



中国人民大学 编著

新世纪专业英语系列教材

New Century Subject-oriented English

总主编 张勇先 副总主编 康成翠 杨树臣 白洁

LAW

法律英语教程

(上册)

主编 赵雁丽



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XI'AN JIAOTONG UNIVERSITY PRESS



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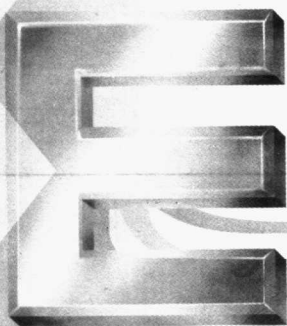
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教育部最新颁布的《大学英语教学大纲》在教学要求中规定：学生在完成基础阶段的学习任务，达到四级或六级后，都必须修读专业英语。《新世纪专业英语系列教材》正是根据《大学英语教学大纲》的要求，为保证大学生英语学习四年不断线而编写的一套教材。

本套教材分《新闻英语教程》、《旅游英语教程》、《法律英语教程》、《国际贸易英语教程》、《财金英语教程》以及《工商管理英语教程》共六个系列。每一系列包括上、下两个分册，每一分册可供一学期（每周四课时）或一学年（每周两课时）使用。主要编写者除了中国人民大学外国语学院骨干教师以及相关院、系的专家外，还特别邀请了北京外国语大学、中国社科院、北京联大旅游学院等单位的专家学者加盟。中国人民大学张勇先教授担任总主编。《新闻英语教程》由白松主编；《旅游英语教程》由王晓彤主编；《法律英语教程》由赵雁丽主编；《国际贸易英语教程》由许葵华主编；《财金英语教程》由韦娜主编；《工商管理英语教程》由张初愚主编。全书由专业英语教师和公共英语教师共同编写，课文译文由英语过硬的专业教师负责把关。

本系列教材具有以下特点：

一、课文选材新，具有时代感。绝大部分文章是近几年发表的，最新的发表于2000年，以使学习者了解各个专业领域的最新发展和最新理念。

二、生词释义采用英汉两种方式。少数

难以用英语解释的词汇直接用汉语释义。这样做的目的在于培养学生查阅原文词典的能力,同时能提高学生对同义词和近义词的记忆能力。所注词汇均为四级以上词汇。

三、教材在内容和语言上贯彻循序渐进的原则。在内容上,上册主要涉及本专业的基本原理和基础知识;下册主要涉及本专业的历史及专家观点,目的在于帮助学生完成从基础到专业的过渡。在语言上,选材从难度、可读性等方面考虑,贯彻由浅入深的原则。

四、考虑到《大纲》对专业英语学时和阅读总量的要求,我们采用了“主”、“副”课文制。对主课文的注释和练习两方面进行了重点处理,用作教师课内重点讲解的内容;副课文主要供学生课后自学,从而对主课文从语言到知识两方面起到巩固作用。

五、本教材以强调理解的准确性及学生的应用能力为突出特点。在注意帮助学生扩大词汇量,特别是专业英语词汇的同时,帮助学生提高阅读有关专业的原版教科书、参考书及其它参考资料的能力、听懂与专业有关内容的能力、能用英语进行有关专业内容的一般性的会话或讨论的能力及写和译的能力。因此,我们精心编写了包括文章理解及语言应用方面的大量练习。为了巩固和提高学生的听说能力,每一单元后的练习中都设有 Role Play 和 Listening and Speaking 的练习。全套教材均配有由外籍专家朗读的录音磁带。

六、为方便自学,书后提供了主课文的参考译文和练习答案。

七、全套六种教材在遵循总的编写原则的同时,又根据各自课程的特点自成体系。

我们热切地期待着广大师生对本套教材的批评和建议。

编者

2003年3月



根据《大学英语教学大纲》对大学英语应用提高阶段在专业英语方面的教学要求,为适应中国加入世贸组织后进一步扩大对外交流的形势需要,以培养更多既有扎实的法律专业知识又精通外语的法律人才,特编写此《法律英语教程》。

《法律英语教程》是针对法学专业高年级学生和法律英语爱好者编写的专业英语教材。本教材选材多为 1995 年以后的英文出版物,以美国法律制度为基点,旨在帮助读者在扩展专业知识的同时,掌握一定的专业英语词汇,熟悉法律英语表达方法,并进一步巩固英语语言基础,提高学生在专业领域内综合性运用英语语言的能力。

本书分上、下两册,每册十个单元,每单元包括主课文一篇、副课文两篇。主课文为该单元的精读部分,除有生词、语言点和背景知识的注释外,还附有课文理解和词汇练习以及听说写译综合性配套练习,以使听说读写译的技能在专业英语学习阶段进一步得到全面提高。副课文为单元的泛读部分,作为课堂教学的补充供学生课外自学,以充实相关领域的专业知识和英语语汇。本书单词注释严格以《大学英语教学大纲词汇表》为依据,排除了大学英语基础阶段所要求的四级内词汇,语言点的注释和单词练习对专业词汇有所侧重。

本书由赵雁丽主编,负责部分选材、全书的修改和统稿工作。本书上册的参编人员有赵雁丽、高海、高永辉、刘启升、刘丽丽、王著定;下册有赵雁丽、刘启升、高海、韩满玲、刘丽丽。

编者在编写过程中,在所涉法律专业知识方面得到了中国人民大学法学院有关法学专家的指导和帮助,在此表示衷心的感谢。

对于本书的编写,我们付出了大量的心血,但由于能力、材料和时间所限,不足之处在所难免,恳请各方专家和热心读者批评指正。

编者
2003.3

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Unit 1

The Nature of Law

The Nature of Law and Legal Theories

Americans have always had ambivalent feelings about law. Our rhetoric is full of noble ideals such as “equal justice under law” and the “rule of law.”¹ We pride ourselves on having a “government of laws, not men,” and on the assertion that “no one is above the law.” At the same time, disregard for the rule of law has been part of our political tradition. We are a nation born of violent revolution, and during our frontier period vigilante groups often took the law into their own hands.² Even in our own time we debate the role of civil disobedience³ in the civil rights, animal rights, abortion, and antinuclear movements.

In many ways the questions we ask ourselves about the nature of law are the same ones we ask about our political system and about society at large. How do we account for the conflicting attitudes Americans have toward law? How can persons who are law abiding one minute turn into a lynch mob the next? How can a nation founded on the basis of its citizens’ “inalienable rights” systematically deny those rights to African Americans and other minorities? How can we explain these contradictions? The answers to these questions are not easy, but we can begin to understand the paradox by looking at three approaches to the nature of law.

→ Natural law⁴ approach

Natural law theorists believe that the laws that govern relationships among people, like the laws that govern the physical universe, are sown in nature. These laws are eternal and immutable, just as God, the



source of all law, is eternal. Natural law is often referred to as a form of “higher law” to distinguish it from lesser—that is, man-made—law. Natural law has moral overtones, and those who invoke it often call it “God’s law.” Ascertaining just what is and is not God’s law can be risky business, but its advocates echo the belief of Justice Potter Stewart⁵ that they “know it when they see it.”

Appeal to natural, or higher, law provides a justification for civil disobedience. For example, if one’s conscience tells one that war is morally wrong, then one has a moral obligation not only to resist induction into the military, but also to commit overt acts of civil disobedience in order to raise the consciousness of the community about the evils of war. It was by appealing to the conscience of society that Mahatma Gandhi and Martin Luther King, Jr., were able to make both those in authority and the general public see the immorality of colonialism and segregation. Proponents of animal rights have attempted to make the question of treatment of animals, especially during laboratory tests for drugs and cosmetics, into a moral issue that justifies admittedly illegal behavior such as sit-ins and breaking into facilities to release animals. Invoking this higher law is one way in which a minority can hope to convince the majority to change its mind by appealing to the majority’s sense of morality.

A discussion of natural law inevitably leads to the question of whether it is possible to “legislate morality.” If by legislating morality it is meant that law can change a person’s values, then law obviously cannot legislate morality. A law prohibiting gambling is unlikely to prevent someone who sees nothing wrong with it from betting on the Super Bowl.⁶ In such a case the law has altered neither the person’s values nor his or her behavior. Among those persons who choose not to gamble are those who refrain from doing so out of fear of punishment rather than a conviction that gambling is “immoral.”⁷

It would be wrong, however, to conclude that law has no impact on morality. A generation or two ago, many Americans thought it was perfectly acceptable to use the law to force African Americans to attend separate public schools, drink at separate water fountains, and eat at



separate restaurants. But most younger Americans today are surprised to learn that such laws ever even existed. Undoubtedly, years of civil rights and antidiscrimination laws have changed the views of many Americans about the morality of racial segregation. It is in this sense that law can indeed legislate morality.

→ Positive law⁸ approach

A second approach, positive law, is the belief that law should simply reflect the will of the majority. Law is stripped of any moral overtones and boils down to⁹ the old adage, “Might makes right.” Despite the immorality of segregation or colonialism, if a majority wishes to have a segregated society or a colonial policy, then they may have it. Those who disagree with the law can certainly work within the democratic process to change it (albeit an unlikely occurrence), but they must accept it as the legitimate reflection of the will of the majority. Under no circumstances may the minority resort to unlawful methods to effect change. The law, then, becomes whatever a majority, wants at a particular point in time.

→ Sociological approach

The sociological theory of law¹⁰ holds that law represents a reflection of the values, mores, and culture of the society that produces it and that as the society changes, the law will also change. For example, we have seen tremendous change in our own society as a result of the women’s movement. As traditional views of the role of women have changed, laws dealing with the rights of women in employment, pension plan,¹¹ credit, and child support¹² have changed to keep pace. Although the law may lag behind a bit, it eventually catches up and reflects society’s prevalent views.

The sociological approach is even more evident in our view of criminal behavior. Criminal law, you will recall, defines what type of behavior is antisocial and therefore proscribed. Some behavior is wrong in itself and is almost universally condemned. Other acts are wrong merely because they have been prohibited. At one time the manufacture



and sale of alcoholic beverages were against the law, but after some experience with Prohibition,¹³ the measure was finally repealed. Today, gambling is still illegal in many states, but society's views are changing. Once restricted to Nevada and New Jersey, casino gambling is now permitted in Colorado, Mississippi, Louisiana, and New Mexico, to name just a few states. While the debate continues over the morality of state-sponsored gambling, people are beginning to view it more as acceptable entertainment and less as an unlawful act.

How would each of the three approaches just described deal with an issue such as homosexual marriages? The natural law theorist might argue that such marriages are a sin against God, violate natural law, and should not be legalized. The positive law theorist would argue that the morality of homosexual marriages is irrelevant; a majority of people are still opposed to them (assuming this to be true), and they should therefore remain illegal. The advocate of the sociological approach would argue that while our society is not yet ready to accept such marriages, a more tolerant atmosphere may prevail at some future time.

In a sense, American law encompasses all three of these approaches. The resulting paradox is the same one that is inherent in our political system and in society in general; On one hand, we believe that law should reflect the will of the majority; on the other hand, we accept the notion that minorities also have rights under the law. It is a source of frustration to many who wonder why we permit flag burning if a majority of Americans oppose it, and why we do not have prayer in the schools when a majority favor it. Is the law a manifestation of the majority's will or isn't it? Reconciling this paradox is never easy and seldom satisfying.

(1,293 words)

Words and Phrases

- ambivalent /æmbi'velənt/ *a.* having opposing attitudes or feelings towards a person or thing (态度等)矛盾的
- rhetoric /'retərɪk/ *n.* 辞令, 言语; 虚夸的话
- assertion /ə'sɜ:fən/ *n.* a forceful statement or claim 主张, 断言



disregard /ˌdɪsriˈɡɑːd/ <i>n.</i>	lack of proper attention to or respect for sb. or sth. 忽视;漠视
vigilante /ˌvɪdʒɪˈlænti/ <i>n.</i>	(美)警戒会会员,治安维持会成员
disobedience /ˌdɪsəˈbiːdiəns/ <i>n.</i>	not obeying 不服从,违抗
abortion /əˈbɔːʃən/ <i>n.</i>	流产,堕胎
at large	as a whole; altogether(位于所修饰词后)整个的, 全部的;大多数
law abiding /ˈlɔːəˌbaɪdɪŋ/ <i>a.</i>	obeying laws 守法的
lynch /lɪntʃ/ <i>n. & v.</i>	(处)私刑; 私刑处死
mob /mɒb/ <i>n.</i>	a large disorderly crowd, esp. one which is violent 暴民,乱民,乌合之众
inalienable /ɪnˈeɪliənəbl/ <i>a.</i>	which cannot be taken away (指权利等)不能让与 的,不可剥夺的
paradox /ˈpærədɒks/ <i>n.</i>	sth. or sb. with seemingly contradictory qualities or phases 有明显矛盾特点的人(物、行为等)
theorist /ˈθiərɪst/ <i>n.</i>	a person who forms or studies the theory of a subject 理论家
eternal /ɪˈtɜːnl/ <i>a.</i>	lasting for ever; without beginning or end 永恒的; 永久的
immutable /ɪˈmjuːtəbl/ <i>a.</i>	unchangeable 不可改变的;永恒的
lesser /ˈlesə/ <i>a.</i>	of less significance; of lower status 次要的
overtone /ˈəʊvətəʊn/ <i>n.</i>	(often <i>pl.</i>) things that are suggested but not shown or stated clearly 内涵
invoke /ɪnˈvəʊk/ <i>vt.</i>	appeal to or cite as authority 援引;援用
ascertain /ˌæsəˈteɪn/ <i>vt.</i>	discover (the truth about sth.); make certain 查明,弄清,确定
justification /ˌdʒʌstɪfɪˈkeɪʃən/ <i>n.</i>	just, lawful excuse or reason for acting or failing to act 正当的理由
induction /ɪnˈdʌkʃən/ <i>n.</i>	(美)征召
overt /ˈəʊvəːt/ <i>a.</i>	(of beliefs or actions) public; not secret 公开的
morality /məˈræləti/ <i>n.</i>	conforming to ideals of right human conduct 道德; (行为等的)道德性
immorality /ɪməˈræləti/ <i>n.</i>	不道德(性);不道德行为
colonial /kəˈləʊniəl/ <i>a.</i>	殖民地的;殖民主义的
colonialism /kəˈləʊniəlɪzəm/ <i>n.</i>	殖民主义
segregate /ˈseɡrɪgeɪt/ <i>vt.</i>	separate or keep apart, esp. keep different races in a country apart(种族)隔离
segregation /ˌseɡrɪˈgeɪʃən/ <i>n.</i>	the separation of a social or racial group from



proponent /prə'pəʊnənt/ <i>n.</i>	others, by laws that forbid them from using the same schools, restaurants, buses, etc. 种族隔离 one who supports or argues in favor of sth.; advocate 支持者; 拥护者; 辩护者
cosmetics /kɒz'metiks/ <i>n.</i>	化妆品
admittedly /əd'mitidli/ <i>ad.</i>	as has been or must be admitted 公认地, 诚然, 无可否认地
sit-in /'sitin/ <i>n.</i>	an act of sitting in the seats or on the floor of an establishment as a means of organized protest 静坐(抗议)
legislate /'ledʒisleit/ <i>v.</i>	enact laws or pass resolutions via legislation, in contrast to court-made law; create, provide, or bring about by making laws 立法; 制定成文法; 用立法实现
legislation /,ledʒis'leifən/ <i>n.</i>	立法
gambling /'gæmblɪŋ/ <i>n.</i>	赌博(罪)
refrain /ri'frein/ <i>vi.</i>	(from) hold oneself back from doing sth.; not do 忍住; 克制
water fountain	(设于公共场所的)喷泉式饮水器
antidiscrimination /'æntidis,krimi'neifən/ <i>n.</i>	反歧视
adage /'ædidʒ/ <i>n.</i>	an old wise phrase; proverb 格言; 谚语
albeit /ɔɪl'bi:t/ <i>conj.</i>	(formal) although; even though 尽管, 即使
legitimate /li'dʒitimət/ <i>a.</i>	correct or allowable according to the law or generally accepted standards of behavior 合法的; 合理的, 正当的
sociological /,səʊsiə'lɒdʒikəl/ <i>a.</i>	社会学的; 有关社会问题的
mores /'mɔ:reiz/ <i>n.</i>	(pl.) the moral customs of a particular group 风俗, 习惯
prevalent /'prevələnt/ <i>a.</i>	generally or widely accepted, practiced, or favored; widespread 流行的, 盛行的; 普遍的
antisocial /,ænti'səʊʃəl/ <i>a.</i>	反社会的; 有害于公共利益的
proscribe /prə'skraib/ <i>vt.</i>	ban; forbid, esp. by law 禁止
alcoholic /,ælkə'hɒlik/ <i>a.</i>	(含)酒精的
beverage /'bevərɪdʒ/ <i>n.</i>	a liquid for drinking, esp. one that is not water or medicine 饮料
repeal /ri'pi:l/ <i>vt.</i>	do away with (a law) 废除, 废止
casino /kə'si:nəʊ/ <i>n.</i>	卡西诺牌戏(一种由二至四人玩的纸牌游戏); 赌场
homosexual /,hɒmə'sekʃuəl/ <i>a.</i>	同性恋的
homosexuality /,hɒmə'sekʃu'æli/ <i>n.</i>	同性恋
legalize /'li:gəlaiz/ <i>vt.</i>	make legal 使合法化



tolerant /'tɒlərənt/ <i>a.</i>	showing or practising tolerance 宽容的, 容忍的
encompass /in'kʌmpəs/ <i>vt.</i>	include or be concerned with (a wide range of activities, subjects, ideas, etc.); comprise 包含, 包括
inherent /in'hiərənt/ <i>a.</i>	(in) belonging by nature or habit 固有的; 内在的
manifest /'mænɪfɪst/ <i>vt.</i>	show (sth.) plainly 显示; 表明
manifestation /,mænɪfɪ'steɪʃən/ <i>n.</i>	the act, process, or an instance of manifesting 显示, 表明; 表现(形式)
reconcile /'rekənsaɪl/ <i>vt.</i>	restore to harmony or friendship 使协调; 使和解

Notes

1. "The rule of law", a legal principle of general application, provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application.
2. Vigilante groups (警戒会; 治安维持组织) are volunteer organizations who try by unofficial means to keep order and punish crime in an area where an official body either does not exist or does not work effectively. A vigilante is a member of such an organization.

Frontier settlements in the United States often lacked established law enforcement agencies and, instead, exercised summary justice through vigilantes. Western pioneers punished murder, rape, horse thievery, and other capital crimes by lynching.

Lynching means putting to death (as by hanging) a person thought to be guilty of a crime without due process of law. Most known lynchings in the United States have taken place in the South. Before the American Civil War (1861-1865), most lynching victims were white and were usually abolitionists or others who worked to end the system of slavery. After the 1880s most lynching victims were black. Lynching has declined considerably during the 20th century. In the 1960s, however, several people attempting to secure civil rights for blacks in the South were killed by lynch mobs.

3. Civil disobedience (非暴力反抗) is collective refusal to obey civil laws or decrees. This refusal usually takes the form of passive resistance. People practicing civil disobedience break a law because they consider it unjust and hope to call attention to it. In his essay *Civil Disobedience* (1849), American author Henry David Thoreau set forth the basic tenets of civil disobedience for the first time. The independence of India in the 1930s was largely a result of the nonviolent resistance by Mahatma Gandhi to the British colonial laws. In the United States, the nonviolent efforts of Martin Luther King, Jr., helped bring about civil rights legislation.