

<<英美司法文书写作>>

图书基本信息

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前言

In 1996 we were assigned by our university to do further study in law at China University of Political Science and Law in Beijing. One of the tasks we had to do there was to collect all the necessary materials that two new courses were in dire need of. One is Legal English; the other is Anglo-American Legal Drafting. Since then we began to keep an eye out for the relevant information and tried to use it in the course. During the teaching, we found that in spite of some similarities there still exist some striking differences between Anglo-American legal documents and Chinese legal documents. One of the reasons is that both the U.K. and the U.S. have a long tradition of practicing common law whereas China is a country of civil law tradition. Because of the differences in these two legal systems, there are quite a lot of distinct features in each. Since common law lays stress on case law, with stare decisis as its basic principle and precedents as major source of law, it gradually has developed its certain forms of expressions which are usually reflected in its legal documents. Besides, different procedures in two different legal systems may also lead to different written forms. Take a civil proceeding in a common law jurisdiction for instance, it is often regarded as a "trial" or "event" and such words as concentration, orality, and immediacy are the essence of a case trial. Because of this, much legal drafting has to be done by an attorney rather than by a judge in the common law world. Since common law relies heavily on case law, every attorney makes an effort to draft documents clearly and in great detail following the norms that a format requires. That's why some Chinese jurists and scholars jokingly commented that Anglo-American legal documents are just like boiler-plates. Such differences inspired us to compile a book by means of which we can introduce some Anglo-American legal documents. With this determination, we set about our great project. The first difficulty we came across is how to make a sound classification of various sorts of documents available and present them in a smooth and logical order. The second is how to furnish the reader with the typical form of each legal document so that the reader may have a complete picture of Anglo-American legal documents and at the same time have a convenient source for future reference. The third is how to make an explicit illustration.

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### 内容概要

本书是专门针对英语专业学生涉外司法工作的诉讼实践需要设计的一本英文司法文书写作教程。书中细致介绍了英美各种司法文书的写作特点，具有很强的实用性，是广大法律专业学生，尤其是法律英语专业学生学习法律的重要资料，也是涉外法律工作者必备的案头工具书。

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## 章节摘录

Ordinarily, languages change over time through ordinary use——words develop new meanings and old meanings are lost; terms that become archaic drop out of the language; grammatical constructions shift to reflect changes in the status of competing dialects ( ain't versus isn't and aren't, for example ) . Legal terms also change through use. But legal language has developed a number of its forms and meanings through different process——a legal historical process. An example of this is the legal meaning of fresh, as in fresh fish. The lay person will probably understand fresh fish to mean fish that was recently caught. But the legal definition of fresh fish, which has been set by regulations, is fish that has never been frozen, no matter when it was caught. It is the courts, legislatures, and government agencies that decide the meaning of many legal terms, rather than ordinary usage and historical change. The meaning of the legal term negligence developed through litigation. The term has been refined through a history of appellate court decisions, so that it now has a very specialized meaning in the law. In ordinary usage, negligence is synonymous with carelessness, but the legal meaning, honed by more than a century of litigation, is much narrower. In California, negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under a given set of circumstances. Most legal meanings, like meanings of words in ordinary usage, do have a certain flexibility; there is a range of meanings for a given word. But in the law the range in meaning is a result of different judicial, statutory, or regulatory interpretations or formal negotiations, not of ordinary linguistic processes.

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