

全国高等院校法律英语统编教材
法律英语证书 (LEC) 全国统一考试推荐用书

大学 法律英语

College
Legal English

张法连 姜芳 主编



北京大学出版社
PEKING UNIVERSITY PRESS

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前 言

随着经济全球化进程的不断加快，尤其是“一带一路”倡议的提出与快速推进，中国与世界各国的合作与交流日益加强，各种涉外活动日益增多，涉外法务活动空前频繁。为适应世界多极化、经济全球化深入发展和国家对外开放的需要，我国急需大批具有国际视野、通晓国际规则、能够参与国际法律事务和国际竞争的国际化人才。党的十八届四中全会对发展涉外法律服务业做出了重要部署，提出了明确要求，要为“一带一路”等沿线国家重大发展战略提供高质量法律服务。为更好地引领经济全球化，司法部、教育部、外交部、中央政法委等部委对开展涉外法律工作进行了全面部署，凸显涉外法律人才的重要性和紧迫性。

涉外法律人才是需要具备两方面能力的复合型人才：一方面，具有国际视野，能熟练运用外语，能在国际事务中进行有效的交流与谈判，即精通外语（尤其是英语）的涉外人才；另一方面，通晓国际规则，善于国际谈判，能够参与国际法律事务，维护国家利益，即明晰国际规则的法律人才。而现实情况是，中国的高端外语人才稀缺。全国范围内，精通法律外语，熟知国际法、国际贸易法和WTO规则，能直接从事胜任涉外法律业务的涉外律师寥寥无几。

作为法律科学与英语语言学的交叉学科，法律英语理应承担起培养“精英明法”复合型人才的重任。法律英语是以普通英语为基础，在立法、司法及其他与法律相关的活动中形成和使用的具有法律专业特点的语言，是表述法律科学概念以及从事诉讼或非诉讼法律事务时所使用的英语。法律英语学科的目标是要适应国家社会发展的需要，培养具有国际视野、通晓国际规则、能够参与国际事务的精通外语、通晓涉外法律知识、具有涉外法律技能的“精英明法”复合型国际化人才。

“一带一路”建设凸显了涉外法律的重要性，而法律英语是涉外法律人才培养的关键。法律语言与经济发展关系密切，经济全球化背景下法律英语与涉外经济的联系越发紧密。“一带一路”沿线65国，官方语言61种，且大多数是非通用语种，因此，在一定程度上可以说，“一带一路”建设面临的首当其冲的挑战就是语言。推动“一带一路”建设，分别使用沿线65个国家的母语，既无条件，也不现实，更不经济。英语作为国际通用语，是涉外法律工作必需的工具语言。法律英语成为

“一带一路”建设中的主要工作语言是必然选择。法律英语语言价值更高，必将有效助推“一带一路”建设进程。

涉外法律人才的培养有赖于法律英语教学的落实与推进。具备条件的高等学校、科研院所要按照涉外法律服务业发展需求，创新涉外法律人才培养机制和教育方法，与相关涉外政府部门和企业密切合作，系统培养“精英明法”复合型涉外法律人才。有条件的高校要重视法律英语学科内涵发展研究，系统开设法律英语课程，包括法律英语视听说、法律英语阅读、法律英语写作、法律英语翻译、英美法律文化、法律语言、中西法律语言与文化比较等知识型课程，以及涉外法务谈判、涉外律师实务、审判实务与庭辩技巧、涉外诉辩文书应用、WTO法律制度与中国、ADR实务、双语模拟法庭等实务性课程，也包括到涉外律所、涉外政府部门或企业的社会实践和涉外法务专业实习。

北京大学出版社已率先出版了法律英语专业套编教材，包括《法律英语精读教程》（上、下）《法律英语泛读教程》（上、下）《法律英语写作教程》《法律英语翻译教程》《英美法律文化教程》《法律英语视听说》以及配套学习使用的《英美法律术语双解》。本书既是通向法律英语专业的桥梁课程，也是面向法学院、经济学院等专业本科生、研究生的法律英语通识课程。

为了力求实现教材内容的权威性和丰富性，编者参考了大量的英美原版法学书籍资料。在此谨对原作者表示谢忱。教材在编写上遵循由总述到具体、由浅入深的原则，基本上达到《大学法律英语教学大纲》《法律英语专业教学大纲》提出的目标要求。本书共由四部分组成：第一部分是英美法律基础知识简介；第二部分主要介绍美国法律体系中主要部门法；第三部分介绍法律翻译及法律文书写作的基础知识；第四部分为选择阅读，主要介绍美国法体系中的海商法、娱乐法等专业知识。这四部分内容浑然一体，又相互独立。学习本教材不一定要严格按前后编写顺序进行，教师完全可以根据学生的具体情况挑选合适的内容安排教学。

参加本书编写工作的还有甘肃政法学院赵永平副教授、马彦峰副教授，河南财经政法大学朱洁副教授，河南工程学院李跃凯副教授，河北师范大学顾维忱教授，中国政法大学曲欣博士以及山东政法学院刘艳老师等。感谢法律英语证书（LEC）全国统一考试指导委员会将该套教材推荐为复习应考LEC的参考用书。

编著者

2018年4月于中国政法大学

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Part I
Basics of Anglo-American Law

Chapter 1

Surviving Law School

Law school is not a walk in the park. It's a jungle out there, and you've got to be savvy to survive. There's a lot to know, and if you're not feeling a little nervous when you show up for Orientation, you're probably not human. Apprehension is to be expected. But don't despair. You can do this, and I can help. I've put together some of my very best tips below, so get to it!

Four Strategies to Think like a Lawyer

Law school is not about learning a set of rules. Law school is designed to teach you how to “think like a lawyer.” Professors have long ago settled that lawyers can always look the law up in a book, but designing an argument and analyzing a legal problem is a matter of reshaping the way a person thinks. Four key strategies will aid you in thinking like a lawyer.

Strategy 1: Accept Ambiguity.

Consider the following rule of law:

There is *always* an exception for *every* rule of law, except for the rules in which there are no exceptions.

At first glance this statement seems circular and contradictory. It states a general proposition that every rule has an exception. Then it goes onto say that there's an exception to this rule for rules that have no exceptions. It's like the childhood riddle, where someone states, “*I am a liar.*” If that person is a liar, how do you know that they are telling the truth in the statement that they are a liar?

The law is full of conundrums and ambiguities like this one. If you can accept the

interplay between those two statements without being distressed at the inherent fuzziness, then you will do well in studying the law. The law is inherently fuzzy in order to be flexible. Although judges attempt to interpret laws that are clear, there is almost always a set of circumstances where applying the rule would be unjust. Consequently, some latitude exists in the law in order to reach a just result.

This can drive you mad as a first year law student. You want as clear of an answer as you would get in mathematics or physics. The law is seldom black and white. Everything is a shade of gray. The right answer is almost always couched in terms of probabilities. “Maybe he’s liable for damages.” “He’ll probably go to jail for murder.”

There is no way around this, and the best method is to embrace and accept the inherent ambiguity of the law as a strength. Instead of thinking of the law as ambiguous, consider it flexible. Your skill as a lawyer will be in how you can use this flexibility to achieve the correct result for your client.

Strategy 2: Don’t be Emotionally Tied to a Position.

One of the biggest traps that professors use on unwary first year law students is playing on the emotions. The professor poses a hypothetical situation in which it’s easy to hate one of the parties and sympathize with the other. The trick is to apply the law neutrally in response to the parties’ legal rights and not your personal feelings.

The classic example is a situation in which a group of Neo-Nazis attempts to assert their First Amendment rights for free speech by holding demonstrations in a city largely populated with Jewish people who are concentration camp survivors.

Naturally, almost everyone feels sympathy for the concentration camp survivors. These people shouldn’t have to be subjected to a Neo-Nazi’s political belief in their own home. However, professors purposefully set up situations that create internal emotional conflict in order to illustrate that you should judge a situation according to the law and not let your individual biases get in the way. The correct legal result here is that the Neo-Nazi possesses a free speech right even in these circumstances so long as they are not inciting a riot.



This does not mean that you have to check your ethics at the door of law school. People complain that lawyers have no morals but these critics don't see the higher principles that are at stake. Those higher principles might be constitutional rights such as free speech or the right to be represented by counsel. This is the higher ethical ground that you need to take as an attorney rather than siding with one party or another merely because of your own political beliefs.

Finally, be aware that the professor's hypothetical situations are not the real world. While you may not like the result of the hypothetical, you need to demonstrate to the professor that you know how to apply the law. If you really feel that the result is unjust, then state the law with the correct legal result followed by your reasons on why you don't think the result is just. Just remember that it's a hypothetical. Don't be tied emotionally to things that don't matter.

Strategy 3: Argue Both Sides.

In order to avoid being emotionally tied to a position, you should always try to argue both sides of an issue. Luckily, the same ambiguity of the law that drives you crazy in Strategy 1 allows you the flexibility to be on either side of a question in Strategy 3. Adopting this attitude will better prepare you for the exam and the practice of law. You want to be able to take on either a defendant's or plaintiff's position for any given legal issue because you don't know whether the facts on the exam will lean towards one side or the other.

One of the biggest traps that first year law students fall into is studying only from their own point of view. For instance, some people are naturally plaintiff's attorneys—fighting for the underdog against the big corporate giant. Others tend towards representing defendants — protecting shareholder interests from people out to make a quick buck on a fraudulent claim. Each side is sometimes right and sometimes wrong. Your immediate goal on the exam is not to figure out what kind of lawyer you are. Your immediate goal is to do well on the exam. This means that you need to be able to argue the side that seems to be correct given the facts. This may, in fact, be a party that you wouldn't normally side with.

One major upside to this sort of training is that it will make you a better lawyer to be able to argue both sides of a case. Once you do adopt a plaintiff's or defendant's posture in real life, you will benefit from knowing what arguments the other side will bring forth. If you can understand the intricacies of another side's case, then you can better attack that argument.

Strategy 4: Question Everything.

Around the age of two years old, a child often starts asking his or her parents "Why?" You should be like a two-year-old. Every rule of law, judicial decision, statute and legal construct has a reason for its existence. It may not be a very good reason, but you will be a better lawyer for behaving like a two year old and repeatedly asking "Why?"

This act of questioning focuses you on policy as a basis for the law. Understanding policy will carry you far in successfully writing exams. Arguing policy is one of the four key methods of analysis.

Four Strategies to Excel as a Student

Law school is as much a psychological game as it is an intellectual game. Students defeat themselves ahead of time by stressing out on the workload. You can put yourself in a better position as a student by adopting these simple attitudes.

Strategy 1: Keep Your Cool.

Law professors use fear as a tool to motivate students to (1) work hard and (2) be cautious lawyers. Many professors feel that a little anxiety is a good thing for students. The very structure of the case method and Socratic dialogue used in most classrooms helps foster this fear since nothing is laid out on the table.

However, fear also takes you away from learning. It's a waste of valuable energy. Instead of focusing on the learning, you focus on the fear of not "getting it." To counteract the fear that is inherent in law school, consider three ideas:

First, everyone in your class is in the same state of ignorance. No one knows what's coming next.



Second, if you make a mistake in the classroom, it doesn't count. The only grade that counts in most law school classes is the final. Relax and make mistakes. It will help you in the exam to know your weak points.

Third, hundreds of thousands of students have sat where you're sitting now and have survived and thrived.

Some people purposefully create stress as a motivator for themselves. They freak out at the workload and use it as a way to bond with other students. Stay away from the people who are stressing out. Stress creates stress, and you want to focus your energies on studying, not stressing out.

Strategy 2: Compete Only with Yourself.

Although grades are important, it's also important to put them in perspective. One key factor in getting good grades is to forget about them and concentrate on the learning. Focusing on the competition — i.e. your fellow students — takes your eye off the ball, which is to learn the law. If you are constantly sizing up the competition and comparing yourself then you are taking yourself away from valuable study time.

Consider the following truism:

While grades are the only thing that counts, grades also count as only one thing. The idea here is to recognize the importance of grades in determining certain things, such as law review, summer jobs and so on. At the same time, you realize that the learning and relationships are far more important keys to happiness than grades.

The stress of getting good grades often creates competition, which leads to bad feelings between students. There are true stories of people hiding books in the library or ripping pages out of case books that are necessary to complete an assignment. This sort of competition can be very destructive.

The best strategy to deal with the stress of grades is to compete only with yourself and not others. The people in your class are your future colleagues. Building trust and relationships with these people will take you much further than any marginal increase in grades you might get from cut-throat competitive tactics for grades. The most successful

people in the world are not those who are most competitive with others. Rather, the most successful are those who compete with themselves to learn the most.

Strategy 3: Play with Concepts Like a New Toy.

Whenever you learn a new legal concept, play with it as if you were a kid and the concept was the coolest, neatest, newest toy that you own.

Make the concept your own by restating the principle in your own words. Turn the idea over in your head as you're walking to class or taking a shower. Whenever you learn a new rule, restate it a dozen times until you don't need notes to say it by heart. Once you really understand that concept by putting it in your own words, move on to other principles.

Apply the rule to your everyday situations. For instance, you might begin to apply the principles you learn in Contract law to your everyday dealings with grocers and retailers. As you drive down the highway, consider what you would have to prove to bring a negligence suit in Tort if there were an accident. If the car crash was caused by a faulty part in a foreign car you were driving, how could you use Civil Procedure to haul the manufacturer into Federal Court.

Closely related to this concept is the idea of making up hypothetical fact patterns in which the rule of law will or will not apply. Try this make-believe technique in order to better learn how to apply the rule. You'll be surprised at how closely you might come to guessing what fact pattern is on the exam.

A lot of the difficulty in learning comes from fighting it. We put ourselves into a non-receptive state by saying, "This is difficult. I don't understand." We also make it harder to learn by not focusing on the learning but by focusing on where we are on the general curve of learning — i.e. what's our class rank. By wasting energy on these areas we don't focus on the area where the true energy should flow — the actual learning of the law. Playing with the concepts like they were toys will defuse that difficulty.

Strategy 4: Strive for Balance in Your Life.

A lot of law students end up studying 12–14 hours a day in order to get through all



of the reading and work of law school. This can easily lead to burn out. Putting in more hours doesn't necessarily lead to more knowledge. The law of diminishing returns suggests that 80 hours a week may lead to less advancement in the study of law than a focused 40-hour week.

It is essential to have a balance in your life with exercise, eating right and fun time with your friends and family. You will get more out of the classroom if you are alert, well fed and otherwise on top of your game physically and emotionally than you will if you have read yet another treatise about the law.

You need to give law school a break in order to give it your maximum attention later on. You need time when you're not thinking like a lawyer in order to better achieve becoming a lawyer. In the words of the Alan Watts, a professor of Eastern religions, "By going out of your mind, you come to your senses."

Two Strategies to Bolster Self Confidence

Many law students suffer academically because they lack self confidence in their ability to handle the material. By deciding ahead of time that they don't have the ability, they fulfill that prophesy before even trying. In order to succeed academically in law school you have to adopt a belief in your ability. Belief alone won't carry you through to your goals. You also have to put in the work. But without a belief in your ability, you defeat yourself before you begin.

Strategy 1: Reprogramming for Success

If you've gotten as far as being accepted into law school, then you have the native intelligence to understand legal reasoning. Hundreds of thousands of people have learned to analyze issues like a lawyer, and you can do it too. If that isn't proof enough, then consider adopting a few techniques to foster self-confidence in studying the law.

One method is through affirmations. Affirmations are a tool you can use to counteract the negative self-image that is ingrained in the subconscious mind. Through the negative messages we receive in childhood, the subconscious mind develops limitations as to what

we can achieve. The subconscious tells us that we aren't an "A student," so we never put forth the effort to counteract that negative message.

Affirmations are a powerful tool to reprogram the subconscious. Affirmations are said in front of the mirror in the morning immediately when you get up and in the evening right before you go to sleep. It could be something as simple as:

"I, (your name), am an intelligent, confident, and articulate student who will become an outstanding advocate and attorney for my clients."

Affirmations generally get a bad rap. It's easy to dismiss affirmations as hokey, and, in a way, they are. But affirmations are also incredibly empowering. Affirmations illustrate just how powerful language can be. I challenge you to use affirmations for a week and see if they make a difference in your underlying attitude.

Another method to improve self-confidence is through visualization. High-performance athletes visualize winning a race before running it. During the actual race, they merely put into action what they have already visualized. You can use visualization to be successful in law school before you crack a book. Take a moment to visualize your first year in law school. Close your eyes and imagine a classroom where you and your fellow students engage in a lively debate. See in your mind a situation where you convince your peers to adopt a different viewpoint. Imagine taking your first test, having fun with it and knowing that you aced the exam. Fast-forward to your third year when you graduate. See yourself successfully taking the bar exam in your state. Visualizing doesn't mean that you don't have to do the work, but it will foster the belief in your ability to accomplish the task.

Strategy 2: The Myth of Mistakes

Fostering a belief in your ability is difficult when you are constantly faced with making mistakes. Mistakes are a fact of life in law school. The number of mistakes that a law school student makes is enormous. Everything about law school is new. The language of lawyering is new. The process of learning is different than most academic fields. The analytical thought process is a skill that doesn't come easily. You should expect to make