

21世纪高校法学专业系列教材



F A L Ü Y I N G Y U

法律英语

刘汉霞 编著

华南理工大学出版社

21 世纪高校法学专业系列教材

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编者说明

本书中的 27 篇课文都取材于最新出版的英、美等国家的法学教材和著作以及著名的官方网站，分成了 8 个单元，内容涉及法律的一般概念、程序法、宪法、财产法、合同法、侵权法、世界贸易组织法及网络法。

为了将“用专业学外语”和“用外语学专业”两个方面结合起来，使学生在了解一般背景知识的基础上，通过英、美法学教材和著作的选读来提高英语的应用能力、巩固专业知识，本书突出体现了如下几个特点。

1. 选材广泛，内容新颖。本书课文不仅涵盖传统的法学基本知识，还包括大陆法国家正在引进的非诉讼纠纷解决程序、抗辩制等英美法律实践，并纳入网络法、世界贸易组织法等反映知识经济时代世界一体化趋势下法律的最新发展内容。

2. 难易适中，注释详尽。考虑到本书适用对象的广泛性，本书在选材时尽量选择整体结构完整明了、专业语言规范精练、法律知识通俗易懂的文章，并详加注释。

3. 课后练习的形式多样化。本书除了有紧扣课文内容的正误判断及英汉互译之类练习题之外，还有其他教材中罕有的长句分析和案例分析练习，这些练习题特别有利于提高具有一定法学专业基础知识的成年人学习英语的兴趣和效率。

本书可供法律专业大学本科高年级学生作为教材之用，亦适合从事或有志于涉外法律工作的公、检、法、司等部门的法律工作者，以及其他对法律英语感兴趣的人员使用。

参加本教材编写的，除主编外，还有华南理工大学外语学院的兰凌老师，她给出了所有长句分析练习题的参考答案。

本书的出版承蒙美国学者 Gordon C. Coffman 及其夫人 Diane M. Coffman 提供最新资料，并提出宝贵意见，中国国际法学会常任理事、中山大

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学国际法教授陈致中老师给予了热情的指导并欣然作序，华南理工大学法学院和出版社给予了大力的支持，谨此一并致以衷心的感谢！

还有家人和其他众多朋友的鼎力支持成就了本书，编者铭感在心，永志不忘！

由于编者水平有限，虽竭力避免但恐怕仍留下许多纰漏，祈望读者朋友批评指正。

刘汉霞

2004年2月



序 言

在国际联系日益广泛的今天，外语的重要性自不待言，英语因适用范围最广泛，已成为我国大学生不可缺少的一门语言工具。我国大学生，仅从初中算起，就读了七八年的英语，有一定的英语基础。有些学生在进大学之前就可以阅读英语原著，或已经能讲一口流利的英语，但进大学后一接触到专业，就发现其英语不足以适应新的要求，这不是因为他的英语水平不高，而是其一般语言或文学语言仍有“转纳”（incorporate）为“专业英语”（special English）之必要。所以大学每个专业都要开设本专业应用的“专业英语”课。

法律专业覆盖面广、专业性强，在长期实践中产生了一套用词确切、表述严谨的法律语言，这是每一个法律工作者必须首先掌握的工具。法律语言包括法律上使用的专门词汇、术语和表达方式，各国和各法系的用语虽有不同，但共同之处较多。因语种不同，就有互译沟通之必要。英语的应用范围最广，不仅英美法系的国家使用英语，大陆法系以及其他法系的国家也普遍以英语作为应用语言，因此掌握了英语的法律用语，在学习其他语种的法律语言时会有触类旁通之效。

我国改革开放以来，由于法律涉外业务增多，法律英语的学习和运用成了当务之急。国内法律院校均开设“法律英语”课作为法学专业学生的必修课。学习法律英语蔚然成风，教材、工具书大量出版，这为读者学习法律英语提供了前所未有的良好条件。

“法律英语”的研究对象不是法律而是英语，是法律方面所应用的英语。学习这门课程，学生必须具备两方面的知识：一是英语基本知识，二是相关学科的法律知识。本教材就是为了给读者提供这两方面的知识而编写的。本教材的内容涉及美国许多重要的法律：宪法、侵权法、合同法、财产法、诉讼法、知识产权法以及当前最新出现的网络法、电子商务法和

WTO规则。内容虽偏重于美国法律，但有广泛的参考意义。编者积多年教学的心血，以其丰富的语言知识和法律知识给读者提供两个非常重要的材料：一是每篇课文的“导言”（introduction）或“背景”（background）；二是各段的文字注释，包括原文的全部译文、重点词语及句型的分析。这些注释对读者来说是非常可贵的，在良师指导之下，定能更顺利地掌握这门语言工具，在法律的学习和运用中取得更大的成就。

陈致中

2004年1月





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Unit 1 Introduction

Lesson 1 Definitions of Law

Introduction¹

In everyday speech, the term “law” conjures up a variety of images. For some, law may mean getting a parking ticket, not being able to get a beer legally if under age, or complaining about the local “pooper – scooper” ordinance. For others, law is paying income tax, being evicted, or going to prison for growing marijuana. For still others, law is concerned with what legislators enact or judges declare. Law means all of the above and more.

The questions “what is law?” haunts legal thought, and probably more scholarship has gone into defining and explaining the concept of law than into any other concept still in use in sociology and jurisprudence.

Text²

There have been and will continue to be different definitions of law. Although the definitions of law vary in their particulars, they all are based on the general observation that, at a minimum, law consists of enforceable rules governing relationships among individuals and between individuals and their society.³ These “enforceable rules” may consist of unwritten principles of behavior established by a nomadic tribe. They may be set forth in a law code, such as *the Code of Hammurabi* in ancient Babylon or the law code of one of today’s European nations. They may consist of written laws and court decisions created by modern legislative and judicial bodies, as in the United States.⁴ Regardless of how such rules are created, they all have one thing in common: they establish rights, duties, and privileges that are consistent with the values and beliefs of their

society or its ruling group.⁵

While few legal philosophers and scholars would disagree with these general observations about the law, those who embark on a study of law will find that these broad statements leave unanswered some important questions concerning the nature of law.⁶ Part of the study of law, often referred to as jurisprudence, involves learning about different schools of jurisprudential thought and discovering how the approaches to law characteristic of each school can affect judicial decision making.⁷

Notes

1 导言

在日常用语中，“法律”一词可激发人们很多种想象。对某些人来说，法律意味着获得一张停车单，或只有到了规定年龄才能饮酒，或对地方清洁法案提出异议；对另外一些人来说，法律意味着缴纳个人所得税，或拖欠租金将被强制迁出，或种植大麻将投进监狱；对其他人来说，法律就是与立法者制定的法令和法官的判决有关的东西。“什么是法律”这一问题在理论上也是众说纷纭，或许在学术界对“法律”的定义和解释的数量超过社会学和法学领域中的任何其他概念。

2 Adapted from K. W. Clarkson, *WEST'S BUSINESS LAW (8th edition)*, 2001, p2.

3 关于法律的定义，已经存在并仍会存在许多不同的说法。尽管法律的定义在细节上有区别，但至少它们都注意到法律由规制个人与个人之间及个人与社会之间的关系的强制性规范组成。

vary *v.* be different, become different 不同，变化

e.g. ① prices that vary with the season 随季节而变动的物价

② They vary in weight from 3 lb to 5 lb. 这些东西的重量从3磅到5磅不等。

particular *n.* detail 细节

minimum *adj.* 最低程度的一（反义词）maximum

4 这些强制性规范可以由游牧民族的不成文行为规则组成，也可通过法典表达出来，如古巴比伦王国的《汉穆拉比法典》或今天某个欧洲国



家的法典；还可由现代的立法和司法机构制定的法律或作出的判决构成，如美国。

Code of Hammurabi 《汉穆拉比法典》，是目前所知最早的成文法典。制定于公元前 18 世纪，由古巴比伦王国第六代国王汉穆拉比（公元前 1792—前 1750 在位）颁布，原文镌刻在一根黑色玄武岩石柱上，因而又称“石柱法”。它于 1901 年被发现于伊朗古城苏萨，现存巴黎卢浮宫。该法典是典型东方奴隶制国家的法典，体系庞大、内容全面。全文有 282 条，涉及法院、财产、婚姻、家庭与继承、人身保护以及劳动和劳动保护等多个方面。

legislative *n.* 立法；*adj.* 立法的，立法机关创造的

legislature *n.* 立法机关，立法机构

legislation *n.* 立法，即国家立法机关制定的法律

legislator *n.* 立法者

nomadic *adj.* 游牧的

- 5 无论这些规则是如何创立的，它们都有一个共同点，那就是确立符合社会或统治集团的价值观和信仰的权利、义务及特权。

privilege *n.* a special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. 赋予某个人或某个集团的特别权、例外权或豁免权

regardless *adj.* ~ of: pay no attention to 不顾，不注意

e.g. ~ of the consequences 不顾后果，~ of expense 不顾虑费用

- 6 尽管鲜有法理学家和学者不同意上述关于法律的一般看法，但那些从事法律研究的人仍会发现这些普遍接受的阐述并没有解答有关法律性质的一些重要问题。

while 在这里引导一个让步状语从句，相当于 **although**

embark on 开始，从事

- 7 一部分通常被称作法学的法律研究，涉及不同法学流派的思想以及研究每一流派探寻法律特点的方法如何影响司法裁判。

jurisprudence 法理学，法哲学，法学，法律学

jurisprudence 来自拉丁文 *jurisprudentia*，早在公元前 3 世纪末罗马共和时代就已经出现，该词表示有系统、有组织的法律知识、法律学问。

jurist 法学家, 法理学家

jurisprudential study 法学研究

jurisprudential thought 法学思想

be referred to as 被称作……

EXERCISES

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

1. Law has many different definitions, but most people agree that law consists of enforceable rules.
2. Law can be written rules or unwritten rules.
3. Court decisions are also law in some nations.
4. The Code of Hammurabi was made by an emperor.
5. Hammurabi is the name of an ancient nation.
6. Law reflects the will of everyone in a nation.
7. Jurisprudence is the study on different schools of jurisprudential thought as well as the relationship between jurisprudential thought and judicial decision making.
8. All studies on law are referred to as jurisprudence.

II. Analyze the sentences.

1. Although the definitions of law vary in their particulars, they all are based on the general observation that, at a minimum, law consists of enforceable rules governing relationships among individuals and between individuals and their society.

2. While few legal philosophers and scholars would disagree with these general observations about the law, those who embark on a study of law will find that these broad statements leave unanswered some important questions concerning the nature of law.

3. Regardless of how such rules are created, they all have one thing in common: they establish rights, duties, and privileges that are consistent with the values and beliefs of their society or its ruling group.

4. The criminal law is something which we either obey or disobey



and what its rules require is spoken of as a “duty”.

III. Translation.

1. Law consists of enforceable rules governing relationships among individuals and between individuals and their society.

2. Regardless of how such rules are created, they all have one thing in common: they establish rights, duties, and privileges that are consistent with the values and beliefs of their society or its ruling group.

3. 即使是广为接受的对“法律”的阐释，也没有完全解答法律的性质是什么这类重要的问题。

4. 强制性规范可由游牧民族建立的不成文行为准则组成，也可由《汉穆拉比》类的成文法组成。

IV. Topics for discussion.

1. What do you think of law?
2. Why do we need law in our social life?

Lesson 2 Classifications of Law

Introduction¹

Laws in a nation can be classified from some angle or according to some standard. There are five categories in common around the world nations: national law and international law, fundamental law and common law, general law and special law, substantive law and procedural law, written law and customary law. There are still other categories such as private law and public law, common law and equity law, federal law and state law in minority nations.

Text²

Because the body of law is so large, one must break it down by some means of classification. A number of classification systems have been devised.³ For example, one classification system divides law into substantive law and procedural law. Substantive law consists of all laws that define, describe, regulate, and create legal rights and obligations. Procedural law consists of all laws that establish the methods of enforcing the rights established by substantive law.⁴

Another classification system divides law into civil law and criminal law. Civil law is concerned with the duties that exist between persons or between citizens and their governments, excluding the duty not to commit crimes.⁵ Typically, in a civil case, a private party sues another private party (although the government can also sue a party for a civil law violation.) to make that other party comply with a duty or pay for the damage caused by failure to comply with a duty. Contract law, for example, as well as tort law, is civil law.⁶

Criminal law, in contrast, is concerned with wrongs committed against the public as a whole. Criminal acts are defined and prohibited by



local, state, or federal government statutes and prosecuted by public officials, such as a district attorney (D.A.), on behalf of the state, not by their victims or other private parties.⁷

Other classification systems divided law into federal law and state law, private law (dealing with relationships between private entities) and public law (addressing the relationship between persons and their governments), national law and international law, and so on.⁸

Notes

1 引言

法的分类,是指从一定角度或者按照一定的标准,对一个国家的法进行划分。在世界上,所有国家共同适用的法的分类有五种,即国内法与国际法、根本法和普通法、一般法和特别法、实体法和程序法以及成文法和习惯法。在少数国家还有公法与私法、普通法与衡平法、联邦法与联邦成员法等分类。(沈宗灵.法理学.北京:北京大学出版社,1999.349)

2 Adapted from Kenneth W. Clarkson, *WEST'S BUSINESS LAW (8th edition)*, 2001, p12.

3 因为法律的体系很庞大,人们必须用某种归类的方法对它进行分析。为此,人们想出了很多种分类法。

break (sth.) down analyse, classify 分析, 分类

by means of through, with the help of 藉以, 利用

devise vt. think out, plan 想出, 计划

4 例如,其中一种分类法是将法律划分为实体法与程序法两种,实体法由所有界定、阐述、规范以及确立权利与义务的法律组成;程序法由规定实体法所界定的权利的实现途径的法律组成。

substantive law 实体法,如 civil law (民法), criminal law (刑法)

procedural law 程序法,如 civil procedural law (民事诉讼法), criminal procedural law (刑事诉讼法), administrative procedural law (行政诉讼法)

5 另一种分类法是将法律划分为民法和刑法,民法涉及个人之间或市民

与政府之间的义务，不包括不得犯罪的义务。

- 6 在民事案件中，典型的案例是一个私事主体起诉另一个私事主体（尽管政府有时候也会起诉民事违法方），以使对方履行义务或对没有履行的义务而带来的损失予以赔偿，例如合同法和侵权法都是民法。

private *adj.* 私人的，私有的，其反义词：**public** 公有的，公共的

- 7 与此相反，刑法涉及违背公共利益的违法行为。犯罪行为是由地方、州或联邦政府制定的法律界定和禁止，并由诸如检控官类的公务员代表国家起诉，而不是由受害人或其他私事主体提起起诉。

in contrast 相反的

on behalf of on account of, for the interest of 为了……的利益，代表

a district attorney 检控官，常简称为 D. A.，也可用以下词表达：**public prosecutor**, **state's attorney**, **prosecuting attorney**

- 8 其他的分类法将法律分为联邦法与州法、私法（处理个人与个人之间的关系）与公法（处理个人与政府之间的关系）、国内法与国际法，等等。

deal with manage, attend to 处理

e.g. How shall we deal with this problem? 我们怎样处理这个问题？

address *vt.* 处理

EXERCISES

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

1. Substantive law defines rights and procedural law establishes the procedure to enforce the rights.

2. Laws can be classify into many categories from different angles.

3. Civil law protects private interest while criminal law protects public interest.

4. Contract law belongs to civil law while tort law belongs to criminal law.

5. A district attorney is a public official who prosecutes on behalf of the state and victims.