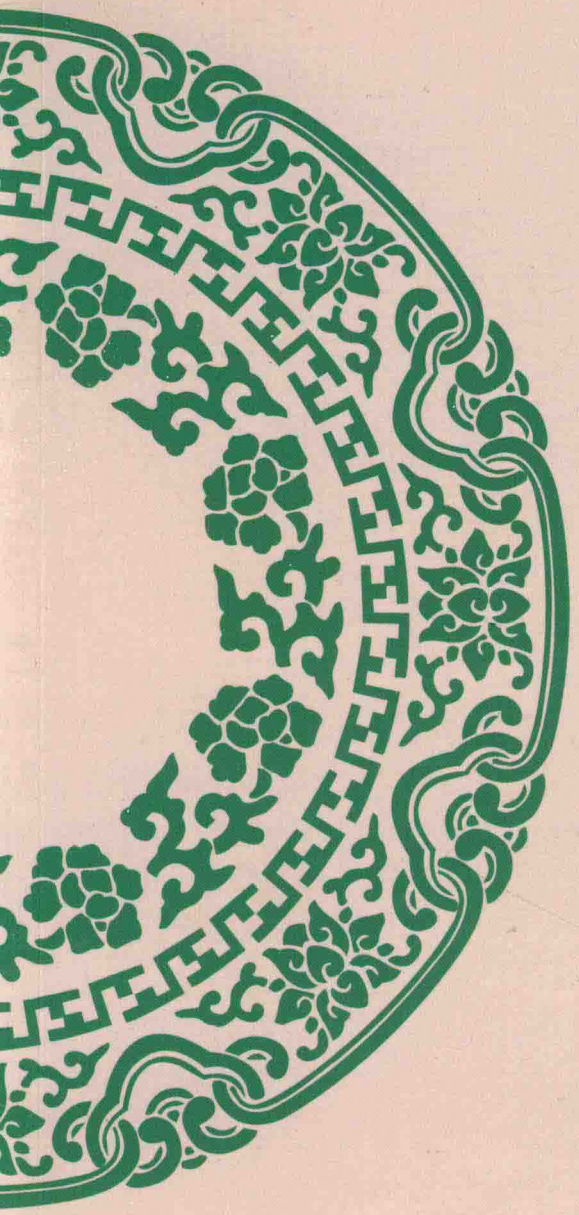

全国高等学校应用型法学人才培养系列规划精品教材

总主编 谈萧

法律英语

Legal English（美国法律）

马亮 谈萧 主编

WUHAN UNIVERSITY PRESS
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广东省第九轮重点学科建设项目成果

广东省本科高校教学质量与教学改革工程建设项目

『法学专业系列特色教材』（粤教高函〔2014〕97号）成果

广东教育教学成果奖（高等教育）培育项目

『应用型法学人才培养系列精品教材』（粤教高函〔2015〕72号）成果

WUHAN UNIVERSITY PRESS
武汉大学出版社

主编简介

马亮，男，1988年出生，河南信阳人，民商法学硕士，现为广州大学松田学院法政系教师，兼职（法律）英语翻译，曾在美国UCA（University of Central Arkansas）学习。主要从事法律英语的基础理论研究工作和部分法学的双语教学与科研工作，主要讲授法律英语和法学的部分主干课程。发表论文十余篇，参与多项科研项目。

谈萧，男，1976年生，法学博士，经济学博士后，现为广东外语外贸大学法学院教授，兼任广州仲裁委、深圳仲裁委仲裁员。主要研究方向为商法、法理学。出版学术专著4部，发表学术论文50余篇；多篇学术论文被人大复印报刊资料全文转载。主持国家社科基金项目一项、教育部项目一项、司法部项目一项、省级项目九项。多项研究成果获得省、市级奖励。曾被评为广东省“南粤优秀教师”，并入选广东省高等学校“千百十工程”省级培养对象、广州市“高层次人才”。

总　序

近年来，随着法治事业的不断推进，我国各个层次的法学教育蓬勃发展。法学教材建设是法学教育的一个重要环节，当前我国法律实践日益丰富多彩，法学教育的内容更新、方法变化以及交叉学科的涌现，都对法学教材的建设提出了新要求。

我国法制建设历经30余年，各个法律领域的大规模立法活动已基本完成，法制建设已开始向司法角度转型。在此背景下，法学教育也应实现面向司法实践的转型。自2002年开始实施国家统一司法考试，我国已建立起严格的司法职业准入制度。面向法律职业培养应用型法学专业人才，是我国绝大部分高校法学院系的核心任务。进入司法实践领域工作，也是绝大部分法学专业毕业生的首要选择。

针对法制建设和法学教育的转型，法学教材必须在理论与实践相结合方面做出更大的努力，以适应司法职业准入和司法实践的需要。为此，我利用所承担的省级法学专业综合改革项目、省级系列法学精品教材建设项目以及省级教学成果奖培育项目的支持，组织了全国近50所高校的100余名法学教师以及部分律师、法官、检察官，编写了这套“全国高等学校应用型法学人才培养系列规划精品教材”。本套教材共约40册，包括法学专业主干课程和部分模块课程，统一编写体例，分批推进出版。

本套教材定位于法律职业教育，以法律思维训练和法律事务处理能力培养为导向，通过案例导引、法庭模拟、司考真题、技能训练、纠纷解决等模块和环节设计，配合系统法理和法律知识讲授，致力于打造最有影响力的法律职业教育教材品牌。总结来看，本套教材具有如下六个特点：

1. 注重应用性和时代性

本套教材从编写体系上要求有较强的解决实务问题的针对性，以法律技能培养为主旨。在编写过程中，各教材作者力争将当今社会生活中方方面面的法律现象在教材中有所反映，并引导学生用成熟、具有通说性的法学理论加以理解和解释，使教材更贴近现实法律生活，体现时代性，也便于学生理解与掌握。

2. 教学形式的多样化

当前，法学教学方式方法已呈现多样化的趋势，有案例教学法、模拟现场教学法、情景教学法、讲座式教学法等。本套教材在编写过程中充分融入这些教学方法，摒弃了传统教材较死板的叙述讲授式的教学方法。为了配合教师教学和学生自主学习的需要，本套教材还制作了电子课件（PPT）供教学者利用。

3. 教材体例的新颖性

本套教材内容以基本法律概念、法律程序和法律方法等体现实操性的知识、技能为

主。教材中穿插反映新颖体例的多个栏目，如法律知识库、法律资料库、典型案例、情景模拟、法律文化长廊、背景材料、实际操作、练习与思考等。

4. 教学内容的科学性

本套教材在知识内容编写方面特别注意科学性，概念表述严谨，选取无争议的法律概念和定义及表述相关知识点。每章节教学内容以目标任务为导向，目标任务以项目组或角色扮演的方式加以设计，引导学生完成。

5. 学理上的适当拓展

本套教材除了内容的严谨性要求外，在学理上注意能有所拓展。按法学理论和法律制度的逻辑顺序展开教材知识内容，同时也利用到其他学科知识、理论与方法作为分析工具，如社会学的田野调查方法、经济学的成本收益分析方法，以及心理学的需求、动机与行为分析方法等，但它们从属于整体上教材的法律科学逻辑的需要，避免大量分析性、研究性内容。

6. 适应法律职业资格考试和法律实务技能培养的需要

本套教材充分考虑国家统一司法考试及其他重要法律职业资格考试（如企业法律顾问资格考试）要求，强调法律实务处理过程，强化技能培养与训练，侧重实操知识介绍，并强调技能与方法介绍的系统性、完整性与模块化。

高校教材及学术著作由于其专业性和学术性，一般很难通过销售来实现收支平衡。除了少量的政府资助项目，高校教材及学术著作在现行体制下缺乏充分的出版服务平台支持，而其作者、读者和使用群体又具备较高的个人素质和良好的发展潜力。为此，我们一直希望搭建一个高校教材及学术著作写作与民间出版资助的合作平台。希望在此平台上，将民间力量与高校及科研机构的智力资源有效地嫁接在一起，建立一个高校教材及学术著作的自助出版维持机制，改变目前学者及科研人员尤其是人文社会科学学者出版著作完全依赖政府资助的局面，同时，利用优秀人文社会科学成果在“全民阅读计划”中的传媒价值，充分回馈民间支持者。

在以上出版平台构想的鼓舞下，全国近 50 所高校 100 余名法学教授、博士、讲师以及部分律师、法官、检察官，以自己宝贵的智力资源和对法学教育事业的热爱，加入了本套教材的编写团队；武汉大学出版社和华中科技大学出版社，不计一时的市场得失，为本套教材的出版提供了优质的出版服务；指南针、众合、万国等司法考试培训机构及部分教育服务机构，热心教育事业，为本套教材的出版提供了支援。

组织编写和搭建平台工作，其中辛苦与顿挫，自不待言。然而，正是有了前面同仁及机构的鼎力支持，让我感到这个事业是值得坚持下去的。在这里，我要深深感谢他们的付出，并向他们的热忱表达敬意！

谌蓁

2015 年 5 月 4 日于广州工作室

前　言

法律英语（Legal English），作为法律语言（Legal Language）的一种，是指以普通英语为基础，在立法和司法等活动中形成和使用的具有法律专业特点的语言，亦即为表述法律科学概念以及诉讼或者非诉讼法律事务时而使用的英语。20 世纪 80 年代我国部分高校增设了法律英语课程，其后该课程的开设范围迅速扩大。伴随 ESP（专门用途英语）逐渐从通用英语中分离出来，法律英语逐渐被越来越多的高校重视，目前已基本覆盖高校法学专业乃至部分高校英语专业的本科生、研究生教育。伴随着法治中国建设的稳步推进、“一带一路”战略的实施、全球经济一体化进程的加剧、各大自由贸易区的创建等，这些都对我国高等教育涉外法律人才培养工作提出了更高的要求。作为复合型涉外法律人才国际化能力的要素之一，法律外语复合能力正成为社会对人才培养的新期待。

高等学校开设法律英语课程顺应了经济社会发展的要求，为学生的学习需求提供了丰富的教育资源。本书正是基于这样的社会背景和需求而编写。与其他类似教材不同的是，本书主要介绍美国法律，以美国法律制度为载体学习法律英语语言和法律知识。德国慕尼黑大学教授 A. 考夫曼和新分析法学学派继承人 N. 麦考密克曾指出法学是一门法律语言学。法律语言极具特色，本书以美国法律为载体的编排体例既能保证法律英语语言用词的严密统一性，又能保持法律体系学习的完整性。本书每篇课文内设篇幅较长，能相对较详细地介绍部门法律制度，另一方面也能帮助提高读者的阅读能力和法律英语专业词汇的积累。本书主要服务的读者对象要求具有一定英语和法律基础，真诚希望本书能够帮读者提高法律英语的综合能力。

本教材的编写分工和编者简介如下：

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魏玮（美国南加州大学语言学博士），编写第四、五章；

韦周平（中山大学外国语学院外国语言学及应用语言学博士），刘梦瑶（武汉大学环境法研究所硕士）编写第九章；

周策（美国弗吉尼亚大学法律博士）编写第十、二十一章。

陈俊杰（信阳农林学院教师、英国纽卡斯尔大学硕士）、孙霓（广州松田职业学院、香港浸会大学）也参与了本书的编排和修改工作。

本书的编写大纲和体例的确定等工作由主编负责执行，全书完成初稿后各章编写者和参与人员反复检查校对和编辑修改，最终由主编负责审定工作。本书在编写过程中受到国内其他版本法律英语教材和外文法学书籍的启发，借鉴和吸收了其有益之处，体例结构设置相对合理。在查找美国法律资料的过程中访问了美国法律图书馆协会（American Association of Law Libraries，AALL）、美国最高法院多媒体数据库（https：//www. oyez. org/）、维基百科等国内外网站。

由于时间仓促和水平的限制，书中瑕疵和纰漏在所难免，请读者指正。

编　者

2017 年 4 月于广州

目　录

第一章

法律体系
Legal System

背景导读
Background Introduction

法律体系(也称法系),在英文中的术语表达通常为 legal system, legal family, legal genealogy, 等等,这是比较法学者基于从总体上对世界法律秩序所做的考察与比较,所形成的范畴性概念。学界通常将其定义为:由若干国家和特定地区的具有某种共性或共同传统的法律的总称,并将西方法律体系主要划分为两大法系:大陆法系/民法法系(civil law systems)与英美法系/普通法系(common law systems)。

大陆法系又称民法法系,最显著的特征在于直接或者间接地以罗马法为核心历史渊源,在法律观念上也有重实体轻程序的传统,大多重视体系、概念和逻辑,尤为重视公私法的划分与部门法的体系构建。大陆法系的法律渊源十分多样,而法典则居于核心地位,且大陆法系的法典十分注重内在逻辑与精神的统一。

英美法系又称普通法系,是以英国中世纪以来形成的英美法传统为主体的法律形态的总称,其法律的表现形式主要为判例,制定法只能作为判例法的补充,成文法只有经过法庭的鞭笞才可以成为有效的法律。二战以来制定法在英美国家的地位有所提高,但与大陆法系相比,其法典内容和体例并不具备严密的逻辑关联与统一,英美法的思想方法轻视那种大原则或过分抽象的一般概括,与大陆法相比,这种思维模式是经验的而不是先验的,是具体的而不是抽象的,是历史的而不是唯理的。

西方两大法系在当代表现出了明显的趋同趋势:在大陆法系,制定法主导之下,法官司法对制定法隐形地发展;在英美法系,立法机关也在判例法环境中,为法律明晰化、体系化作着努力。然而,我们既要看到趋同加强的态势,也仍要关注到两大法系始终具有很大差别,且在很长时间内,这种差别并不会消失。

课文及注释
Text and Notes

The most significant difference between common law and civil-law systems is the type of authority each looks to as its principal source of law. The lawyers from civil-law systems rely on

rules stated in detailed legal codes with historical roots reaching back to the Roman Empire or earlier. Common-law systems rely on principles announced in judicial opinions issued in the settlement of actual disputes, usually between private parties.

Lawyers and judges in civil-law systems are engaged in learning and interpreting detailed statutes. Lawyers and judges in common-law countries are engaged in locating and analyzing judicial precedents. Different mental processes are used to reach decisions. Working with civil-law codes requires deductive reasoning (general to particular). The common-law system involves inductive reasoning and analogy (looking at analogous specific cases to find general principles applicable to the case in issue). The common-law system also involves deductive reasoning. American lawyers look to the reasoning of specific cases to develop general rules applicable to future cases. The general rules, so derived, and often expressed in the Restatements, are then applied to new specific cases in a deductive process similar to those used in civil-law systems. In actuality the two systems have much in common and may be moving closer together. Nevertheless, significant differences exist.

1. Role of Scholarly Commentary

The role of scholarly commentary is more significant in civil-law systems than in common-law systems. When judicial precedents are the primary binding authority, legal analyses will focus on what judges have written more than on what scholars have written. United States lawyers use scholarly commentary to find their way around in an area of law with which they are not familiar. But legal research of specific, identified issues will focus more on judicial authority.

2. Sensitivity to Technological Change

Common-law systems are especially sensitive to changes in technology. The doctrine of judicial precedent could not flourish until developments in printing presses (after 1500) made printed reports of judicial opinions readily available. The methodology of praclicing law in common-law countries underwent a tectonic shift, beginning roughly about 1980, when various computer-related technologies became available. Significantly, the methods of locating, retrieving, and updating judicial precedents are completely different today from they were 40 years ago.

3. Use of Judicial Opinions

In some respect civil law and common law may seem to be moving closer together. Lawyers in both systems pay attention to judicial opinions. However, in civil-law systems a long line of prior precedents may be required before judicial authority is given significant weight. It has been suggested that a doctrine of "jurisprudence constancy" (settled jurisprudence) is followed in Louisiana and many European countries. The doctrine provides that a consistent line of judicial decisions on an issue is entitled to great weigh.

In common-law systems the effect of judicial precedent is instantaneous. In July 2010, at her

Senate confirmation hearing, Supreme Court Justice Elena Kagan described a decision of the U. S. Supreme Court that had been handed down the day before as "precedent" binding on all courts in the United States.

Differences between common-law and civil-law systems in the use of case law are particularly striking with respect to statutory interpretation. Partly because American statutes are less detailed and comprehensive, partly because cases acquire instantaneous effect as binding precedent, research of case law is an essential part of statutory interpretation in the United States.

4. Use and Nature of Statutes and the Restatements

Common-law systems are increasingly enacting statutory law to supplement or restate judicial precedent. However, for the most part, statutes enacted in common-law systems do not have the comprehensive characters of civil-law codes. Some statutes are enacted to fix or adjust a perceived problem in a common-law rule and are narrowly tailored to that purpose. Even statutes with a broader purpose, such as the British Sale of Goods Act or the American Uniform Commercial Code, do not have the broad comprehensive coverage or detailed provisions of a civil-law code. The result is that statutes in common-law countries do not look like civil-law codes.

The American Restatements of Law, for common-law lawyers, play a role similar to civil-law codes. Although not binding authority, the Restatements enjoy such respect that they are often the starting point for legal research. A civil-law lawyer may logically conclude that United States lawyers use their Restatements much as civil-law lawyers use their codes.

There are, however major differences: that the Restatements are not binding, and they are not written in the style of comprehensive codes, the Restatements are the product of common law while at the same tim they restate it. The common law continues to evolve, and the Restatements are changed at regular intervals to reflect that evolution. American lawyers, whether interpreting a statute or applying and interpreting a Restatement, focus their research on case law. The case law is binding precedent, even though the restatements are not.

Common-law judges are likely to be more "creative" than their civil-law counterparts in statutory interpretation. This is due, in part, to the more specific, less comprehensive nature of common-law statutes. It is surely also due to the common-law background and training of the judges.

5. Content of Judicial Opinions

In the United States, the general areas of common law, torts, contracts, property, succession, family law, and criminal law have been generally left to state-by-state regulation. The significant developments in American common law are found in the reports of the decisions of the various state supreme courts. Judges writing with awareness that they are writing opinions that will be read as binding precedent likely to expand more effort in explaining their conclusions than judges announcing decisions in legal systems in which judicial opinions are not binding precedent.

Common-law lawyers have been trained to strive for judicial opinions to include thorough explanations.

Lawyers practicing in matters subject to the CISG, have been required to confront the striking differences in the structure of judicial opinions in different countries. The CISG is a rather unique treaty because it states rules applicable to private contractual transactions that must be interpreted and applied by lawyers, courts, and arbitration tribunals in more than seventy nations with a variety of legal systems. The Convention mandates: "In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application..." In pursuing that mandate lawyers and judges are required to seek out and consider judicial interpretations from other national jurisdictions and legal systems. That process has exposed the differences in style and emphasis of judicial opinions. The process may bring more uniformity to the style and content of judicial opinions.

6. Selection of Judges

The foregoing suggests that the statutes look different and the judicial opinions look different in common law and civil law countries. If you have an opportunity to observe a court in the United States, you might conclude that judges also look different.

United States judges are usually selected from the senior members of the legal profession near the peak of their careers. In the federal courts, judicial appointments are made by the president and are for life. In state courts, a judgeship is usually the last employment before retirement. A judicial appointment, even for trial judges, is a position of respect and prestige, both within the legal profession and in society at large.

Following World War Ⅱ many European countries established constitutional courts that have jurisdiction over matters arising from constitutional issues. Judges of such courts are of an age, experience, and status similar to U. S judges. But in many civil-law countries, judges of courts of general jurisdiction are young, recent university graduates, who are often at the beginning of their careers. The judicial function of such judges is different from the function of American judges.

7. Functions of Judges

In addition to presiding over dispute settlement proceedings, American judges have three distinct powers that transcend individual cases:

They review the constitutionality of legislation and other actions of the federal and state governments.

They interpret and apply legislation in decisions that establish precedents for other courts.

They develop, announce, and apply rules of common law in the tradition of English common-law judges.

The American legal system imposes on its judges a relatively unique combination of powers, each requires different skills. Further, the American expectation is that judges at all levels, from

trial courts to the United States Supreme Court, will perform all of these powers. The most complex constitutional litigation begins in a trial court.

The American legal system is "judge-centric." Law is learned by reading judicial opinions. Boundaries between the branches of government and between the states and the federal government are defined by judicial opinions. The opinions of the United States Supreme Court are accepted as the final word in disputes about constitutional interpretation.

There is heated public debate about how the judicial powers should be exercised. A few years ago, when John Roberts, the present Chief Justice of United States, was being considered for appointment to the Supreme Court, he responded to a question about the judicial power by likening it to an umpire in a baseball game:

Judges are like umpires. Umpires don't make rules; they apply them. The role of umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ballgame to see the umpire.

Many American lawyers view Roberts's analogy as an unduly modest and humble response. Some would suggest that it ignores 900 years of common-law history. To be fair, Roberts undoubtedly had in mind the Court's role in constitution interpretation and judicial review when he made the comment. But even with respect to judicial review, what does the umpire analogy express? Compare the statement made by Chief Justice John Marshall in 1819: This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.

(Adapted from The American Legal System for Foreign Lawyers, Reiley. Eldon H., Kluwer Law International, 2011.)

☞ 注释 Notes

【1】common-law system: 英美法系，英美法系又称普通法系，是以英国中世纪以来形成的英美法传统为主体的法律形态的总称，其法律的表现形式主要为判例，制定法只能作为判例法的补充，成文法只有经过法庭的鞭笞才可以成为有效的法律。

【2】civil-law system: 大陆法系，大陆法系又称民法法系，最显著的特征在于直接或者间接地以罗马法为核心历史渊源，在法律观念上也有重实体轻程序的传统，大多重视体系、概念和逻辑，尤为重视公私法的划分与部门法的体系构建。

【3】deductive reasoning: 演绎推理，就是从一般性的前提出发，通过推导，即演绎，得出具体陈述或个别结论的过程，多见于大陆法系在处理具体案件时的推导方法。

【4】inductive reasoning: 归纳推理，就是从个别性知识推导出一般性结论的推理模式，多见于英美法系。

【5】judicial precedent: 司法判例。判例法是英美法系主要的法律渊源，基本特点就是"遵循先例"。以美国为例，下级法院一般会遵循上级法院的判例，如确有不合适，可以基于法律原则推翻旧有判例，18 世纪的英国大法官 lord mansfield 就说过："普通法通过一个又一个案件净化自身。"所以判例法也是不断新陈代谢的。

【6】scholar commentary：学术评论。

【7】judicial opinions：司法意见。

【8】judicial authority：司法权威。

【9】jurisprudence constant：法学常量(固定的法理)。

【10】senate confirmation hearing：参议院听证会。听证会起源于英美，是一种把司法审判的模式引入行政和立法程序的制度，听证会模拟司法审判，由意见相反的双方互相辩论，其结果通常对最后的处理有约束力。

【11】statutory interpretation：法定解释。

【12】the British Sale of Goods Act：《英国货物买卖法》。

【13】the American Uniform Commercial Code：《美国统一商法典》。

【14】Restatements of Law：法律重述。法律重述是由美国法学会为 American Law Institute 主办、前后两版历经 5 年，凝聚了全美最优秀的法律专家、学者及律师心血和智慧，集体精心创作而成的一套法律丛书，其是一部有条理的美国一般普通法重述的汇编，不仅包括由单纯的司法判决所构成的法律，还包括从法院的实际应用中形成的法律，且这些法律早已制定，多年来一直有效。

【15】binding：有约束力的。

【16】state supreme courts：州最高法院。

【17】CISG：《联合国国际货物销售公约》，由联合国国际贸易法委员会主持制定，1980 年在维也纳举行的外交会议上获得通过，其是为发展国际贸易、减少国际贸易的法律障碍、促进各国间友好关系、建立新的国际经济秩序而制定的照顾到不同社会、经济和法律制度的国际货物销售合同统一规则。

【18】mandate：授权、命令、指令、规定。

【19】judicial interpretation：司法解释。

【20】constitutional courts：宪法法院。

【21】jurisdiction：司法权、审判权、管辖权。

【22】judicial appointment：司法任命。

【23】judge centric：法官中心主义。美国法律现实主义关于法官在司法中的地位进行了重新厘定，对法官作用进行了特别强调，即“法官中心论”，在整个法律界引发了广泛的争论，掀起了一次重视法官、研究法官的热潮。他们认为，法律并非仅仅由客观行为准则构成，法律实质上是一种行动中的法、一种活的制度，各司法主体，尤其是法官的法律行为，构成了法律本身。

【24】Chief Justice：首席大法官。

思考题及段落翻译
Exercises and Paragraph Translation

1. What is the most significant difference between common law and civil-law systems?

2. What mental processes are used to reach decisions in civil-law country and common-law

country?

3. Nowadays, do the significant differences between two systems exist?

4. In which system, the role of scholarly commentary is more significant?

5. Which system is especially sensitive to changes in technology?

6. What's the difference between Restatements in US and Codes in civil-law country?

7. What's the difference between two legal systems of the judge?

8. What's the difference between common-law and civil-law systems in the use of case law?

9. In addition to presiding over dispute settlement proceedings, what are the American judges' distinct powers that transcend individual cases?

10. How do John Roberts, the present Chief Justice of United States, respond to a question about the judicial function?

Paragraph Translation

The most significant difference between common-law and civil-law systems is the type of authority each looks to as its principal source of law. The lawyers from civil-law systems rely on rules stated in detailed legal codes with historical roots reaching back to the Roman Empire or earlier. Common-law systems rely on principles announced in judicial opinions issued in the settlement of actual disputes, usually between private parties.

第二章

法律思想
Legal Thought

背景导读
Background Introduction

美国法律思想经历了200年，完成了从前现代主义到现代主义，一直到后现代主义的发展过程，十分引人注目。

前现代主义可以分为前后两个亚阶段，可以分别被称为转世论和末世论。在第一个阶段里，人们一直信仰自然或神(众神)是知识和价值的稳定和基础性来源。人们假定存在普适的东西，存在于一切状态中。在公元4世纪期间，随着基督教时代的来临，前现代主义进入末世论阶段，圣·奥古斯丁创作的《上帝之城》，认为原罪导致了“两种人类社会——两个城市”。圣·托马斯·阿奎那复活了人类理性，并恢复了对于世俗政治事务的理论兴趣。马基雅维利在文艺复兴晚期发展了人文主义政治思想，强调了国家福利。

由马丁·路德、加尔文倡导的新教改革掀起了现代主义的浪潮。人们开始专注于世俗，挑战教会权威，关注个人权利，认为社会可以由人类的力量和创造力而不断获得发展。第一阶段：理性主义。他们认为纯粹的抽象理想可以给知识以坚实的基础，可以发现和暴露真理。如笛卡儿试图通过把严格的批评同精确的逻辑结合起来，把哲学变成“一种对于知识的第一原则的认识论上的探询”。第二阶段：经验主义。他们把寻求真理来源的关注点从理性的自我转向了外部世界。如洛克声称：“我们所有的知识都……来源于经验。”而休谟作为极端怀疑论者，认为“我们无法确定的了解外部世界的物理物体”，这把现代主义哲学引入了危机。第三阶段：超验主义。最重要的超验主义哲学家伊曼纽尔·康德认为，超验的理性提供了综合的先验知识——这些知识先验于经验，但仍然能够提供有关客观世界的信息。第四阶段：现代主义陷入危机。人类认为自己的理性终究可以解决所有的社会问题，然而两次世界大战对犹太人的种族灭绝击碎了这种自负的想法。

伴随着现代主义的危机，后现代主义在20世纪晚期逐渐兴起。他们驳斥了现代主义有关基础性知识、个人自主和控制，以及无穷尽的社会进步的核心确信。他们开始在表面上观察我们的生活，认为我们应该研究各种力量是怎样在表面上运作的。第一，它是反基础主义、反本质主义，如伽达默尔的哲学阐释学，认为含义和知识总是没有基础的，总是不稳定且不断变换的。第二，它倾向于否定被假设的确定性和边界，倡导学科在分析上进行混合。第三，它广泛地关心权力的表现，强调语言或话语的权力。如福柯认为：“权力