

English

美国法律英语

—— 在法律语境中使用语言

American Legal English

Using Language in Legal Contexts



(学生用书)

[德] 黛布拉·S·李
[美] 查尔斯·霍尔 著
[土] 玛莎·赫尔利

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English

内容简介

本书是一本将法律和语言完美结合的法律英语教材，共9章，分别介绍了美国法律的基本框架，并配有案例，每章安排有读、说、听、写多种练习及活动，帮助读者巩固学习效果。本书内容丰富、实用，为法学师生和法律工作者提供了一个在法律语境中学习英语的知识体系，通过学习可提高与世界同行进行实际交流的能力。本书还可作为大学生、研究生拓展学习，出国人员培训教材。

读者对象：大专院校法学师生、法律工作者、经贸工作者及相关人员。

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编译者的话

随着全球化进程的加快和中国加入 WTO, 我国急需大批既有法律专业知识, 又能熟练运用英语在法律环境下进行交流的高级法律专业人才。美国作为法治国家, 其法律以其先进性和完善性而闻名于世, 且其法律语言系统也相当完善, 并融入了大众日常语言。目前, 世界上很多国家的大学尤其是发达国家的大学为适应社会的需要都为法律专业的学生开设了法律英语课程。而目前在我国大学还没有法学专业硕士生和高级法律研修班英语教材, 因此, 引进外国法律英语教材成了当务之急。本着这一指导思想, 决定引进由德国奥格斯堡大学的黛布拉·S·李 (Debra S. Lee) 教授、美国田纳西州孟菲斯大学的查尔斯·霍尔 (Charles Hall) 教授和土耳其伊斯坦布尔的康克大学的玛莎·赫尔利 (Marsha Hurley) 教授合著的《美国法律英语——在法律语境中使用语言》。该教材 1999 年在美国问世后, 于 2000 年、2001 年和 2002 年连续三次再版。它内容丰富, 融读、写、听、说于一体, 引进该书并加以编译能为中国法专业的学生 and 法律工作者提供一个在法律语境下使用英语的知识体系, 以促进他们和世界上法律同行的实际交流能力。

本书的章节为: 美国法律体系的起源、法律权威和推理、刑法、民事程序、侵权、产品责任、公司、合同、模拟审判等九章, 每章均在五个水平层次上进行组织。第一水平层次为热身训练, 目的在于把学生已有的本国法律知识和美国法律概况联系起来; 第二水平层次是引出一些生词, 并增加一些法律词汇, 还编排各种各样的练习, 以提供机会让学生在听、说、读、写的活动中运用这些词汇; 第三水平层次向学生提供每章的法律主题介绍, 并配有读写练习; 第四水平层次或者向学生介绍语言知识, 以帮助学生了解在法律语言使用中应掌握的技能, 或者介绍文化知识, 以促进学生对法律和交流的理解; 第五水平层次安排更多的练习, 以向学生提供更多的机会把每章所学的内容融会贯通。为了帮助学生克服学习法律专业词汇和复杂句法的困难, 以较快地掌握法学专业知识和运用法律英语, 同时也为了让英语水平还不是太高的青年人自学国际法律知识, 引进版对法律知识介绍和法律条款进行了翻译, 对具体案例视其语言难度, 或进行法律英语专业词汇注释, 或采取中、英文对照的形式。

本人多年从事外语教学和英语语言学研究，对法律英语文体颇感兴趣。在本书的编译中，清华大学法律系的几位研究生参与了前期工作，在此谨向他们表示深深的谢意。同时，也感谢世界图书出版公司的同志们，他们为该书的引进出版，做了大量的工作和提供了许多便利条件。由于时间紧迫，加之编译者水平有限，本书中若有疏漏之处，敬请广大读者批评指正。

清华大学英语系 李秀立

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致 学 生

《美国法律英语——在法律语境中使用语言》，其意谓如何？本书的设计是为你提供基本的法律知识，以提高你与全世界法律人士理解和沟通的能力。它并非全面介绍美国法律，而且在这么个篇幅的书里是不可能做到的。然而，通过该材料你会发现，这些基本法律知识能提升你运用法律语言的能力。

英语熟练的要求：要从本书中获得最大的益处，需要提高你的总体英文水平。就教师而言，你应该是高级英语学生的指导者，当言传身教时，你将更需着力了解提供的所有材料。不过，我们不会提出你不可能解决的任务。

主题：在本书中，我们选择的主题出于三个动机：(1) 介绍美国法律系统的合法推理程序；(2) 概要介绍美国法律；(3) 普通利益和在工作场所的用途。每一章涉及一个特别的法律领域。在每章中都有练习设计，让你从总体上思索法律主题，接下来是法律解释的细节，其综合材料来之于实际案例、论文和法令条文。

结构：每一章中含有五个水平级别的内容，以备平稳地由简单概念向复杂概念转移。水平一是发现关联，可视之为热身运动，是在你已知道自己国家的法律基础上，让你全面了解美国的法律。水平二稍微难一些，这不仅要结合你已掌握的词汇，并且还要加上法律词汇，然后给你机会通过结合说、写、听进行多种练习，就如你在法律语境中所期望的那样。水平三是单一的法律概要，它涉及该章的主题，这更高级一点儿。水平四是提供某一语言焦点以改进语言艺术，这需要在法律语境或某一文化焦点中去提高你对信息和法律的理解。最后，水平五包含附加练习，这些练习通常更复杂一些，但能提供更多的机会让你把本章所学到的一切融会贯通。

隐藏在本书后面的理论，就是你将会获得你自己的国家法律怎样运作的理念。我们已经简略提供了美国法律的某些方面和供讨论的词汇，让你有机会运用。虽然你在这本教材里面将会学到很多新词，但我们选用黑体字标出来的仅限于法学术语。你务必注意我们用方括号括起来的所有那些黑体字及它们的定义。虽然这些法律练习没有执业律师所遇到的情况复杂，然而它们包含的技术类型相同，律师必须为他或她的客户

工作。

涉足法律这一领域是件苦差事，其结果是复杂的，证据不总是清晰可分的，法律条文也模棱两可。我们的希望是在完成本书的学习后，你将不仅发现美国法律更易理解，而且也提高了你对法律英语的理解，还会使你的语言修炼大有希望，尤其是在未来面对你的客户和同事之时。

To the Student

American Legal English : Using Language in Legal Contexts. What does that mean? This book is designed to provide you with an introduction to basic legal information and to improve your ability to understand and communicate with your legal counterparts around the world. This is not a comprehensive introduction to the law of the United States; that would be impossible in a book this size. However, as you go through the materials you will discover that the basic legal information given to you enhances your ability to use legal language.

English proficiency needed: In order to gain the most benefit from this book, your general English skills should be fairly well developed. In instructor terms, we would say you should be an intermediate to advanced student of English. As an intermediate student you will have to work a little harder to understand all the material that is presented. We have, however, not set you an impossible task.

Topics: We have chosen the topics in the book for three reasons: (1) to introduce you to the process of legal reasoning in the American legal system; (2) to give you a general introduction into American law; and (3) for general interest or usefulness in the workplace. Each chapter addresses a particular area of the law. Within each chapter are exercises designed to make you think about the legal topic in general, followed by a more detailed explanation of the law, incorporating materials from actual cases, treatises, and statutes.

Organization: The five levels within each chapter provide a smooth transition from simple concepts to more complex ones. Level I, Discovering Connections, serves as a warm-up, building on what you already know about law in your country and giving you an overall sense of what it is like in the United States. Level II is a slightly more difficult level that not only incorporates the vocabulary you already possess but also adds legal vocabulary and then gives you an opportunity to apply that vocabulary through a variety of exercises that incorporate speaking, writing, and listening as you would expect to encounter it in a legal context. Level III provides a simplified summary of the law, which is the subject of the chapter and is slightly more advanced. Level IV offers either a language focus to improve language skills that you will need in the legal world or a cultural focus to enhance your understanding of communication and law. Finally, Level V includes additional exercises that are often slightly more complex but that can provide additional opportunities to pull together everything you've learned in the chapter.

The theory behind this book is that you will already have an idea of how the law

works in your own country; what we have done is provide a simplification of some aspects of American law and the vocabulary to discuss them along with opportunities for you to employ that vocabulary. Although you will learn many new words in this text, we have chosen to boldface only legal terminology. You should pay careful attention to all boldfaced terms and their definitions that we have placed in square brackets. Though the legal exercises are less complicated than a practicing attorney might encounter, they nonetheless contain the same types of skills that the attorney must put to work for his or her clients.

Learning about an area such as law is hard work; the issues are complicated, the evidence not always clear cut, and the statutes frequently ambiguous. It is our hope that after having completed your study of this book you will not only find that American law is a bit more comprehensible to you but also that you have improved your understanding of how to decipher legal English and make that language work for you and hopefully, in the future, for your clients and colleagues.

致 教 师

本书体现了一种协作的成就，在介绍美国法律体系基本概念的同时，又让学生利用新获得的知识进行活跃的对话。法律这一专业需要评论性解读的技术、良好的写作能力、来之于调查的综合运用资源的能力，以及清楚而又简洁的表达能力。由于这种关系，法律英语课程与那些要求同种技巧的较为高级的英语课程并无任何不同。

本教材并不打算对美国法律作全面介绍，对一本书来说，这将是不可可能的任务。然而，它涉及主要的法律领域，能给学生一些实际案例和与职业有关的法令，使之熟悉法律文法和法律词汇。我们试图选择一些学生们感兴趣的主题和案例，一旦进入工作场所，他们就能运用起来。

你不是作为一名律师使用本书，即使你第一眼见到它时曾这样想过。如果你已经选定法律英语课程，你需要考虑的是将其作为任何其他一种 ESP（作为特种用途的英语）课程。怀着对这一科目内容的兴趣，如同开发资源那样利用你的学生而走进这门课程。你走进班级不同于一名律师或一名 ESP 教师，但最终目的则相同。你的学生必将能够弄懂法律英语方面的材料，及时完成本书的学习。

虽然本书最初的打算是为学中级以上和高级英语的学生而写，由于作了某种改编，一位为中级水平学生教学的教师应能使用它。可以假定部分学生基本上有良好的综合英语知识，但绝不假定他们掌握了法学术语或基本了解了美国法律体系。学生具有的有关本国法律体系的基本知识是极有帮助的，这样，他们对本书介绍的一些概念就会有框架。

结 构

本书章节安排的顺序，是让学生首先得到美国法律体系的重要基础知识，然后进入法律的特定领域（刑法、民事程序、侵权，等等）。如果教师愿意的话，每章亦可被重新排序；不过，先前章节建构的知识，在最后的第九章“模拟审判”中使全部技巧达到了顶点。第九章通过处理一交通事故的模拟审判，要求学生运用他们在课本中学到的所有技巧，包括口头表达、发言和记录、评论性阅读和调查技术来进行。通过本书，他们有机会观察美国的审判工作，最终有机会学以致用。

每章有五个水平级，其结构如下：

1. 发现关联：计划的激活——这个活动设计激发学生思考该章的内容。

2. 用法律知识来说，来讨论，掌握法律术语，用来听，用来听和写，或者说和听：法律语言的实际运用——有独特的章节设计来通过实践运用某些语言。

3. 法律知识：每一章有关这部分的设计是提供一些基本的法律知识，因而总的说来这是些有特色内容的课程。然而，这些信息无意取代一般知识，之所以在教程中一再重复地加以强调，就在于一项法令能或者不能存在于司法权中；如果法令确实存在，它极有可能在那些不同的司法权中以不同的解释为条件。法律知识也介绍法律词汇。法律有它自己的语言，至关重要的是懂得法律术语的精确含义，美国的判决可能恰恰以这一点为转移。

学习法律知识的要点是快速复习，这些简略的测验会以不同方式发生作用。如果前面学过的法律术语特别密集，通常可以通过词汇强化训练。有时把它们提出来以考查学生对法律推理的理解，这是在一套实际的细节中进行。它们也可能被用来提起学生的注意，以根据事实作出至关重要的法律决定。对于任何快速复习，不必给出明确的方向，教师可选择给予个别的回答或在一个小组中以笔头或口头回答。

如果你刚好是一名律师，你要注意的将可能是法律上明显的漏洞，而本书的目的是提供基本的法律观念以让学生练习法律的运用。这不是刻意去冒充法学的坚果壳 [由法学教授为美国法学学生写出的简明观点]，而是刻意提供法律知识实际运用的框架。

4. 语言聚焦或文化聚焦：第二章和第三章包括有密集型文化和松散型文化以及文化辩护。这两个题目在当前是引人注意的，并已经引起学生极大的兴趣。在第一章，我们谈到礼貌的形式和交流时的沉默。在其余几章中，我们基于法律和语言课程教学时发现的问题而提出语法焦点。

5. 补充练习：根据章节的难度，各种练习可供教师在需要时所用。练习的设计是对涵盖前面 (I - IV) 水平级知识的复习。不是所有的练习都是高级的，其中我们为一些中等级别的学生设计了一些较为容易的练习，你肯定会觉得这些练习会使你的学生获得最大裨益。

听力光盘应同本教材结合使用。你会注意到，光盘包括本国的和非本国的说英语者两种。这样做是出于法律界的诸多业务是在第一语言不

是英语的人之间开展的。

最后，本书旨在帮助你在积极的协作中调动学生创造一个活跃的课堂环境。学生在听课过程中的积极参与是学生在课堂上的成功。祝你好运，希望你喜欢使用我们的著作。

To the Teacher

This text represents a collaborative effort to put together an introduction to the basic concepts of law in the U.S. legal system, while at the same time providing communicative activities that allow students to put that newly acquired knowledge to use. Law is a profession that requires critical reading skills, the ability to write well, the ability to synthesize sources resulting from research, and the ability to speak clearly and concisely. In this respect, a legal English course is no different from any upper-intermediate to advanced English course that requires those same skills.

The text is not intended as a comprehensive introduction to U.S. law because that would be an impossible task to ask of one book. It does, however, address major areas of the law, giving students real cases and statutes to work with so that they can become familiar with both legal syntax and legal vocabulary. We have tried to choose topics and cases that will be of interest to the students and be of use once they enter the workplace.

You do not have to be an attorney to use this book, even though at first glance you might think so. If you have been assigned a legal English course, you need to think of it as you would any other ESP (English for Specific Purposes) course. Approach the course with an interest in the subject matter and use your students as resources. Your approach to the class may be different from that taken by an attorney/ESP instructor, but the final goal is the same. Your students should be able to communicate about legal matters in English by the time they finish with the book.

Although the book is primarily intended for upper-intermediate to advanced students of English, with some adaptation a teacher of intermediate-level students should be able to make use of it. A good basic knowledge of general English on the part of the students is assumed, but there is no assumption that the students have any command of legal terminology or even a basic understanding of the U.S. legal system. A knowledge of the basics of the legal system in their own country is extremely helpful, for then the student has a schema for some of the concepts that this book introduces.

Organization

The chapters are ordered so that students are given important basic information about the U.S. legal system first, then move into specific areas of the law (criminal law, civil procedure, torts, etc.). Each chapter, though they can be reordered if the instructor so desires, builds on information given in previous chapters, moving in the end to a culmi-