

新编法学英语教程

上册

A LEGAL ENGLISH COURSE

FOR SENIOR LAW STUDENTS

上海外语教育出版社


外教社

BOOK ONE

新编法学英语教程

(上册)

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前 言

《新编法学英语教程》是为法学各专业学生在修完《大学英语》后进一步学习基础法学英语知识而编写的,旨在通过这套教材的实践,帮助学生掌握法学英语的基础词汇,了解新的国外法学研究成果并通过教学实践获得运用法学英语的基本技能,形成熟练阅读理解法学文献以及较为严谨的汉译英的能力。

本教程分上、下两册。每册 10 个单元,每个单元分 Text 和 Supplementary Reading Materials 两大部分。每单元的教学需 6 学时,全册约需 60 学时。Text 作为精读文章讲解,课文后面设计了选择型阅读理解练习,供课堂测试用;英译汉练习的目的在于进一步培养学生理解和翻译的能力,可作为课后作业用。Supplementary Reading Materials 作为泛读文章用,文中生词让学生自查,教师在课堂上无需做过细的讲解,重在培养学生独立思考的能力。

全套教程的选材均来自原文。题材结合法学各专业特点,力求内容新颖丰富,文章体裁多样。Text 是每个单元的中心,在课时分配上应有所侧重。补充阅读文章与精读文章相互配合,目的在于加大 Text 的信息量。补充阅读材料基本上是未经删改的原文,教师可根据授课情况有选择地进行讲解。

本套教程作为法学英语的教学内容在西北政法学院及国内部分法学院系试用基础上,广泛听取了一些法学专家和执教本教程同志的意见,从大量最新法学英语材料中筛选补充了内容,并对原有体例作了适当调整,特别是对责任编辑江雷红同志认真审阅过程中所指出的问题一一作了修正。

在编写过程中,我们参考和引用了国内外一些法学英语材料并邀请部分法学专家教授审阅原文,魏耀章同志工作之余还帮助

校对并修正部分文字错误,在此一并致以诚挚的谢意。

在审定原稿及出版过程中,得到外教社庄智象社长的重视和支持,有幸得到江雷红女士的细致审校,使得该教程在较短时间内问世,在此编者亦表示最真挚的谢意。

由于编者才疏学浅,疏漏舛错,在所难免,诚恳希望读者批评指正。

编 者

2000年6月1日

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Unit 1

Text

Administrative Agencies

As the United States has grown in size, power, and population, the task of running the country has become increasingly difficult. The needs of a diverse and widely scattered population eventually became too great for the legislative branch to handle alone. In addition, life has become much more complicated in the twentieth century than it was in the eighteenth century, when the country was created. For example, the population of the United States in 1790 was less than 4 million people; today it is more than 220 million people. The federal budget of 1789 – 1791 was \$ 4.3 million; the federal budget for 1981 – 1984 was nearly \$ 800 billion. The growth of the nation, the increase in technical innovations, the demands of the people, and the “shrinkage” of the world have all placed great burdens on the federal government.

In effort to ease the burden under which it had been placed and to take advantage of an expertise it all too often lacked, Congress began to create administrative agencies to deal with specialized areas. The agencies are staffed with experts in the specialized areas who know how to deal with the peculiar problems encountered within that area. The agencies are delegated (given) power by Congress to enable them to effectively treat the problems encountered.

The theory behind the creation of administrative agencies is

that the administrators' expertise allows them to resolve problems within a particular area or industry quickly and effectively. Thus, the regulated area is able to operate more efficiently and with a greater degree of continuity. Further, administrator' expertise should lead to proper decisions in the problem areas, as opposed to the possibly improper decisions that might be handed down by Congress knowledge. Table I points out just a few areas where the specialized knowledge of administrators has been deemed necessary.

Table I

Some Technical Changes in American Life, 1790 – 1980

AREA	1790	1790 – 1980
Transportation	Walking, horseback, wagon, sailing ship	Automobile, airplane, train, bus, ocean liner
Communication media	letter, newspaper	newspaper, letter, telephone, telegraph, television, radio, satellite links
Power	Human, animal, water	Solar, nuclear, electric

The development of modern independent regulatory agency can be traced to the creation of the Interstate Commerce Commission in 1887. The ICC was established to regulate the railroads, which engaged in a business that enjoyed a natural monopoly in many areas at the time. Following the success of the ICC, Congress created the Federal Trade Commission to help enforce the antitrust laws. Again, the agency seemed to handle its

task expeditiously.

President Roosevelt's New Deal saw a mushrooming of administrative agencies and a major change in the Court's attitude toward delegation of authority to these agencies. Before 1936, the Supreme Court often struck down agency conduct and existence due to allegedly improper congressional delegation of power in violation of the Constitution. Since 1936, however, legislative delegations have been permitted so long as "reasonable guidelines" are provided by Congress.

The primary function of any administrative agency is the administration of the area in which it is established. An agency is created by statute, and that same statute delineates why the agency was created and what the agency is expected to do. For example, the Federal Trade Commission was established by the Federal Trade Commission Act, which also charged the FTC with a particular role to fulfill.

The FTC is headed by a five-member commission. No more than three of the commissioners can be from the same political party, to ensure nonpartisanship to the greatest extent possible. The act gives the FTC the authority to prevent "unfair methods of competition on commerce and unfair and deceptive acts or practices in commerce". This broad charge allows the FTC to investigate commercial practices and recommend appropriate legislation to Congress when problem areas are discovered by an investigation. The FTC is limited to the area of commerce and cannot administer in areas outside this limitation.

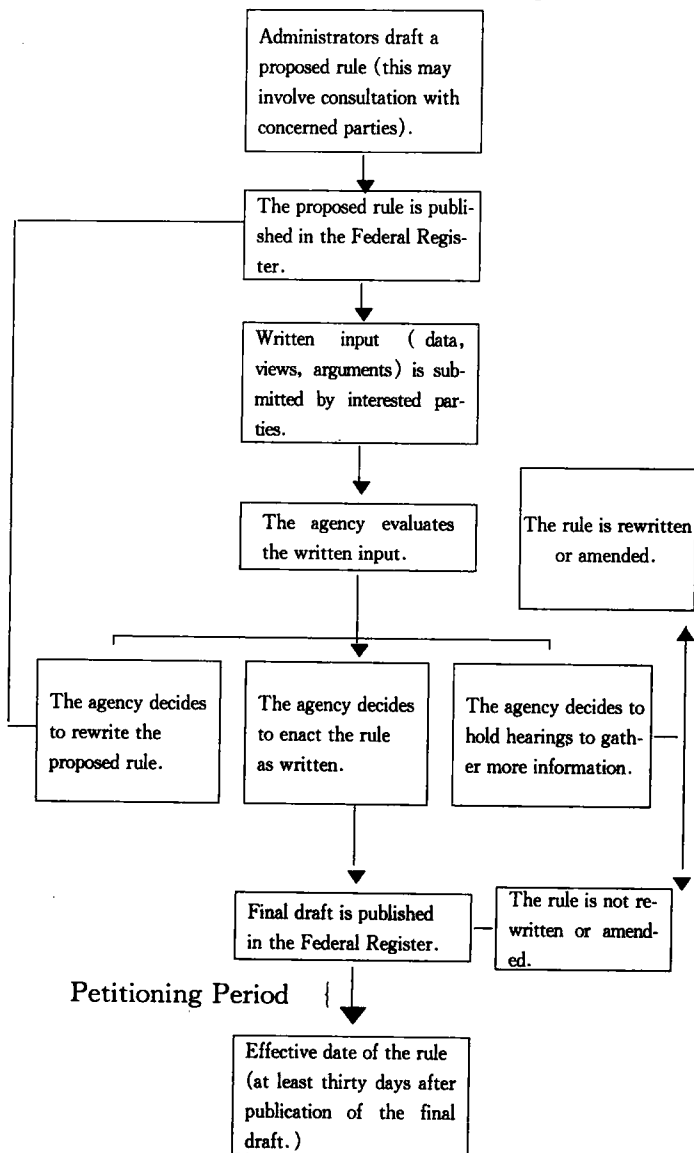
In a similar manner, the Securities and Exchange Commission is charged with the administration of the securities field. It cannot delve such areas as nuclear energy, transportation or airplane safety.

The statutory limitations imposed by Congress define the

permissible scope of administrative activity for any given agency. If the agency exceeds the scope of power granted by Congress, the courts will strike down the conduct.

Table II

The Function of Administrative Agencies



The function of an agency is to oversee and regulate a particular

area, as designated in the statute or the executive order that created the agency. So long as the agency operates within its parameters, it can enact rules and regulations (quasi-legislative powers), enforce the rules and regulations (quasi-executive powers) and conduct hearings on alleged violations on the rules and regulations (quasi-judicial powers).

In conducting its hearings and enforcing its rules, the agency must provide due process of law protections for the parties being regulated. The due process requirements vary with the type of administrative powers being exercised and with the degree of individual regulatory powers involved.

The courts have a right to review administrative conduct, on appeal. The review may be limited by tradition. Even when judicial review is appropriate, the deference principle and the substantial evidence rule may limit or restrict the scope of the review. If the agency infringes on fundamental rights, however, the judicial review is much more comprehensive.

Administrative agencies are now governed by statutory guidelines. At the federal level there are formal, mandated guidelines, while guidelines at the state level may be formal or informal. The federal guidelines are spelled out in the Administrative Procedures Act.

New Words

legislative /'ledʒɪslətɪv / <i>adj.</i>	门知识; 专家鉴定
& <i>n.</i> 立法的, 立法机关的; 立法, 立法机关	deem /di:m / <i>vt.</i> & <i>vi.</i> 认 为; 相信
innovation /ɪnəʊ'veɪʃən / <i>n.</i>	regulatory /'regjələtəri / <i>adj.</i>
创新; 革新	规范的; 规章的; 制定规章 的; 管理的
expertise /'ekspə'ti:z / <i>n.</i> 专	

interstate /ɪntə'steɪt / *adj.*

州际的; 国与国之间的

monopoly /mə'nɒpəlɪ / *n.* 垄

断; 独占; 垄断权; 专卖权

enforce /ɪn'fɔ:s / *vt.* 强制执行; 实施

antitrust /æntɪ'trʌst / *adj.* 反托拉斯的

expeditiously /ˌeksprɪ'dɪʃəslɪ / *adv.* 迅速地; 高效率地

mushroom /'mʌʃrʊm / *vi.* 迅速增长; 雨后春笋般地发展

delegation /delɪ'geɪʃən / *n.* 委派; 授权

allegedly /ə'ledʒdli / *adv.* 声称地; 指称地; 尚未被证实地

violation /vaɪə'leɪʃən / *n.* 违犯; 违反; 侵犯; 侵害

guideline /'gaɪdlaɪn / *n.* 法规; 成文法; 制定法; 章程; 条例; 规程

delineate /dɪ'liːniət / *vt.* 描述; 描写

nonpartisanship

/ˌnɒnpɑːtɪ'zænʃɪp / *n.* 无党派资格; 不受任何党派控制

administer /əd'mɪnɪstə / *vt.*

管理; 支配; 施行; 实施

delve /delv / *vt. & vi.* 挖掘; 钻研

scope /skəʊp / *n.* 界线; 范围

grant /grɑːnt / *vt.* 同意; 准许

regulate /'regjuleɪt / *vt.* 管理; 调整; 整顿

designate /'deɪɡneɪt / *vt.* 委任; 指定

enact /ɪ'nækt / *vt.* 制定(法律); 颁布(法律); 通过(法案)

executive /ɪg'zekjʊtɪv / *adj.* 行政的

judicial /dʒʊ'dɪʃəl / *adj.* 司法的; 审判的; 法庭的

review /rɪ'vjuː / *vt.* (高等法院等)复查(案件)

appeal /ə'piːl / *n.* 上诉; 控诉; 上诉状

substantial /səb'stænjəl / *adj.* 真实的; 实际的

infringe /ɪn'frɪndʒ / *vt. & vi.* 破坏; 侵犯; 侵害; 违反

Notes

1. legislative branch 立法机构; 立法部门
2. federal budget 联邦预算

3. technical innovation 技术革新
4. ease the burden 减轻负担
5. administrative agency 行政机构
6. Interstate Commerce Commission (美)州际商业委员会
7. the Federal Trade Commission (美)联邦贸易委员会
8. New Deal (美)新政,指美国罗斯福总统对美国经济与社会进行的改革
9. the Securities and Exchange Commission 证券交易委员会
10. be charged with (被要求)负责
e.g. He was charged with an important mission. 他授有重要使命。
11. quasi-legislative powers 准立法权
quasi-judicial powers 准司法权
executive powers 行政权
12. conduct hearing 进行听审;审问
13. review administrative conduct 复议行政行为
14. infringe on 侵犯
e.g. infringe on the right of 侵犯……的权力

Exercises

I . Choose the best answer for each of the following according to the text.

1. With the growth in size, power and population, the U.S. Congress began to create administrative agencies to _____.
 a. meet the sole need of the people
 b. legislate more law
 c. release some of the burdens which the government was bearing
 d. achieve a better life for its people

2. The administrative agencies are said to possess the power to resolve _____.
 - a. whatever problems in any area
 - b. the problems only within the area of commerce
 - c. problems within the securities field
 - d. problems within a particular area
3. According to the passage the Interstate Commerce Commission was _____.
 - a. a business organization
 - b. created to help enforce the antitrust law
 - c. an independent regulatory agency
 - d. established in the 18th century
4. The New Deal came into being most probably _____.
 - a. before Roosevelt became President
 - b. after Roosevelt became President
 - c. in 1936
 - d. in 1935
5. FTC was established by the Federal Trade Commission Act and it _____.
 - a. consists of a staff of five people
 - b. defines its own scope of administrative activity
 - c. can not administer in areas outside commerce
 - d. has legislative power
6. There can be no doubt that if an agency exceeds the scope power delegated by Congress _____.
 - a. the agency will be dismissed
 - b. the Congress will strike down the conduct
 - c. the agency will be allowed to review its own administrative conduct
 - d. the court will strike down the conduct
7. Why are administrative agencies said to have quasi-

legislative powers?

- a. Because they can enforce the rules and regulations.
 - b. Because they can conduct hearings.
 - c. Because they can legislate administrative law.
 - d. Because they can enact rules and regulations.
8. This passage mainly tells us _____.
- a. the theory of administrative regulation
 - b. the history of administrative regulation
 - c. the function of administrative agency
 - d. all of the above

II. Match each of the following numbered definitions with the correct term in the list below. Write the letter of your choice in the answer column.

- | | |
|------------------|---------------|
| A. defendant | F. adjudicate |
| B. allegation | G. review |
| C. case law | H. plaintiff |
| D. law | I. Common Law |
| E. statutory law | J. jurist |

- 1. Judicial re-examination of the proceedings of a court or other body; a reconsideration by the same court or body of its former decision. 1. _____
- 2. Rules of conduct applicable to all people and enforceable in court. 2. _____
- 3. To decide a matter by legal means; for example, court, mediation, arbitration. 3. _____
- 4. The party being sued or tried in either civil or criminal action. 4. _____
- 5. The major source of law in the U. S. A. or the U. K; based on old English Law. 5. _____
- 6. Law established by Congress, state legislatures or any