

大学专业英语系列教材


法学专业 英语教程

精·编·版

主编 赵建 夏国佐



ENGLISH

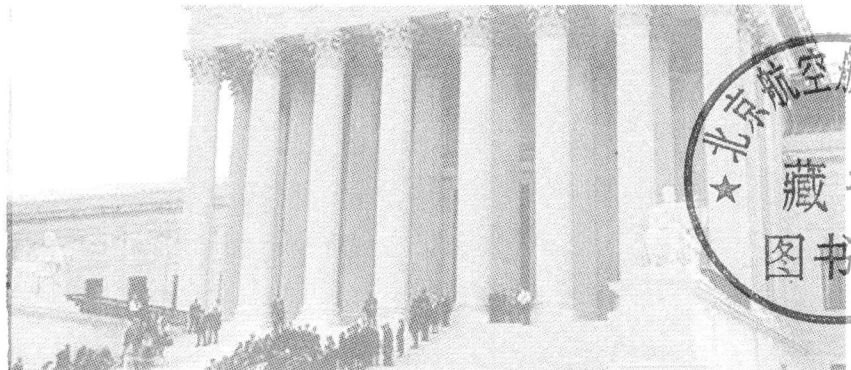
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(精编版)



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精编版前言

《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民商法的基本情况，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。正因为它既具有法律内容上的系统性，又兼备英语学习方面的可操作性，自1999年问世以来，颇受广大师生的好评，经过了多次修订，市场的需求经久不衰。

但是，不少学校在选择该教材作为法律专业学生的英语课本后，也表达了他们的意见，即教材内容过于丰富，上下两册加起来共八百多页，作为专业英语的教材，很难在一学年有限的课时内学完。为适应这部分学校师生的需要，编者在最新版（第三版）的基础上，以不损害原教材的系统性和完整性为前提，把原来的上下两册整合为一册。除对部分课文进行精简外，还删除了“流通票据和担保交易”和“商业组织”两章，缩减了合同法和财产法的部分内容，舍弃了案例阅读材料。删减后的版本，仍涵盖美国宪法、民事程序以及合同、财产、侵权、公司等民商法的主要内容，每课课文配有口笔头多种练习，不论教师和学生，使用起来都非常方便。

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本翻译的经验，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，将本教材的精编版做得更好。由于编者能力有限，教材的疏漏或不妥之处在所难免，欢迎使用者批评指正。

相信《法学专业英语教程（精编版）》在保持原有特色的同时更趋完美，更加符合当前教学需要，贴近教学实际。

编者

2013年3月

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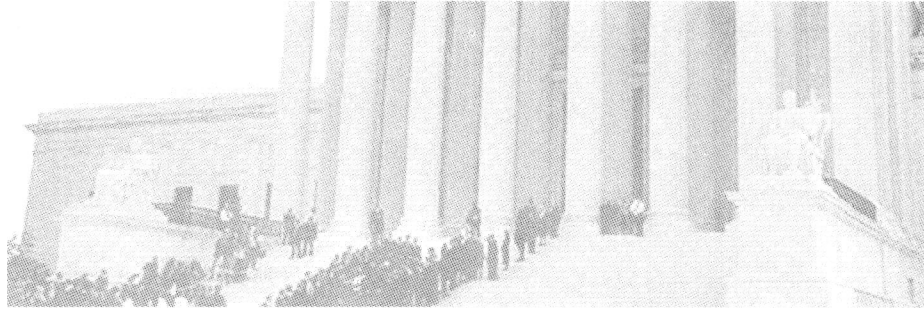
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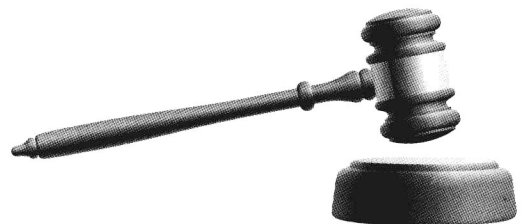
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Unit One



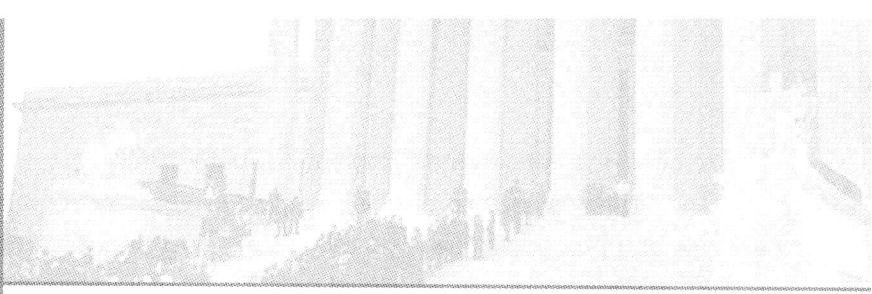
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Lesson One



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.

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.

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. 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

coercion /kəu'ə:ʃən/ *n.* 强迫

enforce /in'fɔ:s/ *vt.* 实施; 强制执行

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

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

norm *n.* 标准; 规范

entity /'entiti/ *n.* 实体

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'hierəns/ *n.* 遵守

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

constitutional /kənsti'tju:fənl/ *a.* 宪法的, 合宪的

contract /'kɒntrækt/ *n.* 合同

tort *n.* 侵权





seamless *a.* 无缝的

web *n.* 网

overlap /,əʊvə'læp/ *v.* 迭盖；重叠

civil law 大陆法

common law 普通法

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

adjudication *n.* 判决，宣判；裁定

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 /'ledʒisleitʃə/ *n.* 立法机关

issue /'isju:/ *n.* 问题，争议

precedent /'presidənt/ *n.* 先例；判例

priority /'prai'ɔ:riti/ *n.* 优先（权）；优先（次序）

constitution /,kɒnsti'tju:ʃən/ *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. 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.

3. 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.

4. 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. Administrative law and constitutional law differ in their sources.
5. In the civil law countries judges do not make laws.
6. In America every decided case becomes a precedent binding on all judges.
7. Adherence to judicial precedents is still kept as a tradition in America.
8. 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. What is substantive law? And what is procedural law?
4. What is the major difference between private law and public law?
5. Why do people say that law is a seamless web?
6. What is the major difference between the civil law system and the common law system?
7. What do statutes usually refer to?
8. 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?

III. Fill in the following blanks with proper words:

1. Some wrongful acts, such as lying, do not give rise to a _____.
2. If the rules of law are not _____, they become meaningless.
3. Many view law as more than a body of rules. Law is defined as a formal means of _____ . This definition of law emphasizes the actions taken for the purpose of _____ to those rules, actions taken to oblige people to act _____ with social norms, which

- are ____ determined.
4. ____ law concerns all the people in a society.
 5. There is no clear-cut line between contracts and torts. These two areas may ____.
 6. Under the common law system, decided cases become binding judicial ____ to a certain extent.
 7. Code of law consists of ____ only. It does not include case law.
 8. Rules and decisions ____ by administrative agencies are collectively known as administrative law.

IV. Cloze:

In everyday conversation, people use the word law in many ____ (1) ways. Actually, the word law is very difficult to ____ (2). In its broad context it expresses a variety of ____ (3). Law has been defined as those rules and regulations ____ (4) by government and applied to people in order for civilization to ____ (5). Law and legal theory, however, are far too complex ____ (6) such a simple definition to suffice; thus other ____ (7) must be examined if the meanings of the word law are to ____ (8) effectively understood. In attempting to define law, it is helpful to look at its ____ (9) or functions. It is fundamental that a basic purpose of law in a civilized society is to ____ (10) order. This is the prime function of that body of law known as the ____ (11) law. Another role of law is to ____ (12) disputes that arise between individuals and to impose responsibility ____ (13) one person has a valid legal claim (索赔权) against ____ (14). Suits for breach of contract would be an ____ (15) of the latter.

V. Translation:

1. From English to Chinese:

The common law system with heavy reliance on case precedents as a source of law must be contrasted with civil law systems, which developed on the European continent. The civil law countries have codified their laws—reduced them to statutes—so that the main source of law in those countries is to be found in the statutes rather than in the cases. Under the common law system, of course, there are a large number of statutes, but these are only a part of the law. In the United States, common law has been the predominant influence. Since most of the colonists were of English origin, they naturally were controlled by the laws and customs of their mother country. But in Louisiana, and to some extent Texas and California, the civil law has influenced the legal systems, because these states were founded by French and Spanish peoples.

2. From Chinese to English:

(1) 法律是一组规则，违反这些规则将产生案由，可在法院起诉。





- (2) 一种流行的观点认为法律不仅仅是一组规则，而且还是为使人们遵守规则而采取的行动。
- (3) 不管怎样界定法律，法律离不开一个强制性机构，这个机构通过强制人们遵守社会规范而保持控制。
- (4) 有时法律被划分为实体法和程序法。实体法被直接用于解决纠纷，而程序法规定法庭处理案件的程序。程序法也可能影响案件的结果。
- (5) 西方社会法律的发展因循了两条不同的道路，形成了两个不同的体系。
- (6) 在讲英语的国家中，法官常将已决的案例适用于手头案件的新事实，所以在某种程度上，已决的案件是有约束力的先例，是法律的一部分。

VI. Writing Assignment:

Read the following quotation, and then explain and comment on it:

“Were it made a question, whether no law, as among the savage Americans, or too much law, as among the civilized Europeans, submits man to the greatest evil, one who has seen both conditions of existence would pronounce it to be the last; and that the sheep are happier of themselves, than under care of the wolves.” —Thomas Jefferson: *Notes on Virginia*, 1782.