

21世纪大学实用专业英语系列



# 法律英语综合教程

——阅读·案例·写作

## Comprehensive Course for Legal English

董晓波 主编



Part I Reading and Understanding  
Intellectual Property Law  
International Law

Part II Classical Cases for Reading  
Smith v. Van Gorkom  
Hutchinson v. Proxmire

Part III Simulated Legal Writing  
Power of Attorney  
Arbitration Agreement



 復旦大學出版社

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# 前 言

P R E F A C E

随着改革开放的深入和市场经济的迅速发展,中国已成为世界经济发展的重要组成部分,中国社会对于既懂法律又通英语的高素质复合型人才的需求大增。为了适应这一需求,尽快培养高素质的“英语+法律”、“法律+英语”的复合型人才,我们精心编写了这本教程。该教程的编写宗旨是将学习英语与了解英美法律、提高法律英语操作能力紧密结合,即在学习英语的同时,能使学生系统地了解英美法律制度的概貌及民法、商法、民事程序、刑事程序等基本内容;在了解英美法律的同时,学习和操练英美法律所涉及的常用词汇和表达方式,巩固并进一步扩展学生的法律英语知识,提高其法律英语应用能力,力求在学完全书之后,学生能借助工具书较为顺利地阅读英美法律条文及案例,并能翻译和起草一般难度的法律文件。

本教程主要由三大部分组成:

## **Part I Reading and Understanding**

该部分选材广泛,信息量大。基本包含了英美法律制度的主要方面,文章长度多介于2 000至3 000词,结构严谨,行文流畅,语言地道。所选文章主要来源于国内外的法律英语网站(如维基百科等)、LexisNexis法律资料库、作者留美期间收集的法律英语资料及已出版的英文著作等,均出自美国等英语国家法律专业人士之手。为了方便学生阅读和理解,每篇文章前均增加了导读,言简意赅地介绍文章基本线索;词汇部分主要汇



集法律专业词汇,以降低阅读难度,扩充学生的专业词汇量;注释力求简单明了,以便学生了解法律知识。此外,本书还配有练习答案,便于学生自学及自测学习效果。

## Part II Classical Cases for Reading

案例均精选于著名的 LexisNexis 法律资料库,简写后请英美法学教授审定,此部分内容有利于帮助学生领会案例中介绍的法律原则及其在实践中的运用。为方便教学,每个案例前均配有导读,简明扼要地指出案件涉及的法律争议和背景,对案例的理解起到画龙点睛的作用。案例后所设计的问题旨在启发学生思考,引导学生分析具体争议背后的法律实质。

## Part III Simulated Legal Writing

书中材料源于最新的中外法律实践,为各国司法界和法律界当前实际应用的鲜活的法律文书,且每篇都配有相关法律文书的语言特点介绍和英汉对照翻译,以期帮助读者更好地理解全文及有关的起草细节。

本教程适用对象为法学专业本科生、硕士生及博士生;英语专业法律英语方向本科生和硕士生。也可作为非英语专业高年级本科生、硕士生博雅课、选修课的教材;同时也是对法律英语和英美法律制度感兴趣、希望提高法律英语实践能力的人士的必备参考书。

参与编写本教程的人员都是长期从事法律语言学研究的,有着丰富法律英语知识和实践经验的教师。本教程由董晓波主编,董晓波、范娜、于银磊编著。此外,硕士生裘莹莹、张杰也参与了本书相关案例资料的收集和编写。编者在此感谢南京师范大学外语学院院长张杰教授和蒋棋琴老师对本教材的编写所给予的鼎力支持。

整个编写过程中,我们力求完美,但是限于水平等因素,定不乏偏颇和疏漏之处,恳请广大读者不吝指正。

董晓波

2008年12月

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# 目 录

C O N T E N T S

## Part I Reading and Understanding

### 阅读与理解

Lesson One	Legal Education .....	3
	法律教育	
Lesson Two	Constitution .....	12
	宪法	
Lesson Three	Civil Procedure .....	25
	民事诉讼程序	
Lesson Four	Due Process of Law .....	34
	正当法律程序	
Lesson Five	Criminal Law .....	47
	刑法	
Lesson Six	Tort Law .....	59
	侵权法	
Lesson Seven	Contract Law .....	73
	合同法	
Lesson Eight	Property Law .....	85
	财产法	



Lesson Nine	Intellectual Property Law .....	98
	知识产权法	
Lesson Ten	Commercial Law .....	111
	商法	
Lesson Eleven	Securities Law .....	123
	证券法	
Lesson Twelve	International Law .....	138
	国际法	

## Part II Classical Cases for Reading

### 经典案例阅读

美国司法判决书与案例解析 .....	153
1. Roy Romer v. Richard G. Evans (1996) .....	157
2. Thomas Gibbons v. Aaron Ogden (1820) .....	161
3. Gideon v. Wainwright, Corrections Director (1963) .....	165
4. Mcculloch v. The State of Maryland (1819) .....	169
5. Securities and Exchange Commission v. Texas Gulf Sulphur Co. (1968)	
.....	173
6. John A. Newman v. Irwin Schiff (1985) .....	178
7. Smith v. Van Gorkom (1985) .....	181
8. Rich Hill and Enza Hil v. Gateway 2000, Inc. (1996) .....	186
9. Hutchinson v. Proxmire (1979) .....	191
10. Roe. v. Wade, District Attorney of Dallas County (1973) .....	195
11. Texas v. Johnson (1989) .....	199
12. David H. Lucas v. South Carolina Coastal Council (1992) .....	203



## Part III Simulated Legal Writing

### 模拟法律文书写作

英语法律文书的语言特点 .....	211
1. 诉状(Complaint) .....	215
2. 答辩状(Answer) .....	218
3. 传票(Summons) .....	221
4. 授权委托书(Power of Attorney) .....	224
5. 风险代理协议(Contingent Fee Retainer) .....	226
6. 仲裁协议书(Arbitration Agreement) .....	229
7. 证明书(Certificate) .....	231
8. 公证书(Notarial Certificate) .....	232
<b>附录一 The World Trade Organization</b> .....	235
<b>世界贸易组织</b>	
<b>附录二 法律英语学习在线资源</b> .....	244
<b>References</b> .....	250
<b>参考文献</b>	





# *Part I*

## *Reading and Understanding* 阅读与理解





## Lesson One

### *Legal Education*

### 法律教育

One of the most striking and salutary thing in American life is the widespread study of law.

—Alexis de Tocqueville



#### 导读

法律教育是指以传授法律知识、法学知识体系和培养法律职业为目的的教育制度和途径。现代法律教育一般分为法学教育和法律职业培训两个基本部分。西方发达国家的高层次法律人才主要有两种类型：应用型和学术型。应用型法律人才主要是指律师、法官、检察官、公证人、商务和行政部门的法律顾问等。学术型法律人才主要是指大学教授。美国法律教育最突出的一个特征是初级法律学历教育被定位在大学本科教育之后的研究生教育阶段，法律教育是以今后的职业为目标的。这种培养方式要求学生在在学习法律之前已获得必要的人文科学知识，因此报考法学院的学生通常已经取得了文学学士学位(Bachelor of Arts)或理学学士学位(Bachelor of Science)，并且还要通过法学院入学考试(LSAT)。



#### Text

### Legal Education

Legal education is the education of individuals who intend to become legal



professionals or those who simply intend to use their law degree to some end, either related to law or business. It includes:

- First degrees in law, which may be studied at either undergraduate or graduate level depending on the country.
- Vocational courses which prospective lawyers are required to pass in some countries before they may enter practice.
- Higher academic degrees.

In addition to the qualifications required to become a practicing lawyer, legal education also encompasses higher degrees such as doctorates, for more advanced academic study.

In many countries other than the United States, law is an undergraduate degree. Graduates of such a program are eligible to become lawyers by passing the country's equivalent of a bar exam<sup>1</sup>. In such countries, graduate programs in law enable students to embark on academic careers or become specialized in a particular area of law.

In the United States, law is a graduate degree, which students embark upon only after completing an undergraduate degree in some other field (usually a bachelor's degree), and is considered to be a graduate or professional school program. The undergraduate degree can be in any field, though most American lawyers hold bachelor's degrees in the humanities and social sciences; legal studies as an undergraduate study is available at a few institutions. American law schools are usually an autonomous entity within a larger university.

Faculty of law is another name for a law school<sup>2</sup> or school of law, the terms commonly used in the United States. This term is used in Canada, other Commonwealth<sup>3</sup> countries and the rest of the world. It may be distinguishable from law school in the sense that a faculty is a subdivision of a university on the same rank with other faculties, i. e., faculty of medicine, faculty of graduate studies, whereas a law school or school of law may have a more autonomous status within a university, or may be totally independent of any other post-secondary educational institution.

In addition in some countries, including the United Kingdom, Canada and

some states of Australia, the final stages of vocational legal education required to qualify to practice law are carried out outside the university system.

### **Legal education in the United States**

The education of lawyers in the United States is generally undertaken through a law school program.

The professional degree granted by U. S. law schools is the Juris Doctor or Doctor of Jurisprudence (J. D. ). Once a prospective lawyer has been awarded the J. D. (or other appropriate degree), he or she is usually required to pass a state bar examination in order to be licensed to practice as an attorney at law<sup>4</sup>. Historically, as many as 32 states have recognized a diploma privilege<sup>5</sup> method of bar admission which does not require sitting for a bar exam. As of mid-2007, Wisconsin is the only state which continues to recognize this privilege.

The Doctor of Jurisprudence or Juris Doctor (J. D. ), like the Doctor of Medicine (M. D. ), is a professional doctorate. The Doctor of Judicial Science (J. S. D. ), and Doctor of Comparative Law (D. C. L. ), are research and academic-based doctorate level degrees. In the U. S. the Legum Doctor (LL. D. ) is only awarded as an honorary degree.

Academic degrees for non-lawyers are available at the baccalaureate and master's level. A common baccalaureate level degree is a Bachelor of Science in Legal Studies (B. S. ). Academic master's degrees in legal studies are available, such as the Master of Studies (M. S. ), and the Master of Professional Studies (M. P. S. ). Such a degree is not required to enter a J. D. program.

Foreign lawyers seeking to practice in the U. S. , who do not have a Juris Doctor (J. D. ), often seek to obtain a Juris Master (J. M. ), Master of Laws (LL. M. ), Master of Comparative Law (M. C. L. ) or a Master of Jurisprudence (M. J. ).

Legal education in the United States normally proceeds along the following route:

- Undergraduate education (usually 4 years)
- Law school (usually 3 years)
- Admission to the bar (usually by taking a state's bar exam)



• Legal practice

A number of law students apply for an optional judicial clerkship (less than 10% end up in such position), to be taken after law school and before legal practice. Some take the bar exam before a clerkship but this is not required. Clerkships usually last a year but can be longer.

(Selected from [http://en.wikipedia.org/wiki/Legal\\_education](http://en.wikipedia.org/wiki/Legal_education))



*Words and Expressions*

practicing lawyer

[中] 执业律师; [美] 开业律师

doctorate ['dɒktərɪt] *n.*

博士头衔

eligible ['elɪdʒəbl] *adj.*

符合条件的, 合格的

equivalent [ɪ'kwɪvələnt] *n.*

等价物, 相等物

embark [ɪm'bɑ:k] *on*

从事, 着手

autonomous [ɔ:'tɒnəməs] *adj.*

自治的

distinguishable [dɪs'tɪŋgwɪʃəbl] *adj.*

可区别的, 可辨识的

Juris ['dʒʊərɪs] Doctor

法律专业博士

jurisprudence [ɪdʒʊərɪs'pru:dəns] *n.*

法学, 法理学

Legum Doctor

[美] 法学荣誉博士

baccalaureate [bækə'lɔ:riət] *n.*

[美] 学士学位

clerkship ['klɜ:kʃɪp] *n.*

书记员的职位



*Notes*

1. **bar exam** (司法考试, 律师执业考试): A bar examination is an examination to determine whether a candidate is qualified to practice law in a given jurisdiction.
2. **law school** (法学院): A law school (also known as a school of law or college of law) is an institution specializing in legal education.
3. **Commonwealth** (共和国, 联邦): The Commonwealth of Nations, usually known as the Commonwealth, is a voluntary association of 53 independent

sovereign states, most of which are former British colonies, or dependencies of these colonies (the exceptions being the United Kingdom itself and Mozambique). The Commonwealth is an international organisation through which countries with diverse social, political, and economic backgrounds cooperate within a framework of common values and goals, outlined in the Singapore Declaration. These include the promotion of democracy, human rights, good governance, the rule of law, individual liberty, egalitarianism, free trade, multilateralism, and world peace.

4. **attorney at law (律师, 法律上的代理人)**: An attorney at law (or attorney-at-law) in the United States is a practitioner in a court of law who is legally qualified to prosecute and defend actions in such court on the retainer of clients. Alternative terms include attorney and counselor at law, attorney, and lawyer.
5. **diploma privilege (学位特权)**: The diploma privilege is a method for lawyers to be admitted to the bar without taking a bar examination. Once used by as many as 32 U.S. states and the District of Columbia, Wisconsin is currently the only state that offers the diploma privilege for admission to its state bar. In 25 states, attorneys who were initially admitted to practice by another state's diploma privilege are eligible for admission to the state bar on motion of the admission committee.



## *Exercises*

### I. Reading comprehension.

1. What is legal education?
2. What are included in legal education according to the passage?
3. Is law an undergraduate degree in the United States?
4. What is the status of American law schools within a larger university?
5. What is the difference between faculty of law and school of law?
6. In some countries such as the United Kingdom and Canada, how are the final stages of vocational legal education required to qualify to practice



law carried out?

7. What is the professional degree granted by U. S. law schools?
8. What is the difference between the Doctor of Jurisprudence and the Doctor of Judicial Science?
9. What do foreign lawyers seeking to practice in the U. S. without a Juris Doctor often seek to obtain?
10. What is the route that legal education in the United States normally proceeds along?

### II. Phrase translation from Chinese into English.

- |               |             |
|---------------|-------------|
| 1. 法学教育       | 2. 职业课程     |
| 3. 执业律师, 开业律师 | 4. 司法考试     |
| 5. 学士学位       | 6. 自治体      |
| 7. 法学博士       | 8. 比较法      |
| 9. 法学硕士       | 10. 法院书记员职位 |

### III. Fill in the blanks with the words in the box.

curriculum	publishers	professional	principles
commercially	material	statement	skim

Law school outlines are legal study aids. Typically, the outlines are created by law school students, however there are (1) \_\_\_\_\_ outlines also available. An outline typically provides a concise and direct (2) \_\_\_\_\_ of legal issues in a particular area of law, organized according to the typical law school (3) \_\_\_\_\_. Outlines often remove many legal nuances and specific distinctions in case law to establish more generalized legal (4) \_\_\_\_\_.

Law school outlines help law students focus on the most important (5) \_\_\_\_\_ they learned for the semester, and are helpful before an exam. They are necessary because it would be impossible to even (6) \_\_\_\_\_ over all of the material they are expected to cover in a semester.



Outlines are (7) \_\_\_\_\_ available from several publishers, including LexisNexis and Westlaw. These (8) \_\_\_\_\_ have outlines for courses most commonly taught in the first year of law school including Torts, Contracts, Property, Civil procedure and Evidence.



### *Supplementary Reading*

#### **Legal Education in Canada**

In Canada, the situation is somewhere between that of the U.S. and the majority of the rest of the world. The first-professional degree in law is the Bachelor of Laws (LL. B.) or the Juris Doctor (J. D.) for common law jurisdictions and the Bachelor of Laws, Licentiate of Law or Bachelor of Civil Law for Quebec, a civil law jurisdiction. While technically most of Canada's common-law law schools will allow people to apply to study law after only two or three years of study in an undergraduate programme in another field, the vast majority of those who are admitted have already earned at least an undergraduate (bachelor's) degree. In the case of Quebec civil law degrees, students can be admitted after CEGEP (魁北克省的教育体系). Some Canadian schools are considering transitioning from the LL. B. to J.D.

Generally, entry into common-law LL. B. programs in Canada is based almost exclusively on a combination of the student's grades as well as his score on the Law School Admission Test (LSAT<sup>1</sup>). This is, at the time of writing, different from Medical School admission, where factors such as community involvement, personal character, extracurricular activities and references are taken into account, with the admission test (MCAT<sup>2</sup>) having only a small influence on the admission decision. However, Osgoode Hall Law School, McGill University and the University of Windsor law schools take into account those personal factors. Quebec civil-law law schools do not require the LSAT, nor does Université de Moncton law school which offers the common-law LL. B. program in French only. In the case of the University of