

21世纪全国高等院校法律英语精品系列教材

法律英语 综合教程

*Comprehensive Legal
English Course*

张法连 编著



山东大学出版社

21世纪全国高等院校法律英语精品系列教材

法律英语 综合教程

*Comprehensive Legal
English Course*

江苏工业学院图书馆
藏书章

张法连 编著



山东大学出版社

图书在版编目(CIP)数据

法律英语综合教程/张法连编著. — 济南: 山东大学出版社, 2008. 4
ISBN 978-7-5607-3574-0

I. 法...

II. 张...

III. 法律—英语—教材

IV. H31

中国版本图书馆 CIP 数据核字(2008)第 060086 号

山东大学出版社出版发行

(山东省济南市山大南路 27 号 邮政编码: 250100)

山东省新华书店经销

山东省恒兴实业总公司印刷厂印刷

787×1092 毫米 1/16 28.5 印张 654 千字

2008 年 4 月第 1 版 2008 年 4 月第 1 次印刷

定价: 45.00 元

版权所有, 盗印必究

凡购本书, 如有缺页、倒页、脱页, 由本社营销部负责调换

前言

随着我国入世和改革开放程度不断加大,越来越多的外资进入中国市场,越来越多的中国企业走出国门寻找商机。无论是迎进来,还是走出去,这些企业所面临的一个共同问题就是法律问题,而这些法律问题中的大多数又都属于涉外法律的工作范畴。由于法律文化、法律条款的差异,中外双方在合作过程中不可避免地会出现许多矛盾分歧,减少、化解这些矛盾分歧需要沟通谈判,甚至需要通过法律手段来解决问题。所有这些工作都需要法律工作者通过专业外语完成。因此,在国际化趋势日见凸显的今天,掌握专业外语已经成为法律人必备的职业素质。

众所周知,美国法是英美法系的典型代表,其法律体系完整、内容丰富,既有传统的普通法,又有新兴的成文法;既有统一的联邦法,又有各州的法律。同时,美国法在世界范围内影响深远,学习研究美国法意义重大,这不仅表现为许多国家都在研究美国的法律规则,借鉴其成熟做法,还表现为许多国际公约也参照美国法的理念、原则、规则制定。

因此,本书作为学习法律英语的精读教材,主要介绍美国法,希望读者通过学习权威、实用的美国法律知识,掌握地道、纯正的法律英语。一般的语言教材都会系统地讲授语法知识,但本书的编写设想是,学生已经完成了从中学英语到大学一、二年级的基础英语学习,系统掌握了英语语法等基础知识,并具有不低于六千个英语单词的词汇量。本书具有以下特点:

首先,编者参考了大量的美国原版法学书籍,包括美国法学院教材及大量判例,力求实现教材内容的权威性和丰富性。

其次,本书引用了许多极具代表性的英文案例。英美法系是判例法系,无论是法官还是律师都特别注重对判例的研究,因此学习美国法不能绕过案例。根据我的个人经验,通过研究案例更有利于掌握标准的法律英语,也更容易掌握美国法的精髓。本书选取了十几个经典案例,以期最大程度地展现美国法原貌。

再次,本书在部门法的后面都附有与该部门法相关的练习题,以期帮助读者检查自己学习掌握法律英语术语和基础美国法知识的程度,查漏补缺。

本书共分十三部分。第一、二部分首先介绍了法律英语的基础知识:该部分选择法律英语口语为切入点,帮助读者认识法律英语口语交流的重要性,督促读者认真练习英语口语,做到听、说、读、写、译齐头并进,绝不可忽视“开口”的能力。美国人的口才都普遍好,律师更是能言善辩,而这正是我国法律人的弱势。第三至第十二部分分别介绍了美国主

干部门法:合同法部分对合同的成立、有效性、违约以及救济进行了详细的论述;侵权法主要介绍了故意侵权、过失侵权、近因原则、共同侵权、代理人责任、严格责任以及抗辩等;知识产权法主要介绍了对商业秘密、版权、专利、商标的概念及对其的保护;商法是美国法的精华,该部分除了介绍股份有限公司、有限责任公司、合伙等基本的商业组织形式,还介绍了我国新合伙法中采纳的特殊的普通合伙—有限责任合伙(LLP);票据法则主要介绍了在票据流通过程中的几种重要法律行为的概念及意义;证券法主要介绍了美国关于证券业的成文立法,着重介绍了著名的 10b-5 规则。此外,本书还对美国宪法、刑法、刑事诉讼法、民事程序法、证据法、财产法等法律进行了概括介绍。本书最后一部分简明介绍了引用(citation)的相关知识,因为学习美国法需要研究大量的判例,引用权威意见,所以了解、掌握引用知识不可或缺。

本书是法律英语精品系列教材中的一本,是法律英语精读教材。另外几本,如《法律英语写作》、《法律英语阅读教程》、《法律英语翻译教程》等已经或将由山东大学出版社陆续出版发行。该套法律英语精品系列教材适用面很广,既适合于法律英语专业和普通英语专业的学生,也适合于法学院、商学院、经济管理学院的学生。本书中的很多材料都在中国政法大学和北京世晨国际(www.shichenconsulting.com)法律英语培训班上试用,反馈良好,感谢有关老师和同学对本书提出的修改意见。在此,我要特别感谢北京世晨国际法律英语、LSAT 培训部的姜芳老师和法律英语证书(LEC)考试中心的马晓老师对本书的早日出版所付出的辛勤努力。

作 者

2008 年 3 月于中国政法大学

CONTENTS

Part One	Introductions and Small Talks	(1)
Chapter 1	How to Make Introductions	(1)
Chapter 2	How to Start a Conversation	(2)
Part Two	General Legal Terms	(9)
Chapter 1	Quick Overview of the U. S. Court System	(10)
Chapter 2	Jury Trial	(11)
Chapter 3	The Adversary System	(15)
Chapter 4	How Does a Civil Action Usually Start?	(16)
Chapter 5	What Can an Appellate Court Do?	(18)
Chapter 6	What Can an Appellate Judge Do?	(20)
Part Three	Constitutional Law	(28)
Chapter 1	Introduction	(28)
Chapter 2	The Judicial Power	(28)
Chapter 3	Legislative Power	(32)
Chapter 4	Individual Guarantees Against Governmental or Private Action	(36)
Chapter 5	Retroactive Legislation	(38)
Chapter 6	Procedural Due Process	(39)
Chapter 7	Substantive Due Process	(40)
Chapter 8	Equal Protection	(41)
Chapter 9	Fundamental Rights	(44)
Part Four	Contracts	(52)
Chapter 1	Introduction	(52)
Chapter 2	Basics of Contracts	(53)
Chapter 3	Contract Formation	(56)
Chapter 4	Capacity of a Contract	(75)
Chapter 5	Vitiating Factors	(77)

Chapter 6	Problems Involving Persons Other Than the Parties to the Original Contract	(88)
Chapter 7	Discharge	(89)
Chapter 8	Breach of Contract	(93)
Chapter 9	Remedies for Breach of Contract	(94)
Chapter 10	Dispute Settlement	(99)
Part Five	Torts	(104)
Chapter 1	Introduction	(104)
Chapter 2	Intentional Torts	(106)
Chapter 3	Defenses to Intentional Torts	(110)
Chapter 4	Negligence	(113)
Chapter 5	Cause in Fact	(118)
Chapter 6	Proximate Cause	(120)
Chapter 7	Multiple Tortfeasors	(122)
Chapter 8	Damages for Personal Injuries	(123)
Chapter 9	Limited Duty: Special Limitations on the Scope of Duty	(127)
Chapter 10	Premises Liability: Duties of Owners and Occupiers of Land ...	(130)
Chapter 11	Defenses	(135)
Chapter 12	Vicarious Liability	(143)
Chapter 13	Products Liability	(147)
Chapter 14	Defamation	(150)
Chapter 15	The Privacy Torts	(152)
Chapter 16	Competitive Torts	(154)
Part Six	Property Law	(164)
Chapter 1	Introduction	(164)
Chapter 2	Acquisition of Property	(164)
Chapter 3	Possessory Estates	(166)
Chapter 4	Future Interests	(168)
Chapter 5	Concurrent Estates	(170)
Chapter 6	Landlord and Tenant	(173)
Chapter 7	Fixtures	(176)
Chapter 8	Rights in the Land of Another—Easements, Profits, Covenants, and Servitudes	(178)
Chapter 9	Conveyancing	(182)
Chapter 10	Cooperatives, Condominiums, and Zoning	(191)
Chapter 11	Nuisance	(192)
Part Seven	Evidence Law	(195)
Chapter 1	Introduction	(195)

Chapter 2	General Considerations	(195)
Chapter 3	Relevance and Judicial Notice	(197)
Chapter 4	Real Evidence	(201)
Chapter 5	Documentary Evidence	(203)
Chapter 6	Testimonial Evidence	(207)
Chapter 7	The Hearsay Rule	(217)
Chapter 8	Procedural Considerations	(223)
Part Eight	Civil Procedure	(235)
Chapter 1	Introduction	(235)
Chapter 2	Personal Jurisdiction	(237)
Chapter 3	Diversity of Citizenship Jurisdiction	(239)
Chapter 4	Federal Question Jurisdiction	(241)
Chapter 5	Venue	(243)
Chapter 6	Removal Jurisdiction	(245)
Chapter 7	Conflict of Jurisdiction Between State and Federal Courts	(249)
Chapter 8	The Federal Rules of Civil Procedure	(250)
Part Nine	Criminal Law	(259)
Chapter 1	Introduction	(259)
Chapter 2	What Makes a Case a Criminal Case?	(262)
Chapter 3	How to Interpret Criminal Statutes	(263)
Chapter 4	How Defendants' Mental States Affect Their Responsibility for a Crime	(263)
Chapter 5	Criminal Offenses	(266)
Chapter 6	Felonies, Misdemeanors and Infractions	(268)
Chapter 7	Implications of a Crime's Classification	(269)
Part Ten	Criminal Procedure	(275)
Chapter 1	Constitutional Restraints	(275)
Chapter 2	Exclusionary Rule	(276)
Chapter 3	Fourth Amendment	(278)
Chapter 4	Confessions	(282)
Chapter 5	Pretrial Procedures	(285)
Chapter 6	Trial	(288)
Chapter 7	Guilty Pleas and Plea Bargaining	(293)
Chapter 8	Constitutional Rights in Relation to Sentence and Punishment	(295)
Chapter 9	Constitutional Problems on Appeal	(297)

Chapter 10	Rights During Punishment—Probation, Imprisonment, Parole	(298)
Chapter 11	Double Jeopardy	(300)
Chapter 12	Forfeiture Actions	(302)
Part Eleven	Intellectual Property Law	(308)
Chapter 1	Introduction	(308)
Chapter 2	Trade Secrets	(309)
Chapter 3	Patent	(312)
Chapter 4	Copyright	(324)
Chapter 5	Trademark Law	(339)
Part Twelve	Business Law	(351)
Chapter 1	Introduction to Business Forms	(351)
Chapter 2	Partnership	(354)
Chapter 3	Limited Liability Company	(357)
Chapter 4	Corporation	(359)
Chapter 5	Securities	(397)
Chapter 6	Commercial Paper	(414)
Part Thirteen	Understanding Legal Citations	(433)
Chapter 1	How to Read a Case Citation	(433)
Chapter 2	Subsequent Case History	(435)
Chapter 3	Parentheticals	(436)
Chapter 4	Parallel Citations	(437)
Chapter 5	The Functions of Legal Citations	(437)
Chapter 6	Understanding “ID.”	(440)
Chapter 7	Using “ID.” with Parallel Citations	(441)
Chapter 8	Short Citations	(441)
Appendix	Key to the Quiz	(443)

Part One Introductions and Small Talks

Chapter 1 How to Make Introductions

Some people become nervous when they meet a “V. I. P.” (very important person). They may only nod hello or shake hands. They may stand uncomfortably while waiting for someone else to pick up the conversation. They may even forget to say their own names. Don’t be shy. You will soon find that most people generally want to make new business contacts and establish new friendships. You will find people who are fascinated by visitors from other countries. They want to get to know something about you and your country. Don’t be offended, however, if they know little about your country: a common belief held by many Americans is that they should not visit other countries until they have seen most of their own. You may therefore find that many otherwise well-educated people may not know much about the social, political, and cultural issues affecting your country. Take the opportunity to educate them.

One of the main elements of an introduction is your smile, or at the very least, a pleasant facial expression. People will forgive most faux pas if they believe one’s heart is in the right place. Making eye contact and projecting one’s voice are also important. Make sure names and titles are pronounced and enunciated properly. Ask about the pronunciation of a name if you are unsure. Always use titles when called for. If it is a doctor, refer to them as “Doctor.” It is always nice to say something a little personal about the other person, but not too personal. Mention a hobby that might interest the other person. If you are the one being introduced, say something like, Hi, it is nice to meet you. Sometimes a simple “Hello” just isn’t enough to convey interest, so if you can’t think of anything else to say, make sure you smile and make that crucial eye contact. If it is a young woman in a social setting, who is being introduced to an older woman of higher rank, she should always stand when introduced. However, there are some women who grew up not knowing that when introduced to someone your own age, you should not stand. This can upset some women and in a way it says, “You must be older

than me.” Also, the rule used to be that only men were supposed to stand when being introduced to a woman. Now, gender no longer plays a role in most business introductions in the U. S. and European communities. In business situations, one should always stand up when being introduced to someone else. If you are traveling to another country, whether it is for business or pleasure, or if you are meeting someone whose culture is unfamiliar, always check to see what the specific manners are for that country or culture. Introductions for kids and teens can be a bit difficult unless they start off at a very young age learning how to do it with confidence. Most kids would rather shake a dog’s paw than an adult’s hand, so get them in the habit early. Young people will respond positively to new things when they find there are “perks” involved.

The seven elements the students learn are: (i) Smile. (ii) Make eye contact. (iii) Project your voice and pronounce names properly. (iv) Add something personal, but not too personal. For example, “My Mom has a teddy bear collection” is fine. “My Dad spends all Sunday morning in the bathroom with the newspaper” is not. (v) Use proper titles. Don’t introduce your parents as Mom or Dad unless that is how they want your friends, teacher, etc. to address them. (vi) Say “It’s nice to meet you” and smile when introduced to someone. (vii) Shake a hand firmly when a handshake is offered. If you are a person that is a little introverted and find yourself constantly nervous about meeting new people, it is in your best interest to practice the proper way to make an introduction in the privacy of your own home. The more you do something, the easier it is. As far as those sweaty palms are concerned, try this tip: carry a fresh napkin in your front pocket when attending an event and before you shake someone’s hand you can discreetly wipe the moisture off your own.

Introducing oneself can often be a frightening task for someone who lacks experience speaking in English. If you only say your name and the country you are from, you will likely find that the person you are meeting may not be able to start a conversation with you.

Chapter 2 How to Start a Conversation

Whether you are a host or a guest, there are many social situations that will call for interaction, even when you are stumped for some way to get it going. For example, you might want to help a friend’s new “significant other” feel comfortable. Or, you might see a stranger across a crowded room, and realize that this is your only chance to impress Mr. or Miss Wonderful. Then, you realize that you’re not sure what to say. Be sure to follow the following steps:

(1) Start with a “hello,” and simply tell the new person your name, then ask them theirs. Offer your hand to shake, upon his or her responding to you. If you already

know the person, skip this step and proceed to Step 2.

(2) Look around. See if there is anything worth pointing out. Sure, talking about the weather is a cliché, but if there's something unusual about it—bam! —you've got a great topic of conversation.

(3) Offer a compliment. Don't lie and say you love someone's hair when you think it's revolting, but if you like his or her shoes, or a handbag, say so. A sincere compliment is a wonderful way to get someone to warm up to you. But be careful not to say something so personal that you scare the person off or make him or her feel uncomfortable. It is best not to compliment a person's looks or body.

(4) Ask questions. Most people love to talk about themselves—get them going. "What classes are you taking this year?" "Have you seen (Insert-Movie-Here)? What did you think of it?" Again, keep the questions light and not invasive. Do not ask too many questions if he or she is not responsive to them.

(5) And another thing, do not ask any question about yourself, because that will most likely make the conversation about you, and people don't like that either.

(6) Jump on any conversation-starters he or she might offer; take something he or she has said and run with it. Agree, disagree, ask a question about it, or offer an opinion, just don't let it go by without notice.

(7) Look your newfound friend in the eye, it engenders trust (but don't stare). Also, use the person's name a time or two during the conversation; it will help you remember the name, and will draw the person's attention to what you are talking about.

Remember to relax. Chances are that whatever small-talk you're making isn't going to stick out in anyone's mind a few months from now. Just say whatever comes into your head, so long as it's not offensive or really weird. (Unless, of course, the person you're attempting to converse with is into weird stuff.)

It will help if you watch some TV, listen to radio shows, and/or read a lot of newspapers, magazines, and/or books. You need to have some idea of what is going on in the world. If you are shy, it will be helpful to have thought about a topic or two that you could talk about.

Follow the lead that your listener is expressing. If he or she appears interested, then continue. If he or she is looking at a clock or watch, or worse, looking for an escape strategy, then you have been going on for too long. Interesting and funny quotes or facts can lighten things up, and make way for things to talk about.

If talking over the phone, keep the person involved in the conversation at all costs. If you can't come up with a good topic, try the "questions" game. Just keep asking them questions; random questions work just fine as long as they are appropriate. This technique can save a phone conversation. The questions should be open ended questions that do not require a yes or no answer. For example, "How do you know the hosts?" This

way you can ask questions about what they just said or follow up with how you know the hosts (for example) instead of acting as if the conversation is an interrogation.

Half of an effective conversation is the way you non-verbally communicate, and not necessarily what you say. Practice better non-verbal skills that are friendly and confident.

If you want to conduct a good conversation, be sure to remember the following tips:

(1) Don't be overly invasive with questions.

(2) Don't use tons of fillers like "umm" or "soo." It might make the person you're talking to feel awkward or obligated to say something. Instead talk slowly and pause. This will create a little tension and make your partner more invested in your conversation.

(3) Don't desperately ask personal questions.

(4) Keep eye-contact.

(5) Don't ever comment negatively on the person or someone's looks. You never know if they have a personal attachment to it or if they are friends with the person you are criticizing.

Sample Dialogues

The sample dialogues here are not model conversations, but they may offer some ideas on ways to introduce yourself and start a conversation. As you read the following lines of dialogue with a partner, fill in the blanks with your own names and your own countries. You may add any additional information that you feel is appropriate, such as the name of a law school that you are attending or the name of the law office or government ministry where you work. Words in parentheses in these sample dialogues are optional.

1. A: Good morning! My name is _____. I am a lawyer from _____. Here is my business card.

B: Good morning, _____. My name is _____, and I'm a lawyer from _____. Here is my (business) card.

A: It is nice to meet you, _____. What kind of work do you do at your law firm?

B: My firm specializes in international business law. Right now I am working on issues for several international corporations.

A: That is my area of work as well. I work on some of the legal issues of corporate finance.

B: That is an interesting work. I'm happy to meet you, _____.

2. A: Hello. My name is _____. I am a judge on the Constitutional Court of the

Republic of _____.

- B: It is nice to meet you, your honor. My name is _____. I am an associate (attorney) at (the law firm of) Baker and McKenzie. Welcome to Washington, D. C. Is this your first visit to the United States?
- A: This is my second visit to the United States, but it is only my first trip to Washington. On my first visit, I went to New York City to attend a meeting at the United Nations.
- B: I've always wanted to visit the United Nations. I'm very interested in the work of the Security Council. When I was a college student, I wrote a seminar paper on how the Security Council can enforce its resolutions.
- A: That is an interesting and important topic.
- B: Well, I don't want to take up too much more of your time, because other people are waiting to speak with you. I hope you enjoy your visit to Washington, Judge _____.
- A: Thank you, _____. It was nice to speak with you.
- B: It was nice speaking with you, too, _____.
3. A: Hello. My name is _____. I am a partner with Shicheng Law Firm, Beijing.
- B: It is nice to meet you, _____. My name is _____. I am a graduate law student at _____. I'm from _____.
- A: It is nice to meet you, _____.
- B: Your firm has an excellent reputation in the area of customs law and international trade law.
- A: Yes, our firm does a lot of work with international businesses. Please stop by our offices if you are ever in Beijing.
- B: Thank you. I would like that very much. Do you have a business card?
- A: Yes, of course. How about you? Do you have a business card?
- B: No, not yet. I'm still only a student!
4. A: Hi. My name is _____, and I'm from _____.
I'm going to be an LL. M. student at _____.
- B: I'm sorry; but your name is difficult for me to understand. Could you (please) spell it for me?
- A: Sure, it is spelled _____.
- B: It is nice to meet you, _____. I'm a student myself at _____, and my name is _____.
- A: It's nice to meet you too, _____. How do you like the school so far?
- B: Oh, I like it pretty well. I'm learning a lot about multinational corporations law right now.

Next semester I'm planning to study international environmental law.

A: That's a great course. I've heard that the professor is really an expert in the field.

B: I'm glad to hear that. I'll be sure to look in the library to see what she has written about environmental law. She probably has written a book or some law review articles.

A: That's a good idea. The reference librarians can help you find her law review articles if you need some help to locate them.

B: That's a good tip, thanks. I don't have a lot of experience in using law libraries here. In fact, I've never had to look up a law review article before.

A: It isn't that difficult once you know what to do. The reference librarians will be happy to help you.

B: I'm glad to know that. The librarians in my country are not always willing to help people who don't know what they're doing.

5. A: Hello, my name is _____. I'm from _____.

B: It's nice to meet you, _____. My name is _____, and I'm from _____.
What kind of work do you do?

A: I am an in-house counsel at an insurance company.

B: I'm sorry, but I'm not sure that I understood you. What is an "in-house counsel" exactly?

A: That only means that I work "in-house." We have some legal work that we farm out to outside law firms and we have other matters that we keep inside the company. I deal with those internal matters and I supervise the legal work that we send to the outside law firms. I guess that you could say that I work as a corporate counsel.

B: What does it mean to "farm out" something?

A: Oh, that's just a slang expression. It means to delegate work to someone else. When we "farm out" work from my company, we send it to outside law firms.

B: I think I understand now. Thank you for explaining.

A: You're welcome. What kind of work do you do?

B: I work for the International Bank and Development Commission of my country. I am here to learn more about international investment law.

A: I hope that you have a productive visit. Please let me know if I can help in any way.

B: Yes, perhaps you could introduce me to some of the other lawyers here who work as "in-house counsel." I would like to learn more about that.

A: Yes, I can introduce you to some friends of mine.

B: Thank you, I would like that very much. Here is a card with my telephone number.

A: Thank you, _____. Here is my card.

B: Thank you, _____.

Sample Introductions

1. Good afternoon, judges, honored guests, and members of the association. Today it is my great pleasure to introduce Professor _____, one of the world's leading authorities on electronic communications law and international business transactions. Given the sophisticated nature of this audience, you are probably already familiar with (his or her) many publications in the field. Professor _____ teaches at the Renmin University of China, and (he or she) is in the United States now to begin a term as a visitor-in residence at New York University School of Law. (He or She) will speak to us today on the legal issues of verifying electronic signatures on international shipping documents. Please join me in welcoming Professor _____.
2. Good afternoon. Welcome to the monthly meeting of the Young Lawyers' Section on International Law. I'd like to introduce our speaker today, Mr. Zhang, from the People's Republic of China. Mr. Zhang graduated from Peking University in 1995 after studying mathematics and mechanics. He has also earned undergraduate and graduate degrees from the China University of Political Science and Law with a concentration in international law. Mr. Zhang will speak to us about recent legal developments in China, including some of the technical matters related to the privatization of key government-owned industries. He will first make a short presentation, and then we will open up the discussion for your questions and comments.
3. Good evening, and thank you for coming to this reception. Tonight we are honored to have with us Alice Dear, the former U. S. Executive Director to the African Development Bank. The African Development Bank is a multilateral development finance institution affiliated with the World Bank Group and composed of 77 member countries. The African Development Bank is engaged in promoting economic and social progress on the African continent. Among other things, the bank's main functions are to promote economic development and expand capital markets and investment in Africa. The U. S. Executive Director, Alice Dear, was responsible for promoting trade and investment between the United States and Africa. Please join me in welcoming Alice Dear.

Interview Forms

Please use this form to interview a classmate. Remember to create questions that will give you the information that you need. Do not fill out the form with your own personal information. When you finish this exercise you will write a short narrative introduction of the person.

Classmate's Name:

Country:

Area of Legal Practice or Interest:

Legal Education:

Other Education:

Other Experience or Professional Training:

Significant Past Employment or Future Career Plans:

Travel or Work Other Countries:

Other Languages Spoken:

Publications, Professional Presentations, or Areas of Work or Research in the Law:

Current Areas of Interest:

Family Members:

Hobbies, Sports, and Favorite Activities:

Other Personal and Professional Information: