

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 Course in Legal English
Writing

法律英语 写作教程

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

涉外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，这就是高效的法律英语写作能力。法律文书应当是十分清楚、精准、全面而且通俗易懂的，但是，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学习法律英语写作，本书详细介绍了几种重要、实用的法律文书的写作方法。

本书共分为三部分，第一部分为律师信函，详尽介绍了几种常用信函的写法。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，注重的是语言技巧，这是涉外法律从业人员必须轻松掌握并熟练运用的。与对方当事人或其代理律师的沟通信函多是与诉讼相关的信函，涉及大量法律术语，这是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。律师处理日常事务的信函也很有特点，通过本章的介绍可使欲从事涉外法律事务的人士在处理日常事务时有章可循。

第二部分介绍了案件法律分析报告（Law 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，其内容是通过案件的客观分析，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技巧以及案件剖析讨论的写作方式。

案件辩论书（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似，但两者在本质上是不同的。案件法律分析报告是客观的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。

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 官方网站：www.lectest.com。

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，书中引用了大量的律师信函、案件法律分析报告、案件辩论书等主要法律文书的原版范文，在此对原作者表示衷心地感谢！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 考试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

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Chapter 1 Introduction to Legal Writing

"Lawyers in practice are generally judged by the final product they produce; the written, negotiated text. Clearly, in my firm, the first thing new lawyers will be judged upon is their writing. The fastest way to get ahead as a new lawyer is to be an able writer. The fastest way to fail is to be a poor writer."

——Bryn Vaaler, *Compositional Practice: A Comment on "A Liberal Education in Law,"*
1 J. ALWD 148, 149 (2002). ^①

From this, we can see clearly the importance of legal writing for the law professionals. The general introduction to legal writing is as follows.

1. Definition

Legal writing is a special type of writing done by attorneys, judges, legislators and others in law. The purpose of this writing is to communicate various legal rights, analysis, and legal duties etc. Unlike regular writing, legal writing is technical and involves continuous dependence on citations, gives importance to precedence and uses special legalese that sounds very formal. There has been a move to reduce such very formal style of writing and to make legal writing simple enough for the layman to understand. However, one must remember that the purpose of legal writing is to make a precise document and informal style may make a legal document's intentions hazy. ^②

2. Features

Legal writing has three features: 1) Authority; 2) Precedent; 3) Terminology. First, legal writing values authority. In most legal writing, the writer must clearly cite the authority. This is accomplished by a unique and complicated citation system, unlike that used in any other genre of writing. The standard methods for American legal citation are defined by two competing rule-books: the *ALWD Citation Manual: A Professional System of Citation* and *The Bluebook: A Uni-*

① http://raymondward.typepad.com/rainman2/2004/12/the_importance_.html

② <http://ezinearticles.com/?What—is—Legal—Writing?&id=1223274>

form System of Citation. Different methods may be used in other countries.

Second, legal writing values precedent, as distinct from authority. Precedent means the way things have been done before. For example, a lawyer who must prepare a contract and who has prepared a similar contract before will often reuse, with mere changes, the old contract for the new occasion. Many lawyers use and reuse written documents in this way and call these reusable documents templates or forms.

Third, legal writing extensively uses technical terminology that can be categorized in four categories: 1) Specialized words and phrases unique to law, e. g. , tort, plaintiff, and recidivism. 2) Quotidian words having different meanings in law, e. g. , battery (physical interference with another person), discovery (disclosure of information by the opposing party in a lawsuit). 3) Archaic vocabulary: legal writing employs many old words and phrases that were formerly quotidian language, but today exist only in law, dating from the 1500s; English examples are herein, hereto, hereby, heretofore, herewith, whereby, and wherefore (pronominal adverbs); said and such (as adjectives). 4) Loan words and phrases from other languages: In English, this includes terms derived from French (jury, breve, and voir dire) and Latin (alibi, affidavit, de facto, quorum, certiorari) and are not italicized as English legal language, as would be foreign words in mainstream of English writing.

These features tend to make legal writing formal. This formality can take the form of long sentences, complex constructions, archaic and hyper—formal vocabulary, and a focus on content to the exclusion of reader needs. Some of this formality in legal writing is necessary and desirable, but when legal content must be conveyed to non—lawyers, formality should give way to clear communication.

Many U. S. law schools teach legal writing in a way that acknowledges the technical complexity inherent in law and the justified formality that complexity often requires, but with an emphasis on clarity, simplicity, and directness. Yet many practicing lawyers, busy as they are with deadlines and heavy workloads, often resort to a template—based, outdated, hyper—formal writing style in both analytical and transactional documents. This is understandable, but it sometimes unfortunately perpetuates an unnecessarily formal legal writing style.

3. Categorization

Legal writing is categorized into two types: legal analysis and legal drafting. Legal analysis can be predictive or persuasive writing, while legal drafting creates binding, legal text. In the United States, in most law schools students must learn legal writing; the courses focus on: (1) predictive analysis, i. e. , memorandum; and (2) persuasive analysis, e. g. , briefs. Although not as widely taught in law schools, legal drafting courses exist; other types of legal writing concen-

trate upon writing appeals or on interdisciplinary aspects of persuasion.^①

Memoranda are documents that lawyer must write to analyze the merits of a case or a particular legal issue. Legal advice to a client is often based on a formal memorandum of law, which is a basic document of legal writing. It is usually written by a clerk or junior attorney for a more experienced attorney to predict what effect application of the relevant law will have on the client's situation. Senior attorneys use memorandum to determine what advice to give a client. The specific guide of writing memoranda is given in Chapter 3 (Law Office Memoranda Writing).

The brief is the formal document a lawyer uses both to convince a court that the client's position is found and to persuade a court to adopt that position. Briefs are similar to memorandum in many respects, and many of the principles apply to briefs. Both must honestly state the law, the facts of the case, and the reasons for their conclusions clearly and concisely. But briefs differ from memoranda; Briefs argue; memoranda discuss. How to write the brief is addressed in Chapter 4 (Basics of Writing Briefs).

In addition, lawyers write many letters to communicate information to clients, to request information from government agencies and other lawyers. All letters benefit from clear writing and simple organization. How to write a legal letter is discussed in Chapter 2 (Writing Letters).

4. Techniques

When you start legal writing, always remember **Issues, Rules, Application, Conclusion—IRAC**. IRAC is often a good starting point for an essay involving doctrinal analysis of the law.^② The writer must start with identifying the relevant legal issue, which often involves a mixed question of law and fact. Then, the writer must identify the controlling rule of law and give some citation of authority to the source of the rule. Next, the writer applies the facts to the rule of law. Finally, the writer concludes the discussion of the issue and predicts how the court should rule on the particular legal issue.

Planning is the key to effective writing. Consider the available time, and divide the task into manageable sub—tasks. You may need to decide who your readers are and what they need to know. By default, assume you are writing for a lawyer without detailed knowledge of the topic under consideration.

The most important stage is **research**. You need to prepare your writing by collecting information. Make full use of printed and electronic documents to find relevant sources. Make notes about your sources, including an accurate reference complying with the rules set out in this document. Always remember you are the only person who is responsible for the accuracy of these

^① http://en.wikipedia.org/wiki/Legal_writing

^② <http://www.ncl.ac.uk/nula/lectures/legwrit/legal%20writing%20v%207.pdf>

references. **Quotations** must be enclosed in quotation marks(" . . . ") and must have a pinpoint reference(page or, if available, paragraph number). Short quotations can be included naturally in the text, but anything that runs for more than three lines should be separated from the text in an intervening paragraph and indented from the left hand margin. Large numbers of long quotations should be avoided. Make sure you are aware of and comply with the rules against plagiarism. If the quotation is not attributed, it is kind of plagiarism.

Whatever the task, your aim should be to write clearly, directly and succinctly, avoiding bad grammar and spelling mistakes as well as unnecessary jargon, circumlocution, and tautology. Consider carefully the **order** in which your material is to be arranged so that your arguments can be put as clearly as possible. You will need to be able to use word—processed **footnotes**. And, you should use recognized legal **abbreviations**. For example: *Ibid*, *loc cit*, and *cf*.

Include **revision** time in your plan. Proofread the entire document, checking for internal consistency, spelling and correct references. Word processing spelling checkers should be used with caution. They will detect many typographical errors but may offer incorrect or even absurd alternative forms, and are not a substitute for proof reading, and the use of a dictionary.

To sum up, this is the general introduction to legal writing in terms of definition, features, categorization, and techniques. The book will show you the specific writing skills and procedures of legal writing in following chapters.

Chapter 2 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 letters. These letters serve different purposes, such as advising clients, seeking compliance, sending documents, obtaining information etc. . 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. ①

1. Classification of the Letters

There are mainly three types of legal letters to be covered in this chapter:

(1) Attorney—Client Correspondence

The Attorney—Client Correspondence refers to the letters sending from the attorney to their clients or prospective clients. The attorney may give his client some advice, ask for information, make sure the attorney's fees, and so on.

(2) Attorney—Adverse Party Correspondence

The Attorney—Adverse Party Correspondence means the letters sending from the attorney to the adverse party or the attorney representing the adverse party to negotiate, ask the adverse party to take action, and so on.

(3) Daily Correspondence

The Daily Correspondence is the letters attorneys dealing with the routine works concerning law, such as asking the information of a law school or a legal newsletter.

① <http://www.jamesmartinpa.com/letters.htm>

2. Steps to Write a Letter

There are many factors to be considered in legal letter writing. Please follow the following steps to write a complete legal 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 these 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 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 _____

(11) 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 wrote the letter and what it means.

(12) Identify your client.

It is important to let others know who your client is 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.

(13) 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 _____."

"I am writing to let you know that _____."

"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 _____."

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

Listing enclosures at the beginning of the letter will make it easier for your staff to assem-

ble 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.

(15) 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. Cleaning Up

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

(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 _____; and

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.

4. Techniques to Write Efficiently

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 different directions.

The only time repetition is helpful is when explaining a difficult concept. Each time you explain it you can make it a little clearer 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.

5. Samples

The following samples illustrate a range of letters and writing styles. These are only samples and not models.

(1) Attorney—Client Correspondence

1. Letter Declining Client^①

SHICHENG LAW FIRM,
BEIJING, CHINA

April 21, 2009

Sarah Smith
IGR Corporation
711 Golden Terrace, Suite 1313
Chicago, IL 60613

Dear Ms. Smith,

We have discussed, investigated and reviewed your potential legal claim. After a cost/benefits and legal analysis, we have decided not to pursue your case. Due to the problems we perceive with taking your case, we are declining to be your attorneys and will take no further action in regard to this matter.

I would urge you, however, that if you wish to pursue your legal rights, you should contact an attorney as soon as possible, since there is a statute of limitation on your potential claim. Also be advised that failure to pursue your claim before the statute runs will result in a complete loss of your rights.

Thank you for considering this law office for legal representation.

Sincerely,

Sun Li
Partner

^① http://forms.lawguru.com/letter-declining-client_p.html