

 配套教学视频

法律英语 商务

[美] 罗伯特·W.伍兹 武小凤 著

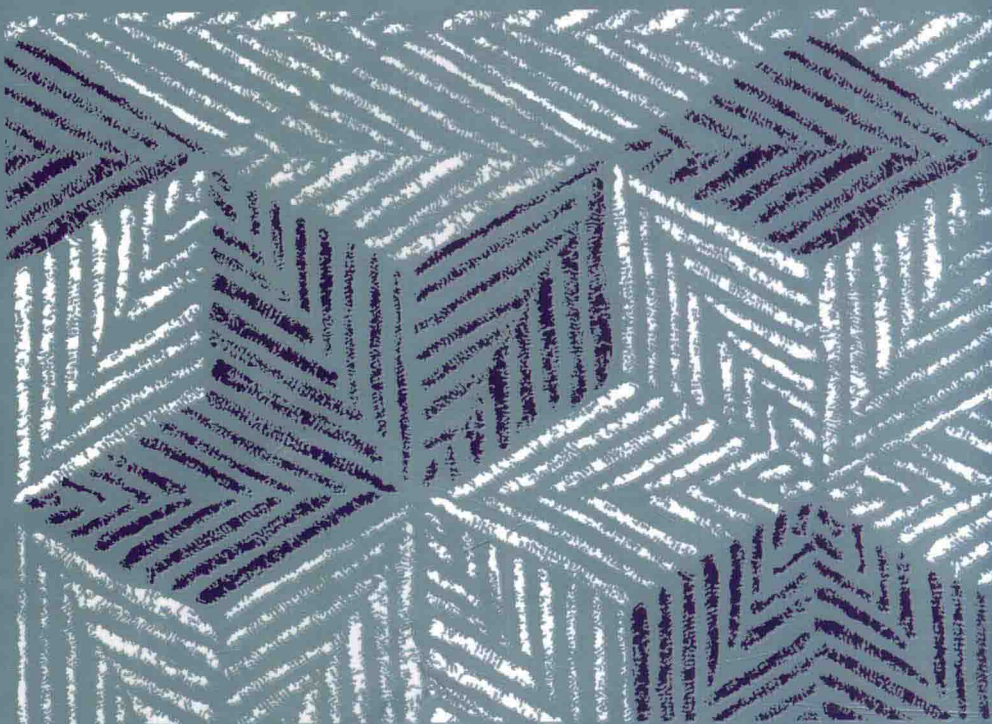
By Robert W. Woods & Wu Xiaofeng

Legal English For Business



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作者简介

Robert W. Woods

美国俄克拉荷马大学法律博士(JD),美国俄克拉荷马大学戏剧导演艺术硕士(MFA);现为美国亚历桑那大学驻中国海洋大学法律项目主任。此前,在美国洛杉矶电影学院、美国俄克拉荷马大学法学院以及美国荷克拉荷马城市大学教授娱乐业商法、娱乐业法和庭审程序等,并曾在中国广西大学教授美国商法。在担任教职前,在美国洛杉矶比弗利山庄长期从事娱乐业律师工作,是很多好莱坞电影制作方的法律顾问,以及若干电视制作公司、人才代理公司、制片人、导演、编剧及音乐家的法律代表。2011年,获得在美国联邦最高法院的出庭资格。除了法学教育与律师工作外,还制作过三部电视剧,其中一部于2012年获得“最富灵感的电视节目 Epiphany 奖”。此外,曾在美国阿肯色州、洛杉矶以及蒙古、中国南宁等地制作了一系列戏剧作品。

武小凤

本科毕业于西南政法大学;中国人民大学法学博士,中国政法大学博士后;曾于甘肃政法学院任教,现为洛阳师范学院法学与社会学院副教授。2009年至2010年,赴美国俄克拉荷马城市大学做访问学者,主要研究领域为美国刑事被害人救助;2013至2015年,在俄克拉荷马城市大学法学院国际中心从事国际交流方面的学术与行政工作;后于俄克拉荷马大学攻读法学硕士学位,主要方向为美国法历史与美国宪法、美国印第安人法律体系。曾在《政法论坛》《现代法学》《法学家》《环球法律评论》《法学前沿》(Frontiers of Law in China)以及 OKCU Law Review 等刊物上发表论文十余篇;出版《冲突与对接——刑事法律和解制度研究》等专著。

前 言

本书的目的是为非英语国家的读者介绍法律英语的语言和词汇。虽然本书主要针对于律师及法学学生,但是对其他人也同样适用。本书对相关法律概念作了解释——这些概念是每一个从事商业活动或者生活在英语国家的人必须明白的。本书贯穿于始终引用了很多例子,它们来自于每天的日常生活及基本的商业环境。本书也引用了很多的案例研究用以说明法律的发展演变。对法学学生和律师而言,本书可以作为其进一步学习美国及其他普通法系国家法律及其适用的基础。对于非律师而言,本书可以成为其进一步了解英语国家及其法律、惯例、语言及商业规则的媒介。

如何使用本书——

由于本书作者为美国法学教师和律师,本书选择以美国法律体系作为基础和渊源。然而,本书内容并不仅限于美国法。事实上,本书所涉及各个主题及其法律适用在各国基本相同,这些主题即为:合同;侵权;不动产;知识产权;商业组织。读者可以在其中随意选择其感兴趣的,并且不必遵循章节顺序。然而,由于本书前两节涉及美国法律体系、法院体系及诉讼程序,其所包含的知识和信息对于理解其他各章的内容非常重要,读者最好从这两章开始学习。

本章所涉及的其他主题大多被设为数章。其中,合同被设为第三、第四和第五章;侵权被设为第六、第七和第八章;不动产被设为第九和第十章;知识产权被设为第十一、第十二和第十三章;商业组织被设为第十四和第十五章。为了更加全面理解这些主题,读者在学习后面相应的各章前,首先就当从第一章开始对这些主题有一总体了解。

本书每一章都包含了若干“讨论要点”。教师可以在课堂讨论中使用这些讨论要点,以便鼓励学生深入思考和应用从该章中所学的法律原则。对于将本书作为自学教材的学生,也可以花费一些时间思考这些讨论要点中所提及的问题,并且尝试根据该章中所涉及的法律信息以及其自身的生活经验和文化观念对这些问题作出答案。读者可扫描封底二维码或登录法律出版社官方网站下载相应的参考答案。

本书各章包含了各项练习,该练习涵盖了四项基本的语言训练——阅读理解、写作技巧、口语练习和听力练习。教师可以根据课程计划和课堂情况尽量多布置这些练习。各章也包含了课堂讨论和小组互动练习,这些练习可以帮助教师提高学生的口头表达技能。自学的学生也应当完成这些练习,以保证其已经理解并且能够应用各章所包含的信息和知识。本书同时配有30个(每章2个)小视频以配合各章的听力练习。练习答案同样可扫描封底二维码或登录法律出版社官方网站获取。

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第 1 章

美国法律制度

The American Legal System

首先，本章对美国政府的基本结构作了解释。美国由一个联邦政府与 50 个州政府组成。其次，本章通过对美国历史的简要回顾，解释了美国如何从当初的英国殖民地演变为一个独立的国家和其最初时期作为一个新兴政府的缺陷与问题，以及后来如何通过宪法成立了现有的政府。最后，本章对美国的联邦政府及州政府的组织机构及其机能作了介绍。联邦政府由三个组织机构与机能不同的部门组成，即行政机构（美国总统及内阁成员）、立法机构（制定全国性法律的机构）以及司法机构（法院）。美国由 50 个独立的州组成，各州的政府组织效仿了联邦政府的结构形式。即各州政府由行政机构（州长为首）、立法机构（制定本州法律）以及司法机构（州法院）组成。各州相互独立，一个州的法律对于生活在其他州的人没有效力。本章就不同的州法律进行了举例说明。

"United we stand, divided we fall. "

*We are stronger when we all work together, but
we are weaker when we argue or fight among
ourselves.*

Understanding the American Legal System

The United States of America is made up of fifty states which have all united to form one nation.

The idiom at the beginning of this chapter states the basic idea here: *united we stand, divided we fall*. By being *united*, the fifty states in the U. S. A. stand strong, but if all of the states were *divided*, they might all fall to stronger nations.

The American legal system consists of the *federal* government, which is the national government for all citizens in the U. S. A., and the fifty *state* governments. Each of the fifty states has its own separate government. This means that there are actually fifty-one separate governments in the U. S. A.—the federal government plus fifty state governments.

To understand this legal system, it is necessary to know something of the history of America.

■ *Colonies of England*

Up until 1776, America was a collection of thirteen *colonies* which were all governed by England. The laws were made by the King of England and the English Parliament. The American colonies had no representatives in Parliament, so they had no voice in what laws were made or enforced against them.

The American colonies were separated from England by the Atlantic Ocean. In the seventeenth and eighteenth centuries, it could take months to travel from England to America. Over time, this separation resulted in the Americans becoming a very independent group. They were no longer satisfied with being governed by men who were so far away. The Americans felt they knew best how to run their own affairs, and they strongly disagreed with many of the laws and policies handed down by Parliament. Eventually, the Americans decided that they no longer wanted to be governed by England at all.

On July 4, 1776, leaders from each of the thirteen colonies came together in Philadelphia, Pennsylvania, and signed the Declaration of Independence. This document declared the thirteen colonies of America to be independent from England and no longer subject to England's laws. Signing the Declaration of Independence was a very dangerous thing to do, because it amounted to an act of treason against England. One of the great leaders of America, Benjamin Franklin, made that risk very clear when he said, "We must, indeed, all hang together, or most assuredly we shall all

hang separately.”^①Mr. Franklin felt that if the colonies did not succeed in their gamble to break free from England, it would mean the penalty of death by hanging for all the men who had signed the Declaration of Independence.

In response to the Declaration of Independence, England sent soldiers to enforce its control over the colonies, and the American Revolutionary War broke out between the colonies and England. Eventually, the Americans won that war, and a new nation was formed: The United States of America.

■ *The Articles of Confederation*

Because the colonies had just successfully separated themselves from the King of England, they had a great dislike of any governmental body that they viewed as too powerful or too centralized. Each of the thirteen colonies had its own concerns, its own interests, and its own problems. The leaders in each of those colonies wanted to make sure that they retained their independence from the other colonies and from the national government.

This attitude led them to create a very weak national government for the new nation. They wrote a document called the Articles of Confederation, which provided that each of the new “states” (the former colonies) would govern itself, separate from any other state or from the national government. The Articles of Confederation created only a “firm league of friendship” among the states. For the national government, the Articles of Confederation created only a committee of representatives from each state, who would meet in a governing body called the Congress. This was a national *legislative* body. The Articles of Confederation did not create any *executive* or *judicial* branches for the national government. The Congress was responsible for conducting foreign affairs, declaring war or peace, maintaining an army and navy, and a variety of other lesser functions. But the Articles of Confederation denied Congress the power to collect taxes, regulate commerce among the states, or enforce laws.

After only a few years, it became obvious that the national government was too weak. A stronger central government was needed if the new nation were to survive.

■ *The Constitution of the United States*

Leaders from each of the thirteen states gathered together to write the Constitution, which established a much stronger national government.

The Constitution divided the federal government into three parts:

- The Executive Branch, led by the President. The Executive Branch has the

① “Hang together” in this sentence is an idiom meaning “to be unified.” When Mr. Franklin said they could “hang apart,” he literally meant they could be killed by being hanged for what they were about to sign. This entire sentence is a play on words ... hang together (be unified) or hang separately (die by hanging).