


新制司法特考法學英文考情介紹 (上): 命題方向與準備方法

	<p>主筆人：文政大</p> <p>本單元因應100年新制，新增法學英文一科而開闢，主筆人文政大老師曾留學美國，專業橫跨外交、法律與政治學，並同時具有學術與實務經驗，對教學充滿熱忱。希藉由文政大老師的背景知識，帶領考生們贏得滿意高分。</p> <p>(文政大老師授課大綱請見：附件三)</p>
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壹、前言

民國一百年的新制律師司法官考試在形式與考科上都有重大變革。在形式上，筆試由原來的一試增加為兩試；在考科上，將傳統考科（包括公法/私法）納入第一試的「綜合法學」當中，並加上「法學英文」此一全新考科。綜合法學由一百五十題選擇題所組成，共計三百分，其中「法學英文」一科佔十五題，計三十分。

此項考試新舉措的實施，勢必造成考生的焦慮與遲疑，尤其當考生面對「法學英文」此一全新科目，在大學法律系的課程安排比重相對不足的前提下，其所產生的手足無措狀態可想而知。本文即以前述背景為前提，從法學英文的**科目概況、命題方向與準備方法**出發，提供面對新制考試的考生們一個概括性的認識。

貳、科目概況

一、科目範疇

探討法學英文的範疇可從兩個方向著手，一是觀察考科標題取得該科目的形式意義；二是檢視考選部提供的命題大綱掌握考試的核心。

就第一點而言，法學英文係由「法學」與「英文」兩項要件組成，故可得



知應試者必須同時掌握法學概念與相關英文能力。就第二點而言，考選部提供的命題大綱將法學英文依據法科類別區分為「契約(contract)」、「侵權(torts)」、「憲法(constitutional law)」、「公司與證交(corporations and securities regulation)」、「刑法(criminal law)」、「民訴(civil procedure)」與「刑訴(criminal procedure)」等七大項，約莫涵蓋了英美法體系最主要的各類法科。由此可知，法學英文中的「法學」在概念上不僅包括本國法，更包括英美法，而「英文」所指涉的不只是我們日常所學的英語字彙、文法與閱讀，更包括了專業法律文件（例如法院判決、專題新聞稿與學術專論）常出現的專業術語。

二、課程教材

目前將英美法列為修業課程的法律系為數不少，同學在修習過程中亦需接觸大量英文法律文獻，例如台大、東吳、北大與輔仁皆設有「英美法導論」課程，東吳大學甚至將該課列為大一的必修課程之一（其他課程請見：附件一）。唯這些在學校開設課程所使用的教材，多半為源自國外的外文教科書，或為老師自行蒐集整理的外國重要判決。這些教材與文獻，對英美法能力的培養幫助甚高，然而對於必須在短期內快速累積英美法能力的考生而言，恐怕失去效率。

事實上，目前由國內學者自行出版的英美法教科書為數甚少。最具代表性的著作即為林利芝教授所出版的一系列法學英文用書。林教授蒐集了國內外最具代表性的法律文獻，並在這些文獻中賦予中文註解與翻譯以幫助同學研讀。唯此系列書籍自 2004 年出版至今已達七本以上，對考生在短時間內準備考試而言勢必仍為一大負擔。

另一本由國內出版的法學英文教科書為 2004 年元照與貝塔出版社出版的《法律英文寫作的第一本書》。該書係外國法律學院教授針對法學院學生在學習與從業階段可能撰寫法律文件（例如判決書、訴狀、備忘錄、摘要等）所需寫作技巧的指南。事實上，若排除考試的需求，該書對有志從事法律工作的法律系學生具有高度效用性，亦有利於法律英文字彙的充實與練習。

參、命題方向

目前可以作為判斷司法考試法學英文命題方向的依據有二，一是九十九年的司法預試模擬考題（綜覽 99 預試試題請見：附件二）；二是其他類似考試的考古



題。事實上，法學英文並非首次出現在各類考試當中，例如台北大學法研所的入學考試即將「法學英文」列為考科之一，而國家考試當中的民間公證人、專利師考試亦有類似考科的設置。唯這些考古題仍與司法考試當中的題型、範圍有所差異。例如專利師考試的命題方向多環繞智慧財產權(intellectual property rights)與專利法(patent law)相關字彙，但此類字彙並非司法考試的命題範疇；台北大學的法學英文則偏重法律字彙的掌握，較少涉及英美法基本概念的命題。因此縱使他山之石可以攻錯，同學們在面對司法考試「法學英文」一科時，仍必須以考選部頒佈的命題大綱以及預試考題為準。

以命題形式而言，預試考題可分為「字彙選擇」、「文義測驗」與「案例操作」三種。就字彙選擇而言，考題提供一小段文字敘述，要求考生選出適當的字彙填入，此種考題共占六題；就文義測驗而言，考題擷取部分英美法重要判決判例，要求考生從該段敘述中選出符合或錯誤的選項，此種考題共計七題；最後的案例操作則提供虛擬的情境，要求同學依據該情境做出合理的選項判斷，此種考題共占兩題。不論何種考題類型，其前提是同學必須能讀懂這些專業的法律字彙，並能掌握基本的英美法知識，方能取得相當的分數。

肆、準備方法

基於前述前提，考生在法學英文考試的準備上，首要即為專業法律字彙的加強。畢竟法學英文並非生活性的語言，對於初學者而言，許多字彙多是第一次接觸；即使是一般語言中常用的字彙，其在法律上所代表的意義也不同。筆者建議，將法律字彙依照各法科分門別類地記憶是較具效率的作法；在記憶上宜強調字彙文義的掌握而非逐字背誦（畢竟司法考試時並不要求同學的寫作與拼字能力）。

其次則為閱讀具代表性的英美法文獻並熟悉此類專業文件的寫作模式。閱讀法律文獻（包括法院判決與判例、新聞資料與學者專論）除了有助於擴充並確認自己專業字彙的數量，更有助於熟悉此類文獻的寫作模式。受到考試時間的限制，若不熟悉該類文獻的寫作風格與模式，很可能因時間壓力而喪失原本應得的分數。

伍、結語

本文整理探討了民國一百年司法預試當中「法學英文」此一新興考科的概況、命題方向與準備方法。雖說學無捷徑，然而在有限時間內，有效率、有方法地學習將是成功的關鍵。在下一期的考情介紹當中，筆者將進一步提供模擬預試



考題的解析與作答，期待對於準備司法考試的辛苦考生們能有具體幫助。

附件一：99 學年度上學期國內法律系開設英美法學課程一覽表

大學	課程名稱	開課年級/必修	教師名稱
政治大學	英美法導論	一年級/選修	朱德芳
台北大學	英美法導論	法學財經組/必修	吳嘉生
台北大學	英美法導論	司法組/必修	司法組
交通大學	英美法導論	科法所	王敏詮
中正大學	英美法導論	財經法碩一/選修	陳文吟
東吳大學	英美法導讀	二年級/必修	余慕德
東吳大學	英美法導讀	二年級/必修	高聖惕
東吳大學	英美法導讀	二年級/必修	帥以仁
東吳大學	英美法導讀	二年級/必修	連致遠
東吳大學	英美法導讀	二年級/必修	林繼恆
東吳大學	英美法導讀	二年級/必修	莊人樺
輔仁大學	英美法導論（一）	財法二/必修	黃裕凱
銘傳大學	英美法導論	二年級/選修	王震南
文化大學	英美法導論	二年級/選修	王愷悌
東海大學	英美法導論	二年級/必選	胡心蘭
真理大學	英美法導論	二年級/選修	張明偉
銘傳大學	法律英文	一年級/必修	實丹尼

說明：

- 1.目前各校除銘傳大學外，多開設「英美法導論」課程而非「法律英文」來增加法律系同學對法學英文與英美法的能力。由於這些課程與考選部頒佈之「法學英文」考試大綱內容相關，筆者仍將「英美法導論」課程列入前表。
- 2.台大歷來均設有「英美法導論」之課程（張文貞老師開設），唯 99 學年度並未開設，故並未列於前表。



附件二：綜覽 99 預試試題

- (D)136. At common law, a married woman lacks capacity to sue or be sued in her own name. This is the so-called "interspousal immunity" rule. The public policy behind the rule is to promote marital harmony. Encouraging litigious spouses tends to foster marital disharmony. Many states, due to the gender equality concern, changed the rule by statutes. These statutes, however, do not remove all common law immunities as such. Which of the following correctly states the current status of interspousal immunity in the United States?
- (A)The antique interspousal immunity rule has been entirely abolished because the Equal Protection Clause of the Constitution prohibits discrimination against women.
 - (B)The interspousal immunity rule remains intact in that it can prevent the home from being split apart.
 - (C)State lawmakers failed to repeal the interspousal immunity rule because any legislation should not violate common law rules.
 - (D)The interspousal rule has been largely revised in many states; nevertheless, it has not been totally abolished despite its discriminatory nature.
- (B)137. The classic description of an effective waiver of a constitutional right is the intentional _____ or abandonment of a known right or privilege. Courts indulge every reasonable presumption against waiver of fundamental constitutional rights.
- (A)reimbursement
 - (B)relinquishment
 - (C)requirement
 - (D)reinforcement
- (C)138. In a civil lawsuit, what formal document the plaintiff first bring into the court to set out the basic facts and legal reasons?
- (A)summary judgment
 - (B)deposition
 - (C)complaint
 - (D)indictment
- (B)139.The U.S. Supreme Court held unconstitutional a state law requiring all children in the public schools to salute and pledge allegiance to the flag of the United States. The Court explained that "To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind." "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." In accordance with the words cited above, what is the constitutional ground for the Court to strike down the flag salute law?
- (A)The Cruel and Unusual Punishment Clause which forbids the government to impose grossly disproportionate punishment upon criminal defendants.
 - (B)The Freedom of Speech Clause which protects people's right not to speak.
 - (C)The Equal Protection Clause which guarantees me fundamental right to education.
 - (D)The right to privacy created by the precedents of the U.S. Supreme Court.
- (D) 140.The "fair use" defense allows the public to use not only facts and ideas contained in a



copyrighted work, but also expression itself in certain circumstances. The fair use of a copyrighted work, including such use by reproduction in copies, for purposes such as criticism, comment, news reporting, teaching, scholarship, or research, is not an _____ of copyright. The fair use defense affords considerable latitude for scholarship and comment, and even for parody.

- (A)impediment
 - (B)impairment
 - (C)impeachment
 - (D)infringement
- (C)141. A police officer who followed dog running loose in violation of ordinance to house where plaintiff was sitting in car parked at curb and arrested plaintiff not for violation of the dog leash ordinance but for refusing to produce her driver's license. Plaintiff sued for ①false imprisonment; ②assault & battery; ③mental distress and ④negligence against the police officer. What cause of actions the plaintiff may succeed?
- (A)①②③
 - (B)①③④
 - (C)①②③④
 - (D)None
- (C)142. The U.S. Supreme Court, in Planned Parenthood case, held that the constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, the Court indicated that the Clause has been understood to contain a substantive component as well. Which of the following correctly states the aforementioned statement?
- (A)The U.S. Supreme Court held that the Constitution guarantees women's right to abortion based upon the Right of Abortion Clause.
 - (B)The U.S. Constitution does not guarantee the woman's right to abortion.
 - (C)Women's right to abortion is guaranteed by the U.S. Constitution despite the contentious textual ground of the right.
 - (D)The Due Process of the Fourteenth Amendment to the U.S. Constitution simply protects the people free from arbitrary decisionmaking procedure.
- (C)143. A lawyer shall neither knowingly make a false statement of fact or law to a tribunal nor fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or _____ act by the client.
- (A)frivolous
 - (B)fiduciary
 - (C)fraudulent
 - (D)fundamental
- (D)144. Donna and Carol were walking along a sidewalk which connected the clubhouse with the swimming pool at their country club. They were both wearing bikinis and carrying towels. On the way to the pool, they passed a "cocktail wagon," which was a cart from which alcoholic drinks were served to golfers at a point where the golf cart path crossed the sidewalk. As Donna and Carol passed the cocktail wagon, Mort, a golfer who had been standing next to the wagon with a drink in his hand, reached out and tried to unfasten the



back of Donna's bikini top. When Donna felt Mort's hand on her back, she spun around and gave him a shove. Mort, being quite inebriated, stumbled backwards and fell into the path of a golf cart which was crossing the sidewalk on the path. The cart struck Mort in the head and he died later that day as a result of his head injuries. If Donna is charged with murder and raises the defense of self-defense, she most likely will be:

- (A) Convicted of murder because she could have escaped by simply running away from drunken Mort.
 - (B) Convicted of assault because self-defense only provides a defense to a homicide charge.
 - (C) Convicted of voluntary manslaughter because her self-defense was imperfect due to the fact that she was not entitled to use deadly force to resist a non-deadly attack.
 - (D) Acquitted.
- (A)145. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.
- Which of the following most correctly describe the essence of the aforementioned statement?
- (A) Any legislation repugnant to the written constitution must be invalidated.
 - (B) The judiciary, not the legislature, has the authority to review the constitutionality of legislative acts.
 - (C) The attempt to enact a written constitution is absurd.
 - (D) The legislature should have power to revise and amend the constitution.
- (C)146. The doctrine of _____ is of fundamental importance to the rule of law. Adherence to precedent promotes stability, predictability, and respect for judicial authority. Although the doctrine is of fundamental importance to the rule of law, the United States Supreme Court's precedents are not sacrosanct. The United States Supreme Court overrules prior decisions where the necessity and propriety of doing so is established.
- (A) forum non-convenience
 - (B) res judicata
 - (C) stare decisi
 - (D) res ipsa loquitur
- (A)147. To make a prima facie case of Assault, Plaintiff does not need to prove which of the following elements?
- (A) substantial certainty to know
 - (B) harmful or offensive contact
 - (C) threat of immediate apprehension of harmful or offensive contact
 - (D) actions arouses from reasonable apprehension of imminent harm
- (A)148. In *United States v. Virginia*, the U.S. Supreme Court held: "Virginia's public institutions of higher learning include an incomparable military college, Virginia Military Institute (VMI). The United States maintains that the Constitution's equal protection guarantee precludes Virginia from reserving exclusively to men the unique educational opportunities VMI affords. We agree." In light of the opinion cited above, which of the following statements is false?



- (A) United States v. Virginia upheld VMI's "male only" admissions policy for the Court agreed with Virginia that the policy in question is consistent with the Equal Protection Clause.
 - (B) VMI's "male only" admissions policy is held unconstitutional; it therefore must consider to admit female applicants.
 - (C) The Court rendered a decision in favor of the United States on the ground of equal protection.
 - (D) Virginia tried to keep VMI as a single-sex military educational institute, but the United States opposed.
- (D) 149. Where the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a "search" and is presumptively unreasonable without a _____.
- (A) warranty
 - (B) witness
 - (C) withdrawal
 - (D) warrant
- (B) 150. Generally, in a civil tort lawsuit, what kind of the minimum standard the plaintiff has to satisfy the burden of proof?
- (A) by clear and convincing evidence
 - (B) by preponderance of the evidence
 - (C) beyond a reasonable doubt
 - (D) clear and present danger



附件三：文政大老師 100 年授課大綱

堂 數	授 課 綱 要 / 課 程 簡 介
一	1.法學英文預試考題鳥瞰 2.契約法字彙研析 3.契約法文章導讀（一）
二	1.侵權法字彙研析 2.侵權法文章導讀（二） 3.契約法與侵權法英文題型破解
三	1.商事法字彙研析（包括證交、公司） 2.商事法文章導讀（三） 3.商事法英文題型破解
四	1.隨堂考（契約、侵權、商事法） 2.刑事法字彙研析 3.刑事法文章導讀（四） 4.刑事法英文題型破解
五	1.訴訟法字彙研析（包括民訴、刑訴） 2.訴訟法文章導讀（五） 3.訴訟法英文題型破解 4.隨堂考檢討
六	1.隨堂考(刑法、訴訟法) 2.憲法字彙研析 3.憲法重要案例導讀（六） 4.憲法題型破解

