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Alison Wiebalck | Richard Norman | Clemens von Zedtwitz

The Legal English Manual

2nd Edition

Handbook for
Professional Legal Language
and Practical Skills

Lawbility

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Helbing Lichtenhahn

BarWrite® Press

Praise for the 1st edition

“ The *Legal English Manual* is a fantastic reference guide for those seeking to elevate their use of English in a professional law-related context. The book is concise and extremely user-friendly, while providing a wealth of guidance for numerous practice scenarios. And it can add value to everyone from the law student to the seasoned lawyer.”

Toni Jaeger-Fine | Assistant Dean | Fordham Law School (New York City)

“ In today’s international legal practice, working in English is inescapable but can be challenging for those who are not native speakers of English. This is where the *Legal English Manual* becomes a valuable resource. It provides users with a well-structured reference to commonly used terms in various areas of practice, as well as guides for written and oral communication. I fully recommend this for any lawyer who works in English!”

Joel Lee | Associate Professor | Faculty of Law National University of Singapore

“ This book provides the essence of the professional legal English language: professional language, legal terminology, and examples on how to use them in practical situations. It is hence more than a reference book for international law students and lawyers. Sample documents, checklists, and guidance for practical situations make this handbook a compass for international legal practice.”

Larry Teply | Professor in Law, Creighton University, Nebraska (USA)
Chairman of the International Negotiation Competition for Law Students
Author of “Legal Negotiation in a Nutshell”

“ The *Legal English Manual*, with its fresh approach and engaging content, is a very valuable resource in maintaining and strengthening clear, accurate, and relevant communication in law.”

Frank Astill | President, International Negotiation Competition for Law Students
Former Director of The University of Sydney Law Extension Committee (Australia)

“ This is a valuable manual for non-native speakers to improve their legal writing and speaking skills! It contains lots of useful terminology, phrases, and tips in a well-organized style which makes it easy for users to find the information they need easily.”

Tetsuo Morishita | Professor | Sophia University Law School, Tokyo (Japan)

Praise for the 1st edition

“*The Legal English Manual is so much more than the title suggests; it contextualizes the use of legal English so that students and practitioners can use the lessons for everything from getting a job to retaining and communicating with clients to advocating and negotiating on behalf of those clients. This book packs a huge educational punch into a highly efficient and user-friendly small package!*”

Nancy Schultz | Professor of Law | Fowler School of Law
Chapman University, California (USA)

“*With its clear explanation of legal vocabulary and useful form documents for both the U.S. and the U.K., this book is both an essential resource for civil-law lawyers, and an excellent guide for U.S. or U.K. lawyers who want to master the subtle differences in legal vocabulary and written forms between the two countries and their legal systems.*”

John B. Thornton | Clinical Associate Professor of Law, Northwestern Pritzker School of Law, Chicago (USA) | Chair of the Section on Graduate Programs for Non-U.S. Lawyers of the American Association of Law Schools | Author of U.S. Legal Reasoning, Writing, and Practice for International Lawyers, Carolina Academic Press, 2014

“*An excellent handbook providing students with an accurate, clear, and practice-oriented insight into all relevant Legal Skills issues.*”

Stefano Troiano | Full Professor of Private Law | University of Verona (Italy)

“*The Legal English Manual provides an exceptional overview of the various modes and styles of legal English communication. It provides key vocabulary terms for multiple practice areas, guidelines for different styles of legal writing, and advice for effective oral communication. Significantly, it places legal terminology into context, rather than simply providing isolated definitions. At the same time, it provides an appropriate depth of information without overwhelming the reader. Overall, it is a solid primer that will provide legal professionals anywhere in the world with the foundation they need to begin effectively communicating with other English-speaking professionals.*”

Aaron Richard Harmon | B.A., M.A., J.D., LEED® AP
Clinical Assistant Professor | College of Law, Qatar University (Doha-Qatar)

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Preface

Proficiency in Legal English is a highly desirable skill. The Legal English Manual is the first of its kind to use a practice-oriented approach specifically geared to legal professionals who use Legal English in their practice. It is not a course book, but a handbook designed to provide practitioners with key legal terminology, along with explanations and examples of usage.

English has become the most global of languages, the lingua franca of international commerce, science, computing, and law. Even non-Anglo-American companies often choose English for international negotiations and agreements. For better or for worse, the use of English in international commerce and international law is inescapable. The ability to use Legal English competently and confidently has, thus, become a requirement for lawyers working in an international environment.

The Legal English Manual's authors are either practicing lawyers trained and licensed in the US, the UK, and civil law jurisdictions, or linguists with extensive experience teaching and coaching Legal English. The book also draws on the combined expertise of a wide network of coaches, legal practitioners, and linguists who work with Lawbility, a professional legal language and practical legal skills training institute based in Zurich, Switzerland.

Specifically designed for legal practitioners, the Legal English Manual is a practical reference book for legal professionals who want to “demonstrate their lawbility.” We hope that it will provide you with the Legal English tools you need to take your legal practice to the next level.

Please send any comments you may have to legallenglish@lawbility.ch.

January 2017

Kathrin Weston Walsh
Editor

Jean-Luc Delli
Managing Director Lawbility Ltd.

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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.

Language notes

The abbreviations “US” and “UK” do not refer specifically to these countries themselves, but are intended to distinguish between the variations in legal terminology, spelling, or date formats in their respective regional variations of English.

Special feature

And, finally, the Legal English Manual leaves adequate space for you, the reader, to add your own comments and notes, as this is no coffee table book but a working manual!

I

Legal Terminology Manuals for Practice Areas

- | | |
|--|-----------------------------|
| 1 Contract Law | 8 Intellectual Property Law |
| 2 Tort Law | 9 Antitrust/Competition Law |
| 3 Company/Corporate Law | 10 Civil Procedure |
| 4 Employment Law | 11 Arbitration |
| 5 Family Law | 12 Bankruptcy Law |
| 6 Trusts and Estates/
Inheritance Law | 13 Tax Law |
| 7 Insurance Law | 14 Criminal Law |

1 Contract Law

A. Key Legal Terms

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

- *party*
- *contracting party*
- *enter into*
- *counterparty*
- *perform*
- *breaching party*
- *non-breaching/
injured party*
- *privity of contract*
- *third party*
- *third party
beneficiary*
- *assign*
- *assignor*
- *assignee*

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

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	As each party construed the best efforts clause to mean something different, the court found the clause to be ambiguous.
to interpret a document, word, or an act in a certain way	

→ **to draft a clause**

to prepare something, usually an official document, in writing (syn.: to draw up)

to outline the initial/ preliminary version of a document, including the main points but not necessarily all the details

The associates were asked to draft a clause that would grant their firm full protection.

→ **to interpret a clause**

to determine the intended meaning of something

to understand the meaning of a clause/contract in a particular way

As the contract was originally in Spanish, it was hard to determine whether the English-speaking parties had interpreted the clause correctly.

→ **to modify a clause**

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

The clause may need to be modified to include past as well as present income.

→ **to negotiate a clause**

to try to reach an agreement with someone by formally discussing the subject matter

The client was no longer willing to negotiate the compensation clause.

→ **to refer to a clause**

to mention/relate (to) a person, thing, or concept

Section II of the contract referred to numerous clauses in Section I of the contract.

→ **to strike (out) a clause**

to delete, eliminate, or remove a word, sentence, or paragraph

The parties decided to strike (out) the entire clause.

II

Legal Practice Manuals for Legal Writing

- 1 Professional Legal Writing – Language and Style
- 2 Formal v. Informal Correspondence
- 3 Professional Correspondence –
Technical Aspects, Structuring, and Drafting
- 4 Substantive Correspondence to a Client
- 5 Substantive Correspondence to Opposing Counsel
- 6 Response to a Request for Documents or Information
- 7 Research Memorandum Template
- 8 Contract Drafting

1 Professional Legal Writing – Language and Style

This chapter deals with language for legal memoranda and professional correspondence. Use it to edit and assess these documents critically after your initial draft(s) and to ensure that you are communicating effectively with your audience. Improving your professional language and writing style can also lead to new career possibilities or opportunities for studying abroad. The following sections offer some key ways to review your approach to memoranda and professional correspondence.

A. Plain Legal English

Professional legal writing in memoranda and correspondence includes substituting Plain Legal English for overly formal and unnecessarily technical language. Plain Legal English refers to an extension of the Plain Language movement, which suggests using simpler and more understandable language in legal documents so that lawyers and non-lawyers can understand these documents more readily.

As lawyers often rely on existing precedents, legal documents can contain “legalese” or “legal jargon” that is incomprehensible to readers not trained in the law. Faced with such technical language, lawyers can simplify important documents by changing their structure and replacing legalese terms with Plain Legal English. Doing so, however, requires great care to ensure that the document retains its intended legal effect. In addition, be aware that digital and social media influence spoken and written language, including language in professional contexts. Practical written communication now tends to be short, and frequently follows straightforward patterns. This style applies especially to email communication, which is often read on a mobile device.

The following sections describe hallmarks of professional legal writing under the Plain Legal English approach.

2 Formal v. Informal Correspondence

Phrases and Expressions

These phrases and expressions are appropriate for both emails and letters. Depending on the context and on the recipient of your message, you can use either formal or informal language in an email. However, a letter calls for formal language in most circumstances.

A. Introduction

Informal	Formal
<ul style="list-style-type: none">• Hi/Hello/Hi [name]	<ul style="list-style-type: none">• Dear [name]• Dear Sir(s)/Madam• Dear Mr [name]/Ms [name] (US: Dear Mr. [name]/Dear Ms. [name])
	<p><i>Note: In the US, the term “Ms.” is commonly used to address women with whom you are not on a first-name basis. The terms “Mrs.” and “Miss” are considered outdated in written correspondence. Further, the term “Miss” may even be deemed condescending and may cause offense.</i></p>

B. Referring To A Previous Communication

Informal	Formal
<ul style="list-style-type: none"> I wanted to tell you/write to you ... 	<ul style="list-style-type: none"> I am writing to follow up on our telephone conversation/ your request/our discussion on [date] regarding ...
<ul style="list-style-type: none"> As I said/mentioned on the telephone earlier, ... 	<ul style="list-style-type: none"> I am writing in/with reference to your email/letter/telephone call of [date], in which you requested advice on ...
<ul style="list-style-type: none"> As we talked about, ... 	<ul style="list-style-type: none"> Further to our telephone conversation of 12 June 2016 (US: June 12, 2016)/this morning/last week/yesterday ...
<ul style="list-style-type: none"> You asked ... 	<ul style="list-style-type: none"> I write in response to your question/your query/ your inquiry regarding the professional services our law firm can provide.
<ul style="list-style-type: none"> Thanks for asking about our law firm's services. 	<ul style="list-style-type: none"> We recently received your letter dated [date] regarding ...
<ul style="list-style-type: none"> We got your letter/email about ... 	<ul style="list-style-type: none"> Thank you for your email/ letter of [date].

6 Response to a Request for Documents or Information

This template for a response to a request for information or documents can be used in both civil and criminal cases, in the context of regulatory investigations, and in the context of private litigation. It may also be used in response to requests for the production of witnesses.

A. Agreeing to the Request

a. *Model letter for the US*

July 20, 2016

VIA OVERNIGHT COURIER AND FIRST-CLASS MAIL

Mr. Seymour Stratham
Head of Investigations
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Investigation of First Municipal Bank File No. 123456

Dear Mr. Stratham:

I represent First Municipal Bank with regard to the investigation referenced above, File No. 123456. I am writing in response to your July 1, 2016 notice, which we received on July 4, 2016, requesting records of all correspondence between and among the officers of First Municipal Bank for the time period of January 1, 2011 to the present.

My client intends to cooperate fully with this investigation, and, therefore, agrees to provide you with copies of the complete set of documents you request. We are currently locating and retrieving all documents responsive to your notice from First Municipal

Bank's physical and electronic archives. Given the significant volume of this set of documents, we anticipate that the process of retrieving the requested correspondence will take at least a month. Thus, we expect that First Municipal Bank will be in a position to provide you with the requested set of documents by August 31, 2016. We will notify you in advance if First Municipal Bank is unable to complete the document collection process by that date.

In the meantime, please do not hesitate to contact me at any time, either by telephone at 212-444-1234 or via email at ssstone@Banking-Law.com, should you wish to discuss the status of the document collection or any other aspect of the pending investigation.

Best regards,
Sidney Stone

b. Model letter for the UK

20 July 2016

BY OVERNIGHT COURIER AND FIRST-CLASS MAIL

Mr Seymour Stratham
Head of Investigations
Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Mr Stratham

Investigation of First Municipal Bank File No. 123456

With regard to the above-mentioned investigation, I represent First Municipal Bank. I am writing in response to your notice of 1 July 2016, which we received on 4 July 2016, requesting records of all correspondence between and among the officers of First Municipal Bank for the time period of 1 January 2011 to the present.

(...)

Yours sincerely
Sidney Stone

The following sections contain alternative formulations for certain portions of the response, allowing you to tailor your correspondence to the substance you intend to convey.

B. Agreeing to the Request in Part

- My client intends to comply with your notice. However, ...
- While we agree to provide you with the bulk of the requested documents, certain of the correspondence you requested is privileged and will, therefore, not be produced.
- Before we can produce the documents, we require a protective order/assurances of confidentiality from you.
- While we have commenced the process of locating and retrieving the documents you requested, the timeline you proposed is unrealistic, given ...
- In your notice, you requested that we ... by *[date]*. Unfortunately, we will not be able to comply with this deadline, because ...

C. Politely Declining to Follow the Request

- As you know, my client has been very cooperative in this investigation. However, ...
- We are not in a position to provide the documents you request, as ...
- We disagree with your assertion that the correspondence you requested is relevant to this investigation. To the contrary, ...
- In light of the law, we believe the documents you requested are beyond the scope of this investigation. As such, we will not be producing them.
- We have already provided you with ..., and do not believe that the additional documents you now request are subject to production because ...
- Given the documents' extensive volume, and the nature of our client's archiving software, providing all of the documents you request is simply not possible/would place an undue burden on my client.

6

Instead, it is customary to state that your client is not able or not in a position to provide the particular items requested, e.g. “we are unable to turn over/provide you with/locate/produce correspondence between [certain individuals]/for the time range of [date] to [date].” In addition, provide the specific facts, and – where applicable – law supporting your position.

Personal Notes

III

Legal Practice Manuals for Oral Communication

- 1 Oral Advocacy Phrases and Expressions
- 2 Negotiation Phrases and Expressions
- 3 Negotiation Checklist
- 4 Client Interview Phrases and Expressions
- 5 Client Interview Checklist
- 6 Proposals – Responding to an RFP
- 7 Checklist for Proposals
- 8 Job Interview Phrases and Expressions

1 Oral Advocacy – Phrases and Expressions

A. General Terminology for Court Proceedings

a. *Bringing a case to court*

- to sue someone for ...
- to bring/file a lawsuit/an action for ...
- to file a complaint seeking ...
- to take someone to court for ...
- to lodge an action against someone seeking damages for ...
- to lodge a claim against someone (UK)
- to file/lodge (UK) counterclaims
- to file an appeal in the matter of [*party name*] v. [*party name*]

b. *Filing documents*

- to file a pleading/motion with the court
- to submit evidence/a pleading/a motion to the court

c. *Court procedure: actions by the parties*

- the parties appear before the court
- counsel appears on behalf of [*client's name*]
- to deliver an opening statement
- to put on/present/submit evidence
- to read evidence into the record (US)
- to put on/call witnesses to give testimony
- to submit witness statements (UK)
- to conduct a direct examination/cross-examination of a witness (US)
- to put forth an argument/a defense
- to deliver a closing statement

d. Court procedure: actions by the court

- to hold a hearing/proceedings/a trial on ... (US)
- to hear a case/evidence/an argument on ...
- to rule on a motion/an issue
- to grant a motion/a request by a party to ...
- to deny a motion/a request to ...
- to refuse a request for ...
- to admit/refuse to admit ... into evidence
- to strike a statement/evidence from the record
- to reject an argument
- to sustain an objection to ...
- to overrule an objection to ...
- to dismiss a claim/an action/a case/a complaint
- to issue a judgment/decision/ruling/verdict/order in favor of a party
- to render a decision on the issue of ...
- to deliver/return a verdict that ...
- to hold in favor of a party
- to award costs/attorneys' fees to a party
- to remit/remand a case to the lower court
- to allow an appeal
- to grant certiorari (US Supreme Court)

e. Settlement

- to settle a case
- to settle out of court
- to reach a settlement
- to reach an extrajudicial resolution
- to submit a consent order to the court

f. Referring to legal propositions

- the law states/provides/requires that ...
- the relevant case law/precedent states/provides/requires that ...
- prior court decisions on this issue have found that ...
- the Code of Obligations/statute/regulations/ordinances state(s) that ...
- Note: the term “jurisprudence” refers to a legal philosophy generally, not to case law or specific court decisions



Authors' Profiles

Kathrin Weston Walsh

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- J.D., M.A. (Duke University School of Law, Dartmouth College)
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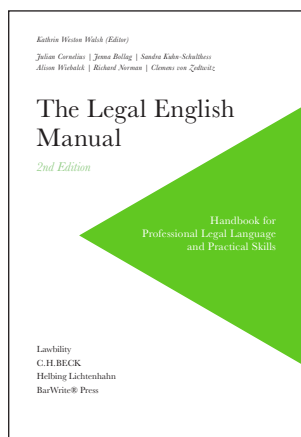
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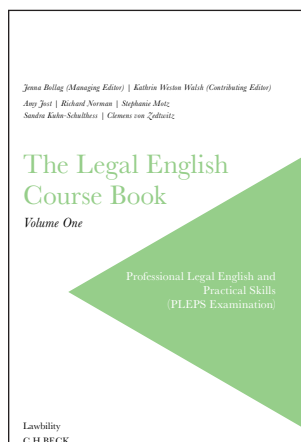
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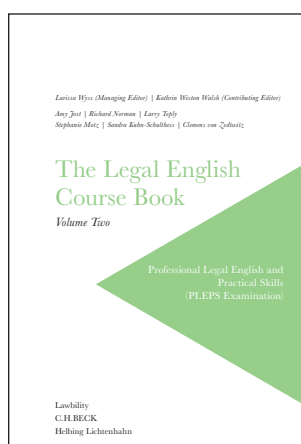
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Co-author of Introduction to International Legal English, Cambridge
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