

全国高等院校法律英语精品系列教材  
法律英语证书 (LEC) 全国统一考试指定用书

A Comprehensive Course in  
Legal English

# 法律英语

## 综合教程

法律英语证书 (LEC) 全国统一考试委员会 / 编

中国法制出版社  
CHINA LEGAL PUBLISHING HOUSE

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## 前 言

随着我国入世和改革开放程度不断加深,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的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的讲授语法知识,但本书的编写设想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有不低于六千英语词汇量。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,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,以期最大程度的展现美国法原貌。

再次,本书在每部分后面都附有相关的练习题,以期帮助读者检查自己学习掌握法律英语术语、基础美国法知识和逻辑推理知识的程度,查漏补缺。

本书共分十三部分。第一、二部分首先介绍了基本法律英语词汇的特点、美国的法律体系,这是学好法律英语的基础。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阐述;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商业秘密、版权、专利、商标的概念及其的保护；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企业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。本书最后一部分简单介绍了逻辑推理（logical reasoning）的有关知识，这也是涉外法务工作人员需熟练掌握的不可或缺的知识。

法律英语证书（Legal English Certificate，简称 LEC）全国统一考试旨在为国家机关、涉外企事业单位、律师事务所等提供招募国际性人才的客观标准，同时督促国内法律从业人员提高专业英语水平。LEC 考试的题型、考查内容与美国律师资格考试相近，同时又突出了法律英语语言运用特色，并结合中国实际增加了法律英语翻译测试。公检法机关和企事业单位涉外法务工作人员；从事涉外法务的律师、公司法律部门的从业人员；高等院校法律、英语、经贸等专业学生；愿意从事法律英语教学的教师以及社会上一切法律英语爱好者均可参加 LEC 考试。LEC 考试每年举行两次，分别在 5 月和 12 月的最后一个星期六举行。有关考试信息请考生关注 LEC 考试官方网站：[www.lectest.com](http://www.lectest.com)。

本书由法律英语证书（LEC）全国统一考试委员会组织专家编写，它不仅为欲参加 LEC 的考生提供了系统权威的复习指南，也是一本为全国高等院校学生学习法律英语所精心编写的精品系列教材之一。

书中不当之处，敬请同仁指正。

编 者

2009 年 9 月 9 日

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# Part One Basics of Legal English

## Chapter 1 Introduction

Legal English is the style of English used by lawyers and other legal professionals in the course of their work. It has traditionally been the preserve of lawyers from English-speaking countries (especially the U. S., the UK, Canada, Australia, and New Zealand) which have shared common law traditions. However, due to the spread of English as the predominant language of international business, as well as its role as a legal language within the European Union, legal English is now a global phenomenon.

Law is everywhere in the United States. The daily newspaper and the evening news report about the latest sensational criminal trial, massive lawsuit, or constitutional claim. Because law is everywhere, the language of the law is everywhere, too. New stories, television shows, and legal transactions are filled with special words and phrases. To learn legal English well, one must study the features of legal terms or jargons first.

Law must contain technical terms, but "technical" does not have to equate to "incomprehensible". In a democratic society, law belongs not to the lawyers but to the people, and ordinary people need to be able to understand the law. That is the purpose of this chapter: to make the language of the law accessible to the layperson and the beginning student of the law.

When you encounter an unfamiliar legal term or phrase, you should make it a habit to look up that word not only in a bilingual dictionary but also in a good, English language law dictionary. You must do this because many words that appear to be familiar will have very different meanings in American law. For example, the functions of a "notario" in Spain or Latin America are much more extensive and significant than the functions fulfilled by a "notary" in the United States.

When you look up a word in an English language law dictionary, you will usually learn not only that word but other words as well. By doing so, you will learn more about the legal concepts you are studying. You know already that many words are capable of multiple meanings. Even a simple word such as "issue", for example, can refer to:

- (1) A legal question to be decided by a court;

(2) The process by which a judge will approve a police officer's request for a search warrant; or

(3) The children of a testator (someone who has written a will).

Some people say that finding alternative meaning for words is at the heart of the lawyer's craft. Consider this quotation from John Marshall, the "Great Chief Justice" of the U. S Supreme Court:

*Such is the character of human language, that no word conveys to the mind, in all situation, one single definite idea; and nothing is more common than to use words in a figurative sense. Almost all compositions contain words, which, taken in... their rigorous sense, would convey a meaning different from that which is obviously intended.*

You may also have the experience that the terms here are too difficult. Remember that this course is only an introduction – you will encounter these words and phrases in the future. You will have other opportunities to learn more about these terms. Do not be discouraged if you are having difficulties – you are being challenged and you can rise to meet that challenge. American law students often encounter similar difficulties as they begin their studies: many words that were once familiar are no longer so in the context of specific legal documents.

## Chapter 2 Historical Development of Legal English

Modern legal English is based on standard English. However, it contains a number of unusual features. These largely relate to terminology, linguistic structure, linguistic conventions, and punctuation, and have their roots in the history of the development of English as a legal language.

Following the Norman invasion of England in 1066, Anglo – Norman French became the official language of legal proceedings in England for a period of nearly 300 years. Consequently, many words in common use in modern legal English are derived from what evolved into Law French. These include property, estate, chattel, lease, executor, and tenant. The use of Law French during this period has an enduring influence on the general linguistic register of modern legal English. It also accounts for some of the complex linguistic structures employed in legal writing. During this period, Latin remained the language of formal records and statutes. However, since only the learned were fluent in Latin, it never became the language of legal pleading or debate. The influence of Latin can be seen in a number of words and phrases such as *ad hoc*, *de facto*, *bona fides*, *inter alia*, and *ultra vires*, which remain in current use in legal writing. ①

In 1356, the Statute of Pleading was enacted (in French). It stated that all legal proceed-

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① [www.wikipedia.org](http://www.wikipedia.org)

ings should be in English, but recorded in Latin. Nonetheless, the use of French in legal pleadings continued into the seventeenth century in some areas of the law. In this later period, new branches of – in particular – commercial law began to develop entirely in English and remain relatively free of French – based terminology.

As the printed word became more commonplace, some writers made a deliberate effort to adopt words derived from Latin, with the aim of making their text appear more sophisticated. Some legal words taken from Latin in this way are *adjacent*, *frustrate*, *inferior*, *legal*, *quiet* and *subscribe*. Some writers also started to use a Latin word order. This led to an ornate style, deliberately used to impress rather than inform. Even today, Latin grammar is responsible for some of the ornateness and unusual word order of legal documents. It also lies behind the frequent use of *shall* constructions in legal documents.

English was adopted for different kinds of legal documents at different times. Wills began to be written in English approximately during the 1400's. Statutes were written in Latin until about 1300's, in French until 1485, in English and French for a few years, and in English alone from 1489.

## Chapter 3 Characteristics of Legal English

Legal English differs from standard English in a number of ways. The most important of these differences are as follows:

### 1. Extensive use of words and phrase derived from French and Latin

Legal English stems from Latin and French. Sometimes foreign phrases are used instead of English phrases (e. g. *inter alia* instead of *among others*), unusual pronouns are employed (*the same*, *the aforesaid*, etc), and unusual set phrases are to be found (*null and void*, *all and sundry*).

### 2. Legal terms of art

Legal terms of art are technical words and phrases that have precise and fixed legal meanings and which cannot usually be replaced by other words. Some of these will be familiar to the layperson (e. g. *patent*, *share*, *royalty*). Others are generally only known to lawyers (e. g. *bailment*, *abatement*).

### 3. Legal jargon

Terms of art should be differentiated from legal jargon. Legal jargon comprises words used by lawyers, which are difficult for non – lawyers to understand. Jargon words range from near – slang to almost technically precise words. Well – known examples of jargon include *boilerplate clause* and *corporate veil*. Jargon includes a number of archaic words no longer used in ordinary English. These include *annul* (to declare that something, such as a contract or marriage is no longer legally valid) and *bequest* (to hand down as an inheritance property other than land). It

also includes certain obscure words which have highly specialised meanings and are therefore not often encountered except in legal documents. Examples include *emoluments* (a person's earnings, including salaries, fees, wages, profits and benefits in kind) and *provenance* (the origin or early history of something). Jargon words should be replaced by plain language equivalents wherever possible.

#### **4. Legal meaning may differ from the general meaning**

There is also a small group of words that have one meaning as a legal term of art and another meaning in ordinary English. One example is the word *distress*, which as a legal term of art refers to the seizure of goods as security for the performance of an obligation. In ordinary English it means anxiety, pain or exhaustion.

#### **5. Words may be used in apparently peculiar contexts**

A number of words and phrases, which are used in ordinary English, are also used in legal English but in unusual contexts. Examples include *furnish*, *prefer*, *hold*.

#### **6. Lack of punctuation**

One of the most unusual aspects of old – fashioned legal drafting – particularly in conveyances and deeds – is the almost complete lack of punctuation. This arose from a widespread belief among lawyers and judges that punctuation was unimportant and potentially confusing, and that the meaning of legal documents should be gathered solely from the words used and the context in which they were used. In modern legal drafting, punctuation is (or should be) used for the same reason as it is used in ordinary writing – to give clarification about meaning.

#### **7. Use of doublets and triplets**

There is a curious historical tendency in legal English to string together two or three words to convey what is usually a single legal concept. Examples of this include *null and void*, *fit and proper*, *perform and discharge*, *dispute*, *controversy or claim*, and *promise, agree and covenant*. Such constructions must be treated with caution, since sometimes the words used suggest, for practical purposes, exactly the same thing (*null and void*); and sometimes they don't (*dispute*, *controversy or claim*).

#### **8. Unusual word order**

At times, the word order used in legal documents appears distinctly strange; for example, "*the provisions for termination hereinafter appearing*." There is no single clear reason explaining this phenomenon, although the influence of French grammatical structures is certainly a contributing factor.

#### **9. Use of unfamiliar pro – forms**

For example, *the same*, *the said*, *the aforementioned* etc. The use of such terms in legal texts is interesting since very frequently they do not replace the noun – which is the whole purpose of pro – forms – but are used as adjectives to modify the noun. For example: "*the said John Smith*."

### 10. Here – , there – and where – words

Words like *hereof*, *thereof*, and *whereof* (and further derivatives, including – *at*, – *in*, – *after*, – *before*, – *with*, – *by*, – *above*, – *on*, – *upon* etc) are not often used in ordinary English. They are used in legal English primarily as a way of avoiding the repetition of names of things in the document – very often, the document itself. For example, *the parties hereto* instead of *the parties to this contract*.

### 11. – *er*, – *or*, and – *ee* name endings

Legal English contains a large number of names and titles, such as employer and employee, or lessor and lessee, in which the reciprocal and opposite nature of the relationship is indicated by the use of alternative endings. This practice derives from Latin.

### 12. Use of phrasal verbs

Phrasal verbs play a large role in legal English, and are often used in a quasitechnical sense. For example, *parties enter into contracts*, *put down deposits*, *serve* [documents] *upon other parties*, *write off debts*, and so on. ①

## Chapter 4 Terms and Rules in Legal English

### 1. Articles

Articles in English include *the*, *a* and *an*. *A* is used when mentioning something for the first time ("a client walked into the office"). *An* is used in the same circumstances but only where the following word begins with a vowel ("an attorney walked into the office"). *The* is used when referring to something already mentioned before ("the client then sat down"), or when referring to something that is the only one of its kind ("the sun") or when referring to something in a general rather than specific way ("the internet has changed our way of life").

In some circumstances, articles should be omitted. For example, when a sentence links two parallel adjectival phrases, the article should be omitted from the second phrase. For example: *The judge ruled that Cloakus Ltd was a validly registered and (an) existing company*. In addition, when using certain abstract nouns in a general, conceptual sense, it is not necessary to use an article to precede the noun. For example: *In the event of conflict between the definitions given in appendix 1 and the definitions given in the contract, the contract shall prevail*. There is no need here to precede *conflict* with *a*, since *conflict* is used in a general conceptual sense. However, when referring to a specific conflict, articles should be used, as in *the opposing factions took part in the conflict*.

### 2. Prepositions

Prepositions are words used with a noun or pronoun which show place, position, time or

① [www.wikipedia.org](http://www.wikipedia.org)

method. Prepositions such as *to, in, from, between, after, before*, etc, normally come before a noun or pronoun and give information about how, when or where something has happened ( " she arrived before lunch " , " I travelled to London " ). The preposition *between* should be followed by an object pronoun like *me, him* or *us* instead of a subject pronoun such as *I, she* and *we*. It is therefore correct to say " this matter is between you and me " and wrong to say " this matter is between you and I ". The main problem for the non – native speaker is remembering which preposition to use. There are no clear rules to follow in this respect, but some examples of common usages are set out below :

*The parties to this agreement ...*

*The goods must be delivered to the purchaser.*

*The commencement/termination of this agreement ...*

*The price list set out in Schedule 1 ...*

*Royalties will be paid in accordance with this agreement for a period of five years.*

*The goods must be delivered within 14 days.*

*The Company agrees to provide training for service personnel.*

*The agreement may be terminated by notice.*

*An arrangement between the Seller and the Buyer ...*

*It is agreed that the goods will be collected from the Seller's warehouse at 21 Redwoods Road.*

*Interest will be charged on any unpaid instalment after the expiration of a period of 28 days from the date hereof.*

*He was charged with murder.*

*The property at 2 Parker Street is sold with vacant possession.*

It is important to note that in certain circumstances it may be possible to use more than one preposition, and that there may be small but important differences in meaning between them. For example, the sentence; *The goods must be delivered within 7 days* is subtly different from; *The goods must be delivered in 7 days*. The use of the word *within* makes it clear that the goods may be delivered at any time up to the seventh day, while the word *in* might imply that the goods should only be delivered on the seventh day. This minor linguistic difference could be critically important in a contract for the sale of goods.

### 3. Pronouns

A pronoun is a word used instead of a noun to indicate someone or something already mentioned or known; for example, *I, you, this, that*. Pronouns are used to avoid repeated use of a noun. They are usually used to refer back to the last used noun.

Legal drafters have traditionally avoided using personal pronouns such as *he, she, we, they*, instead replacing them with formulations such as *the said, the aforesaid* or *the same*. The reason for this is a fear of ambiguity in cases where it is unclear to which noun the pronoun might refer

if a number of parties are mentioned in the document. Here is an example of a sentence made ambiguous by unclear use of personal pronouns: *He arrived with James and John. John then continued his journey by car. James stayed at the depot, and he followed John later.* The modern trend, however, is to use pronouns where possible, as their use makes documentation less formal and intimidating. For example, "you must pay the sum of £ 100 per month to me" is easier for a layperson to understand than "the Tenant must pay the sum of £ 100 per month to the Landlord". However, their use is inappropriate where the aim of the drafter is to impress the reader with the seriousness of the obligations being undertaken, as pronouns often lead to a chattier and lighter style than is found in traditional legal documentation.

One aspect of pronoun use which is now highly relevant lies in the desire to avoid sexist language in legal and business English. A list of common gender - neutral pronouns and adjectives which can be used to avoid using sexist language is set out below:

any, anybody, anyone, each, every, everybody, nobody, none, no one, some, somebody, someone

#### 4. Adjectives

An adjective is a word used to describe a noun or make its meaning clearer (eg, *excellent*, as in "an excellent horse"). Some words in the English language have the ability to change parts of speech. For example, the word *principal*, often used in legal English, can be used as an adjective ("the principal sum") or as a noun ("the principal instructs the agent"). Some adjectives are described as uncomparable adjectives, meaning that they describe something which can only be absolute. Such adjectives cannot be qualified by words like *most*, *more*, *less*, *very*, *quite* or *largely*. For example, if a provision in a contract is void, it cannot be "largely void" or "more void" - it is simply void. A short list of uncomparable adjectives is set out below:

absolute, certain, complete, definite, devoid, entire, essential, false, final, first, impossible, inevitable, irrevocable, manifest, only, perfect, principal, stationary, true, uniform, unique, void, whole.

#### 5. Adverbs

An adverb is a word which modifies or qualifies a verb (e. g. , *walk slowly*), an adjective (e. g. , *really small*) or another adverb (e. g. , *very quietly*). Most adverbs consist of an adjective + the ending - *ly*. There are a number of words which act both as adjectives and as adverbs, to which the suffix - *ly* cannot be added. These include:

alone, early, enough, far, fast, further, little, long, low, much, still, straight

#### 6. Collective nouns

A collective noun is one that refers to a group of people or things (*jury*, *government*). Such nouns can be used with either a singular verb ("the jury was made up of people from many different backgrounds") or a plural verb ("the jury are all in the court now"). It should be remembered that if the verb is singular, any following pronouns (words such as *he*, *she* or *they*)