



Introduction to Taiwan's Legal System

# 法學英文

徐慧怡、張心悌、蔡瑄庭、王震宇、李榮耕、黃銘輝、官曉薇 著

Legal /l'igəl/, a. [L. legalis,  
prob. orig., that which lies  
and if so akin to E. lie, to  
be prostrate, {Loyal},  
1. Created by, permit

 元照

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# 序 言

科技的發展與進步，讓世界越來越靠近，各國接觸頻繁的結果，跨國案例也越來越多，對於他國法律的瞭解，成為現代法律人不可避免的課題；同時，如何介紹本國法律讓外國認識，更是法律人學習中的重要一環。在英文仍是世界共同語言的現在，專業的法學英文自然成為跨國法律爭議中的共同語言，如何學習法學英文，更是成為達到成功法律人的基礎墊腳石。

為了讓法律人能夠熟悉英美的法律制度，各大學的法律學院或法律學系早就開始教授英美法導論、英美契約法、英美侵權法等等課程，但是對於如何使用英文表達我國的法律，則是最近數年才開始普遍發展的教學內容。2011年，台灣的律師與司法官考試新增法學英文一科，依照考選部命題大綱所公布的原則，其核心能力為「獲取法律專業知識的基本法學英文閱讀能力」，包含新聞報導與法院判決常用之字彙、片語及文法句型，並使學生理解新聞報導與法院判決的主旨與要意。換言之，就是希望通過律師與司法官考試的未來律師或司法官，都能閱讀新聞中有關法律案件的報導，或者能夠瞭解外國判例或判決的主旨與要意。本書的內容除針對法學英文的命題大綱內容——緒論、憲法、民事法中之契約與侵權、證券交易法與刑事法等領域加以介紹外，並進一步針對我國國際法與其實踐提出重點說明。本書的撰寫方式全部以英文為主，每章均以cover story的方式導讀，讓閱讀者可以瞭解本章所要陳述的內容，結束時並輔以問題，讓學習者有自我檢視是否瞭解本文內容的機會。本書希望能提供學生準備律師、

司法官考試使用，並成為從事法律實務工作者的參考入門，同時也期待提供不懂中文的外國法律人，一個可以瞭解台灣法律的最佳管道。

本書的出版，要特別感謝所有撰寫的國立台北大學法律學院的教授們，雖然他們在法律各領域均學有專精，也都曾留學美國，是以對於相關領域的英美法律用語，有深入的研究，但因為他們平日教學研究非常繁忙，若沒有對於法學教育的熱忱，無法完成此書。最後，期待這本書的出版，能協助台灣的法律更加接近國際化。

**徐慧怡及作者一同**

# Preface

Taiwan is a Chinese speaking country that is governed by civil law. Thus, Taiwan's statutory regulations, complaints and judgments, as well as a majority of its law school textbooks and supplements, are all written in Chinese. In fact, the Court Organization Act and the Attorney Regulation Act, both expressly provide that the judge is required to use the Chinese while conducting proceedings in court, and all documents submitted by attorneys in the course of their professional work must be drafted in Chinese characters as approved. Moreover, a non-citizen licensed to practice law within the R.O.C.'s territory is required to use the Chinese either in court proceedings or at an investigation procedure.

Due to the substantial increase in transnational cases, English has become the standard language for transnational litigations. In order to familiarize law students and members of the legal profession with English legal terms of art, law schools in Taiwan have long ago introduced courses of Anglo American Law. Scholars did not until recently, however, attempt to interpret Taiwan's law in English through various teaching methods.

As of 2011, Taiwan's Bar and Judicial Exams have incorporated an additional subject—Legal English. In accordance with the standards established by the Ministry of Examinations, the Legal English subject evaluates the examinees' ability to read English newspaper articles related to law, court decisions, and commonly used

legalese. Besides evaluating the examinees' English comprehension, the purpose of incorporating this extra subject into the Exams is also to promote the ability of future lawyers and judges to read and interpret foreign court decisions.

This book address provides an in depth analysis of the following topics: Torts, Contracts, Securities Regulations, Criminal Law and Procedures, and Constitutions. The book also highlights other aspects of laws in Taiwan, such as the legal systems, and International Aspects of R.O.C. Law. Our vision is to provide legal education and basic legal terms in English to prospective lawyers, judges, those currently practicing in the profession, as well as give foreigners a general understanding of the laws of Taiwan. Additionally, the book will begin each chapter with a cover story to provide readers with a general idea of the topic covered in the chapter. At the end of the chapter, the book will give readers an opportunity to examine their understanding of the material through a self-quiz.

The writers of this book are faculty members of the College of Law, National Taipei University, all of whom studied law both in Taiwan and the United States. They all teach courses in their areas of expertise and have all conducted extensive research on Anglo-American legal terminology. Additionally, in order to bolster the accuracy of this book, we thank Tiffany Wang and Jessica Chu, two extremely talented young ladies receiving their legal education in California, for helping the editing work of this book.

**Huei-Yi Shyu and authors**

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## INTRODUCTION

## ● Cover Story

*The China Post 2010/01/01***New Amendment Expands Rights of  
Accused During Interrogations**

“TAIPEI, Taiwan—As of today, enforcement of a new amendment in the Criminal Procedure Law will allow defendants the right to refuse midnight interrogations in court houses.

According to Article 93 of the Criminal Procedure Law, upon the granting of the prosecutor’s petition for holding the defendant in custody, the defendant shall be subjected to immediate interrogation. The amendment provides that if the interrogation continues to or beyond midnight or if the custody is granted at latter hours, the defendant or his/her attorney may request that the interrogation be postponed to the next day at an earlier time. The court shall not refuse the defendant’s request unless justice demands otherwise. With the new amendment in place, the court is required to provide an adequate resting room for the defendant. In an open tour of the Taipei District Court, the court showcased to the media

its newly renovated night time resting rooms, which were all reasonably furnished and equipped with air conditioning units. The President of the Judicial Yuan Lai In-jaw also stated that the amendment requires all courts in Taiwan to install adequate facilities in order to help achieve the objectives of the new amendment.”

After reading the above newspaper report, as a law student in Taiwan, do you understand the terms and effects of amending the Criminal Procedure Law with regards to interrogation and detention? Do you understand the reasoning behind revising the article? What is your perspective on the revision?

### ● Learning Objectives in this Chapter

- The Origin of Law
- The Legal System
- Legal Education
- Legal Ethics

## I The Origin of Law

### 1. Statutory Law

The laws in Taiwan are traditionally divided into six categories: The Constitution of the Republic of China (Taiwan), Civil Code, Criminal Code, the Code of Civil Procedure, the Code of Criminal Procedure, Administrative Law, and their relative laws and regulations. The compilation of the law is referenced in the book of "The Six Major Laws of the Republic of China on Taiwan." The dates of promulgation and effectiveness of each of the laws and regulations are all different. The Code of Criminal Procedure was promulgated in July 1928 and effective the same year, while the Criminal Code was promulgated in July 1935, also effective the same year. The Civil Code was promulgated from 1929 to 1930 and became effective separately from 1929 to 1931. The Code of Civil Procedure was promulgated in December 1930, but was not effective until 1935. Moreover, the Constitution was not drafted until December 1946 and became effective in 1947.

The traditional six legal categories were expanded as Taiwan developed both economically and socially. Due demands resulting from Taiwan's growing economy, the legislature passed the Trademark Act, Patent Act, Business Mergers and Acquisitions Act, Copyright Act, Fair Trade Act, and The Securities Exchange Act. Taiwan's laws also sought to protect consumers through the creation of the Consumer Protection Law. Moreover, the Act of Gender Equality in Employment, Child and Youth Sexual

Exploitation Prevention Act and the Protection of Children and Youths Welfare Rights Act were enacted to keep up with the international trend of promoting both gender equality and children's rights. Additionally, three other acts were passed to protect the right to personal safety and deter violence. These three acts were the 1997 Sexual Assault Crime Prevention Act, the 1998 Domestic Violence Prevention Act, and the 2005 Sexual Harassment Prevention Act. Significant family law reforms occurred in 2012 with the enactment of the Family Affairs Act. This new law advocated judicial efficiency, requiring that family disputes be expedited and resolved in accordance with the best interests of the claimant and child. This law also promoted family harmony by merging actions, such as those concerning personal affairs, family disputes, and domestic mediation.

## 2. Doctrine of Precedents

Taiwan's legal system derives from the civil law, not common law, system. Thus, the statutes passed by Legislative Yuan control in the application of domestic laws, and the doctrine of precedent generally does not have any binding authority in Taiwan. Nevertheless, in order to avoid conflicting judgments on similar causes of actions, Taiwan recognizes that the doctrine of precedents has de facto binding authority.

Lawyers in common law countries are able to use, interpret, and cite legal opinions in future causes of actions that bare similarity to precedential cases; lower courts are bound by precedential rulings.

However, in Taiwan, not all precedent is taken into consideration by the court. Pursuant to Article 57 of the Court Organization Act of the Republic of China, precedential rulings are selected through a meeting between the president, division chief judge, judges of the tribunal or through a multi-judicial panel of the civil or criminal division. Upon selecting the deemed precedential cases, the selected cases are then reported to the Judicial Yuan and the lower courts are bound by the Supreme Court's ruling by *stare decisis*.

### 3. International Covenants

Despite Taiwan's withdrawal from the United Nations in 1997, Taiwan has emphasized international human rights protection as early as 1990. On March 31, 2009, Taiwan formally ratified The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR), also known as "The Two Conventions." Concurrently, the Legislative Yuan passed two acts to further safeguard those human right: (1) The Act to Implement the International Covenant on Civil and Political Rights and (2) The International Covenant on Economic, Social and Cultural Rights. After concrete enforcement of the laws, the contents of the two conventions became part of the law of Taiwan.

On December 18, 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was effectuated in the September of 1981. The Convention protected women's





rights with regards to political, legal, employment, educational, medical, commercial, and familial activities. As a result, on June 8th 2011, the Enforcement Act of Convention on the Elimination of All Forms of Discrimination Against Women was also passed by the Legislative Yuan to ensure the protection of human rights and promote gender equality in accordance with Taiwan's domestic laws.

## II The Legal System

### 1. Judicial Independence

The Constitution of the Republic of China (Taiwan) requires that governmental powers be separated. As such, the power of judicial authority is separated from the executive and legislative authorities and is operated independently without the intervention of non-judicial agencies.

### 2. Prosecutorial Body

The highest court in the Republic of China (Taiwan) is the Prosecutors Office of the Supreme Court. This is followed by the High Courts and then by the District Courts.

Taiwan's prosecutorial system treats prosecutors as an "integrated prosecutorial body." This refers to the prosecutor's independence from the courts to exercise their professional authority. However, prosecutors at different levels are still considered as a whole. In other words, when exercising their professional authority,