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THE LEGAL SECRETARY'S GUIDE

ANN CHEYNE

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Ann Cheyne

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PREFACE

This book is intended for those who can already type and who wish to break into the more lucrative and interesting field of legal secretarial work. It is aimed at those who wish to be good legal secretaries and who wish to become involved in their work. Legal secretarial work is not only very interesting, it is fun! The more you are able to put into your job, the more you will get out of it and I have therefore endeavoured to explain not only how to do things, but also why they must be done. However, it is a guide only and not meant to be a legal textbook. It relates only to the law practised in England and Wales.

Unless I produce a series of books of encyclopaedic proportions, I cannot hope to cover everything you will come across. I have therefore covered the most-used basic forms and aspects of law and have, of necessity, generalised matters. To assist you until you become familiar with legal work I have made many cross-references throughout the book. You will see that I also repeat certain important points lest they be forgotten. After the introductory chapter there is a glossary which includes some expressions and terms commonly used in lawyers' offices.

You may find that you will never need to refer to some parts of the book, depending on what aspect of law your firm specialises in. It will probably be in the smaller firms that your duties will be more diverse and you may be working in many different areas of law doing everything from making the tea and ordering stationery to meeting clients and attending court.

At the end of each section there are some questions for you to test yourself on. If you find that you cannot answer them then read the section again until you are happy with your answers. Please also make sure that you read and understand all the example forms and documents shown. In some of the examples of forms and documents you will come across a space that only has an asterisk (*) typed in it. This does not mean you should type an asterisk but it is there to indicate that you must leave a space for something to be typed in later — often a date.

Please note that throughout the book, where persons are referred to in the masculine this includes persons in the feminine and similarly, persons referred to in the feminine includes the masculine. All names given in the examples are purely fictitious.

The law is constantly changing and the text of this book is up-to-date as at May 1991.

By the time you finish this book you should have sufficient knowledge to enable you to find out for yourself anything which may not be covered. I am sure you will enjoy my book and find it of assistance to you throughout your career as a legal secretary.

Ann Cheyne

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INTRODUCTION

The Lawyer's Office

The term 'lawyer' is used here because, as you will discover when you become a legal secretary, you will encounter various people for whom you may work, and they may not all be solicitors. In solicitors' offices persons who handle cases and earn money for the firm are also known as 'fee earners' or 'case handlers'.

The Solicitor

The function of a solicitor is to conduct the legal affairs of his clients, give them legal advice and represent them in various matters, perhaps at court or at a tribunal. He deals direct with his clients who may come into the office to discuss matters.

The conduct of a solicitor is governed by the Law Society and only those admitted to the Roll of Solicitors can practise as solicitors. They are also officers of the Supreme Court of Judicature, i.e., the High Court, the Crown Court and Court of Appeal, and as such come under the jurisdiction of the court.

Solicitors may practise on their own or with other solicitors as a partnership, when they are known as firms. Unlike a limited company they cannot limit their liability to the public, but do insure against claims. The partners of a firm may be responsible not only for their own actions and those of their partners, but also for the actions of their employees. It is the partners of the firm, or a sole practitioner if he has no partners, who have the ultimate responsibility for everything the firm does and they share in the profits of the firm. A firm of solicitors may employ other solicitors who are not partners (known as 'assistant solicitors') and may also employ barristers, legal executives and clerks.

Some solicitors specialise in one field of law and this mainly applies to those in large practices. There are large firms of solicitors in the City of London consisting of 50 or more partners employing 100 or more solicitors and other fee earners. There are even firms larger than this. Most of these large firms are divided into specialist departments. At the other end of the scale, particularly outside London, in rural areas, there are some very small firms with only one or two solicitors who deal with everything that comes their way. Often, a solicitor in a large city will have country solicitors as his clients, either because of his particular expertise or because the country practitioner requires the city practitioner to deliver papers, or attend court as his agent, within that city.

Regulation of solicitors' practices is the responsibility of the Law Society who lay down rules for conduct, ability and the regulation of client monies. If, for example, the solicitor sells a client's house, he must put that client's money into a specified account for client monies. He may, in fact, have different sums for different clients in hand at any one time but he must always maintain accurate records of all monies held.

Solicitors may appear before county courts and magistrates' courts but have only limited rights of audience in the High Court and Crown Court. However, once the relevant sections of the Courts and Legal Services Act 1990 come into force, solicitors will have a more extensive right of audience.

INTRODUCTION

The Legal Executive

In previous days, solicitors employed clerks to assist with their work. These clerks carried out many different functions and gradually some clerks became very involved in carrying out legal work even though they were without formal legal qualifications. As their numbers grew and they became fairly senior members of staff, they were called managing clerks. In 1892 the Solicitors' Managing Clerks' Association was formed to represent the interests of these clerks. Examinations were introduced and various attempts were made by the Association to have a recognised status for their members.

In 1963 the Institute of Legal Executives was formed. This body governs the examination standards of those who wish to become legal executives. However, to assist a solicitor as a clerk or executive, that person does not have to be an admitted member of the Institute of Legal Executives. There are many people who assist solicitors who are called legal executives but who have never actually taken examinations, their knowledge having been gained through experience.

A Fellow of the Institute, however, has had to pass examinations of a high standard and must have completed a certain number of years' employment with a solicitor. Fellows of the Institute can, after certain conditions have been met, set up on their own account as licensed conveyancers, dealing in property transactions. Fellows of the Institute have only a very limited right of audience in the county court.

The Licensed Conveyancer

Licensed conveyancers are persons who are not solicitors but have passed certain examinations and are registered with the Council for Licensed Conveyancers. As the name suggests, they deal with conveyancing matters (see Chapter 11) and can set up in business on their own account to deal with these matters.

The Trainee Solicitor

Training for the solicitors' profession is in two parts — an academic part at university, polytechnic and/or College of Law and an in-service training. This in-service training is called 'Articles of Training' or is simply referred to as 'Articles'. It is proposed that from autumn 1993 'Articles' will be known as a 'Training Contract'.

The academic stage of training is itself in two parts — the Solicitors' First Examination (often dealt with in a law degree) and the Solicitors' Final Examination.

Whilst in Articles, the trainee serves for two years, often for fixed periods in different departments of a firm (a minimum of three specific areas of law). The training varies from using a photocopier to handling cases, depending upon the firm, the clerk and the stage of training. At this stage of his career, the trainee is known as a 'trainee solicitor' but until recently was called an articulated clerk.

The Barrister

Barristers (also referred to as 'counsel') do not normally take instructions direct from clients. The practice has developed that barristers have always received instructions only through a solicitor acting for a lay client or from a patent agent, trade mark agent or parliamentary agent. Now, if they are properly indemnified, barristers may take direct instructions on appropriate matters from a wider, specified range of professional people. However, they are restricted in taking direct instructions where intervention would normally be required by a solicitor, e.g., to appear before the county court, High Court or House of Lords. This does not affect their ability to take direct instructions to appear before certain tribunals on behalf of certain professional clients. Most barristers specialise in a particular field of law and their work involves basically giving advice and opinions on matters of law, and advocacy in the courts. They have a right of audience in all the courts of the land.

The majority of barristers have their 'chambers' or offices in London near the Royal Courts of Justice. They generally form a 'set' and share expenses. There are quite a number of barristers who have their chambers outside London.

You have probably heard of Queen's Counsel ('QC') but perhaps do not know quite what this is. Barristers of some standing may apply to the Lord Chancellor to become a QC and the decision is entirely in the hands of the Lord Chancellor. Once a barrister becomes a QC he is entitled to wear a silk gown, and thus the expression 'taking silk' has evolved. When a QC appears in court he usually has with him another barrister who is not a QC and is known as a 'junior' barrister, the QC being known as the 'leader'.

Conduct of barristers is governed by the Bar Council.

The Barrister's Clerk

As barristers usually share the expenses of running a set of chambers, the administration of the set of chambers is also shared and this includes sharing clerks, secretaries and other staff. Because of this sharing, a secretary may find she is typing work for two opposing sides and must be very careful not to get their work mixed up. There are normally two or three clerks, headed by a senior clerk. They deal with the administrative paperwork of the chambers, keep the barristers' diaries and negotiate fees on their behalf, ensure that barristers new to the chambers receive work, advise solicitors which barristers would be most suitable for a particular matter, and many other functions. They also usually have responsibility for secretarial staff employed by their chambers.

Barristers' clerks do not generally have specific formal qualifications for the job, and they are represented by the Institute of Barristers' Clerks.

Lawyers not in Private Practice

There are many solicitors and barristers who are not in private practice. The only real difference is that those not in private practice act for one client only, that being their employer.

Many large organisations employ lawyers, either to advise generally or specifically. Among the number of such organisations are British Telecom and British Rail, local authorities, banks, insurance companies and the Civil Service.

INTRODUCTION

The Client

The 'product' of a lawyer is advice and representation and the person who buys that product is like any other customer — he expects good quality and value, so lawyers are anxious to serve their customers (their clients) well. An essential part of this is that the client must be able to place absolute trust and confidence in the lawyer. Hence it is all important that the client's details are *never* discussed outside the firm. In fact, solicitors can be reprimanded by the Law Society for doing so or if their employees do so. This kind of 'discretion' can be as simple as not saying to a telephone caller 'Yes, we act for X'. It is of fundamental importance that you may divulge information only with the *express authority of the client*.

The clients must always be the most important element of the work, no matter how difficult, slow or unresponsive they may be and this must be borne in mind at all times.

Categories of Law

Civil Law

Civil law regulates relations and activities of private citizens and/or organisations between one another. This may involve purchase of property, disputes, performance and non-performance of contracts, wills, and so on. In fact, matters which generally are only of interest to the parties involved.

In civil law it is generally a plaintiff who sues or brings an action against a defendant. If the defendant is found to be liable, then judgment may be entered against him and he may be ordered to, for example, pay damages to the plaintiff.

Criminal Law

Criminal law can be said to consist of offences committed against the State (the Crown) and action against the offender in these cases is normally taken by the Crown (usually through the police in the first instance). Private prosecutions are possible in certain circumstances.

In criminal law a prosecutor prosecutes a defendant for a criminal offence. If the defendant is found guilty he is convicted and may be punished.

Other Categories

There are other important areas of law which are not strictly either civil or criminal. These include social security, tax and family law.

GLOSSARY

Listed below are some of the words and terms you may encounter. You will find in law that many Latin words are used. Although you may not appreciate it at the moment, this usage is very helpful because it can eliminate the need for long definitions and explanations. If you wish to have a more comprehensive list there are legal dictionaries available.

Ab initio From the beginning. If something is void *ab initio* it means void from the beginning.

Abjuration The renunciation by oath of a legal right or privilege.

Absolute Final, complete, without conditions.

Act of God An unforeseen event of natural causes, such as a flood or earthquake.

Actus reus A guilty act.

Ad diem To the appointed day.

Address for service The address that a party in a civil action nominates as the address where he may be served with documents relating to the action. It does not need to be that person's own address — it is often the address of a solicitor.

Ad hoc For this purpose.

Ad idem This indicates that two or more persons are in agreement.

Ad infinitum Endless or for ever.

Adjourned sine die The adjournment of legal proceedings without fixing a date on which the proceedings will be recommenced.

Administration of estates The management and distribution of a deceased person's estate.

Ad valorem According to the value.

Affidavit A written statement sworn under oath or affirmed before a solicitor or other person who is empowered to administer oaths. An affidavit may be used, in some cases, as evidence in court proceedings.

Affiliation The determining of paternity in order to receive maintenance.

Alias An assumed name by which a person is known.

Alibi A defence given by a person that he was elsewhere at the time an offence was committed.

Alibi Warning A warning given to the defendant informing him that if he intends to put forward an alibi at trial as a defence he should give notice of the alibi within seven days.

Ancillary Additional to or incidental to something.

Annul To make void or invalid.

Antecedents A person's past history.

Anton Piller Order An order issued by the High Court whereby the plaintiff must be permitted to enter the defendant's premises to inspect, copy or remove any documents belonging to the plaintiff or relating to his property.

Apportionment To share or divide benefits or monies which more than one person either has the benefit of or must pay.

Attest To bear witness to.

Attestation clause This is a clause at the end of a document, and usually in a specific form, showing that the signature of a party to the document has been witnessed by another person.

Bench The judges or magistrates sitting at a court of law.

Bench warrant An order issued by the court for the immediate arrest of someone.

Beneficial owner A person who owns goods or land and is free to use them for his own benefit.

Beneficiary A person who is to benefit by receiving something under a will, or for whose benefit property is being held on trust.

GLOSSARY

- Bequeath** To dispose of personal property under a will.
- Bequest** Something that is bequeathed.
- Bill of lading** A document of title to cargo giving details of the consignor and consignee and signed by the captain or agent of a ship or aircraft.
- Breach of contract** The failure by one party to keep to his part of a contract.
- Canon law** The ecclesiastical laws governing the Church of England.
- Cause list** A list of cases which are to be heard in the Supreme Court.
- Caveat** This means 'let him beware'. A *caveat* is a notice often placed with a registry, such as the Probate Registry (see Chapter 10), which prevents any action being taken on the matter without notice first being given to the person lodging the *caveat*.
- Certiorari** An order issued by a higher court quashing a decision of an inferior court.
- Charterparty** An agreement for hire of a ship/aircraft.
- Chattel** Property other than freehold land (see Chapter 11). There are chattels real which are interests in land and chattels personal, which is other property either tangible or intangible.
- Chose in action** Something which can be owned but is intangible, such as the goodwill of a business or a copyright.
- Chose in possession** Personal property.
- Circumstantial evidence** Evidence which is not actually seen by a witness but would seem to be so because of circumstances.
- Codicil** A document which alters or adds to a will and which has been executed in the same manner as a will.
- Commissioner for Oaths** A person who may administer oaths.
- Committal** The sending of a person to prison for a short period or on a temporary basis. Committal for trial is the sending by examining justices of a person for trial by jury.
- Compos mentis** Of sound mind.
- Conduct money** Money paid to a witness to cover his expenses in attending court.
- Consolidation of actions** Court actions having certain similarities being tried together.
- Contributory negligence** Where a person has contributed by their own negligence to, for example, an accident which caused them injury.
- Copyright** The exclusive right to publish the work of someone.
- Coram** In the presence of.
- Counsel** A barrister.
- Counterpart** A document signed by a party to a deed, quite often a lease, which is identical to the original. Each party keeps the copy signed by the other.
- Court of Protection** This administers the property of persons suffering from mental disorders.
- Covenant** An agreement in a deed whereby one party is obliged to do something which is for the benefit of the other party.
- Cross-examination** This is where a person giving evidence in court is examined by the legal representative of another party.
- Damages** Money paid by one party to another by way of compensation.
- Debenture** A type of charge or mortgage on a limited company.
- Decree absolute** A court order which shows that a divorce is final.
- Decree nisi** A court order granted mainly in divorce proceedings. It is granted six weeks before the decree absolute. This gives a period of time in which it may be shown that the divorce should not be granted for some reason (see Chapter 4).
- De facto** In fact.
- De minimis** A small matter.
- Demise** To grant land to another, e.g., by way of a lease.
- Demurrage** Payment of damages for time used in excess of laytime for loading/unloading.
- Deponent** A person who gives evidence by deposition.

- Deposition** Evidence, either verbal or written, given under oath.
- Derogate** To detract from, e.g., limit a right.
- Devise** To give land under a will.
- Disponent owner** A person who hires out a ship to another, but only 'owns' the ship under another charterparty.
- Distrain** To seize goods in satisfaction of a debt.
- Distress Warrant** A written notice held by the court bailiff authorising him to seize or distrain the goods of a debtor.
- Domicile** The country where a person has his permanent residence.
- Dying declaration** A verbal statement made by someone immediately before his death in the knowledge that he is about to die.
- E. & O.E.** This means 'errors and omissions excepted'. In effect, this means that no liability is accepted for minor errors, etc.
- Easement** An easement is a right enjoyed by an owner of land over another piece of land which he does not own, e.g., rights of way, rights of light, etc.
- Empanel** To form a jury.
- Encumbrance** A right over land which is held by someone who does not own the land, e.g., a mortgage.
- Equity** Very simply, this is a system of rules which when applied by the courts means that fairness will prevail.
- Escrow** A document which will come into effect when a certain condition is met.
- Estoppel** A rule which provides that a person is barred from denying something which he has previously asserted or which has been decided on by a court case to which he was a party.
- Et seq** Abbreviation for *et sequentia* meaning 'and what follows'.
- Executor/executrix** A person appointed by a will to deal with the affairs in the will according to the terms of the will. Also known as a personal representative.
- Ex gratia** As a favour, not legally obliged.
- Ex parte** An application made either by an interested person who is not a party to an action, or by one party in the absence of the other.
- Expert witness** A person who is an expert in a particular field, such as a surgeon or engineer, who is called to give evidence.
- Fee simple** This is a term which refers to freehold property (see Chapter 11).
- Fiduciary** A relationship involving trust on one person's behalf where the other is legally obliged to act in his best interests.
- Fixed charge** A mortgage over a particular property.
- Garnishee order** When one party has been found to owe another money a court order may be made so that someone who owes the debtor money pays it to the creditor.
- General damages** A payment intended to compensate for a wrongful act.
- Guardian *ad litem*** A person who defends proceedings in a court action on behalf of another who is unable to do so, such as a child or a person suffering from a mental illness.
- Habendum** A term referring to a particular type of clause in a deed.
- Hereditament** Land and property which passes on the death of the owner to that person's heir.
- Immemorial** See Time immemorial.
- In camera** This means in private, to which the public do not have access.
- Incorporation** A process whereby something becomes a legal personality, such as a company being started.
- Indemnify** To promise to compensate someone against any loss or damage they may incur.
- Indenture** This is a type of deed made between parties.
- Injunction** A court order which restrains or compels someone to do a particular act.
- In loco parentis** Temporarily in place of a parent.
- In personam** An action at court against a person.

GLOSSARY

In rem An action against a thing, e.g., a ship. A ship may be arrested through this type of action as security for a claim brought against the owner.

In situ On the original site.

Insolvency Being unable to pay debts. An insolvent person may become bankrupt. An insolvent company may go into liquidation or be wound up.

Intellectual property This relates to intangible property, such as an idea or a design.

Inter alia Among others.

Interim payment In a court case where liability has already been determined, the party who is liable makes a payment to the other party before the final amount of damages is calculated.

Interlocutory A proceeding which is issued before the final case is decided at court.

Interpleader A process settling a dispute of ownership where one independent person is holding property which is claimed by other parties as being theirs.

Interrogatories Written relevant questions asked of one party to proceedings by another party to those proceedings.

Inter vivos Among living persons.

Intestacy This occurs where a person dies without having made a valid will. He is said to have died intestate.

Joint and several This is an expression used where two or more people may become liable. They are liable both individually and jointly together.

Judgment The final decision of a court.

Judicial precedent A previous binding decision of a court.

Jurat A memorandum at the end of an affidavit which shows details of how the affidavit was sworn, i.e., before whom, when and where.

Knock for knock agreement An agreement between insurance companies in which each company agrees to pay for the damage to its own insured's vehicles.

Land charges Rights and interests in land which must be registered with the Land Registry if they are to have any legal effect. In the case of unregistered land these are registered with the Land Charges Registry. (See Chapter 11.)

Laytime Time allowed in a charterparty to load and unload cargo.

Legacy A gift of personal property under a will.

Legatee A person to whom a legacy is left.

Lessor A person who grants a lease to another. That other person is called the lessee.

Licensing justices Magistrates who consider whether to grant or renew licences, e.g., for the sale of intoxicating liquor.

Lien A right to hold property until a debt is paid off.

Limitation of actions This is a legal rule whereby different types of actions must be brought before the court within a certain time.

Liquidated damages A fixed sum of damages.

Liquidation This is a process whereby a company is wound up.

Locus The place.

Locus in quo The place where, i.e., where the accident happened or where the crime was committed.

Locus sigilli The place of the seal. If a document has been sealed by the court and you are sending a copy which does not show the seal you can write on the copy 'L/S' inside a circle and this indicates where the seal is placed on the original document. The date of the seal should also be given under the letters L/S.

Locus standi A right to take part in court proceedings.

Mandamus An order from the High Court ordering a public duty to be carried out.

Mareva injunction This is a court order which freezes the assets of a person or company so that they cannot dispose of them or take them out of the country.

Mens rea A guilty mind. With the intention of committing a guilty act.

Mesne This means average or intermediate. In landlord and tenant disputes you may find that a person claims 'mesne profits' rather than rent.

Message A dwellinghouse and any buildings or land attached to it.

Mitigation A person whose responsibility or guilt is not disputed may make a plea in mitigation, i.e., a statement which tries to reduce the penalty he must pay. This would normally take the form of a statement showing that he has never done anything like that before and giving reasons as to why this particular offence has occurred.

Mortgage The use of land or other property as security for a loan. The person lending the money is the mortgagee and the person borrowing the money, and thus mortgaging his property, is the mortgagor.

Muniments Title deeds and other documents proving ownership of land.

Next friend A person who brings court proceedings on behalf of one who cannot, such as a minor.

Nisi This relates to a court order which will become effective at a certain time unless cause is shown within a certain period why it should not become effective.

Nominal damages These are given where someone wins the case but has not actually suffered any damage. A nominal sum is awarded just to show that the case has actually been won.

Non sequitur It does not follow.

Notice to admit A notice by one party to another in civil proceedings that they wish to bring a particular item or document into the evidence without having to prove it.

Notice to quit A notice given by a landlord to a tenant that the tenancy is to end.

Notice to treat This is a notice which must be given to a party when it is desired to exercise powers of compulsory purchase over that party's land.

Official Receiver An officer of the court who is appointed to manage the affairs of a person declared bankrupt or a company that has gone into liquidation.

Official Solicitor An official of the Supreme Court who may, in certain circumstances, be called upon to act in his capacity as a solicitor, e.g., he will quite often act as next friend to a person under a disability.

Ombudsman An official who investigates complaints made against the administrative procedures of government departments and other bodies.

Parcels Clauses in deeds describing property. A piece of property is often described as a 'parcel of land'.

Passing off One business trying to pass itself off as another, e.g., using a trademark similar to that of a well-known company in the hope that people will believe they are dealing with the well-known company.

Peppercorn rent A nominal sum stated in a lease for which rent will not actually be collected.

Per se By itself.

Plaintiff The person who brings an action in civil court proceedings.

Power of attorney The giving of authority by one person to another to act on his behalf. It can relate to general matters or a specific matter. Often given if a person is going to be out of the country. It can be revoked at any time. There is also an enduring Power of Attorney which cannot be revoked which has effect when the person giving it is no longer capable of managing their own affairs.

Praeceptum A written request to the court asking it to prepare a document.

Preliminary act In admiralty actions, a document which gives details of a collision between ships.

Prima facie At first sight, on first impression.

Product liability The liability of a manufacturer of goods to the purchaser or consumer of those goods.