
Special English Peter Strevens General Editor

Michael Molyneux

Legal Problems

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Cassell
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PREFACE

This Special English series from Cassell Publishers introduces titles on a wide range of technical subjects that will be of interest to students of English as a second language. Each volume illustrates the special English of a particular trade or profession in both its spoken and written forms. It is not possible, of course, for books of this size to cover the subject matter exhaustively, so the authors have concentrated on those topics and activities that should have the widest appeal. The conversations which are the basis of each chapter or unit are deliberately written in the colloquial and idiomatic speech used by technicians and specialists as they go about their everyday activities.

It must be emphasized that these books are *not* intended to teach the subject matter itself, although the technical content is accurate in every respect. Nor are they intended to teach the introductory stages of English. It is assumed that the reader is already familiar in his own language with the subject matter of the book, and has a good grounding in the basic grammatical patterns and vocabulary of English. He will use these books to improve his knowledge of English within the framework of a technical vocabulary that is of interest to him either privately or professionally.

The authors in this series each have their individual approach, but all the volumes are organized in the same general way. Typically, each book is based on a series of situational dialogues, followed by narrative passages for reading comprehension. Exercises give the student practice in handling some of the useful and more difficult patterns, as well as lexical items, that occur in each unit. Tape recordings, of the dialogues and selected exercises, may be used either in the language laboratory or for private study. Each volume is provided with a glossary of technical terms, with i.p.a. equivalents as used in the Daniel Jones Pronouncing Dictionary.

PETER STREVEVS
General Editor

INTRODUCTION

This book is intended for students of English as a second language who wish to become familiar with the vocabulary of English law. It is intended mainly for classroom work with a teacher, but it should also be useful to those who want to study the language on their own.

Each unit consists of three parts: dialogue, exercises, reading and comprehension. Keys to the exercises and a fairly detailed glossary will be found at the back of the book. The international phonetic alphabet equivalent of the words in the glossary is also given as a guide to pronunciation.

Legal English is primarily a written rather than a spoken language so the dialogues are used more to set the scene and advance the story than to illustrate legal terminology, although each one does contain a number of relevant words and phrases which might be used in ordinary conversation.

It is in the reading and comprehension sections, therefore, that the most typical usages of legal English will be found, although even here some of the more specialized constructions have been omitted or rephrased in the interests of intelligibility.

In both the dialogues and the reading and comprehension sections, words which appear in the glossary are marked with an asterisk and idiomatic phrases are explained in footnotes on the pages where they occur.

The exercises give practice in the natural and flexible use of some of the everyday constructions found in the dialogues. Practise these orally and in writing until you can use them correctly without having to think first.

The tape recording that accompanies the book may be used in the classroom or language laboratory. For the student working alone it will provide a model for pronunciation as well as a means of taking dictation to practise spelling.

MICHAEL MOLYNEUX

CONTENTS

Preface	vi
Introduction	viii
1 SETTING UP IN BUSINESS	1
2 MAKING CONTRACTS (1)	7
3 MAKING CONTRACTS (2)	12
4 ARBITRATION	17
5 RESTRAINT OF TRADE	23
6 NUISANCE	28
7 DAMAGES	34
8 NEGLIGENCE	40
9 CONDITIONS AND WARRANTIES	45
10 THE DUTIES OF AN EMPLOYER	49
11 RAISING MONEY	55
12 EMPLOYER'S LIABILITY	61
13 BREACH OF CONTRACT	66
14 WINDING UP A COMPANY	71
APPENDIX	
Key to Exercises	79
Glossary	95

UNIT 1

SETTING UP IN BUSINESS

Dialogue

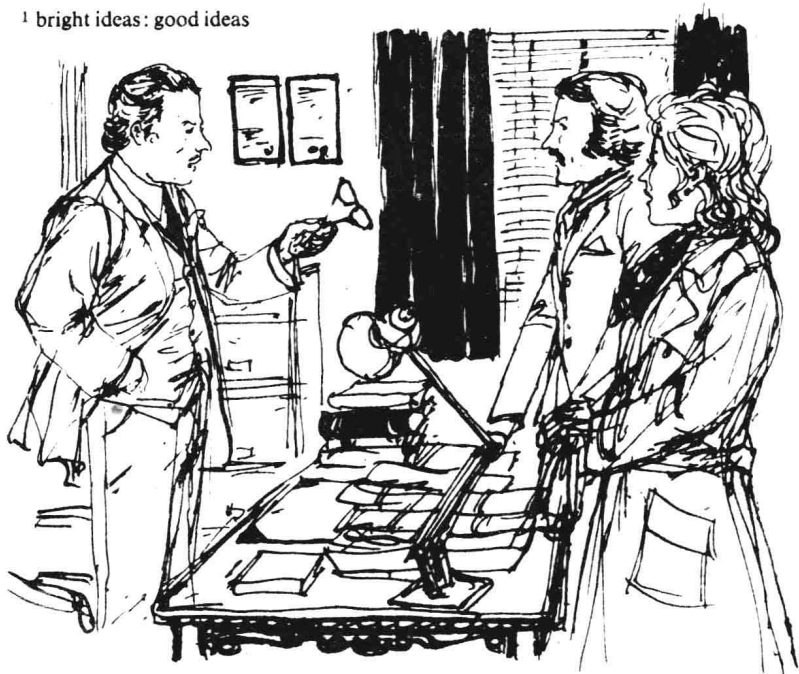
*The scene is the private office of Peregrine Cringe, senior *partner of Cringe, Bluster & Co., *Solicitors, *Commissioners for Oaths and *Notaries Public, of 10, Shovel Lane in the City of London. The office, which was originally furnished by Peregrine's grandfather in the Edwardian taste, is once again in the height of fashion.*

*Peregrine is *taking instructions from two young industrial designers, Simon Thorpe and Cynthia Twine.*

Mr. Cringe: If I understand you correctly, you have, between you, invented some kind of collapsible furniture and you want me to tell you how to go about starting a business to sell this invention.

Simon: That's it. We'll supply the bright ideas;¹ all you have to do

¹ bright ideas: good ideas



is to give us a few tips² so that we know where we stand with the *law.

Mr. Cringe: Just a few tips.

Cynthia: You don't sound very enthusiastic, Mr. Cringe. If you can't handle it we'll find some other lawyer who can.

Mr. Cringe: I didn't say that I couldn't handle it, Miss Twine. I just feel that you do not fully appreciate the implications of your casual request.

Simon: Like what, for instance?

Mr. Cringe: Well, for a start, have you done anything about taking out a *patent for this invention of yours?

Cynthia: Of course not. That's just the sort of thing we want you to tell us about.

Mr. Cringe: Very well. First of all you will need the services of a good *patent agent.

Simon: Can't you act for us?

Mr. Cringe: Good heavens no! Patent law is a very specialized business. There is the question of³ preparing the specification for submission to the *Patent Office, and then proving that you are the true and first inventor.

Cynthia: All right, you've convinced me. But where will all that get us?⁴

Mr. Cringe: If you are eventually granted a patent, it will give you the sole right to manufacture your furniture in the United Kingdom for sixteen years.

Simon: What about other countries? I'm sure there's a big market for this idea overseas. Would we have to go through the same procedure every time?

Mr. Cringe: It would depend on the country. There's a move towards standardizing the law on patents but so far the United Kingdom has not *ratified the Council of Europe *Convention on Patent Law.

Cynthia: But if you can't help us with the patents, what can you help us with?

Mr. Cringe: A great deal, young woman. To begin with you must decide whether the two of you wish to trade as a *partnership or to set up a *company.

² tips: suggestions

³ question of: matter of

⁴ where will all that get us: how will that help us?

Cynthia: We don't care what you call it as long as we don't have to get married. Just draw up the papers and we'll sign.

Mr. Cringe: It's not quite as simple as that, I'm afraid. It is a question of *liability. In a partnership each of you would be *liable for all the debts of the business up to the full extent of your personal fortunes.

Simon: Personal fortunes. I like the sound of that.

Mr. Cringe: On the other hand, if you set up a company then your liability would be limited to the amount that each of you put into the business in the first place. *Creditors would not be able to go behind the company and get at your personal . . . private money.

Cynthia: What happens if we just go ahead and start making the stuff⁵ and selling it? Do we have to have a partnership or a company? It all sounds very expensive to me.

Mr. Cringe: I'm afraid you have no choice. Section 1 of the *Partnership Act*, 1890, defines a partnership as "the relation which subsists between persons carrying on a business in common with a view to profit". So, even if you go ahead without any formalities, you will have created a partnership whether you like it or not.

Simon: Which would you advise us to do?

Mr. Cringe: Personally, I think you should set up a *limited company. It may cost a bit more than starting a partnership but in the long run⁶ it's probably safer. Shall I go ahead and draw up the *Memorandum and *Articles of Association, then?

⁵ stuff: things (in this case, the furniture)

⁶ in the long run: after considering all the advantages and disadvantages

The Companies Acts 1948 to 1967

COMPANY LIMITED BY SHARES

Memorandum

AND

Articles of Association

4 LEGAL PROBLEMS

Simon: We're in your hands.⁷

Mr. Cringe: Good. Now we're getting somewhere. I think a little celebration is called for. Would you care for a glass of sherry?

Cynthia: Well, thank you, but I don't really see what there is to get excited about yet.

Mr. Cringe: Perhaps I am just rather romantic, my dear, but I always feel a certain thrill when I am called upon to assist at the birth of a new company. In the eyes of the law, you know, a limited company is almost human—it is, in fact, an artificial legal person. So I am a sort of legal midwife.

Simon: Come on, Cynthia, let's drink to Mr. Cringe's new baby!

⁷ We're in your hands: We'll do what you tell us to do

EXERCISE 1: STRUCTURAL PRACTICE

Notice this structure from the conversation:

If you can't handle it we'll find some other lawyer who can.

Use this structure to complete the following statements:

Example: Can you handle it?

Prompt: *some other lawyer*

Response: If you can't, we'll find some other lawyer who can.

Now you do it.

- | | |
|--------------------------------|--------------------------|
| 1. Can you handle it? | <i>some other lawyer</i> |
| 2. Can you do this? | <i>a company</i> |
| 3. Can you give us a few tips? | <i>somebody</i> |
| 4. Can you act for us? | <i>a solicitor</i> |
| 5. Can you help us patent it? | <i>a patent agent</i> |
| 6. Can you draw up the papers? | <i>a lawyer</i> |
| 7. Can you tell us about it? | <i>someone</i> |
| 8. Can you help us? | <i>another lawyer</i> |

EXERCISE 2: PROGRESSIVE SUBSTITUTION DRILL

Statement: You will need the services of a good patent agent.

Prompt: *solicitor*

Response: You will need the services of a good *solicitor*.

Now you do it.

Statement: You will need the services of a good patent agent.

Prompts:

- | | |
|-----------------|---------------|
| 1. solicitor | 5. They |
| 2. lawyer | 6. some other |
| 3. have to have | 7. might |
| 4. He | 8. another |

EXERCISE 3: FURTHER STRUCTURAL PRACTICE

Notice this structure:

Have you done anything about taking out a patent?

Use this structure to complete the following sentences:

1. they / prepare the specification
2. the company / patent this invention
3. she / find a patent agent
4. the manufacturers / market the furniture
5. our lawyer / set up the company
6. you / prove that you are the inventor
7. the lawyer / draw up the papers
8. he / contact a solicitor

Reading and Comprehension

The phrase “sources of law” has at least two meanings: it may mean the places where you must look to find the law, or it may mean the ways in which law is made. In England you can find the law in *Acts of Parliament, or *statutes, and in the *Law Reports, which are written records of the decisions of the courts. From this it follows that the law is made by *Parliament, when it *legislates, and by the courts, when they decide cases.

The importance of *decided cases as a source of law is a peculiar feature of the English, or *Common Law, system. An example, from the field of company law, is the leading case of *Salomon v. Salomon*. This case was decided by the House of Lords, the highest court in England, in 1879 and it lays down the principle that a company is a separate entity from its members. This is perhaps the essential difference between a company and a partnership, because, in a partnership, the members or partners are the partnership. And this is why partners are liable, to the full extent of their personal fortunes, for all the debts of the partnership business.

EXERCISE 4: COMPREHENSION QUESTIONS

1. What is meant by the "sources of law"?
2. Where can you find English law written down?
3. What institutions make law in England?
4. What is one special feature of the Common Law system?
5. Which is the highest court in England?
6. What principle of law was laid down by the case of *Salomon v. Salomon*?
7. To what extent are partners liable for partnership debts?

EXERCISE 5

Use the following words and phrases in sentences of your own to show that you understand their meaning and use:

1. for instance
2. act (verb)
3. specialized
4. sole right
5. depend on
6. to the full extent of
7. draw up
8. source of law
9. principle (noun)
10. liable



UNIT 2

MAKING CONTRACTS (1)

Dialogue

Simon is working in a shed in his back garden which serves, for the time being, as both factory and office for the newly formed company, Cynamon Products Ltd. Cynthia comes down the garden path and pushes open the door of the shed.

Cynthia: And how's the joint managing-director this morning?

Simon: In no mood for bright chatter. We've run out of varnish, and anyway, you're late.

Cynthia: There's no need to be like that. I've been out on the company's business since the crack of dawn¹—well, since 10 o'clock anyway. And it so happens that I noticed we were running short of varnish yesterday so I made a special journey to that dreadful smelly paint works to order some more. And that's why I'm late.

¹ crack of dawn: early in the morning

- Simon:* Well, aren't you a clever little girl. It may interest you to know that I, too, have just ordered some varnish—only I decided it was time we got a bit cost-conscious in this business, so I sent off² to this cut price firm that's always advertising in the *Cabinet Maker's World*. They had a special offer this month—fifteen gallons for the price of ten. So now, thanks to you, we're stuck with³ two lots of the stuff. How much did you order, by the way?⁴
- Cynthia:* Ten gallons . . . that's not much really. We'll easily use it all.
- Simon:* If it doesn't go off⁵ first. And what about the fifteen gallons I ordered?
- Cynthia:* Oh, well. You'll just have to cancel your order, won't you?
- Simon:* Why should I cancel? You're the one who messed things up—you should have consulted me. In fact, I doubt if you've got the power to order stuff on behalf of the company. Anyway, I can't cancel. I've already posted the letter and *accepted their offer.
- Cynthia:* Oh, that does make it a bit difficult. I suppose I could always cancel mine. It was only *verbal anyway so it's not binding or anything.
- Simon:* All right, you'd better do it straight away. But just have a look at this first. It's from this French company and they want us to supply five hundred collapsible chair kits. What do you think about that?
- Cynthia:* How long is it going to take us to make that many?
- Simon:* Oh, about six months, if we do nothing else.
- Cynthia:* That's far too long. Tell them we can't do it.
- Simon:* We don't want to turn down⁶ an opportunity like that. Why don't we say we'll make one hundred to start with and see how they like that?
- Cynthia:* All right. You write to them now. Say we're extremely busy but we could manage to let them have one hundred kits in three months. Go on, do it now. You can't do anything else until we get that varnish. And that reminds me . . .
- Simon:* Yes. I'll write the letter while you cancel your order.
- Cynthia:* All right. Don't rub it in.⁷

² sent off: wrote

³ stuck with: forced to keep

⁴ by the way: as a matter of interest; incidentally

⁵ go off: go bad; become unusable

⁶ turn down: refuse

⁷ Don't rub it in: Don't remind me of my mistake.

EXERCISE 1: STRUCTURAL PRACTICE

Notice this structure from the conversation:

I'll write the letter **while** you cancel your order.

Use this structure to respond to the following questions:

Example: Will you write the letter?

Prompt: *cancel your order*

Response: Yes, I'll write it while you cancel your order.

Now you do it.

- | | |
|---------------------------------------|----------------------------------|
| 1. Will you write the letter? | <i>cancel your order</i> |
| 2. Will you order the varnish? | <i>post that letter</i> |
| 3. Will you contact the solicitor? | <i>prepare the specification</i> |
| 4. Will you stay here? | <i>consult the solicitor</i> |
| 5. Will you write the letter? | <i>make out the order</i> |
| 6. Will you send off for the varnish? | <i>talk to him</i> |
| 7. Will you do that? | <i>go to the paint works</i> |
| 8. Will you have a look at this? | <i>go out</i> |

EXERCISE 2: PROGRESSIVE SUBSTITUTION DRILL

Statement: They want us to supply five hundred chair kits.

Prompt: *chairs*

Response: They want us to supply five hundred *chairs*.

Now you do it.

Statement: They want us to supply five hundred chair kits.

Prompts:

1. chairs
2. two hundred
3. them
4. ten gallons of varnish
5. order
6. buy
7. He told her
8. didn't want

EXERCISE 3: FURTHER STRUCTURAL PRACTICE

Notice this structure:

You'd **better** do it straight away.

Use this structure to respond to the following questions:

Example: When should I do that?

Prompt: *straight away*

Response: You'd better do it straight away.

Now you do it.

- | | |
|--|----------------------|
| 1. When should I do that? | <i>straight away</i> |
| 2. When should she cancel the order? | <i>immediately</i> |
| 3. When should they order the varnish? | <i>now</i> |
| 4. When should they take out the patent? | <i>soon</i> |
| 5. When should he post the letter? | <i>this morning</i> |
| 6. When should we supply the kits? | <i>this month</i> |
| 7. When should he draw up the papers? | <i>this week</i> |
| 8. When should they get a lawyer? | <i>today</i> |

Reading and Comprehension

Offer and Acceptance

A *contract is a legally binding agreement which the courts will enforce. This definition, like all definitions, is not perfect, but it does emphasize the most important element in all contracts—*agreement. All contracts are agreements, although not all agreements are contracts.

So, without agreement there can be no contract. But how do you prove the existence of agreement which is really no more than a state of mind? English judges, who are more interested in practical solutions than in abstract theories, have adopted a simple approach to this difficult problem. They have found, from experience, that if one person makes a clear and definite *offer and another person unconditionally accepts that offer then it is reasonable to say that the two of them are in agreement. There is no attempt to look inside their minds to find out what they are really thinking: it is what they say and do that counts.

Cynthia and Simon, incidentally, display a total ignorance of these basic principles.

The advertisement which Simon sees in the trade paper is not, in spite of its wording, an “offer” in the legal sense. It is what is called an **“invitation to treat”*: that is to say, an invitation to make offers. It is, therefore, Simon who makes the offer when he sends in his order. And he can, in fact, withdraw this offer at any time before it has been accepted.

Cynthia, on the other hand, has actually made a contract from which she cannot withdraw, unless the other party agrees. This is the case even though her offer to buy was made **orally*. Contrary to popular belief, most contracts in England are just as valid if made by word of mouth as they would be if made in writing. The most important exceptions to this rule are, perhaps, contracts of insurance and **hire-purchase* and all **transactions* involving land. But in commercial deals the only safe rule to observe is that the spoken word is just as **binding* as the written one. (N.B.⁸ Cynthia uses the word “verbal” when she means “oral”—by word of mouth. This is, in fact, the common usage although, strictly speaking, “verbal” means simply “by words”, which may, of course, be either written or spoken. This careless use of terms does not seem to bother anyone today, except, perhaps, linguistic purists and cautious lawyers.)

⁸ N.B.: abbreviation for *nota bene* (Latin) meaning “note well”

EXERCISE 4: COMPREHENSION QUESTIONS

1. What is a contract?
2. What is the most important element in all contracts?
3. What do courts look for as proof of agreement?
4. What is an invitation to treat?
5. When can an offer be withdrawn?
6. Is an oral contract binding?
7. Are there any contracts which must be made in writing?
8. What is the difference between “oral” and “verbal”?

EXERCISE 5

Use the following words and phrases in sentences of your own to show that you understand their meaning and use:

- | | |
|----------------------|---------------------|
| 1. cost-conscious | 7. enforce |
| 2. withdraw | 8. definition |
| 3. on behalf of | 9. a state of mind |
| 4. opportunity | 10. unconditionally |
| 5. to start with | 11. contrary to |
| 6. in agreement with | 12. common usage |