

教育部推荐教材

大学专业英语系列教材

法学专业 英语教程

(第三版·上)

ENGLISH

主编 赵建 夏国佐



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第三版前言

《法学专业英语教程》是一套专供具有大学英语四级水平的法律专业学生使用的英语教材。它较全面系统地介绍美国商法的基本情况，又提供了案例阅读，形成了一套精泛读相结合、配有各种口笔头练习的易于操作的全新的法学英语学习体系。使用本教材的学生在循序渐进提高英语水平的同时，可了解美国法律的概貌，掌握各种法律概念的英语表述。正因为此，它自1999年问世以来颇受广大师生的好评。2007年首次修订，更新了部分内容。然而，在过去的五年中，技术发展突飞猛进，经济跌宕起伏变幻莫测，社会变革的深度和广度前所未有，这些变化必然也带动了法律的发展。为使这套教材在内容上紧跟美国法律发展的脚步，出版社提议再次修订，编者本着对使用者负责的态度，欣然接受了这一任务。

本次修订的重点是案例阅读部分。旧版的案例大多在内容上紧扣课文，扩充和诠释了课文内容，但其中一些案例年代久远，对学生的吸引力不大。本次修订保留了原版的经典案件，但作了删节，使之更简练；同时又增添了不少近五年的新案例，使21世纪以来的案例达到三分之一以上。新增的案例有涉及轰动全美的“庞氏骗局”的刑事案 *United States v. Madoff*，诠释萨班斯-奥克斯利保护告密者条例的案例 *Tides v. The Boeing Company*，权衡无过错产品质量索赔和保护新兴产业之间利弊的 *Russell Bruesewitz v. Wyeth LLC.*，界定和区分不可申请专利的科学发现和可申请专利的技术成果的 *Mayo Collaborative Services v. Prometheus Laboratories, Inc.* 等。新选的案例不少涉及电信、生物技术等新兴产业和金融保险等当今的热门行业，案例的当事方有不少是学生熟悉的跨国公司，这样必然会增加学生阅读案例的兴趣。更重要的是，案件所解决的争议也是我国当今法律界面临的问题，判决意见书多数出自联邦最高法院的法官，他们透彻的分析也将开阔学生的视野和思路，帮助他们为日后从事法律工作打下更为扎实的基础。

由于课文是介绍经久不变的法律基本原则的，除最后一章公司法有新添内容外，其他改动较少。课文的注解和案例阅读中的问题及答案，这次也作了不少修改，使表达更加简练明晰。

编者长期从事英语和法律英语教学，曾赴美国杜克大学法学院进修法律，又有



多年在外国律师事务所从事法律文件翻译的经验，深知学习法律英语的艰辛，更体会到掌握好法律英语对中国改革开放的意义，以及对法律工作者自身在拓展业务上的帮助。因此，愿尽自己微薄之力，将本教材修订得更好。但由于能力所限，疏漏错误在所难免，敬请使用者批评指正。

相信经修订的《法学专业英语教程》在保持原有特色的同时会更趋完美、更受广大使用者的欢迎。

编者

2012年5月



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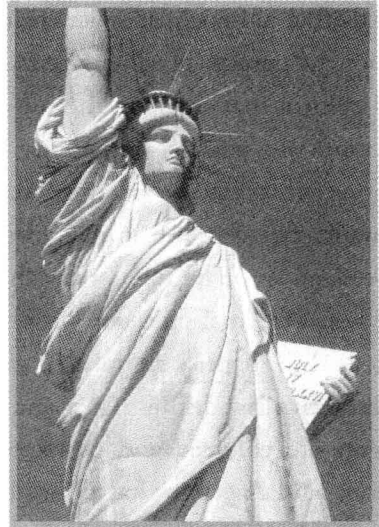
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Lesson One

Law: Definition, Classification, and Sources





Text



What is law? Though we use the word “law” very often in our daily conversations, we use it in so many ways that there is no simple answer to this question.

Law has been defined as a set of rules that govern the actions of people in a community. These rules must be followed by citizens, and violation of these rules may give rise to a cause of action in the courts. This view sees law as a set of fixed principles known to lawyers and judges, ignorance of which excuses no one, not even the less knowledgeable or less affluent members of society.¹

Another view is that law is a method of establishing order by maintaining authority of a ruler over those ruled. According to this view, law begins only when a coercive apparatus comes into existence to maintain control through enforcement of social norms. The control group need not be agents of a political entity, but may be labor, business, or church organizations. And the coercion can be psychological as well as physical.

Most observers, however, believe that law exists only in a formal setting that involves the legislative, judicial, and executive arms of a political body and its system.² This view holds that although rules are an important part of the process, the emphasis is upon actions for the purpose of adherence to those rules. Law is thus defined as the formal means of social control that involves the use of rules that are interpreted, and are enforceable, by the courts of a political community. The hallmark of law is the obligation to act in line with norms authoritatively determined.

Laws may be classified in many ways. They are sometimes classified as substantive law and procedural law. The rules of law that are used to resolve disputes are referred to as substantive law. The legal procedures that determine how a law suit begins, how the trial is conducted, how appeals are taken, and how a judgment is enforced are called procedural law. Substantive law defines rights and procedural law establishes the procedures by which these rights are enforced and protected. For example, **A** and **B** have entered into an agreement, and **A** claims that **B** has breached the agreement. The rules that provide for bringing **B** into court and for the conduct of the trial are rather mechanical, and they constitute procedural law. Whether the agreement is enforceable and whether **A** is entitled to damages is a matter of substance and would be determined on the basis of substantive



law of contracts.

Law is also frequently classified into public law and private law. Public law includes those bodies of law that affect the public generally. It can be further divided into constitutional law, administrative law and criminal law. Private law includes the areas of law that concern the relationships between individuals in an organized society. It covers the subjects of contracts, torts and property, each of which can be subdivided into several bodies of law. The law of torts is the primary source of litigation in America. It deals with wrongful acts against a person or his property and is based on the theory that in a civilized society, people who injure other persons or their property must compensate them for their loss.

Classification of law according to subject matter³ can often be difficult because the law is indeed a seamless web, and overlapping is inevitable if we divide it according to a clear-cut definition. Assume that a person is injured by a product he has purchased. The law of sales, even though a part of the law of contracts, contains several aspects that could best be labeled a branch of the law of torts. Therefore, it is apparent that even the general classification of contract and tort is not accurate in describing the subject matter of various bodies of law.

The phrase “sources of law” is often used to describe methods and procedures by which law is created and developed, or the origin from which particular laws derive their authority or coercive force.

Law in Western societies has developed along two lines. In the countries of continental Europe and those areas influenced by them, the governing law dates back to Roman law and is known as the civil law system. The law with which Americans are more familiar is known as the common law, which developed in English speaking countries.

The major difference between the two systems lies in the operation of the judicial processes. Adjudication under the civil law is made by the judge following principles originating from Roman law and embodied at present under an extensive code of law in effect in that particular country. The judge must apply the appropriate section of the code to the case in court. The common law, on the other hand, develops more through the decisions of judges applying prior decisions of courts to the new facts at hand. Under the common law system, a very substantial part of law is not to be found in statutes enacted by legislatures but rather in cases. A case once decided establishes a binding precedent to a certain extent⁴, and will be followed by the courts when similar issues arise later. Although judges tend to focus more upon statutes or administrative rules these days, the fact that they still review past cases before making a decision shows that adherence to decided



cases is still kept as a tradition in American courts.

Because of the common law tradition, American law comes from four basic sources: the federal and state constitutions, statutes made by the United States Congress and the legislatures of the various states, case law or judge-made law (uncodified law based on judicial decisions), and rules and decisions formulated by administrative agencies collectively known as administrative law. However, the judicial system has established a general priority among the various sources of law. Constitution prevails over statutes, and statutes prevail over common law principles established in court decisions. Courts will not turn to case decisions for law if a statute is directly in point.

New Words

cause *n.* 原因

cause of action 案由

affluent /'æfluənt/ *a.* 富裕的

coercive /kəu'ə:siv/ *a.* 强迫的, 强制的

enforcement /in'fɔ:smənt/ *n.* 实施; 强制执行

norm *n.* 标准; 规范

entity /'entiti/ *n.* 实体

coercion /kəu'ə:ʃən/ *n.* 强迫

legislative /'ledʒislətiv/ *a.* 立法的; 立法机构创立的

n. 立法机构

judicial /dʒu:'diʃəl/ *a.* 司法的

adherence /əd'hɪərəns/ *n.* 遵守

enforceable /in'fɔ:səbl/ *a.* 可实施的, 可强制执行的

hallmark *n.* 标志, 特点

substantive /'sʌbstəntiv/ *a.* 实体的

procedural /prə'si:dʒərəl/ *a.* 程序的

procedure /prə'si:dʒə/ *n.* 程序

lawsuit /'lɔ:sju:t/ *n.* 诉讼, 案件

appeal /ə'pi:l/ *n. & vi.* 上诉

enforce /in'fɔ:s/ *vt.* 实施, 强制执行

breach *n. & vt.* 违反; 违(约)

contract /'kɒntrækt/ *n.* 合同

constitutional /'kɒnstɪ'tju:ʃənl/ *a.* 宪法的, 合宪的

tort *n.* 侵权

litigation /'lɪtɪ'geɪʃən/ *n.* 诉讼

litigate /'lɪtɪgeɪt/ *v.* 诉讼

compensate /'kɒmpenseɪt/ *v.* 补偿

seamless *a.* 无缝的

web *n.* 网

overlap /'ɔʊvə'læp/ *v.* 迭盖; 重叠

civil law 大陆法

common law 普通法

adjudicate /ə'dʒu:dikeɪt/ *v.* 判决, 宣判; 裁定

adjudication *n.*

embody /im'bɒdi/ *vt.* 体现

statute /'stætju:t/ *n.* 成文法; 法条

enact /i'nækt/ *vt.* 制定(法律); 颁布;



通过 (法案)
legislature /'ledʒɪsleɪtʃə/ *n.* 立法机关
issue /'ɪʃjuː/ *n.* 问题, 争议
precedent /'presɪdənt/ *n.* 先例; 判例

priority /praɪ'ɔːrɪti/ *n.* 优先 (权); 优先
(次序)
constitution /kənsti'tjuːʃən/ *n.* 宪法

Phrases & Expressions

give rise to 引起
for the purpose of 为了…… (目的)
in line with 与……一致, 符合
provide for 规定
be entitled to 有权……, 有资格……

compensate (sb.) for 补偿 (某人
的) ……
date back to 追溯到
at hand 近在手边, 手头 (的)
turn to... for 向……求, 从……找
in point 恰当的, 切题的

Notes

1. ... ignorance of which excuses no one, not even the less knowledgeable or less affluent members of society. 这一部分为前句的定语从句, “which” 在从句中指 “a set of fixed principles”, 意思是: 不了解这套规则的人并不能因此被免除责任, 即使他们文化水平低或经济条件差也不能例外。
2. Most observers, however, believe that law exists only in a formal setting that involves the legislative, judicial, and executive arms of a political body and its system. 然而大多数人认为, 法律只存在于正式的环境, 一种包含一个政治实体的立法、司法和行政机构及其制度的环境。
本句的意思是, 法律不只是一套规则, 而是一个成熟的政体的产物。只有在一个政体具有立法、司法、行政等职能机构及其一整套制度时, 才能形成产生法律的环境。
3. classification of law according to subject matter 按内容把法律分类。“subject matter” 是指内容、题材或案件事由, 如: The subject matter of the case decides that it has to go to an admiralty court. (本案的事由决定了此案必须由海事法院处理。)
4. A case once decided establishes a binding precedent to a certain extent 案子一旦判决, 就在某种程度上确立了一个有约束力的先例。此句中, “某种程度上” 是指各法

院的判决在其所辖范围内对下级法院有约束力。如联邦最高法院的判决对美国的所有法院都有约束力，联邦中级法院的判决对该中级法院辖区内的联邦地区法院有约束力。

Word Study

1. provide for / that 规定

This clause not only sets the contract price, it also provides for the method of payment.

This clause provides that payment of the contract price should be made before February 1, 1999 in a lump sum.

2. compensate *vt.* 补偿

compensation *n.*

The party in breach should compensate the non-breaching party for the latter's losses. Before bringing the lawsuit, the injured party should consider whether he will finally be compensated for his injury.

Foreign employees in this joint venture receive annual compensations ranging from US \$ 100,000 to US \$ 150,000.

3. derive *vt.* 取得

vi. 起源, 衍生 (from)

Decided cases derive their binding authority from the common law tradition.

Many English words derive from Latin.

The power of the United States Supreme Court derives from the Constitution.

4. adjudicate *vt.* & *vi.* 判决, 裁定

adjudication *n.*

The court adjudicated the dispute in an impartial way.

Adjudication under the civil law system is a very different procedure from that under the common law system.

5. apply *vi* & *vt.* 适用 (于)

applicable *a.* 适用的

These rules don't always apply.

In the civil law countries, judges must apply a specific portion of the code to the case at hand.



The joint venture must comply with all applicable laws of the People's Republic of China. Is the new tax law applicable to foreign-invested enterprises?

Exercises



I. Tell whether each of the following statements is true or false:

1. Every case will involve substantive law as well as procedural law.
2. Substantive law can further be divided according to subject matter.
3. It is substantive law and not procedural law that decides who will win in a lawsuit.
4. The law of torts is public law.
5. In America most of the lawsuits concern contracts.
6. Administrative law and constitutional law differ in their sources.
7. In the civil law countries judges do not make laws.
8. In America every decided case becomes a precedent binding on all judges.
9. Adherence to judicial precedents is still kept as a tradition in America.
10. Statutes are laws enacted by the legislature. They are often referred to as "codified law".

II. Answer the following questions:

1. Find a sentence in the text to explain: "Ignorance of the law is no defense."
2. What is the difference between law and moral codes if we view law as a set of rules?
3. Explain: "Law is a formal means of social control."
4. What is substantive law? And what is procedural law?
5. What is the major difference between private law and public law?
6. Why do people say that law is a seamless web?
7. Give an example to show that there are overlappings between the law of torts and the law of contracts.
8. What is the major difference between the civil law system and the common law system?
9. What do statutes usually refer to?
10. How many kinds of law are there in America if we divide law according to its sources? What are they? Which of them prevails over the rest?