

The Legal English Manual

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How to use this book

Introduction

This Manual is intended to help you expand your vocabulary and to improve your legal writing and speaking skills. It is not a legal textbook. Nor should you rely on the Manual as a source of legal advice. The Manual presents terminology and examples of usage in the context of Anglo-American law, as the language itself is conceptually bound to Anglo-American legal systems. Although the authors have made every effort to alert the reader to differences between the common law and the civil law context, you, as the reader, will have to exercise care when using legal terminology in different jurisdictions.

The book consists of three main sections:

- I. key legal terms relating to 14 areas of legal practice
- II. practice manuals with templates for legal writing
- III. practice manuals with templates for oral communication

Part I: Key legal terms relating to 14 areas of legal practice

Given space restrictions, the manual cannot cover every area of legal practice. Instead, it focuses on different aspects of commercial law.

Nevertheless, we have included criminal law and family law as well, in recognition of these fields' increasing importance in an international lawyer's practice.

Each separate manual in Part I follows the same pattern: first, principal content divided into sub-sections for easy reference; second, sample sentences; third, selected definitions; and fourth, the collocations corner.

The left-hand column of each sub-section sets out the principal legal terms you are likely to encounter in the context of each area of law. The accompanying text in the right-hand column then incorporates these terms in a typical legal context to help clarify each term's meaning.

A notation that a term is typical for the US or for the UK signifies that terms are used differently across jurisdictions, as follows:

- | | |
|---|--|
| <ul style="list-style-type: none">• <i>plaintiff</i>• <i>claimant</i>• <i>defendant</i> | The <i>plaintiff</i> (UK: <i>claimant</i>) initiates legal proceedings; the <i>defendant</i> is the party against whom the plaintiff brings suit. |
|---|--|

Following every sub-section, a sample sentence indicates how to use a selected term in practice, as follows:

Once a *complaint* has been *filed*, the court will *issue* a *summons* which is normally *served on* the *defendant*.

Each individual manual closes with the collocations corner. Collocations, or word partners, refer to words in English which naturally belong together. Collocations may be made up of

- a verb + a noun: *to incur costs*
- a verb + adverb: *to recommend strongly*
- or an adjective + noun: *a dramatic increase*

Legal English is rich in such word partnerships. Using them correctly helps to ensure that your Legal English is sophisticated and appropriately formal. In each collocations corner, we have tried to identify the word partners you are most likely to encounter in practice, as follows:

- *to instruct a lawyer*
- *to initiate legal proceedings*
- *to file a claim*
- *to lodge an appeal*
- *to bear the costs*

Part II: Practice manuals with templates for legal writing

These chapters set out authentic examples of the sort of correspondence and documents you may draft or receive in the course of your professional duties. The templates illustrate the layout and language of professional legal documents. **As with any legal drafting, the law may differ by jurisdiction, and there may be many different ways of expressing the same thing; hence, be aware that these templates are models only, and that you will have to customize all contracts and your correspondence for each transaction.**

The authors have also devoted particular attention to the differences between British English and American English. These differences occur not only in with regard to spelling – for example, defense counsel (US) and defence counsel (UK) – but also in date formats – 3/4/2016 (US) and 4.3.2016 (UK), or March 4, 2001 (US) and 3 April 2016 (UK); in the use of punctuation – Mr. Jones (US) and Mr Jones (UK); and even the choice of words or expressions when addressing the recipient of a letter or email – Dear Ms. Jones (US) or Dear Ms Jones (UK). You are, of course, free to adopt either American English or British English, but we recommend that correspondence and other documents be internally consistent.

Part III: Practice manuals with templates for oral communication

According to particular areas of practice or situations, the tables in Part III list useful terms and expressions you can memorize and use on the appropriate occasions. They will also help you to recognize – and appreciate – the language your colleagues, opposing counsel, and clients use. Again, be aware of what is appropriate in the context and culture in which you are operating.

In addition, this section includes helpful checklists to assist you in preparing for and conducting successful negotiations and client interviews.

1 Contract Law

A. Key Legal Terms

a. *Persons who have rights and obligations under a contract*

| | |
|---------------------------------------|--|
| • <i>party</i> | A person who signs a contract is referred to as a <i>party</i> to the contract, or a <i>contracting party</i> . |
| • <i>contracting party</i> | |
| • <i>enter into</i> | Parties <i>enter into</i> a contract. In relation to each other, each contracting party is the <i>counterparty</i> to the other party. If a party does not <i>perform</i> i.e. fulfill its obligations under the contract, it is known as the <i>breaching party</i> . The counterparty is the <i>non-breaching</i> (or <i>injured</i>) <i>party</i> . An interested person not in <i>privity of contract</i> , i.e., who is not a contracting party, is known as a <i>third party</i> . A third party who may benefit under a contract is a <i>third party beneficiary</i> . A party who <i>assigns</i> its rights and duties under a contract to another is the <i>assignor</i> ; the recipient of those rights and obligations the <i>assignee</i> . |
| • <i>counterparty</i> | |
| • <i>perform</i> | |
| • <i>breaching party</i> | |
| • <i>non-breaching/ injured party</i> | |
| • <i>privity of contract</i> | |
| • <i>third party</i> | |
| • <i>third party beneficiary</i> | |
| • <i>assign</i> | |
| • <i>assignor</i> | |
| • <i>assignee</i> | |

Under the terms of the contract, the *contracting parties* agreed to *perform* their respective obligations to their best endeavors.

b. Contract drafting

- *draft*
- *draw up*
- *templates*
- *clauses*
- *sections*
- *provision*
- *paragraph*
- *whereas*
- *operative*
- *rights and obligations*
- *standard/boilerplate clauses*
- *severability*
- *schedule*

Lawyers *draft* or *draw up* contracts, often with the help of contract models or *templates*. Contracts consist of *clauses* (or *sections*). Each clause contains a *provision*. If a clause consists of more than one *paragraph* it may be cited as, for example, clause 5, paragraph 2. Typically, a model commercial contract will commence with the names and addresses of the parties designated by a capitalized definition, e.g.: “This contract is entered into between Acme Ltd (“Seller”) and Emca Holdings (“Purchaser”)”. This is generally followed by the *whereas* clause which is not an *operative* part of the contract but functions as a short introduction. The definitions section then lists the terms as they will be used in the contract. The agreement section sets out the parties’ *rights and obligations*. *Standard clauses* (also known as *boilerplate clauses*) are generally found at the end of an agreement and may include provisions such as an applicable law clause or a *severability* clause (which provides that if for some reason a clause is unenforceable it may be severed or struck out without affecting the validity of the rest of the agreement). A *schedule* generally refers to very detailed agreements or information (such as a price list) put at the end of the contract for the sake of clarity; nevertheless, the content of the schedules remains part of the substantive agreement between the parties.

Now regarded as archaic, the introductory term *whereas* may be substituted by *Recitals* or *Background*, or even a statement such as: “This contract is made with reference to the following facts:”

B. Sample Definitions

| | |
|----------------------|---|
| <i>consideration</i> | Common law concept in connection with contracts: what is done in return for the promise or act of another party in order for a contract to be properly performed or enforceable. |
| <i>indemnity</i> | Obligation to compensate someone, or the compensation provided to someone for loss, damage, or expense. |
| <i>voidable</i> | A contract is voidable if it appears to be enforceable but in fact suffers from some defect that entitles one or both parties to rescind the contract or have it declared unenforceable by a court. |

C. Collocations Corner

a. *Clause(s)*

→ to amend a clause

to change a clause, usually slightly, or to cause the characteristics of a clause to change (syn.: to modify)

Amending a clause in the contract could mean delaying the entire transaction.

→ to construe a clause

to understand the meaning, especially of a contract clause, in a particular way

to interpret a document, word, or an act in a certain way

As each party construed the best efforts clause to mean something different, the court found the clause to be ambiguous.