INTRODUCTION: YOUR AUDIENCE

When I was in law school, many of my fellow students shunned the practice of business law. They weren’t in law, they said, to make money; they were in law to “help people.”

I have no doubt that they were sincere, and I imagine that most of them did end up helping people. But so did I. The people I help have titles like “assistant treasurer,” but they’re people nonetheless, and, God knows, they have problems. They value my help, and I value their confidence in me.

These people are my audience. They are sophisticated people, but they are not lawyers. They want legal advice and “legal” documents, but their concerns are not primarily legal. I try to write documents that address their concerns.

To say my audience is not composed of lawyers is not to say that they are ignorant of legal concepts. My audience knows what a security interest is, and most of them know that security interests must be perfected. Joint and several liability is a familiar concept to them, as is a voidable preference.

I’m lucky. I know most of the initial audience for my documents by their first names. Several of them will read the document and ask for clarifications before the document goes to the strangers on the other side (although I’m getting to know lots of people on the other side too). I think I know what my audience wants.

Knowing your audience is the first step to good legal drafting. If your documents are going to help your audience with
their problems, you have to understand their problems, hopefully in the way they understand them.

Sometimes you will not know your audience. I’ve spent a good deal of time drafting securities prospectuses. I’m not sure who reads prospectuses and why, so I write for a hypothetical investor—an investor who may only exist in my or an SEC reviewer’s fantasies.

My approach to legal drafting has a good deal in common with the “plain language” school. I like plain talk. However, I draft my agreements (and even most of my prospectuses) for sophisticated businesspeople, not consumers. I use legal concepts that are familiar to my audience, although not to most laymen. I also feel free to use trade jargon without explanation. It’s appropriate when I’m drafting for my audience.