《大学英语选修课系列教材》
COLLEGE ENGLISH ELECTIVE COURSE SERIES

专业英语类

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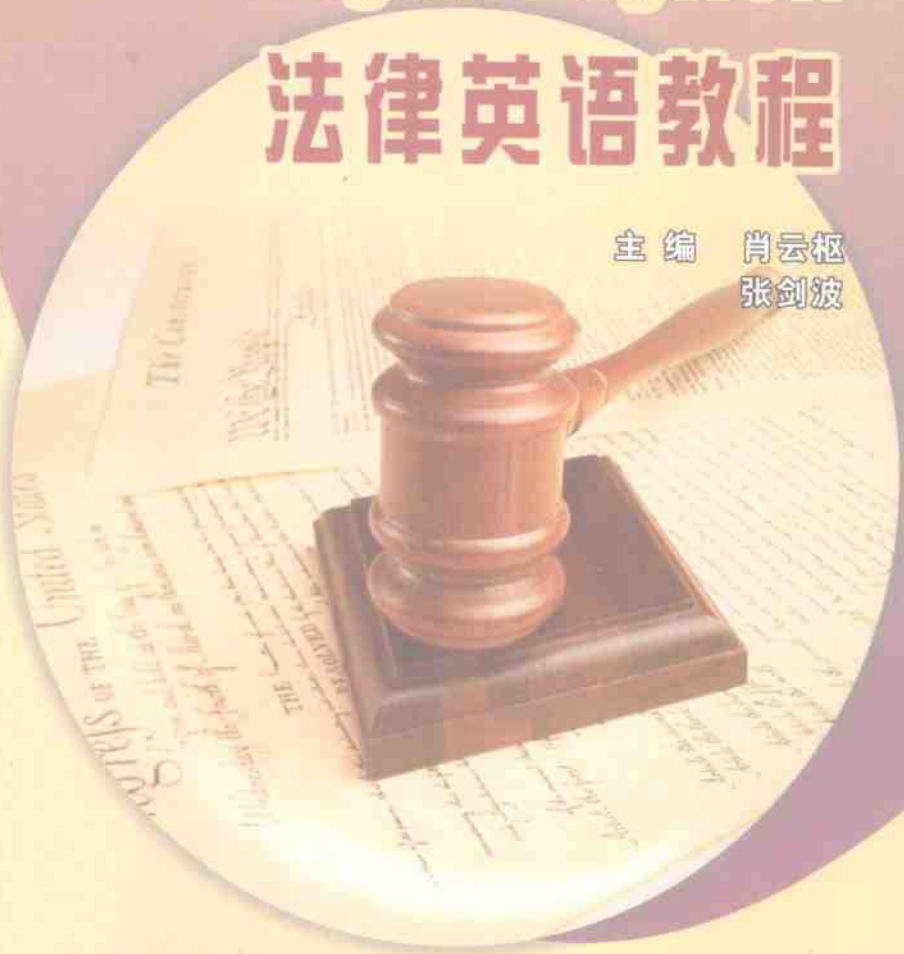
A Course Book of Legal English

法律英语教程

主 编 肖云枢
张剑波



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谯　莉

重庆大学出版社

内容提要

随着我国加入世界贸易组织，培养高素质的法律英语复合型人才迫在眉睫。本教材在编写过程中，从选材、注释、练习设计等多方面做了精心考虑安排，既强调学生英语语言技能的培养，又考虑到对学生法学知识的输入和拓展，同时也注意到教材的连贯性和循序渐进性，以确保学生英语水平和法律认知与理解能力的提高。本教材包括17个单元，所选材料全部源自英美法律原版文章和法律条文。内容涉及英美法律制度、美国法律教育、法理、宪法、刑法、民法、刑诉、民诉、合同法、侵权法、公司法、知识产权法、国际经济法、劳动法、调解等。

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COLLEGE ENGLISH
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总　序

我国的大学英语教学起步于20世纪80年代，经过20多年的发展，大学英语在教学水平、课程设置、教学方法、教学环境、师资队伍等各个方面都有了长足的进步和发展。但随着我国加入WTO和国民经济的快速发展，大学英语教学暴露出与时代要求不相称的一面。为适应现代社会对人才培养的实际需求，推动和指导大学英语教学改革，教育部于2003年颁布了《大学英语课程教学要求（试行）》（以下简称《要求》），并于2007年结合对人才能力培养的新要求再次做了修订和调整，作为全国各高校组织非英语专业本科生英语教学的主要依据。

《要求》将大学阶段的英语教学分为一般要求、较高要求和更高要求三个层次，强调要贯彻分类指导、因材施教的原则，使英语教学朝着个性化的方向发展，要"将综合英语类、语言技能类、语言应用类、语言文化类和专业英语类等必修课程和选修课程有机结合，形成一个完整的大学英语课程体系，以确保不同层次的学生在英语应用能力方面得到充分的训练和提高。"这样，大力发展大学英语选修课就成了大学英语教学改革的重要课题。

大学英语选修课的开设不仅是《大学英语课程教学要求（试行）》精神的体现，也是《教育部财政部关于实施高等学校本科教学质量与教学改革工程的意见》（以下简称《意见》）的内在要求，《意见》将"学生的实践能力和创新精神显著增强"作为教学改革的重要目标之一，而大学英语教学要在这方面有所作为的话，必须注重培养学生的跨文化交际能力、文化素养和在全球化、信息化的背景下获取知识的能力，这显然是传统的大学英语教学和课程设置所不能胜任的。

近年来，全国许多高校纷纷进行了开设大学英语选修课的尝试，并取得了可喜的成绩。但是由于指导思想不明晰、教师知识结构单一和配套改革滞后等原因，在大学英语选修课的开设中出现了"因人设庙"，开课随意性强，开课种类单一，各门课程难易不均，课程测试不规范，学生对各门课程的兴趣差异过大等问题。大学英语选修课的开设迫切需要某种程度的规范与引导，需要更为科学地设置选修课程，确实达到《要求》和《意见》中提出的目标。

针对以上问题，我们认为，一套由成熟理念指引的、体系科学的、建立在选修课开设的成功实践基础之上的系列教材能够起到这种规范和引导作用。因此，重庆大学出版社组织来自全国各地的、在选修课开设方面走在前列的高校的专家和教师，在多次交流与反复论证的基础上，组织编写了这套《大学英语选修课系列教材》。该套教材具有以下明显的特点：

第一，教材体系科学、系统。系列教材以《大学英语课程教学要求（试行）》为指导，覆盖语言技能类、语言应用类、语言文化类和专业英语类4个板块，既注重语言基础知识的积累，也充分考虑对学生文化素质的培养，确保不同层次的学生在英语应用能力方面得到充分的训练和提高。

第二，坚持"实用、够用"的原则。在体例安排和内容选择上严格按照选修课的课时要求和学生水平的实际需要，力求精练，避免长篇累牍，在语言难度上体现了与英语专业同类教材的差别。

第三，注重知识与技能相结合，语言与文化相结合。在深入浅出地讲授知识的同时，结合课程内容尽可能多地为学生提供说与写的练习，在雕琢学生语言的同时，尽可能培养学生的跨文化交际能力和批判性思维能力。

第四，强调学生综合能力的培养。考虑到学生在选修课阶段可能不再修综合英语类的课程，各教材在主要训练与课程相关能力的基础上，适当补充了其他能力的训练内容。

第五，吸纳并总结近年来相关高校选修课开设的经验和成果。该套教材的参编者来自全国多所高校，多数教材是由开设该门课程最成功的、最受学生欢迎的学校和教师撰写，教材既吸纳了相关讲义的优点，又根据专家意见，按照学科要求和普遍情况进行了改编，在保证教材科学性的前提下，最大程度地体现了大学英语学生的选修取向。

选修课的开设是大学英语教学改革的重要发展方向，但是在改革中诞生的事物也必然不断地在改革中被重新定义，因此我们这套大学英语选修课教材的体系也将是动态的和开放的，不断会有新的教材被纳入，以反映大学英语教学改革在这方面最新的成功尝试。相信随着教学改革不断走向深入，我们的教材体系也将日臻完善。

总主编

2008年6月

前 言

法学家们在很早以前就认识到，"...language is no mere instrument which we can control at will; it controls us"(Maitland)。法律英语(legal English 或 the English language of the law)是指表述法律科学概念以及用于诉讼和非诉讼法律事务时所使用的一种语言变体(language variety)。作为一种专门用途语言(language for specific purposes)，法律英语因其具有的"frequent use of common words with uncommon meanings; frequent use of old English and Middle English words once in common use, but now rare; frequent use of Latin words and phrases; use of Old French and Anglo-Norman words which have not been taken into the general vocabulary; use of terms of art; use of argot; frequent use of formal words; deliberate use of words and expressions with flexible meanings; attempts at extreme precision of expression"(Mellinkoff)等特点在英美国家而被视为一门外语，足见其难度之大。但是，本教材并非要对法律英语的这些特点进行研究，而是通过对精心选编的课文的学习，使学生对英美法系国家的法律有所了解，培养学生阅读和使用英语法律文献、进行法律比较研究以及与外国法律人(lawyers)直接进行沟通的能力，从而满足我国日益增长的对涉外复合型法律人才的需要。

本教材在编写过程中，从选材、注释、练习设计等多方面都做了精心的考虑和安排，既强调学生英语语言技能的培养，又考虑到对学生法学知识的输入和拓展，同时也注意到教材的连贯性和循序渐进性，以确保学生英语水平和法律认知与理解能力的提高。

本教材共17个单元，所选材料全部源自英美法律原版文章和法律条文，内容涉及英美法律制度、美国法律教育、法理、宪法、刑法、民法、刑诉、民诉、合同法、侵权法、公司法、知识产权法、国际经济法、劳动法、调解等。

西南政法大学是我国最早在本科高年级和研究生阶段开设法律英语的政法院校。本教材的编者主要是西南政法大学外语学院从事多年法律英语教学与翻译的骨干教师。这里要说明的是，西南政法大学外语学院英汉对比法律语言学及法律翻译专业2006级硕士研究生周怡、杜艳参加了第2课的编写并协助主编对部分课文的校对做了一些有益的工作。本教材为2009年重庆市教委人文社会科学研究项目，项目编号：09SKC19。

本教材适合修完大学英语4级的学生和相当水平者使用。鉴于编者水平有限，书中的疏漏之处在所难免，恳请读者批评指正。

主 编

2009年2月

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Lesson 1

An Introduction to the English Legal System[1]

The legal system presents a number of different aspects to the inquiring mind. From one point of view it may be seen as systematic collection of principles and rules of law, as distinguished from principles and rules of morality, or of physics, or of politics, or of etiquette. Thus, when a citizen asks about the law on a particular matter he often wants to know what rules there are, if any, which will tell him what to do or what not to do. And he will often assume that the legal system as a whole has the primary function of establishing and enforcing legal system. From another point of view legal system can be seen as an independent system of government. That's to say, the other systems in the world recognize it as having a separate existence with a government claiming ultimate law-making and governmental authority. This is to look at the legal system from an international point of view — to see it wholly from the outside as it were. Seen from this point of view no special organization need be thought essential to the institutional structure of any system. From yet another point of view the legal system can be seen as a collection of institutions functioning within defined geographical areas. Modern European legal systems may be expected to have a variety of distinct legal institutions: legislatures to make laws, courts to resolve disputes between persons subject to the laws, executive departments of government to carry into effect authoritative decisions made in accordance with law, and police forces to enforce laws generally and to prevent breaches of law.

The United Kingdom consists of four parts: England, Wales, Scotland and Northern Ireland. Three legal systems exist within the United Kingdom: the legal system of England and Wales, the legal system of Scotland, and the legal system of Northern Ireland. The legal system for England and Wales became fully integrated following the Laws in Wales Act 1536.

The union of crowns in 1603 meant that the same person was the monarch in the two kingdoms of Scotland and England. However, this did not immediately integrate all the institutions of the two countries. The Union with Scotland Act[2] 1707 established the United Kingdom of Great Britain and provided that this kingdom would be regulated by one Parliament. However, the Scottish legal system was retained and even today changes planned for the whole of Great Britain may require specific Scottich legislation.

The position of Northern Ireland is considerably more complex constitutionally. From the establishment of a provincial Parliament in Northern Ireland in 1921 until 1972, legislation on most domestic issues was made in the form of Acts of the Northern Ireland Parliament. In 1972 that Parliament was suspended and direct rule from Westminster[3] was substituted. The majority of Northern Ireland's primary legislation is carried into effect by means of Orders in Council.

The differences between the legal systems are most marked in areas such as land law and trust law. However with the increasing importance of statutory law and law emanating from the European Union there is a corresponding increase in the similarity between the existing legal systems.

Sources of Law

The main sources of law in the United Kingdom are four: common law, statute law, law emanating from the European Union and international law.

Common Law[4]

One of the most ancient and continuous sources of law in England, Wales and Northern Ireland is the "common law".

Before the Norman Conquest[5], there was no unified legal system. Cases were tried in such types of courts as the Shire Courts, the Hundred Courts[6] and the Franchise Courts. When the English legal system first began to take shape, judges were appointed to administer the "the law and customs of the realm." They built up their own set of rules and principles based on general custom and this part of the law was called "common" in contrast to that which was particular or special, such as canon (or ecclesiastical) law[7] or local custom.

Strictly speaking, the common law refers to the legal rules which have evolved over many centuries from judges' decisions in court cases. These rules are based on the concept of binding precedents, whereby lower courts are bound by the decisions made by higher courts until those higher courts themselves overturn the precedents. This occurs when the cases before the court has similar material facts and involves similar

legal principles to the precedent.

Even if a preceding judgment is binding on the courts, only some parts of the judgment are important. Lawyers distinguish two parts of a judgment: the *ratio decidendi*[8] and *obiter dicta*[9]. The *ratio decidendi* means the reason for the decision. This is the principle of law on which the decision is made and can become a binding precedent. The *obiter dicta*, on the other hand, is a term used to describe the remainder of the judgment. This is not binding but may be persuasive. In the absence of a binding *ratio decidendi* the court may be influenced by *obiter dicta*. Its strength depends on the seniority of the court and the reputation of the judge.

Common law forms the basis of the law in England and Wales and Northern Ireland, except when superseded by statute law made by parliament. Scotland's system has in the past made more use of jurists' writings, although common law principles are now usually applied.

Statute Law

The majority of the laws applicable in Britain are made by Parliament, and are called "statute law". Parliament is the highest legislative body in Britain and has the power to make and repeal any laws it wishes, subject to compliance with EC legislation. This is known as the doctrine of parliamentary supremacy or sovereignty.

Parliament also empowers bodies such as government departments, local councils or other statutory bodies to make delegated or secondary legislation. This often deals with technical details, for example, the regulations for the assessment of maintainance paid for a child under the Child Support Act 1991.

Statutes often give Ministers of State (through their departments) power to create rules or procedures to carry out the purpose of the statute. For example, the procedure for making a social security benefit claim.

Legislation is introduced to Parliament as a bill for debate. An act is created when a bill has been approved by the House of Commons, the House of Lords and the Queen. There are different kinds of bills. Some are public bills and intended to alter the general law and be generally applicable. These are generally introduced by the Government as part of its legislative program. Alternatively, a member of Parliament may introduce a private member's bill. Private bills are intended to have more limited effect, for example, a bill concerned with the building of a new railway line.

Euopean Community Law

Britain is also a member of the Euopean Union and therefore subject to European

Community law which is having an increasing impact on the British legal system. In the early days of the Euopean Union, when it was known as the Euopean Economic Community, Euopean law was mainly concerned with economic matters. Many laws were aimed at breaking down the trade barriers between countries and ensuring fair competition. Nowadays the European Union is also increasingly involved in legislating on the rights of citizens. Some European laws are now directly effective, which means they can be invoked by the citizens directly in British courts without Parliament needing to pass new legislation.

In addition, Britain is in the process of incorporating the European Convention on Human Rights into domestic law which will enable people to take human rights cases through the courts in Britain, rather than through the much longer process of the European Court of Human Rights[10].

International Law

Britain is a signatory to many international conventions which have an impact on the domestic laws, but in general these laws cannot be applied directly in domestic courts. Lawyers in Britain are therefore working within the context of Britain's various domestic legal systems, the European legal system, as well as the international legal framework. The interaction between these systems ensures a dynamic legal environment.

Legal Profession

The most distinctive feature of the Egnlish legal profession is, of course, the division between barristers and solicitors. Barristers appear before the "Bar" of justice, hence their name. They are associated with one of the four Inns of Court (Lincoln's, Inner Temple, Middle Temple and Gray's), which date from the fourteenth century. While the national organization of solicitors, the Law Society[11], did not receive a Royal Charter until 1831, solicitors can trace their profession back to the sixteenth century.

One may not practise simultaneously as a barrister and solicitor. The barrister is an advocate in the higher courts, a specialist, and, quite literally, a "lawyer's lawyer", because usually he can be retained only by a solicitor. The solicitor, on the other hand, is retained directly by the client to act as a general advisor. While solicitors do specialize, partnerships[12] (firms) preserve the general advisory nature of their work. Barristers, on the other hand, cannot form partnerships or firms although they can share "chambers".

Unlike the solicitor, the barrister has no contractual relationship with the person he

represents and cannot sue for a fee. The barrister's fee is theoretically an honorarium which the solicitor retaining him has an ethical duty to pay, even if the solicitor is not paid by his own client.

In general terms, the solicitor conducts the day-to-day communications with the client, informs the barrister of the client's desires and, in litigated matters, takes discovery, interviews and prepares witnesses (the barrister is permitted to interview only the client and expert witnesses[13] before trial) and advises the barrister on the facts. The barrister gives specialized advice or, in litigated cases, drafts the pleadings, plans litigation strategy and acts as a courtroom advocate. This division of responsibility frees the barrister to acquire special knowledge in a particular field of law and to concentrate on the demands of advocacy.

While the barrister and the soliciter receive different training, each must apprentice himself prior to qualification. A solicitor must usually have a university degree, pass the qualifying examinations, and serve a two-year period of "articles" with a practising solicitor. A barrister must normally have university degree and, if his degree is in a field other than law, a one-year diploma in law. In addition to passing the Bar examinations, the would-be barrister must join an Inn of Court, attend a required number of dinners at his Inn and take part in other traditional activities. He must also serve a year's "pupillage" with a practising barrister after completing his examinations.

In assessing the educational program for English lawyers one must consider the shortcomings as well as the virtues of its emphasis on practical training. One problem, for example, is that prospective barristers find it difficult to support themselves during their practical training. The Inns gives some limited scholarships and pupils may earn fees during the last six months of their pupillage, but barristers do not pay a salary to their pupils who have, after all, completed their academic requirements. This has left barristers open to charges of favoring those applicants who have social standing and independent means. In contrast, solicitors normally do pay articled clerks a subsistence salary and are encouraged by the Law Society to pay clerks an "adequate wage" so that "no one is lost to the profession because of the cost of qualifying."

The division of the English legal profession between barristers and solicitors has understandably led to certain tensions. Depite a declaration by the Bar and the Law Society in November 1975 that the two branches were equal and that their work should be conducted on that basis, some solicitors still complain that certain barristers behave as if they belonged to the "superior branch" of the profession. Additionally, solicitors

have requested greater rights of audience in criminal courts (they may now appear only for limited purposes), and in the High Court of Justice (for example, to appear on certain uncontested motions and to advise the court of agreed terms of settlement between the parties).[14] The barristers have opposed this request. Solicitors also consider the complete separation of qualifying programs for barristers and solicitors to be unsatisfactory and unnecessarilly rigid since it compels the prospective English lawyers to choose one career or the other before he begins this professional training. Moreover, solicitors criticize the fact that most judges are drawn from the Bar.

Nonetheless, most barristers and solicitors do not desire a fused profession because they believe the advantages of the split profession outweigh its shortcomings. Most English lawyers contend that the divided profession leads to the most efficient allocation of work and enables barristers to develop greater expertise in advocacy. Another reason given for not merging the profession is that fusion might place the leading barristers in the larger firms of solicitors, leaving smaller firms or individual solicitors without access to the best advocates.

Words and Expressions

etiquette *n.* the formal rules of correct or polite behavior in society or among the members of a particular profession 礼节,礼仪;规矩

enforce *v.* to make sure that people obey a particular law or rule 强制执行,强制实施(法律、规则)

monarch *n.* a person who rules a country or an empire, for example, a king or queen 君主,帝王

suspend *v.* to officially stop sth. for a time 暂停;中止

precedent *n.* a decided case that furnishes a basis for determining later cases involving similar facts or issues 先例;判例

ecclesiastical *a.* (基督教)教会的;传教士的

supersede *v.* to take the place of sth. or sb. that is considered to be old-fashioned or no longer the best available 取代;替代

dynamic *a.* always changing and making progress 动态的;发展变化的

barrister *n.* in England or Northern Ireland, a lawyer who is admitted to plead at the bar and who may argue cases in superior courts 巴律师(过去曾译为大律师、出庭律师、专门律师)

solicitor *n.* in the United Kingdom, a legal adviser who consults with clients and prepares legal documents but is not generally heard in High Court or (in Scotland) Court of Session unless specially licensed 沙律师(过去曾译为小律师、事务律师、撰状律师)

advocate *n.* a person who assists, defends, pleads, or prosecutes for another; (Scotland) a barrister 提倡者;拥护者;辩护人,律师;(苏格兰)巴律师

honorarium *n.* (*pl.* honoraria) a payment made for sb.'s professional services 酬金;谢礼

Notes

1. legal system 法律体系,法律制度。指一个国家最高统治者或统治集团直接或间接制定的全部法律的总和,或者根据同一个基本规范在一个国家或共同体内实施强制权而直接或间接制定的全部法律总和。
2. The Union with Scotland Act 1707(英)《与苏格兰合并法》(1707)。这里要说明的是,1707 年英格兰与苏格兰的联合或合并,并不是通过议会制定法,而是通过英格兰和苏格兰各自的议会立法所批准的条约来实现的。根据该条约,解散双方各自的议会,成立只有一个议会即大不列颠议会(Parliament of Great Britain)的大不列颠新国家。
3. Westminster威斯敏斯特。毗邻伦敦的一个城市,是大伦敦市(Great London)的一部分,曾为王国的高级法院所在地,现在是英国政府机构驻地。
4. Common Law 普通法,也称"习惯法"。指英美法系中表现为习惯与判例的、通行于全国的法律。普通法以其表现英国法的主要特征,有时也指整个英国的法律制度。因具有全国通行、普遍适用的意思,故称。从这最初含义出发,又引申出下列含义:①与大陆法相对,指英美法,故英美法系又称普通法系;②与制定法相对,普通法与衡平法统称判例法;③与衡平法相对,普通法指以普通法法院的判例为依据而产生的法律;④与教会法相对,普通法指世俗政权所颁发的或由法院所创制的法律。

5. Norman Conquest (英)诺曼征服。指1066年及后来诺曼人在威廉公爵率领下征服英格兰的历史事件。诺曼征服对英格兰法律的发展带来了重要的后果。这种后果是一种制度性的变革,使英格兰建立了强有力的、高效运作的政府,严格确认和执行国王的权利。这为后来亨利一世和亨利二世发展普通法奠定了坚实的基础。
6. the Hundred Court 百户区法庭。百户区指英格兰盎格鲁-撒克逊时期建立的郡下面的一级行政组织,确立于公元6世纪。百户区的界定,有人认为由一百海得(hides)土地的面积构成,有人认为由10个十户区(tithings)构成,有人认为由100户自由民家庭组成等。在英格兰各个不同地区,百户区的范围和名称均有不同。百户区由高级治安官管理,并有自己的法庭。百户区法院是一种较大的封建法庭,一般每隔3—4周开庭一次,审理的案件多为轻微的民事案件。1867年,百户区法庭制度由《郡法院法》(County Court Act)废除。
7. canon law 天主教教会法;英格兰教会法;苏格兰教会法;东正教教会法
8. *ratio decidendi*(拉)判决依据。指法庭判决案件的法律依据,可简写为*ratio*。
9. *obiter dicta*(拉)(法官的)附带意见。指法官在作出判决的过程中就某一与案件并不直接相关的法律问题所作的评论,它并非为本案所必要,因此不具有判例所具有的拘束力。
10. the European Court of Human Rights 欧洲人权法院。指欧洲理事会(Council of Europe)在1950创建的司法机构,位于斯特拉斯堡(Strasbourg)。欧洲理事会各成员国为了维护和进一步实现人权和基本自由,于1950年在罗马签署一项公约。该公约宣布应禁止奴役和强迫劳动,以及保证人身自由与安全、受到公正的审判、思想自由、宗教信仰自由、集会自由等诸多权利。后来的议定书中又增加了财产权和教育权内容。该公约于1953年生效,但它并不必然构成成员国的国内法的一部分,也并不强迫各成员国接受其管辖。
11. the Law Society(英)沙律师协会。英国沙律师行业的组织。该组织于1825年成立。该协会的主要职能是设立沙律师的培训、执业和服务的标准、颁发开业许可,确保所有新的沙律师是恰当和适宜的人员,并已得到必要的培训,指导职业考试,维持赔偿基金等。
12. partnership 这个词有以下几个含义:"合伙;合伙企业;合伙关系、合伙人身份;合伙合同"。但在这里特指"律师事务所",因为英美的律师事务所大多数是合伙组织。要注意的是,在英美国家,特别是美国,律师事务所的英语名称通常是"law firm"。