

English

# 法律英语 写作

*Legal English Writing*

张法连 编著



山东大学出版社

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# 前言

优秀的涉外法律从业人员应当能够将他的才能与想象力、勤奋和技巧相结合。法律实践要求从业人员将谈判、咨询、法律研究以及辩论的能力整合在一起,而有一种能力是以上所有能力的基础,这就是高效的写作能力。通透地理解法律问题的解决过程本身没有价值,除非这种分析理解过程能够通过书面的方式表达出来。法律文书应当是十分清楚、精准、全面而且通俗易懂的,但是,由于涉外法律文书种类的纷繁复杂,给我国涉外法律从业人员的工作带来极大的障碍。为了方便涉外法律从业人员的工作,本书详细介绍了几种重要、实用的法律文书的写作方法。

本书共分为四部分,第一部分为律师信函。在该部分中作者介绍了几种常用信函的写法,即与诉讼相关的信函和与当事人的沟通信函。其中的诉讼信函涉及大量法律术语,成为希望在法律英语方面提升自己的读者应当重点学习的内容;而由于与当事人的沟通信函的主要目的是与当事人明确沟通,因此一般使用通俗易懂的非法律语言,其注重的是语言的技巧,这是涉外法律从业人员能轻松掌握并熟练运用的。读者也可以参照本书的内容明确涉外法律服务的具体步骤和沟通注意事项。

第二部分介绍了案件法律分析报告(Office Memo)的写法。在英美法系国家,案件法律分析报告由初级律师撰写,由高级律师最终确定,其内容是通过分析,预测出适用相关的法律将对其当事人产生的影响。本书该部分内容主要介绍了概括事实的方法、提出案件主要争议点的方法以及案件讨论的写作方法。

案件辩论书(Case Brief)在法律英语写作中占有相当重要的地位。尽管案件辩论书在许多方面与案件法律分析报告相类似,但是两者在本质上是不同的。案件法律分析报告是客观地分析究竟哪方当事人的理由更加充分,并且一般要在分析的最后阶段才能得出结论,而案件辩论书的撰写人在写作之前已经知道了基本结论,其主要任务是为结论寻找支持的依据,并极力证明他的当事人的理由更加充分,应当得到法院的支持。因此在写作方法上,案件辩论书也有别于案件法律分析报告。我国从事涉外法律服务人员应当特别注意,在法律英语写作中,向初审法院和向上诉法院提交的诉状、答辩状等法律文书的要求是不同的,写作方法也是不同的。本书在第三部分着重介绍向初审法院提交的案件辩论书的写作方法和向上诉法院提交的案件辩论书的写作方法。

本书第四部分简单介绍了上诉法院法庭辩论应该注意的问题。该部分虽是口头辩论,其实是第三部分撰写案件辩论书部分的延续,也是美国法学院的必修课,是法

律写作课的实践课,因而备受重视。

本书的参考资料全部来自美国知名法学院学生用原版法律英语写作参考用书,我们力求保证所选资料的原汁原味。同时,书中引用了不少的律师信函、案件法律分析报告、案件辩论书等主要法律文书的原版范本,其中包括作者在美国印第安纳州司法部工作时所写的法律文书原件。本书弥补了国内法律英语写作方面的一项空白,是一本为法学院学生,特别是意欲到英美国家法学院深造学习人员,以及涉外法律从业人员提供的实用法律英语写作参考用书。

本书中的很多材料都在中国政法大学和国内首家法律英语培训机构北京世晨国际法律英语培训班上试用,收到了良好的效果。世晨国际([www.shichenconsulting.com](http://www.shichenconsulting.com))的姜芳老师、马晓老师为本书的早日出版做了大量的工作,在此谨对两位老师的贡献表示衷心的感谢。

作 者

2007年10月12日

于中国政法大学

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PART ONE

# **Writing Letters**



# Chapter 1

## Writing Letters

LAWYERS USE letters, notes, and memoranda to communicate information to clients, to request information from government agencies and other lawyers. There are, of course, many other purposes for letters and many styles of writing them. For example, you may want information about a graduate school program, you may need to thank a person who has helped you, or you may want to find temporary or permanent employment.

Lawyers write many, many letters. These letters serve many purposes: advising clients, seeking compliance, sending documents, obtaining information. All letters benefit from clear writing and simple organization. Lawyers who write direct and concise letters to non-lawyers are more likely to achieve successful results. All of these letters have one thing in common: They are not great literature. They will not be read in a hundred years and analyzed for their wit, charm or flowery words. With any luck they will be read just once by a few people, followed quickly by their intended result, whether that be compliance, understanding or agreement. Why do lawyers write so many letters? A primary reason lies within the ethics of this profession.

### 1. Getting Ready to Write a Letter

#### **(1) Find a letter form.**

Find a similar letter you have sent in the past, or see the sample letters in this Chapter.

#### **(2) Do not send a letter to another lawyer's client without that lawyer's consent.**

Before sending the letter, find out if the non-lawyer is represented by someone else. Start by asking your client.

#### **(3) Outline your thoughts in a checklist.**

Before turning on your computer or dictating machine, pull out a yellow pad and jot down the main points for your letter. List what you want the letter to say. Write the points in any order; write them as they come into your mind.

#### **(4) Start your letter carefully.**

Letters begin with boring things like the date and recipient's name and address, but if any of those are missing or wrong the letter writer will look pretty careless, to say the least. So be careful when starting the letter.

**(5) Date your letter.**

Date your letter the day you write it, and send it the same day. Consider using the international dating convention of day-month-year rather than the U. S. convention of month-day-year.

**(6) Indicate the time of your letter.**

If you are sending a fax or email, then type the time next to the date. While letters “cross in the mail” in days, faxes and emails “cross in the wires” in hours and minutes.

**(7) Remind your client to preserve attorney-client confidentiality.**

Sometimes the clients show your letters to others without realizing they can lose the attorney-client privilege of that communication. Add this phrase at the top of the letter to remind them not to do this:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION  
DO NOT COPY OR DISCLOSE TO ANYONE ELSE

If the letter is written during or in anticipation of litigation, the following phrase can be used:

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION AND WORK PRODUCT  
DO NOT COPY OR DISCLOSE TO ANYONE ELSE

**(8) Be sure to use the recipient's correct legal name and address.**

Your letter may be relied upon for its accuracy, so be accurate. Verification of names can be obtained from the public records, the phone book, or the websites. And when it comes to middle initials, never rely on your memory or guess at it because most of the time you'll be wrong.

**(9) Indicate the method of delivery if other than mail.**

If being faxed, include the fax number and telephone number. If being sent by FedEx, state whether it is by overnight or second day. If being sent by email, state the email address. This will make it easy for your staff person to send it to the correct place, and it will document for your file how it was sent.

**(10) Include a fax notice.**

When sending by fax, include a notice in case it is sent to the wrong number. Here is the notice when sending a fax:

*NOTICE: This is privileged and confidential and intended only for the person named below. If you are not that person, then any use, dissemination, distribution or copying of this is strictly prohibited, and you are requested to notify us immediately by calling or faxing us collect at the numbers above.*

Date Sent \_\_\_\_\_ Time Sent \_\_\_\_\_

Number of Pages \_\_\_\_\_ Receipt \_\_\_\_\_

## 2. Putting More Emphasis on Body of the Letter

The body of the letter is why you are writing it. You succeed by leaving the reader

with full knowledge of why you write the letter and what it means. Follow the following suggestions will keep your letters on the successful end of the scale.

**(1) Identify your client.**

It is important to let others know who is your client at the earliest opportunity. This accomplishes a great deal. First, it tells the reader that your client has a lawyer. This makes your client happy because most clients want the world to know they have a lawyer. Second, it tells the reader that you are not the reader's lawyer. This makes your malpractice carrier happy because it's one less person who's going to sue you claiming they thought you were representing them when, in fact, you were not.

**(2) State the purpose of the letter.**

Why leave the reader guessing? Go ahead and say right up front why you are writing the letter. Here are some opening sentences:

"The purpose of this letter is to \_\_\_\_\_."

"This letter is to inform you that \_\_\_\_\_."

"My client has instructed me to \_\_\_\_\_."

"This is to confirm that \_\_\_\_\_."

"This confirms our phone conversation today in which \_\_\_\_\_."

**(3) If there are any enclosures, list them first.**

Listing enclosures at the beginning of the letter will make it easier for your staff to assemble them and for the reader to check to be sure all was received. The enclosures should be described with specificity so that there is later no question as to what was enclosed. At a minimum, the title and date of each document should be listed.

**(4) Outline the letter as separately numbered paragraphs.**

Each paragraph of the letter should state a separate thought, comment, point or concept. No paragraph should be longer than four or five short sentences. If the paragraph is longer, then separate it into subparagraphs. The paragraphs should flow in logical, organized fashion. It is not necessary to write them all at once; you can write them as you think of them. Try to group related concepts in the same paragraphs or in adjacent paragraphs. Give each paragraph a title and underline that title. Think of this as the headline for a newspaper article. This makes it easy for the reader to scan the letter and choose how to more fully read and digest its contents. This also makes it easier for you later when you see the letter in your file and try to remember why you wrote it.

### 3. Studying the Elements of Style

Why does it take lawyers so long to write letters? Because they must be careful with the choice of words and the style. Lawyers write, rewrite, move around, delete, cut and paste the words over and over again until they are happy with the way it sounds. That's the art of legal writing. That's why writing is an art. Follow the following tips:

**(1) Write in short sentences.**

Short sentences are easier to understand than long ones. "Short, crisp sentences in a language accessible to lay people."

**(2) Use the jargon when necessary, but explain it when you use it.**

**(3) Repeat yourself only when repetition is necessary to improve clarity or to emphasize a point.**

Ambiguity can be created by saying the same thing more than once; it is almost impossible to say it twice without creating ambiguity.

**(4) When explaining a difficult concept, describe it from three directions.**

The only time repetition is helpful is when explaining a difficult concept. Each time you explain it you can make it a little more clear if you describe it from a different direction, perspective or point of view.

**(5) Write in active tense, rather than passive.**

Active tense is interesting; passive is boring. Active tense sentences are shorter and use words more efficiently, and their meaning is more apparent.

**(6) Watch where you place modifiers.**

When adding a modifier before a compound of nouns, be sure to clarify whether you intend the modifier to apply to both nouns or just the first one. If you intend it to apply to both, use parallel construction and write the modifier in front of each noun, otherwise, place one noun at the end of the list and the modifier directly in front of it.

**(7) Write numbers carefully.**

Write numbers as both words and numerals; ten (10). This will reduce the chance for errors.

**(8) Don't be creative with words.**

Legal letter writing is not creative writing and is not meant to provoke reflective thoughts or controversies about nuances of meaning. Legal writing is clear, direct and precise. Therefore, use common words and common meanings.

**(9) Be consistent in using words.**

If you refer to the subject matter of a sales contract as "goods" use that term throughout the letter; do not alternately call them "goods" and "items."

**(10) Be consistent in grammar and punctuation.**

Write the letter so that no matter what rules they learned the letter is clear and unambiguous.

**(11) Eliminate needless words.**

Avoid flowery words. That's what good writing is all about. A letter written for the lowest common denominator is understood by every reader.

**(12) Be direct and frank.**

There is no sense beating around the bush in legal letter writing. Just say what you mean. If you leave the reader wondering what you mean, your letter will only stir the imagination instead of prompting some action.

#### 4. Cleaning up

Now that you have the letter written, it's time to do some cleanup work before you hit the sending button.

**(1) Let your secretary or paralegal read it.**

Not only will your staff frequently find spelling and grammar errors missed by your word processor's spell checker, but they will find inconsistencies and confusing areas that you missed when drafting.

**(2) Number every page of the letter, and staple the letter.**

If the letter is more than one page long, then it is important to number the pages because they will invariably get out of order. Place the following at the top left corner of each page after the first:

Recipient's name \_\_\_\_\_ Date \_\_\_\_\_ Page \_\_\_\_\_

**(3) Sign the letter in blue ink, not black ink.**

This will make it easier to differentiate the signed original letter from photocopies, and it will make it more difficult for someone to change your letter after you send it.

#### 5. Samples

The following samples illustrate a range of letters and writing styles. These are only samples and not models. Your professors will assign a letter writing task related to your current field of study or employment in class.

**(1) Letter Requesting a Copy of a Publication**

August 15, 2007

Professor Zhang Li  
China Law Institute  
Zhongguancun Road  
Beijing 1000860  
P. R. China

Dear Professor Zhang,

I would like to order a copy of the book, Shaping the Future by Law: Children, Environment, and Human Health. Please advise me of the current cost (in U. S. or Canadian dollars, if possible) to purchase the book and to have it sent by airmail. If it is convenient for you, you may fax this information to me at (fax number).

Thank you.

Sincerely,

Prof. [Name]

**(2) Letter Requesting Multiple Copies of a Publication****NATIONAL MINISTRY OF FOREIGN INVESTMENT**

January 15, 2007

Mr. Peter Whitten  
Publications Office  
International Law Institute  
1615 New Hampshire Avenue, N. W.  
Washington, D. C. 20009-2520 USA

Dear Mr. Whitten,

I would like to extend my compliments to you for your publication, "Model Foreign Investment Law" by Don Wallace, Jr., Robert B. Shanks, and David A. Levy. The book provides useful information on how to modernize foreign investment laws and attract more foreign investment through a more market-oriented investment climate. I fully agree with the statement that the book "utilizes a contractual approach to the relations of the foreign investor and the host State, limiting administrative steps which may have the effect of hindering the willingness of foreign investors to invest in a system which they perceive as burdensome, while at the same time preserving the right of the host State to regulate foreign investment within its borders." It is a practical text for modernizing the foreign investment laws of my country.

I would like to order additional copies of the book to share with other cabinet ministers and their staffs. Could you please send me pricing and shipping information for 10, 100, and 1,000 additional copies of the book?

Sincerely,

[Name]

Minister of Foreign Investment

**(3) Letter of Thanks to a Speaker**

July 25, 2001

Mr. Richard P. Bruno  
Supervisory Import Specialist  
United States Customs Service  
610 S. Canal Street, Room 450A  
Chicago, IL 60607

Dear Mr. Bruno,

I enjoyed your presentation yesterday on customs law and procedure in the United States. Thank you for coming to speak at the law school and for staying after class to answer additional questions about how the United States Customs Service enforces trademarks and other intellectual property rights. I was especially interested in your explanation of how the Customs Service has no authority to prevent the importation of goods that violate a patent unless directed to do so by an exclusion order issued by the U.S. International Trade Commission. I confess that I am often confused about which governmental agencies have responsibilities over these matters. Your explanation of the exclusion orders issued by the Commission made this easier for me to understand.

Thank you also for bringing the brochures discussing import quotas, foreign trade zones, and customs duty drawback. I look forward to reading these brochures and learning more about these issues.

Thank you again for coming to the school. You were very gracious with your time.

Sincerely,

[Name]

(4) Letter Requesting Information About a Law School Program

July 15, 2007

Professor William B. T. Mock  
Director, International and Comparative Law Program  
The John Marshall Law School  
315 S. Plymouth Court  
Chicago, IL 60604 USA

Dear Professor Mock,

Thank you for speaking with me today about the number and variety of LL. M. programs available in the United States. As I mentioned to you on the phone, I graduated from Liaocheng University in 1999, with specialization in corporate and copyright law. Soon after graduation, I obtained a position as inhouse counsel with a large government bank, where I worked on a number of financial, corporate, and real estate matters.

I am interested in eventually moving to the private sector, but I would first like to obtain some additional legal education in the United States. Your school's program in International and Comparative Law seems to fit my needs exactly. I would be very grateful to receive further information about the specific courses offered in the program, the academic requirements for admission, and, if possible, information about housing options near the school.

Sincerely,

Zhang Lei

**(5) Letter Requesting Information about the Legal English and Orientation Courses**

15 Jan. 2001

Ms. Keri S. Lawhead  
International Law Institute  
1615 New Hampshire Ave. , N. W.  
Washington, D. C. 20009-2520 U. S. A.

Dear Ms. Lawhead,

I have been accepted into an LL. M. program at U. S. law school for the fall semester. I have heard that your summer training programs in Introduction to Legal English and Orientation in the U. S. Legal System are helpful for lawyers who want a good overview of U. S. law, and that these courses are especially helpful for persons who, like me, will be enrolled in full-time studies at an American law school. I would greatly appreciate it if you could please send me further information about the courses and how to register for them.

Sincerely yours,

[Name]