- Degenerate definitions. A degenerate definition, according to Robinson, is one that "leaves us bereft of any means of indicating an important distinction that could be indicated by the word in its previous sense." Robinson, *op. cit. supra* at 82. Redman further describes this as "impoverishing the language by using certain words in such a way as to rob them of their special meanings and make them do forced labor as mere synonyms of other words." The Saturday Review, March 2, 1957, p. 22.

  Many lawyers have been guilty of implying a degenerate definition of the word "ambiguity" by using it indiscriminately to cover both ambiguity and vagueness. Dickerson, *The Diseases of Language*, 1 Harv. J. Leg. 5 (1964). Although "equivocation" is available for taking its place, the word is only infrequently used in this legal context. As a result, it is difficult to discuss the concept of ambiguity (in its classical sense) with a lawyer. He is not used to making the important distinction between ambiguity and vagueness.

  During the recent recodification of the military laws of the United States, top-level officials in the Pentagon made things unnecessarily difficult for the codifiers and complicated the art of communication by insisting that the term "Department," which is the traditional governmental name for the headquarters concept, be defined as covering the entire military establishment, which includes all field installations. 10 U.S.C. §101(5). The purpose of this insistence was to establish the plenary powers of the Sec-
Secretary of Defense over all elements of the military establishment, a result that could have been easily achieved without resorting to a degenerate definition. This left the headquarters concept bereft of its normal label and required the codifiers to improvise a substitute, somewhat cumbersome, term, "executive part of the Department." 10 U.S.C. §101(6).

It should take no extended argument to establish the undesirability of definitions that tend to obscure significant distinctions between underlying concepts.

• One-shot definitions. Draftsmen sometimes define a word in a legal instrument and then use it only once. Although this is not likely to confuse, it introduces a circumlocution that wastes the draftsman's time as well as the reader's. Here is a recent example, slightly condensed:

Each judge shall be paid all necessary traveling expenses and all reasonable maintenance expenses while attending court or transacting official business at a place other than his official station. The official station of such judges for this purpose shall be the District of Columbia.

What would be lost by restating this provision as follows?

Each judge shall be paid all necessary traveling expenses and all reasonable maintenance expenses while attending court, or transacting official business, outside the District of Columbia.

• Stuffed definitions. Draftsmen often abuse definitions by stuffing them with substantive rules that it would be more appropriate to state elsewhere. An example appeared recently in the Civil Air Regulations of the Federal Aviation Agency:

A periodic inspection is an inspection of an aircraft required each 12 calendar months and is a complete airworthiness inspection of such aircraft and its various components and systems in accordance with procedures prescribed by the Administrator. 14 C.F.R. §43.70 (rev. Jan. 1, 1962).

Such a provision should be divided into a definition ("The term 'periodic inspection' means an inspection made at least once during each 12-month period") and a substantive requirement ("Each periodic inspection shall completely cover the airworthiness of the aircraft and its components and shall be made in accordance with procedures prescribed by the Administrator").

A stuffed definition is sometimes developed in connection with formulas and computations. It takes the form of a definition of a complicated technical term, specially created and usually without previous connotations. The temptation here is to make a complicated problem seem simpler than it is. The effect is heightened by putting the new
definition with other definitions at the beginning of the instrument.

This, unfortunately, not only does not solve the basic problem but creates two additional difficulties, one of arrangement and the other of clarity. With an essential part of the substantive rule placed elsewhere, it is correspondingly harder to fit together the two parts of an integrated idea. Furthermore, it may make the basic rule, taken by itself, unclear or deceptively simple. Even if the definition is placed where the term is used, it is at best circuitous, because the same result is reached more directly by stating the result intended or by simply referring to the related provision (e.g., “as computed under section 16”).

A good working test of whether a substantive rule and its accompanying definitions are adequately stated is whether the reader can get a generally accurate and complete impression of the substantive rule without referring to the pertinent definitions. If he cannot, the chances are that the draftsman has either used words in unnatural senses or put too much of the substantive rule in the definition.

Stuffed definitions not only impair clarity and good arrangement but may produce unintended results. For example, a recently proposed zoning ordinance included the following definition:

"Parking space" means a space, no smaller than 9 feet by 20 feet, for the off-street parking of one motor vehicle.

This definition looked innocent enough until the reader examined some of the basic provisions. For example, one provision of the proposed ordinance forbade the location of parking spaces in front yards in some residential or business districts. Under this definition, an owner might have safely located a 9-by-19-foot parking space in his front yard, because, not being within the definition of “parking space,” it would have fallen outside the prohibition. On redraft, the definition (“The term 'parking space' means a space for the off-street parking of one motor vehicle”) was stated separately from the substantive requirement (“No parking space may be less than 9 feet by 20 feet”). Stuffed definitions, therefore, are not only inartistic but dangerous.

**CONCLUSION**

Although, by itself, the problem of definitions may seem to some to be relatively unimportant, the sophisticated draftsman knows that systematic adherence to the principles of communication and internal organization as performed in a myriad of small operations pays rich cumulative rewards in substantive coherence and readability. The draftsman who is sensitive to the uses and pitfalls of definitions is likely to be sensitive to the other factors upon which sound draftsmanship ultimately depends.