

**William R. McKay
Helen E. Charlton
Grant Barsoum**

LEGAL ENGLISH

**How to understand and
master the language of law**

Second Edition

LEGAL ENGLISH

'This is a much needed text and should be on the reading list of all students who need to get to grips with language issues.'

Dr Sharon Hanson, PhD, Senior Lecturer in Law,
Department of Law and Criminal Justice Studies, Canterbury Christ Church University

'I would recommend this book to students who intend to study law and need to learn legal language.'

Alison Chisholm, Sussex Centre for Language Studies, Sussex University

'This book fills a very important gap and will be gratefully appreciated by both students and teachers of legal English. It is an authoritative introduction to a field which is becoming more and more significant internationally.'

David Rowson, MBE, Head of English, Bellerbys College, London

Sometimes memos are addressed to outside parties. They are known as 'external memos' and are usually intended to persuade a party to accept another party's point of view in a legal dispute. External memos are less common than internal memos (although sometimes used in the USA in particular).

E-mails

E-mails are increasingly used for legal correspondence and are usually laid out in similar fashion to more traditional correspondence such as letters. Language should remain appropriately formal.

Read the following e-mail from your secretary at Stringwood & Evans, then answer the questions which follow.

From: Tracey Hongzhi <tracey.hongzhi@unilaw.univ>

Date: 7 July 2011

To: Alex Reader <a.reader@legal.unilaw.univ>

Subject: Appointment tomorrow with Cadmium Aerospace

Dear Alex

The Sales Director of Cadmium Aerospace Limited, Frederick Johannsen, telephoned this afternoon. I have made an appointment for him to see you in your office tomorrow at 11.00 a.m. He wants to discuss an agency agreement with you that his company is considering entering into with another company called MacFadyen Aviation Limited. In particular, he wants you to advise him concerning:

- Whether Cadmium Aerospace can appoint other agents within Europe and North America during the course of the agency agreement.
- Whether the principal can sell directly to customers within Europe and North America as well as through MacFadyen Aviation Ltd while the agreement remains in force.
- Details of how the principal is required under the agreement to assist the agent to achieve sales.
- An explanation of how the agent's commission is to be calculated in accordance with the agreement and what minimum sales the agent is required to achieve under the agreement.

Kind regards

Tracey

Exercise 3.19**Comprehension**

1. Why is Frederick Johannsen coming into your office tomorrow?
2. Which other company is involved in the proposed agency agreement?
3. What in particular does Frederick Johannsen want advice on concerning Europe and North America?
4. What in particular does he want to know about the agent's rights and obligations under the proposed agency agreement?

Attendance notes

An attendance note records what was said, agreed and decided while talking to a client, a witness or indeed another lawyer (whether in person or by telephone). They are therefore largely composed of reported speech.

Reported speech indicates what was said but not in exactly the same words. Verbs commonly used in reported speech include 'said', 'told', 'explained', 'suggested', 'asked', 'wondered' and 'advised'. For instance, 'He told me that the meeting had taken place.' Be careful to use the correct verb tense.

Imagine the following discussion between a lawyer and her client:

Lawyer: 'How did the accident happen?'

Client: 'I tripped over a pot of paint.'

This would be written in reported speech (in the first person) as:

I asked her (or 'the client') how the accident happened. She told me that she had tripped over a pot of paint.

Or, more concisely:

She (or 'the client') told me she had tripped over a pot of paint.

Good practice tip

- Direct speech is placed in speech marks (inverted commas).
- Pronouns and tenses alter in indirect speech.

Exercise 3.20

Rewrite the following in reported speech using 'I asked' or 'I said that'.

1. 'What is your job Mr Anderson?'
2. 'We'll meet again next week Mrs Kennedy.'
3. 'An employer will usually agree to provide a reference.'

Attendance notes are kept in a client's file and should contain the following details:

- date and time of attendance;
- names of everyone present at the meeting, event or discussion being recorded by the file note;
- duration of attendance (with starting and finishing times);
- what was discussed – including all relevant facts;
- what advice, decisions and conclusions were reached;
- what further action was agreed (what are the next steps for the client and lawyer to take).

Attendance notes can later be useful for checking and proving:

- what a client's specific concerns or instructions were;
- details of what was said and agreed with other parties (including, for instance, details of a telephone conversation with a lawyer acting for another party);
- exactly what a client informed you of or asked you to do when a dispute arises!

Now read the following attendance note, noting how reported speech is used.

Exercise 3.21

As you read the attendance note, try to spot the two sentences containing irrelevant information!

Lambros & Co. Solicitors

ATTENDANCE NOTE

Date: 21 July 2011

File Ref: H3547

Attended on Mrs Catherine Hawkins, a new client. She set out what happened to her on Thursday 30 June 2011. She tripped over a tin of paint on the ground floor of an office building at 32 Chancery Lane, London, while heading towards a client's office. She sustained a broken finger on her right hand as well as a fractured right arm. This client turned up twenty minutes late for our meeting. Mrs Hawkins works for an advertising agency and she is concerned that these injuries may affect her ability to do her job, which involves a good deal of written work. The accident happened at approximately 10 a.m. Mrs Hawkins clearly remembers that the tin of paint had been left on the floor of the corridor by decorators who had not fenced off the area in which they were working. There were also no warning signs to indicate that decorating work was being carried



out. She did admit, however, that, off the record, she was not fully paying attention to where she was going because she was in a hurry.

She wishes to pursue a civil claim for damages for the injury and loss sustained on the grounds of the decorators' negligence. She also told me that one of the decorators was wearing a dirty old shirt. We agreed that I would write a letter to the company which owns the building. I advised that she is likely to be successful with her claim.

Time engaged on attendance on client: 30 minutes

Uncountable nouns

There are some nouns in English which are uncountable, i.e. they have no plural form (such as having an 's' on the end). In the above file note, for instance, 'negligence' is uncountable. The following words are also uncountable and regularly used in legal correspondence and documents.

| | | | |
|----------|-------------|----------------|-------------|
| malice | information | advice | evidence |
| research | employment | discrimination | legislation |

File notes

File notes are regularly used in legal practice to create an accurate record of work and legal research undertaken on a particular client's file.

File note checklist

File notes should contain:

- date, time and any file reference number;
- duration (time taken for both the work undertaken which the file note is recording and for writing the file note);
- all relevant facts, findings, conclusions and details of work undertaken (whether letter writing, drafting documents or legal research, etc.).

File notes can then be subsequently referred to when reviewing the client's file. The file may, for instance, have to be reviewed for the purpose of:

- preparing for trial
- becoming familiar with a client's file when taking over conduct of it from a colleague.

Time spent on tasks such as writing correspondence, drafting documents and legal research is recorded in file notes. So file notes are also useful when calculating the fees to charge your client! Read the following file note, noting how reported speech is used.

STRINGWOOD & EVANS

Solicitors

FILE NOTE

7 July 2011

Fee Earner's Reference: WRM

File Number: L8453

Client: Michelle Lohan

Conducted legal research into share holding required by one share holder to compel a company incorporated in the United Kingdom to hold a general meeting of the shareholders. Ascertained that this now requires 5 per cent shareholding (reference – website of UK Department of Business, Innovations and Skills).

Drafted necessary notice to company on behalf of client to call a general meeting and covering letter.

Time engaged: 1 hour

SUMMARY

- Use headings and separate paragraphs for separate issues.
- Proofread carefully for correct grammar, punctuation and spelling.
- When describing events or occurrences, it can be helpful to structure the content of your correspondence in date order (i.e. chronologically).
- Check you have included all key facts and information.
- Use appropriate headings to 'signpost' issues and topics and set out content in a logical order.

Visit www.mylawchamber.co.uk/mckay to access further resources for practising legal language skills including additional exercises, listening activities and live weblinks for online research.



Chapter 4

Drafting legal documents for business

Learning objectives

This chapter will help you to:

- become familiar with company documentation and procedure;
- understand the language of legal agreements and business documents;
- consider the sentence structure and grammar of commercial legal documents;
- practise drafting and amending business documentation.

INTRODUCTION

Legal drafting is the process of preparing legal documents. Typical examples of such documents include:

- company documents, such as articles of association of a company, company resolutions and minutes of company meetings;
- commercial agreements, including partnership agreements, agency and distribution agreements, merger and acquisition agreements and intellectual property agreements;
- statements of case (formal court documents used in court proceedings).

This chapter will address the first two of these types of documents, i.e. company legal documents and commercial agreements. The next chapter will look at drafting court documents for court proceedings, i.e. documents for litigation, generally known as statements of case.

The purpose of drafting business and commercial documentation is principally to create documents which accurately set out agreements reached between individuals and/or companies – generally referred to as the parties. It is essential to use the appropriate vocabulary and write grammatically correct sentences to ensure that the documents you produce convey precisely the intended meaning. Otherwise a dispute may subsequently arise as to the meaning of a term in the drafted agreement, particularly when the language used can be interpreted as having alternative and different meanings which would lead to ambiguity. In that case a court will interpret (construe) the term as having the meaning least beneficial to the party which drafted the ambiguous term. This is known as the ***contra proferentem*** doctrine. However, if the document is well drafted, being clear and concise, then any misunderstanding or dispute can be determined by reference to the document, avoiding a dispute in court. So precision of meaning is crucial.

When drafting documents, it is common practice to use precedents (existing, previously used documents). Precedents provide a range of standard words and phrases for you to use but they must be selected carefully. Many precedents deliberately retain some traditional vocabulary or dated words (i.e. not in everyday current use), where such words have been tried and tested, sometimes in court, as to their specific meaning. If you replace such words