



21世纪法学系列教材

法律英语

郭义贵 主编

基础课系列

LAW



北京大学出版社
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21

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法律英语

主编 郭义贵 副主编 封桂英 汤俊芳 郭兰英

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内 容 提 要

本书共设 20 课, 40 篇原文(含课文和补充读物), 内容主要涉及英美的宪法、法理学、法律沿革、法律职业、公司法、土地法、契约法、婚姻与家庭法、社会法、刑事司法、证据学、法律援助、欧洲共同体法的适用等。本书的特色在于: (一) 追求原汁原味。即选材源自英美法学原作, 一般不作改动。(二) 追求学术品位。即所选作品均为英美名家的论著。(三) 方便读者。本教材力求通过适当地提供相关背景知识和注释、单词附音标和释文、配以参考答案等方式, 以便于读者参照学习, 了解更多的信息, 激发学习兴趣。

本书希望: 通过本教材的系统学习, 广大读者朋友能较为熟练地掌握法律英语, 轻松自如地阅读和理解法律英文原作, 并由此对英美法有较深的认识, 扩大自己的知识面, 巩固以前所学, 为今后的工作与深造打下良好的基础。

本书适用对象: 高校法律专业学生及一切对法律英语和英美法律制度感兴趣的人士。

每课大致编撰体例: 课文、相关背景介绍、生词及注解、词语释义、课文注释、练习、补充阅读、参考答案。

前 言

就时间而言,在世界法律文明的长河中,英美法与古巴比伦法、古印度法、古埃及法、古希伯来法、古代中国法、古伊斯兰法等相比,自然算不上历史悠久,源远流长;与古希腊、古罗马的法律相比,英美法亦难以望其项背。然而,作为世界公认的五大法系之一的英美法,不仅存活了下来,而且极具生命力,其独特的魅力在今天和今后一段时间自当为世人所关注。

概而言之,英美法肇始于英伦三岛,确立于公元 11 世纪后期的诺曼征服(The Norman Conquest),伴随着近代以来英国的海外殖民扩张,传播于世界各地,最终形成了一个所谓的英美法系(或谓“普通法系”,以与法、德诸国为代表的“大陆法系”相区别)。举凡议会制度、普通法、衡平法、信托法、陪审制、抗辩制、独立的财产法、契约法、侵权行为法等均为英美法首创或独有。因此,英美法(包括其法律制度、法律思想和观念等)对于一百多年以来的中国人一直具有一种吸引力和神秘感,而借助英语原文来解读这一颇具特色的域外法律文化,也就成为一种较为自然的选择。

奉献给广大读者朋友的这本《法律英语》,首先当然是一本供大家选择阅读的教材。但我们希望它的价值最好不限于此。如果通过本书,读者朋友获得了一扇了解英美法,尤其是了解英、美这两个典型的普通法系国家的法律的历程及其相关制度的窗口,并由此引发学习和研究、借鉴包括英美法在内的域外法律文化的热情,则可谓为本书对各位读者提供的一种微不足道的帮助。

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Lesson 1

What is a Legal System?

(法律制度)

In modern American society, the legal system is everywhere with us and around us. To be sure, most of us do not have much contact with courts and lawyers except in emergencies. But not a day goes by, and hardly a waking hour, without contact with law in its broader sense — or with people whose behavior is modified or influenced by law. Law is a vast, though, sometimes invisible, presence.

For example, when we go to the grocery and buy bread, milk, soup, and potato chips, and when we make out a check for the food and take the packages out to our car, we invoke or assume many facets of legal order. To be sure, we do not feel that the legal system, like some sort of Big Brother, is staring at us over our shoulder. But in a sense it is: at us, and at the shopkeeper and his workers. Some branch of law touches every aspect of this ordinary little piece of behavior.

To get to the store, we drove a car or walked, crossing several streets. Traffic law walked or drove with us. Dozens of rules and regulations applied to conditions at the factory where the car was assembled — rules about the work force, and about the car itself, body and engine. Inside the grocery store, there were labels on the cans and packages — more rules and regulations; in the life history of every jar of jam, every tube of toothpaste, rules and regulations are lurking. And of course, workers in the store, like workers in the auto plant, are covered by federal, state, and local labor regulations.

Indeed, most things we buy — TV sets, mattresses, shoes, whatever — are covered by some body of law, some rules about safety or quality or other as-

pects of manufacture or use. Most buildings and places of business, including the grocery store itself, have to conform to building codes and to fire and safety regulations. Rules about standard weights and measures, employee comfort and safety, time and a half for overtime work, Sunday closing laws — the list is endless.

But there is more. When I buy a loaf of bread or a can of soup, I have entered into a contract, whether I realize it or not. If something goes wrong with the deal, the rules of contract law, of the Uniform Commercial Code, or of some branch of commercial law come into play, at least theoretically. The Commercial Code governs the rules that relate to checks; and a vast body of banking law is relevant to the way these pieces of paper provide credit and payment. If the can of soup is tainted and I get sick, I may have the right to sue the soup's company; this will switch me onto still another legal track — the law of products liability, a branch of the law of torts.

This is not to say that we feel law lying on us like a suit of lead. Law is in the atmosphere, as light as air to the normal touch. (Manufacturers and storekeepers, of course, may see things differently.) Moreover, it is wrong to think of law as a tissue of don'ts, that is, as a kind of nagging or dictatorial parent. Much of the law is intended to make life easier, safer, happier, or better. When the norms do forbid something (or require something from somebody), it is usually for the specific benefit of somebody else. The law insists that soup companies put labels on their soup. They must tell us exactly what they put inside. This is a burden on the company, but is a benefit (or is supposed to be) for buyers of soup. There are also many ways in which the legal system facilitates, rather than forbids or harasses. It subsidizes; it promotes; it provides easy ways to reach desirable goals. The law about wills or contracts, for example, is basically about ways to do what you want to do, safely and efficiently; it is much less concerned with what not to do — with the price for disobeying rules. A great deal of law is facilitative in this way. It provides standard ways — routines — for reaching goals. It builds roads for the traffic of society.

Legal process is so important that it certainly behooves us to know as much as we can about it. But what is that "it"? What do people have in mind when they speak about "the law" or "legal process"? Much as we might want to avoid tricky problems of definition, we may in the end have to say exactly what we mean by the terms law, legal system, and legal process.

To define them is a tricky job. LAW is an everyday word, part of the basic vocabulary. But it is a word of many meanings, as slippery as glass, as elusive as a soap bubble. It is impossible to talk sensibly about the meaning of law, as if law were some concrete object in the world around us — something we could feel or smell, like a chair or a dog. But we can try to get at some sort of working definition.

One way to start is to listen to the way people use words like law, and ask what they are referring to. To begin with, people seem to have in mind the network of rules and regulations that surrounds us. This is clear from such expressions as “breaking the law” or “obeying the law”. It is also what the word law means in sentences like “It’s against the law to drive ninety miles an hour”. There may be, and certainly are, other shades of meaning; but the idea of rules and regulations is usually at the core. In ordinary speech, then, the word law is connected with “laws”, that is, with rules and regulations.

Background (背景)

什么是法？法是一种具有区别于其他社会规范的行为规则体系，涉及到我们生活的方方面面。(1) 法是由国家制定和认可的，具有国家意志性和最高权威性。国家制定和认可，是国家创制法的两种方式：国家制定，一般是指制定成文法而言，是指有权制定法规的国家机关，按照法定的权限和程序制定出具有法律效力和条文形式的规范性文件；国家认可，一般是指统治阶级通过国家机关对社会上已经存在的风俗习惯、道德、教规、判例等，承认它是法律规范，赋予它有法律上的效力，以国家强制力保证其实施。(2) 法具有特定的表现形式、明确的行为模式和严密的逻辑结构，具有明确的规范性。法的表现形式是特定的，就是说它必须是有权制定或认可法规的国家机关，按照法定权限和程序，以特定的文件和方式发布，方为有效。法律规范法把人们的行为活动概括为三种模式：一是可以做这样的行为；二是应该或必须做这样的行为；三是不应或禁止做这样的行为。(3) 法是通过国家确认人们的权利和义务的方式来调整人们的利益关系，具有固定权利义务的特性。在法律规范中，有些规范直接规定主体享有什么权利或应尽什么义务，有的规范却只规定人们可以做什么、必须做什么或不得做什么。一般来说，凡规定人们可以做什么，就是指人们享有什么权利；规定必须做什么或不得做什么，就是必须承担做什么或不得做什么的义务。法律上的权利义务，说到底就是对利益的分配、调整、确认和维护。(4) 法是由国家强制力保证实施的，具有国家强制性。法是由国家强制力作后盾，这是法得以存在和发展

的条件之一,如果没有国家强制力作保证,一切规范都等于零。

这篇文章以轻松、明快的笔触谈及法律及其在美国社会中几乎无所不在的作用,读来自应有一定的启迪意义。

New Words

1. modify [ˈmɒdɪfaɪ] v. 修改, 改造
2. invoke [ɪnˈvəʊk] v. 求助于(法律等);行使(法权等);实施
3. assume [əˈsjʊ:m] v. 采取, 采用
4. facet [ˈfæsit] n. (问题等的)一个方面
5. lurking [ˈlʌ:kɪŋ] a. 潜在的;隐藏着的
6. mattress [ˈmætrɪs] n. 褥垫
7. conform [kənˈfɔ:m] v. 遵守;依照;符合
8. paper [ˈpeɪpə] n. 票据;证券
9. tainted [ˈteɪntɪd] a. 受污染的, 腐坏的
10. tort [tɔ:t] n. 侵权行为
11. nag [næg] v. 唠叨;不断地找……的差错
12. dictatorial [ˌdɪktəˈtɔ:riəl] a. 独裁的;专横的;霸道的
13. facilitate [fəˈsɪlɪteɪt] v. 使更容易;有助于
14. facilitative [fəˈsɪlɪteɪtɪv] a. 容易的;便利的
15. harass [ˈhærəs] v. 烦扰
16. subsidize [ˈsʌbsɪdaɪz] v. 资助;给与……的补助
17. will [wɪl] n. 遗嘱
18. behove [biˈhəʊv] (美) behoove [biˈhʊ:v] v. 对某人说来有必要的;是某人职责所系
19. tricky [ˈtrɪki] a. 难以捉摸的;微妙的
20. elusive [ɪˈlu:sɪv] a. 难抓住的
21. bubble [ˈbʌbl] n. 泡;泡沫
22. sensibly [ˈsensəbli] adv. 明智地;合理地;切合实际地
23. shades [ʃeɪdz] n. 形形色色, 多种多样

Terms and Expressions

1. to be sure 诚然, 固然
2. make out 写出, 开出;填写
3. be covered by 涉及到;包括

4. body of law 法的体系;法律体系
5. conform to 遵守;依照;符合
6. enter into a contract 签订合同
7. come into play 开始起作用
8. be concerned with 与……有关系的
9. have sth. in mind 呈现在脑海中
10. some sort of 在一定程度上,有点
11. be at the core 是核心的,处于核心地位的

Notes

1. Law is a vast, though, sometimes invisible, presence. (Para. 1) 尽管有时难以觉察,但法律却无处不在。presence 的意思是“存在”。例如:

a. She was so quiet that her presence was hardly noticed.

她一声不响,几乎没有人注意到她的存在。

b. He was calm in the presence of danger.

危险面前,他镇定自若。

2. We do not feel that the legal system, like some sort of Big Brother... (Para. 2) 我们认为法律制度并不像独裁者。

some sort of 有点,在一定程度上

Big Brother 独裁者

3. But in a sense it is; at us, and at the shopkeeper and his workers. (Para. 2) 但是,在一定程度上,法律在监视着我们、店主以及他的店员们。

该句中,在 us 之前省略了 staring 一词。

in a sense 在某种意义上,在某种程度上。例如:

a. You are right in a sense, but you don't know all the facts.

在某种意义上,你是对的,但你不了解全部事实。

b. What you say is true in a sense.

就某种意义而言,你说的是实话。

4. ..., time and a half for overtime work, ... (Para. 4) 超时工作要支付相当于平时一倍半的工资。

5. Sunday closing laws (Para. 4) (亦称 blue laws, 指在若干管辖范围内) 禁止在星期天营业的法规。

6. the Uniform Commercial Code (Para. 5) (美)《统一商法典》。

《统一商法典》是美国各州法律统一化工作的一项产物,原是向各州推荐的

商法典的一个范本,后来被路易斯安那州以外的其他各州所采用。《统一商法典》共分为9篇:(1)总则;(2)买卖;(3)商业文件;(4)银行存款和贷款;(5)信用状;(6)大批转让;(7)产权证明,设计提单和货栈收据等;(8)投资证券;(9)有担保的交易。

7. . . . , this will switch me onto still another legal track — the law of products liability, a branch of the law of torts. (Para.5)这将会使我与另一部门法发生联系,即产品责任法,它是侵权行为法的一个分支。

8. This is not to say that we feel law lying on us like a suit of lead. Law is in the atmosphere, as light as air to the normal touch. (Para.6)这并不是说,庞大、复杂的法律的存在能让我们切实感觉得到。法律的存在就像是空气一样,无处不在,但并非时时为人觉察。

9. . . . , it is wrong to think of law as a tissue of don'ts. (Para.6)把法律看做是一系列“禁止”的行为是错误的。

a tissue of 一系列的。例如:

His story was a tissue of lies.

他讲述的事完全是一派谎言。

10. Much as we might want to avoid tricky problems of definition, . . . (Para.6)尽管我们想要逃避定义所带来的棘手的问题……

As 引导让步状语从句。As 引导让步状语从句具有两个特点:一是语气比 though 或 although 引导的从句要强些;二是 as 引导的让步状语从句需要倒装。其结构为:应提前部分 + as + 主语 + 谓语动词。例如:

a. Young as he is, he is knowledgeable.

虽然他很年轻,但却很有知识。

b. Much as I respect him, I can not agree with him.

尽管我很尊重他,但我不同意他的观点。

11. But it is a word of many meanings, as slippery as glass, as elusive as a soap bubble. (Para.8)“法律”一词是多义词,它就像玻璃一样需要小心对待,(也)像肥皂泡一样让人难以抓住。

slippery: a. 需要小心对待的。例如:

slippery economic problems 棘手的经济问题。

Exercise

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

1. In modern American society, the legal system is everywhere with us and

around us.

2. Most of us have much contact with law in its narrow sense.
3. We do feel that the legal system, like sort of Big Brother, is staring at us over our shoulder.
4. If the can of soup is tainted and you get sick, you may have the right to sue the soup's company.
5. It's correct for us to think of law as a tissue of don't.
6. No law is intended to make life easier, safer, happier or better.
7. A great deal of law is facilitative in providing standard ways — routines — for reaching goals.
8. It's very easy for us to define "the law" or "legal system".
9. In the author's opinion, law is some concrete object in the world around us.
10. When we define "law", the idea of rules and regulations is usually at the core.

II . Choose the definition from column B that best matches the word in column A.

- | A | B |
|-----------------------|---|
| 1. law | a. laws, ordinances, or government regulations concerning fitness for habitation setting forth standards and requirements for the constitution, maintenance, operation, occupancy, use or appearance of buildings, premises, and dwelling units |
| 2. court | b. prescribed rules of conduct to promote the orderly and safe flow of traffic |
| 3. lawyer | c. contract between employer and employees which governs working conditions, wages, fringe benefits, and grievance |
| 4. contract | d. a body of rules or standards of conduct promulgated or established by some authority |
| 5. traffic regulation | e. a person licensed by an appropriate authority to practice law |
| 6. regulation | f. a governmental institution charged with the administration of justice according to laws or principles of equity |

- | | |
|-------------------|---|
| 7. labor contract | g. a rule or order of the executive branch of government which has the same force of law as if issued by the legislative branch |
| 8. building code | h. a person's declaration of how he/she wishes his/her property to be disposed of after his/her death |
| 9. tort | i. some action or conduct by the defendant which results from a breach of a legal duty owed by the defendant to the plaintiff |
| 10. will | j. an agreement between two or more parties which creates legally binding obligations |

III. Translation

A. English to Chinese (英译汉)

1. Potential conflicts between state and federal regulation in all areas, including environmental protection, are governed by the Supremacy Clause of the United States Constitution.

2. Common law has no statutory basis; judges establish common law by applying previous decisions (precedents) to present cases.

3. Although typically affected by statutory authority, broad areas of the law, most notably relating to property, contracts, and torts are traditionally part of the common law. These areas of the law are mostly within the jurisdiction of the states, and thus state courts are the primary source of common law.

4. The federal courts have the sole authority to interpret the Constitution and to evaluate the federal constitutionality of federal or state laws.

5. The United States is a republic which operates under federalist system. The national government has specific, enumerated powers, and the fifty sovereign states retain substantial autonomy and authority over their respective citizens and residents.

6. Both the national government and each state government are divided into executive, legislative, and judicial branches. Written constitutions, both federal and state, form a system of separated powers, checks, and balances among the branches.

7. The federal Constitution, federal laws, and international treaties are supreme to state or local law; state and local laws that contradict federal laws or treaties are thus preempted and can be declared unconstitutional by a federal court.