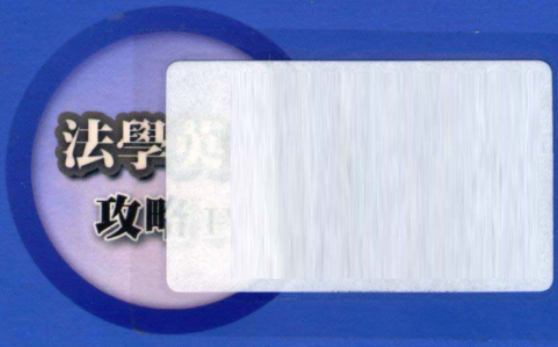
法學英文

攻略 IV

Legal English

林利芝 /編著

新學林出版股份有限公司



Legal English

本書每一篇皆從英文原文的案例出發，到最後的測驗複習，每一環節的精心設計都出自於作者自身教學經驗所得。經由這樣的導引，讀者可以逐步攻略法學英文當中的“閱讀技巧”、“搜尋技巧”、“分析技巧”以及“寫作技巧”。這些技巧可以幫助讀者眼明手快地找出法律爭議，自信滿滿地去適用解決爭議的法律或法則，並且能舉一反三地將法律或法則靈活運用在其他的具體事實情況。經過這樣長期的訓練累積，讀者便能有條理地分析與應用，進而躋身成為具有十足國際競爭力的法律人。

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002LB120708

ISBN 978-986-7160-91-1
00430
9 789867 160911

國家圖書館出版品預行編目資料

法學英文攻略 IV /林利芝著. -- 初版. -- 臺北市：
新學林, 2007-〔民96-〕
冊； 公分
ISBN：978-986-7160-16-4 (第1冊：平裝). --
ISBN：978-986-7160-85-0 (第2冊：平裝). --
ISBN：978-986-7160-35-5 (第3冊：平裝). --
ISBN：978-986-7160-91-1 (第4冊：平裝). --
1. 法學英語 - 讀本

805.18 94024835

法學英文攻略 IV

作　　者：林利芝
出 版 者：新學林出版股份有限公司
地　　址：10658台北市信義路三段106號6樓之4
電　　話：02-2700-1808
傳　　真：02-2705-9080
網　　址：www.sharing.com.tw
總 經 理：毛基正
總 編 輯：田金益
責任編輯：許祐瑄
版 權 部：林靜妙
製程管理：佳木斯國際有限公司

出版日期：2007年8月　初版一刷
郵撥帳號：19889774新學林出版股份有限公司
購書未滿1000元每本加收郵資50元，滿1000元可刷卡。
定　　價：430元

ISBN　978-986-7160-91-1
本書如有缺頁、破損、倒裝，請寄回更換。
門市地址：10658台北市信義路三段106號6樓之4
團購專線：02-2700-1808分機18
讀者服務：law@sharing.com.tw
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寫在前面

許多法律人認為，目前律師考試科目並無法學英文一門，因此對於學校所開設的英美法學習較不熱衷。雖然通過律師考試是目前成為我國律師的主要途徑，但是臺灣的法律系學生與律師必須了解，對身處於國際地球村時代的法律人而言，涉獵多國法律是相當必要的，而英美法更應是學習外國法律的重點。

學習英美法，從案例直攻，對於法律人有很多的好處：

第一，幫助法律人打破平日所自囿的思考模式，以更開闊的視野面對律師考試或其他類型的考試。像是法學英文“閱讀技巧”的訓練，可以幫助讀者迅速找出法律爭議。“搜尋技巧”可以用來確認適用在法律爭議上的法律或法則。“分析技巧”可以將正確的法律或法則適用在具體的事實情況。而“寫作技巧”則能幫助讀者有條理地分析考題。

第二，讀者可以從案例的研讀學習到律師執業技巧，對日後的生涯規劃有相當大的幫助。臺灣的經濟繁榮和政治安定吸引許多外國人士來臺觀光或投資，每分鐘有數以百計的國際商業交易，每天更有數以千計的臺灣旅客在世界各國旅行。面對往來頻繁，像是造成死亡或人身財產傷害的犯罪行為、違約行為、和侵權行為在臺灣境內、外層出不窮，而這些紛爭皆需倚靠律師的協助來解決。尤其臺灣已經加入世界貿易組織，在不久的將來，外國律師將被允許在臺灣執行涉外法律事務。屆時，唯有法學英語流利、精通外國法律（尤其是英美法）、並且具備解決跨國爭議經驗的本國律師，才能輕鬆面對外國律師（尤其是美國律師）競爭下的強大壓力。

第三，對於想要精通專利法、著作權法、商標法、營業秘密法、及公平交易法等新興法律領域的讀者有非常大的幫助。臺灣許多法律受到英美法，尤其是美國法的影響

甚深。眾多法律的制定與修正，亦經常借鏡美國的相關的法律制度。研讀美國法律和案例的英文原文，很自然地會學習到法律條文中專用的法學英文字彙，並且直接地了解這些法律設計的目的，進而去比較我國與美國法律的差異與制度的優劣，最後有能力去重新審視並建構適合我國國情的法律。

第四，對於具有提昇台灣國際競爭力使命的法律人更需要藉由法學英文的研讀增強自己的實力。以目前臺灣的形勢，迫切地需要兼備英語能力的律師代表臺灣出席世界貿易組織（WTO）或其他國際組織。雖然臺灣已在國際上擔當大任，但是因為中國大陸的阻撓和打壓，使得臺灣不被認同是一個"主權獨立"的國家，而無法成為聯合國的會員。為突破中國大陸所造成的政治孤立，臺灣雖然積極地參與許多國際組織，但是在多國貿易協商中，因缺乏強勢的法律代表捍衛臺灣人民的權益，經常使台灣在國際上屈居下風。英語已然是全世界通用的語言，而法律則是全世界統合的基礎，必須了解，只有仰賴全世界都聽得懂的語言，表達立場才能突破台灣現有的格局，與世界各國建立起此對等的聯繫。

本書的目的是希望法律人在了解到學習法律英文的好處以及重要性之後，能用不同的心情面對這門學科。也希望藉由本書可以減少法律人在學習英美法時所產生的焦慮與苦惱。本書是根據作者身為美國法學院 J.D. 學生的經驗來撰寫，希望讀者在閱讀本書之後能用更寬闊的視野面對自己的法律專業。

林利芝　　台北，2004.03

目錄

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Criminal Presumption
刑事推論

此篇英文原文是摘錄自美國最高法院判決
Barnes v. United States, 412 U.S. 837; 93 S. Ct. 2357 (1973).

原文

Petitioner Barnes was convicted in United States District Court on two counts of possessing United States Treasury checks stolen from the mails, knowing them to be stolen, two counts of forging the checks, and two counts of uttering the checks, knowing the endorsements to be forged. The trial court instructed the jury that ordinarily it would be justified in inferring from unexplained possession of recently stolen mail that the defendant possessed the mail with knowledge that it was stolen. We granted certiorari to consider whether this instruction comports with due process.

The evidence at petitioner's trial established that on June 2, 1971, he opened a checking account using the pseudonym "Clarence Smith." On July 1, and July 3, 1971, the United States Disbursing

Office at San Francisco mailed four Government checks in the amounts of $269.02, $154.70, $184, and $268.80 to Nettie Lewis, Albert Young, Arthur Salazar, and Mary Hernandez, respectively. On July 8, 1971, petitioner deposited these four checks into the "Smith" account. Each check bore the apparent endorsement of the payee and a second endorsement by "Clarence Smith."

At petitioner's trial the four payees testified that they had never received, endorsed, or authorized endorsement of the checks. A Government handwriting expert testified that petitioner had made the "Clarence Smith" endorsement on all four checks and that he had signed the payees' names on the Lewis and Hernandez checks. Although petitioner did not take the stand, a postal inspector testified to certain statements made by petitioner at a post-arrest interview. Petitioner explained to the inspector that he received the checks in question from people who sold furniture for him door to door and that the checks had been signed in the payees' names when he received them. Petitioner further stated that he could not name or identify any of the salespeople. Nor could he substantiate the existence of any furniture orders because the salespeople allegedly wrote their orders on scratch paper that had not been retained. Petitioner admitted that he executed the Clarence Smith endorsements and deposited the checks but denied making the payees' endorsements.

The District Court instructed the jury that "possession of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably

draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen."

The jury brought in guilty verdicts on all six counts, and the District Court sentenced petitioner to concurrent three-year prison terms. The Court of Appeals for the Ninth Circuit affirmed, finding no lack of "rational connection" between unexplained possession of recently stolen property and knowledge that the property was stolen. Because petitioner received identical concurrent sentences on all six counts, the court declined to consider his challenges to conviction on the forgery and uttering counts. We affirm.

We begin our consideration of the challenged jury instruction with a review of four recent decisions which have considered the validity under the Due Process Clause of criminal law presumptions and inferences.

In *United States v. Gainey*, the Court sustained the constitutionality of an instruction tracking a statute which authorized the jury to infer from defendant's unexplained presence at an illegal still that he was carrying on "the business of a distiller or rectifier without having given bond as required by law." Relying on the holding of *Tot v. United States*, that there must be a "rational connection between the fact proved and the ultimate fact presumed," the Court upheld the inference on the basis of the comprehensive nature of the "carrying on" offense and the common

knowledge that illegal stills are secluded, secret operations. The Court in *United States v. Romano* determined, however, that presence at an illegal still could not support the inference that the defendant was in possession, custody, or control of the still, a narrower offense. Presence is relevant and admissible evidence in a trial on a possession charge; but absent some showing of the defendant's function at the still, its connection with possession is too tenuous to permit a reasonable inference of guilt.

Three and one-half years after *United States v. Romano*, the Court in *Leary v. United States*, considered a challenge to a statutory inference that possession of marihuana, unless satisfactorily explained, was sufficient to prove that the defendant knew that the marihuana had been illegally imported into the United States. The Court concluded that in view of the significant possibility that any given marihuana was domestically grown and the improbability that a marihuana user would know whether his marihuana was of domestic or imported origin, the inference did not meet the standards set by *Tot v. United States*, *United States v. Gainey*, and *United States v. Romano*. Referring to these three cases, the Court in *Leary v. United States* stated that an inference is " 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." In a footnote the Court stated that since the challenged inference failed to satisfy the more-likely-than-not standard, it did not have to "reach the question whether a criminal presumption which passes muster when so judged

must also satisfy the criminal 'reasonable doubt' standard if proof of the crime charged or an essential element thereof depends upon its use."

Finally, in *Turner v. United States*, decided the year following *Leary v. United States*, the Court considered the constitutionality of instructing the jury that it may infer from possession of heroin and cocaine that the defendant knew these drugs had been illegally imported. The Court noted that *Leary v. United States* reserved the question of whether the more-likely-than-not or the reasonable-doubt standard controlled in criminal cases, but it likewise found no need to resolve that question. It held that the inference with regard to heroin was valid judged by either standard. With regard to cocaine, the inference failed to satisfy even the more-likely-than-not standard.

The teaching of the foregoing cases is not altogether clear. To the extent that the "rational connection," "more likely than not," and "reasonable doubt" standards bear ambiguous relationships to one another, the ambiguity is traceable in large part to variations in language and focus rather than to differences of substance. What has been established by the cases, however, is at least this: that if a statutory inference submitted to the jury as sufficient to support conviction satisfies the reasonable-doubt standard (that is, the evidence necessary to invoke the inference is sufficient for a rational juror to find the inferred fact beyond a reasonable doubt) as well as the more-likely-than-not standard, then it

clearly accords with due process.

In the present case we deal with a traditional common-law inference deeply rooted in our law. For centuries courts have instructed juries that an inference of guilty knowledge may be drawn from the fact of unexplained possession of stolen goods. Early American cases consistently upheld instructions permitting conviction upon such an inference, and the courts of appeals on numerous occasions have approved instructions essentially identical to the instruction given in this case. This longstanding and consistent judicial approval of the instruction, reflecting accumulated common experience, provides strong indication that the instruction comports with due process.

This impressive historical basis, however, is not in itself sufficient to establish the instruction's constitutionality. Common-law inferences, like their statutory counterparts, must satisfy due process standards in light of present-day experience. In the present case the challenged instruction only permitted the inference of guilt from unexplained possession of recently stolen property. The evidence established that petitioner possessed recently stolen Treasury checks payable to persons he did not know, and it provided no plausible explanation for such possession consistent with innocence. On the basis of this evidence alone common sense and experience tell us that petitioner must have known or been aware of the high probability that the checks were stolen. Such evidence was clearly sufficient to enable the jury to find beyond a reasonable doubt that petitioner knew the checks were stolen.

Since the inference thus satisfies the reasonable-doubt standard, the most stringent standard the Court has applied in judging permissive criminal law inferences, we conclude that it satisfies the requirements of due process.

Petitioner also argues that the permissive inference in question infringes his privilege against self-incrimination. The Court has twice rejected this argument, and we find no reason to re-examine the issue at length. The trial court specifically instructed the jury that petitioner had a constitutional right not to take the witness stand and that possession could be satisfactorily explained by evidence independent of petitioner's testimony. Introduction of any evidence, direct or circumstantial, tending to implicate the defendant in the alleged crime increases the pressure on him to testify. The mere massing of evidence against a defendant cannot be regarded as a violation of his privilege against self-incrimination.

Since we find that the statute was correctly interpreted and that the trial court's instructions on the inference to be drawn from unexplained possession of stolen property were fully consistent with petitioner's constitutional rights, it is unnecessary to consider petitioner's challenges to his conviction on the forging and uttering counts. Affirmed.

生字

1. **petitioner**（**n.**）上訴人

petition（**v.**）上訴
petition（**n.**）訴狀，上訴狀
petition for appeal 上訴申請書

2. **convict**（**v.**）宣告有罪的，判決有罪的
convicted（**adj.**）被定罪的，被判罪的
convicted felon 被定罪的重罪犯
convicted person 已定罪者
conviction（**n.**）定罪，判罪
convict（**n.**）罪犯，被判有罪的人

3. **count**（**n.**）被控罪名

4. **endorsement**（**n.**）背書（文件，支票等）
blank endorsement 完全背書
restrictive endorsement 有限制的背書
special endorsement 特別背書
endorse（**v.**）背書（文件，支票等）
endorser（**n.**）背書人
endorsee（**n.**）被背書人
endorsee in due course 正當手續的背書人

5. **forgery**（**n.**）偽造（罪）；偽造品
forge（**v.**）偽造
forge a check 偽造支票
forge a signature 偽造簽名
forged（**adj.**）偽造的
forged document 偽造的文件
forged signature 偽造的簽名
forger（**n.**）偽造者

6. **instruct**（**v.**）指示
instruction（**n.**）指示
instructions to jury 法官給予陪審團的指示