

大学 商法英语

College English Language of Business Law
—Anglo-American Corporate Law

陈庆柏 王景仙 编著



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新世界商务英语系列教材

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本科层次的商务英语教材适用于全国各高等院校英语专业的商务英语方向和国际贸易、国际经济、国际工商管理 etc 商科专业的学生。

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Foreword

On the Learning of the English Language of Law

Ways of Saying “English for Law”

What is the standard way of saying “English for law”? On the surface it is an easy-to-answer question, but in actual fact, it is not. In China, even in the USA and the UK, it is a highly controversial subject or topic for discussion. Many people in answering this question, offer “legal English”, and still others use “legal parlance”, “legal jargon” or “legal lingo” or “English for/of law” and so on and so forth. As for answers to this question in my opinion, none of them is acceptable or relevant. The main reason is that the word “legal” often carries the meaning of “being lawful”. Therefore, “legal English” can be easily be misunderstood as “lawful English”. For more or less the same reason, “legal jargon”, “legal parlance” or “legal lingo” can also be misleading, making people mistaking them as lawful or legitimate English expressions used by a particular group of people like lawyers and judges. Obviously, this is not what we really want to say or express. To avoid such misunderstanding we must use “the English language of law”. This is the standard and authentic way in which we express the meaning of English for Law.

Definition of the English Language of Law

Two definitions can be offered for the English language of law: the narrow one and the broad one. In a narrow sense, the English language of law mainly refers to the customary language used by lawyers and judges in the common-law countries like the US and the UK, which include those vocabulary, phrases or other expressions with outstanding features of law. For example, “The court is adjourned” “The objection is sustained”. “The court sustained his claim that the contract was illegal.” “The case is dismissed”— all of them fall into the category of the English language of law based on our narrow definition; But in a broad sense, the scope of the English language of law is much wider and larger. It includes almost all English related to law. So the English language of business law can be defined as the English language related to business law.

Special Features of the English Language of Law

There are all sorts of English such as scientific English, technological English, medical

English, business English, literary English.... Each and every type of English has its own unique characteristics. As a single grain of coin in the wide sea, the English language of law also has its own striking features. As a result of my long observation of and research into the English language of law I've found five of them:

1. Being precise or exact

When drafting legal documents like articles of incorporation, contracts, wills, complaints... every word, every phrase, every sentence used in them must be concise and exact. This is because once the writers' thoughts, opinions and attempts are stated or expressed in writing, it will be the only important ground for determining right and wrong, hence such a saying: "A single word in a legal document is worth a thousand ounces of gold".

To illustrate the importance of precision in legal writing I'd like to tell two true cases which happened in the USA.

The first one occurred in Louisiana, where the dispute between the plaintiff and the defendant centered around the meaning carried by the word "on" in a sentence of the articles of incorporation or the corporate charter. The original sentence goes like this. The articles of incorporation require that directors shall be elected on a vote of the shareholders representing no less than two-thirds of outstanding capital stock of the corporation.... In the opinion of the plaintiff "on" here meant that to be elected a director called for the approval of two-thirds stockholders or shareholders of the corporation, yet the defendant thought otherwise. According to the defendant, "on" used here meant that two-thirds of the corporation's shareholders must be present at the meeting for electing directors. To resolve this dispute, the case was taken to the court for judgment. The judge eventually made the decision: the defendant won the case. The judge said, if the plaintiff was right, "on" must be changed into "by". Here "on" a vote of the shareholders representing no less than two-thirds referred to the quorum—having two-thirds of the corporation's shareholders present to make the shareholder's meeting valid.

The second case occurred in Arkansas, which was about an American's will left prior to his death. One sentence was written to the effect that the remainder of his property should be divided equally "between" all of their nephews and nieces on his wife's side and his own niece. This time what was controversial was the word "between". On the side of the testator's wife there were all together 22 nephews and nieces, but on the side of the testator there was only one niece. When dividing up the remainder of the testator's property, the 22 nephews and nieces on the side of the testator's wife stick to the view that each of the 23 nephews and nieces should have an equal share. This demand, however, met the strong opposition from the testator's only niece who insisted on saying that half the remainder of property should go to her. Due to failure to reach an agreement, at the end of the day they decided to seek judicial solution of their dispute. Eventually, the testator's niece was successful. The court held the view that "between" used in the will was to mean "between two parties or two sides". The

testator’s niece was one party and the other was composed of the 22 nephews and nieces on the side of the testator’s wife. If the testator meant that all 23 nephews and nieces get an equal share of the remainder of his property, he would have used the word “among”.

2. Being formal

More than one factor account for this striking feature. But one of them is the most important. That is, many lawyers, judges, law professors, jurists frequently prefer to use some words and expressions different from those used by common people or ordinary guys when speaking or writing for the purpose of showing off their unique talents. To support my view I’d like to give you some examples. For instance, normally we, common peoples, say “Come here!”, while the judges in the court would say “Approach the bench!” instead. We, common people, say “He has become a judge”, but the lawyers would say “He is now on the bench.”

To deepen our impression of the characteristic of the English language of law being formal, I’d like you to take a good look at the following figure in which there are more examples to show you that the English language of law is formal.

Figure 1

| Meaning to be expressed | Common English | The English language of law |
|----------------------------|--|--|
| 明显地 | plainly or clearly | manifestly |
| 最高法院的全体法官 | all judges of the supreme court | the full bench of the supreme court |
| 由于同样原因 | for the same reason | by the same token |
| 此法 2015 年 7 月 1 日生效 | This law becomes effective on July 1, 2015 | This law takes effect as of July 1, 2015 |
| (英) 大学法学老师 (英) 他将担任王室律师 | law teacher of a university He will become the King’s/ Queen’s counsel | law don He will take silk. |
| 不在犯罪现场 | not at the scene of crime | alibi |
| 为了争论 | for the sake of argument | arguendo (adv.) |
| 做假账 | do false accounts | cooking the books |

3. Being tough

Being tough is the third striking feature of the English language of law, which means it is difficult to understand the English language of law. The English language is tough, not just because of its two above-discussed special features, but also due to the following factors:

3.1 Common words are used to carry uncommon meanings.

Many words and phrases in legal documents and law books look simple and familiar, yet so hard for you to guess out or catch their exact meanings. To convince you of this phenomenon I’d like you to have a good look at those examples listed in the following figure.

Figure 2

| Common words or phrases | Uncommon meanings carried |
|-------------------------|--|
| act | the former product of a legislative body |
| action | a charge or a matter for consideration by a court of law |
| minor | a person under legal age |
| major | a person who has reached the legal age |
| consideration | the price you pay for other's promise |
| fine | a sum of money required to be paid as a penalty |
| (BrE) a silk | a Queen's Counsel (QC) |
| (BrE) to take silk | to become a QC |

3.2 Frequent use of Old English and Middle English

Old English refers to English in use (c.450—c.1100) and Middle English refers to English popular (c.1100—c.1500). For instance, the following words are either Old English or Middle English.

Wherefore, herewith, thereto, quorum, thence...

Old and Middle English are considered outdated in Modern English, esp. in Modern spoken English, yet their usages can often be found in modern legal writings. People in legal circles seem to be filled with nostalgia for them.

3.3 A considerable usage of foreign terms

There are two major classes of foreign terms which are, every now and then, used in law books and legal periodicals: ① Latin terms such as “alibi, onus, alias, bona fide, inter alia, proviso, quasi, situs, defacto, dejure, expurte...” ② French terms. Apart from Latin terms, in legal writings there are often words of the French origin, such as “action, appeal, misnomer, contract, heir, lien, larceny, plaintiff, tort, etc.”

3.4 Special-legal-term usages

For example, in sales law, instead of saying “The responsibility still remains with the seller”, lawyers would say, “The onus still remains with the seller”. Instead of using “a serious crime, a less serious crime”, lawyers and judges replace them with “felony and misdemeanor” respectively.

4. Intentional use of ambiguous language

In the following three cases, ambiguous language is preferred by people in the legal circle:

First, when one does not want to express his stand or position in a clear-cut manner, ambiguous phrases like “to take an appropriate action” and “necessary steps” will be employed by lawyers.

Second, when the time is not ripe for mentioning sb's name or naming names, ambiguous language is used. For instance, in diplomatic notes or on some diplomatic occasions, you can use "a certain country" or "someone or somebody" said this or that.

Thirdly, when you don't want to "get your hand and foot bound" (putting yourself in a difficult and inflexible position) you can resort to ambiguous language as a way out. For example, the ambiguous expression "unfair completion" was purposefully and deliberately used by the Federal Trade Commission (FTC) in its Federal Trade Commission Act without clear-cut definition of what constitutes unfair completion. What is the purpose of doing so? To keep the initiative in the hand of the FTC. Similar examples can also be found in another well-known American federal law—Uniform Commercial Code (UCC), in which you will find "within reasonable time", but "how long is the reasonable time" is never stated or defined.

5. Existence of the differences between British English and American English

Due to limited space I'll just illustrate this striking feature with some examples in conjunction with Anglo-American corporation law. In English company law the most fundamental two documents for governing a company are called "the memorandum of association and the articles of association", but in American corporation law, they are known as "the articles of incorporation and the corporate bylaws" respectively; In English law the general meeting of share holders held annually are called "Annual General Meeting (AGM)" but in American corporation law is called "annual shareholders' meeting" and the offer to buy all or a majority of shares in a company so as to control it is called "take-over bid" in English company law, but in American corporation law, "tender offer" is used to mean the same thing...

Requirements for Studying Well the English Language of Law

From the foregoing discussion of the striking features of the English language of law we can see, to have a good grasp of such language is no easy job, not to mention plain sailing. But anything is possible. We can achieve a good mastery of the English language of law if the following requirements are met.

1. Having a good command of Chinese

This requirement is essential if the learner of the English language of law wants to do a good job in translating English legal articles or law books into Chinese or vice versa.

2. Acquiring a reasonable amount of knowledge of the law concerned

For example, if you expect to improve your listening, speaking, writing, reading and translating skills in your study of the English language of business law you must know something about contract law, the law of negotiable instruments, the law of sales, business organizations, bankruptcy law, agency law, intellectual property, and so on. How can you acquire such knowledge more quickly? There is one shortcut, i.e. to read the Chinese version together with the English version of those laws in a textbook on the English language of law compiled by a Chinese professor of English published by Chinese presses or publishing houses

or companies.

3. Having mastery of the basic English grammar

Grammar is the rules for changing the form of words and joining them into sentences; The two parts of English grammar which are very useful are morphology (the study of forms of words) and syntax (the study of rules for putting together words and phrases to form sentences). In making use of these two parts special attention should be drawn to rules governing the correct use of prepositions, verbs (including their tenses), and the formation of complex and conditional sentences.

4. Knowing the major difference between British English and American English

English as well as the similarities and dissimilarities between the English language and the Chinese language, esp. in terms of Grammatical rules.

5. Having on hand some useful dictionaries

According to my personal experience, the following dictionaries are especially helpful in the learning of the English language of law.

- Oxford Advanced Learner's English-Chinese Dictionary published jointly by the Commercial Press and Oxford University Press
- Dictionary of Law published by Porter Collin Publishing
- Black's Law Dictionary published by St. Paul Minn West Publishing Co.
- The compact English-Chinese Dictionary of Anglo-American Law published by Peking University Press (元照英美法词典 北京大学出版社)
- Merriam-Webster's Dictionary of Law published by Merriam-Webster, Incorporated Spring Field, Massachusetts
- A Chinese-English Dictionary (Revised Edition) published by Foreign Language Teaching and Research Press (汉英词典 外语教学与研究出版社)

6. Having the spirit of never-give-up

Last but not the least requirement is a spirit of never-give-up; in this spirit you will be afraid of no difficulties and setbacks. In this spirit you will have courage of overcoming all sorts of difficulties and taking meeting all sorts of challenges. And in this spirit you will be able to keep making progress in your study of the English language of law.

编著者几点说明

一、编写此书的目的

编写此书的目的只有一个：为中国法律英语水平的提高作一份小小的贡献。众所周知，我国高校法律英语及相关教学科研水平与其他方面普通英语相比，还是存在明显差距。许多大学甚至比较知名的大学法学院都没有开设法律英语课。许多相关人员，走入用英语授一、两门法律课就等于上了法律英语课的误区。这种情况与当今世界经济一体化和改革开放成为主旋律的形势很不相适应，必须设法尽快改变。

二、该书的内容结构

本教材的内容共由三大部分组成：第一部分为美国公司法；第二部分为英国公司法；第三部分为有关法律英语（其中包括法律英语）学习的六篇论文。除第一篇 Good Legal Writing 外其余五篇都是出自编者之手。这三部分的内容都与学习法律英语息息相关。学习它们可以起到相辅相成、相得益彰的效果。

三、本书的服务对象

本商务英语教材既可供我国普通高校法学专业的本科生和研究生使用，也可供商贸类院校英语专业学生和社会上从事涉外法律事务工作的人员学习参考，更适合作准备去英美攻读商法的留学人员的必读英语精读教材，或当外企工作人员的短期培训教材。

四、本教材所涉及的商法中心内容

选用英美公司法作为本教材的中心内容理由有二：其一，公司法是一门综合性极强的商法，它涉及证券法、代理法、信托法、会计法、民法、刑法和抵押法，因而有利于拓宽法律英语的范围；其二，公司法很贴近我们的经济活动，贴近我们生活的方方面面。例如：我们几乎每天都要与各种大大小小的公司打交道，去银行存款取钱，去超市购物，子女上学，网上了解股市行情，乘飞机或坐火车旅行……样样都离不开各种各样公司的产品与服务。这样的贴近有利于我们对法律英语的吸收与学习。

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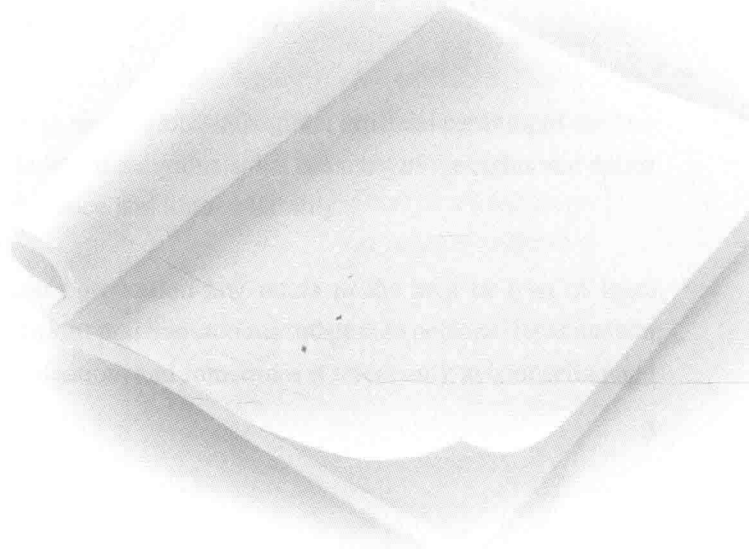
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Part One

US Corporation Law



Overview

Section 1 General Introduction

Learning Objectives



After studying this section you should be able to

1. Define a corporation and corporate law.
2. Say a few words about the historical development of corporation as an important form of business organizations in the US.
3. Tell the major characteristics of a corporation.

Definitions of Corporation and Corporate Law

1. Definition of corporation

In the US, a corporation is defined as an invisible, intangible, artificial creation of the law existing as a voluntary, chartered association of individuals that has most of the rights and duties of natural persons but with perpetual existence and limited liability.

2. Definition of corporate law

Broadly speaking, corporate law or corporation law refers to the area or type of legal practice that deals with business organizations and transactions rather than personal legal matters; sometimes the term includes corporate litigation, and sometimes it refers only to counseling and