

大学法律 COLLEGE LEGAL ENGLISH



英语教程

主编 张法连



外语教学与研究出版社
FOREIGN LANGUAGE TEACHING AND RESEARCH PRESS

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前言

法律英语是法律科学与英语语言学有机结合形成的一门实践性很强的交叉学科，是ESP（English for Specific Purposes）最重要的分支之一。法律英语是以普通英语为基础，在立法和司法等活动中形成和使用的具有法律专业特点的语言，是指表述法律科学概念以及诉讼或非诉讼法律事务时所使用的英语。当今世界的发展日新月异，经济全球化进程突飞猛进，国际交流合作日益加强，涉外法务活动空前频繁。经济全球化过程中我们所面临的很多问题其实都是法律问题，而这些法律问题中的绝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地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。所有这些工作都需要法律工作者通过专业外语完成。因此，法律英语的重要性日益彰显，掌握专业外语已经成为法律人必备的职业素质。法律英语证书（LEC）全国统一考试的成功推出和中央政法委、教育部“卓越法律人才教育培养计划”的顺利启动无疑把法律英语的学习和研究推向了高潮。

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、规则制订。因此，本书主要介绍美国法，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地讲授语法知识，但本书的编写设想学生已经完成了从中学英语到大学低年级的基础英语学习，系统掌握了英语语法等基础知识并领会认知约6,000个英语单词。

本教材具有以下特点：

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。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。教材选取了几十个经典案例，以期最大限度地展现美国法原貌。

其次，内容丰富，可读性强，几乎涉及了法律英语的听说读写译的各个方面。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》提出的基础阶段和提高阶段的目标要求。

再次，每部分或各章后面附有相关的练习题，以期帮助学生检查自己学习掌握基础美国法知识和英美法律文化知识以及法律英语读写译基本能力的掌握程度。

本书共由四部分组成。第一部分是法律英语基础知识，首先介绍了法律英语的来历、词汇术语特点、学习法律英语的重要性等。第二部分是英美法律文化知识。语言是文化的载体，学习法律英语离不开法律文化背景知识，这也是学好法律英语的前提和基础。第三部分分别对美国六个主干部门法（美国宪法、合同法、侵权法、财产法、证据法、刑法/刑事诉讼法）进行了概括介绍。第四部分介绍了法律英语写作的基本知识，这也是涉外法务工作人员需熟练掌握的不可或缺的知识。这四部分内容浑然一体，又相互独立。除第一部分外，本教材不一定要严格按照前后编写顺序学习，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。本书内容可供学生一学期使用（选取每部分的一半内容），也可供学生一学年使用。

编写本书过程中，我们参考了大量国内外有关资料，在此谨对原作者表示谢忱。参加本书编写工作的还有中国人民大学杨敏教授、北京外国语大学郑小军教授、中国石油大学张建科副教授，以及中国政法大学齐筠、刘华、魏蘅副教授和张鲁平讲师。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指定为复习应考LEC的参考用书。

各位教师或同学在使用本书的过程中有什么问题，欢迎及时与编者联系：zhangbook16@yahoo.com。

编者

2014年3月于中国政法大学

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Part

1

Basics of Legal English



导 读

法律英语 (Legal English) 在英语国家中被称为 Legal Language 或 Language of the Law, 即法律语言。学好法律英语首先是以英语为基础, 同时还要通晓中国法律与英美法律知识。在当今多元化社会里, 对于诸多领域来说, 仅仅具有专业的法律知识已经很难应对复杂的社会需求, 因此, 全球化更加提高了法律从业者对英语与法律相互融合能力的要求。

法律英语作为英语语言与法律科学的交叉学科, 在翻译、词汇、写作等方面都有别具一格的特点。因为法律英语在表达上必须具有专业性、准确性、正式性和客观性等特点, 所以法律英语中包含了众多的关于法律法规、权利义务的专业术语, 还有不少的古英语词汇和拉丁语、法语等外来词汇。法律英语在句式上的特点突出表现为句子通常是以长难句居多, 而且还有很多对于普通人理解起来十分困难的固定用法。

本书的第一部分共有五章, 概括介绍了法律英语的基础知识。法律英语融合了“法律”与“英语”两类课程的特点, 但又区别于这两类课程, 自成体系, 其主要着眼点在于“英语”而不是“法律”。法律英语学习者尤其要将重点放在如何用英语来表达有关法律关系, 如何用英语处理好涉外法律事务上, 要对英美法有一个基本了解。基于这样的原因, 本部分主要介绍法律英语语言的主要特征, 包括一部分常用法律术语, 使读者能够对法律英语有一个全面概括的了解; 本部分也概括介绍了法律英语的历史发展过程, 能让读者对法律英语发展脉络有个宏观、清晰的认识。

第一章是对法律英语的简单介绍。法律英语是律师工作者 (尤其是涉外法务人员) 日常工作中的必备工具。要想学习好法律英语, 首先要学好法律英语中的行业术语, 而这些术语、固定搭配等都是我们在日常的生活与学习中不曾或很少接触过的。这就要求我们在法律英语学习的过程中养成勤于查阅词典的习惯, 而且要求查阅专门的法律英语词典。

第二章主要介绍了法律英语的历史发展过程。法律英语以普通英语为基础, 但又独具特色。这些特征的形成与法律英语的历史演变过程有着密不可分的关系。本章较为详细地介绍了法律英语中为什么有那么多的法语法律词汇、法语和法律英语的特殊关系以及人们在法律英语中使用拉丁语的缘由。

第三章概括介绍了法律英语不同于普通英语的 12 个特点。正是由于法律英语的这

些特点，才在一定程度上增加了我们学习、理解和应用法律英语的难度。既然知道了问题症结所在，那么在以后的学习中就要做到目的明确、“对症下药”，这样才能达到事半功倍之效。

第四章概括介绍了美国司法程序不同阶段所用到的基本法律术语。法律英语对于母语为英语的人来说也是有一定难度的，因为法律英语的专业性很高，它要求学习者既有良好的英语知识，也有一定的法律基础，难度之大不言而喻。法律英语只能在专业的领域里使用，在其他的场合是不宜使用的。有些普通词汇含有法律意义，这些词若用于法律文件中就不再具有普通英语的含义了。

第五章概括地介绍了法律英语的适用范围和学好法律英语的重要性。

通过本部分的学习，读者可以发现法律英语作为专业英语的确和普通英语有很大的不同。对于中国人来说，学习法律英语比学习英语本身更有难度。首先，中国的法律制度接近大陆法系，与英美法系的差异很大；其次，英语并不是我们的母语，法律英语对于英语语言水平要求很高。基于此，就要求学习者在学习法律英语的过程中，要尽可能创造法律英语的使用环境，对外国法律知识尤其是美国的法律知识有所了解，也要提高与其他国家的法律专业人员的交流与互动，通过参与各种涉外法律事务来学习法律英语，了解国外的法律文化。在学习法律英语的过程中，要有很强的意识将法学知识与英语语言知识相结合，绝不要让两者分离。说法律英语难，不如说法律英语的“入门难”。只要了解了法律英语的这些特点，学习方法得当，勇敢地面对“入门难”，闯过这一关，你就会发现法律英语的学习别有一番洞天。

1

Introduction

Chapter

Text

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 or districts (including the U.S., the U.K., Canada, Australia, New Zealand and Hong Kong of China) 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.

Take the United States as an example, law is everywhere in this country. The daily newspaper and the evening news report about the latest sensational criminal trial, massive lawsuits, or constitutional claim. Law is everywhere, so is the language of the law. News 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 contains 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.

You will encounter many unfamiliar words as you learn about law and legal procedures in the United States and other common law countries. You should ask about the meanings of unfamiliar terms that you hear in conversation or in class. If you are reading on your own, you will often be able to figure out the meaning of the term from the context of the sentence.

In many cases, words that would otherwise be familiar to you may have special meanings in the law. For example, we all know what it means to go to a party, but not everyone knows what it means to be a party to a lawsuit. We know the woman’s name “Sue” is short for “Susan,” but we also know that we can “sue” someone in court. We know that we can wear a “suit” to court and we learn that we can “file suit” against someone.

criminal 刑事的

file 提出（申请等）；提起（诉讼等）；呈请备案

In still other contexts, familiar words may be combined to designate concepts that are entirely unfamiliar. For example, the words “class” and “action” may by themselves be familiar. Together, however, the words “class action” designate a legal procedure that is unknown in many other countries. China has one of the few legal systems outside the United States that permits class actions. Although a number of countries have adopted procedures by which a representative may litigate on behalf of individuals with the same interests, few countries other than the United States permit class actions for large or unidentified groups of plaintiffs.

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 have 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 arguments.

class action 集团诉讼；集体诉讼

plaintiff 原告

notary 公证人；公证员

warrant 授权，批准

search warrant 搜查令

testator 立遗嘱人（男）

2 Chapter Historical Development of Legal English

Text

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.

In 1356, the Statute of Pleading was enacted (in French). It stated that all legal proceedings should be in English, but recorded in Latin. Nonetheless, the use of French in legal pleadings continued into the 17th century in some areas of the law. In this later

terminology 专门名词; 术语

proceeding 程序; 诉讼程序

property 财产; 所有物

estate 遗产; 财产; 房地产

chattel 动产

lease 租契; 租约; 出租

executor 遗嘱执行人

tenant 租地人; 租屋人

statute 法规; 制定法

pleading 诉状; 诉讼文书

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 in about 1400. Statutes were written in Latin until about 1300, in French until 1485, in English and French for a few years, and in English alone from 1489.¹

deliberate 蓄意的；故意的
inferior 下级的

¹ From Rupert Haigh (2009).

3 Characteristics Chapter of Legal English

Text

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

Extensive Use of Words and Phrase Derived from Latin and French

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*).

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*).

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

aforesaid 上述的; 前述的

patent 专利

archaic 古旧的; 古体的

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.

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.

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*.¹

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.

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 mean, for practical purposes, exactly the same thing (*null and void*); and sometimes they do not quite do so (*dispute, controversy or claim*).

provenance 起源; 出处
equivalent 同等物; 同价物
obligation 义务
conveyance 财产转让
deed 契据
covenant 契约; 盟约

1 From Rupert Haigh (2009).