面向21世纪课程教材
Textbook Series for 21st Century

全国高等学校法学专业必修课、选修课系列教材

法律英语教程

Legal English Textbook

（第二版）

齐 筠 主编

高等教育出版社
HIGHER EDUCATION PRESS

配教学课件

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Falu Yingyu Jiaocheng

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（第二版）

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内容提要

本教程选材以美国法为主，包括美国法律制度、宪法、刑法、刑事诉讼法、民事诉讼法、侵权法、合同法、财产法、公司法、证据法、知识产权法、家庭法、反垄断法以及相关的经典案例等13个单元。每个单元自成体系，既包含系统的理论介绍，又包含美国法院的判决意见书。单元后还特别设计了听力部分、案例讨论和翻译练习。书后附录部分的内容也很丰富，包括听力部分的书面材料、部分合同样本和词汇表等。

本教程可供大学本科生、研究生、博士生使用，同时也可作为广大法律英语爱好者的学习用书。

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第二版修订说明

2007年,我在美国印第安纳大学布鲁明顿校区摩利尔法学院偶遇浙江大学法学院梁上上教授和正在印大攻读法学硕士学位的我国某法学院毕业生,互通姓名以后,他们立刻提到了《法律英语教程》这本教材,并对教材的知识性、系统性和实用性给予了充分的肯定,认为该教材在语言和知识方面为他们后来赴美学习美国法提供了非常大的帮助。作为主编,能得到读者的直接反馈和肯定,深感欣慰和鼓舞。《法律英语教程》自2005年出版以来,历经五个年头,一直是中国政法大学大学英语高级模块课程法律英语的主要教材之一,受到学生的广泛认同和欢迎。

作为编者和本书的使用者,我们认为该教材突出了知识性和系统性,很好地实践了以内容为依托的语言教学模式,避免专业英语教学"只见树木,不见森林"的弊端,针对法律语言的复杂特点,很好地帮助学生在真实语境下,领悟法律英语术语的含义,了解法律英语语言特点,获得语感。

近五年来,随着我国在经济、技术、文化、教育等方面的迅猛发展,学生的知识结构和层次也发生了很大变化,现代化通信手段在教育领域应用广泛,亟须对教材内容做适度的调整。在广泛征求师生意见的基础上,本书编者历经一年的时间,对本书进行了较大篇幅的修订,力求更加适应教学形势和满足师生需求。

第二版基本保持了第一版的编排体系,在内容方面作了如下修改:

第一,对内容进行了必要调整。秉承本书初版的编写原则,在强调语言技能训练的前提下,兼顾专业英语语言特点及学习者的特点和需要,力求课文内容更加丰富,更加突出知识性和系统性。同时考虑到语言教材的特点和课时限制,对初版中的一些课文进行了更换或删节,使主题更突出,内容更紧凑,结构更系统。

更换的内容有:第一单元:听力,课文A,课文C;第二单元:听力,课文A,案例;第三单元:案例;第四单元:听力,案例;第五单元:听力,课文B,案例;第十单元:案例;第十二单元(现第十三单元):课文A,课文B,案例。此外,考虑到涉外婚姻家庭事务的增多,还增加了"家庭法"作为第十二单元,原十二单元改为第十三单元。并对以上各单元(除"家庭法"单元以外)的练习都进行了重新编写。

进行删节的内容有:第二单元:课文B;第三单元:课文A;第四单元:课文A;第六单元:课文A;第十单元:课文A;第十二单元:课文A,课文B。

并将第一版附件中的Case Brief提前到第一单元的案例部分,凸显briefing cases作为学习普通法的基本技能的重要性,也为学生学习以后单元中的案例提

供指导。

此外，第二版替换了一些案例，主要基于如下考虑：使案例与课文B所涉法律原则切合，以便学习者能更好地理解课文B中的法律原则及其适用；力求案例经典，或案例内容更富有趣味或有现实意义。建议学生仔细研读案例及课文B中的法律原则，学习掌握案例法的精髓。

初版问世五年以来，我国在信息化方面发生了根本性的变化，互联网的普及为人们查询资料提供了十分便利的条件，因此，第二版附录部分不再放入《美国宪法》，该部分内容将与其他法律文献或资料在本书配套的教学课件中以索引形式呈现给读者，以便学习者学习各部门法时查询法律依据。

第二，适当降低课文难度。根据师生的反馈，第二版对所有课文及案例中的单词和术语增加了注释及课后的注解，力求以有限的篇幅为学习者提供尽可能多的背景知识。

第三，编写人员也有较大变化。第二版对编写人员进行了调整。编者均多年从事语言教学，深谙语言教学规律，且全部有美国法学院系统学习法律的留学背景，主讲法律英语及美国法律制度等课程，英语法律语言及法律基础深厚，具有丰富的法律英语和双语课教学经验。具体编写分工如下：徐新燕编写第一单元和第二单元，胡晋华编写第三单元、第四单元和第十三单元，张清编写第五单元、第七单元、第八单元和第九单元，齐筠编写第六单元、第十单元、第十一单元、第十二单元。齐筠担任本书主编，负责全书的统稿工作。

本书对第一版中的打印和语言内容错误进行了认真仔细的修订，但由于水平有限，一定还存在很多的不足，恳切希望师生多提宝贵意见，并致以诚挚的谢意。

主编　齐筠

2011年春

前　言

随着我国与国际间交往的日益增多，以及我国涉外经济合作的飞速发展和涉外法律业务的急剧增多，社会迫切需要越来越多具有较强英语语言运用能力的法律从业人员，法律英语教学已凸显其在法律院校英语教学中的重要地位。本书旨在向法律专业学生和法律从业人员传授法律英语知识和系统的普通法知识，帮助学生扩大法律英语专业词汇，了解法律英语的语言特点，提高阅读能力和语言运用能力，为今后进一步学习专业法律英语和从事法律工作奠定基础。本教程以培养既懂法律又懂英语的复合型人才为目标，力求成为一本有效实用的教材。

本教程选材以美国法为主，强调知识性、系统性和实用性。在内容选排上克服了许多法律英语教材内容不够全面的缺点。每个单元自成体系，力求结构完整，内容全面系统，形式丰富多样。既包含系统的理论介绍，又包含美国法院的判决意见书，改变了现有专业英语教材多为“阅读—翻译”的单一模式。本书内容主要包括美国法律制度、宪法、刑法、刑事诉讼法、民事诉讼法、侵权法、合同法、财产法、公司法、证据法、知识产权法、家庭法、反垄断法以及相关的经典案例。

本教程包含十二个单元及附录部分，每个单元主要介绍一门法律，具体内容包含：

1. 听力部分，内容涉及案例事实、法庭辩论、法律知识介绍等。突出情景对话，让学生熟悉法律英语的常用表达方式并加以模拟，巩固法律英语词汇，培养语言运用能力。

2. 课文 A，概述一部门法的主要内容，旨在让学生系统了解有关部门法律制度、规则，掌握该部门法的主要词汇。

3. 课文 B，是对相关法中某个问题的重点论述，使学生在全面了解有关法的基础上，更深刻地理解某一具体原则或理论，同时也为第四部分的案例学习做准备。

4. 案例部分，选择相关部门法的经典案例，旨在增强实用性和趣味性，使学习者能够接触到原汁原味的美国联邦法院及州法院的判例。学生在学习课文 A 和课文 B 的基础上，可以对案件展开辩论，进行口语练习。

5. 练习部分，本教程每部分后面都设计了练习。练习强调专业词汇的学习，在课文 B 后面还特别设计了词汇扩展练习，其中一些词汇没有在课文中出

现，但属于相关法律的专业词汇，学生应予掌握。本教程练习的另一特点是突出学生的语言运用能力的训练，设计了听力部分、案例讨论和翻译练习。听力设计在单元的开始部分，教师可根据学生的学习情况，将该练习放在完成课文学习以后进行。

书后附录部分包括听力部分的书面材料、一些合同样本，如何写案情摘要、模拟法庭、《美国宪法》和词汇表。建议学习者提前阅读案情摘要(Case Brief)，以方便学习案例。

本书编写分工如下：高莲红：第一、五单元；陈延兵：第二、四单元；胡晋华：第三、十二单元；齐筠：第六、十、十一单元；张清：第七、八、九单元。齐筠负责全书的统稿工作。

限于时间和水平，书中可能存在一些失误和不妥之处，恳请广大读者批评、指正。

编者

2004 年冬于北京

Contents

Unit One Legal Systems

Warm-up Exercises: Listening Practice

Words and expressions:

legal system	common law	precedent	civil law
code	Roman law	panel	Congressman
competition law	public and private	international law	comparative law
litigant	practitioner	system-builder	problem-solver

I. Spot dictation. Listen to the passage carefully and fill in the blanks with the words you hear.

In England, the legal system is based on _____. Over the centuries, English judges have unified and developed laws using a system of _____ and established practice. By contrast, in the rest of Europe, civil law forms the bases for most legal systems. Civil systems generally feature a _____ setting out basic rights and duties and in some cases, can be traced right back to _____. In 2004, the unreliable evidence set out to explore the differences between the two systems. Here's the presenter Clive Anderson, introducing his _____ of experts.

(Anderson) To discuss laws, common and uncommon, civil and uncivil, I'm joined by a Congressman Simon, one of the English judges in _____ _____. Hue Massa is a barrister specialized in EU _____, _____. He's appeared in cases involving European Commission. Prof. Bessel Maxis, who has joined in our program before, is a leading expert on _____. Prof. John Bell is another distinguished academic expert, currently professor of Lord Canterbury College of Cambridge. Welcome a distinguished penal. Prof. Maxis, an ordinary person, maybe an ordinary _____, to recognize the differences of the court on historical

bases of civil law or common law.

(Maxis) I would put it in this way. Our concept of the law, the people who tell us what the law is in the continental European systems are the academics of the universities and in the common law systems are the _____ and the judges. That's very important difference. Because academics go for system, logic, structure and theory and therefore tend to be system-builders while our lawyers are practitioners. They look for the problems and they try to find the right remedies. So they are problem-solvers.

(Anderson) What are the differences between the ways a town or city might develop England using old rules and gradually building up one supposed to be a new town which is laid up on a great pattern?

(Maxis) Yes, I think it is true to say that our system has developed without the kind of structure that the European systems have from the beginning largely for the reasons you said they inherit from Roman Law. But these differences are being a tenuated practice, and gradually, I think, will all move together. Let's give a take. We are adapting to their ideas and they are taking many of ours.

Ⅱ. Listen to the passage again and decide whether the following statements are True or False according to what you hear.

1. English legal system follows the common law tradition, which was based on case law.
2. The source of law in civil law system is the legislation, which is also part of the source in the common law system.
3. There is tendency that civil law system and common law system learn from each other and the feature of one legal family is accepted by the other.
4. Judges play an important role in interpreting the law in the common law system the same as what law scholars do in the civil law system.
5. In the civil law jurisdictions, judges may not make principles as their equivalents do in the common law systems.

Text A

Common Law v. Civil Law Systems

By Judge Peter J. Messitte

The two principal legal systems in the world today are those of civil law and common law. Continental Europe, Latin America, most of Africa and many Central European and Asian nations are part of the civil law system; the United States, along with England and other countries once part of the British Empire, belongs to the common law system.

The civil law system has its roots in ancient Roman law, updated in the 6th century A. D. by the Emperor Justinian and adapted in later times by French and German jurists.

The common law system began developing in England almost a millennium ago. By the time England's Parliament was established, its royal judges had already begun basing their decisions on law "common" to the realm. A body of decisions was accumulating. Able lawyers assisted the process. On the European continent, Justinian's resurrected law-books and the legal system of the Catholic Church played critical roles in harmonizing a thousand local laws. England, in the midst of constructing a flexible legal system of its own, was less influenced by these sources. It never embraced the sentiment of the French Revolution that the power of judges should be curbed, that they should be strictly limited to applying the law such as the legislature might declare.

After the American Revolution, English common law was enthusiastically embraced by the newly independent American states. In the more than 200 years since that time, the common law in America has seen many changes — economic, political and social — and has become a system distinctive both in its techniques and its style of adjudication.

- civil law system 民法法系
- common law system 普通法系
- British Empire (旧称)大英帝国
- Roman law 罗马法
- the Emperor Justinian 查士丁尼大帝
- jurist 法学家
- millennium 一千年
- accumulate 积累;积攒
- resurrect 恢复旧风俗、习惯等;复兴
- embrace 包含,收买,信奉
- curb 控制,约束,抑制
- legislature 立法机构
- adjudication (法院的)审判;裁定

· code
法典
· analogy
类比，类推，类似
· tort
侵权行为
· delict
不法行为
· inheritance
继承
· penal code
刑法典
· procedure
程序
· interpret
解释
· accessible
可得到的
· Magna Carta
英国大宪章
· legislation
立法
· enacted law
制定法
· constitution
宪法
· enactment
成文法
· internal revenue code
国内税收法
· uniform
统一的
· ratify
批准，认可
· statute
成文法
· sources of (the) law
法律渊源

"Judge-made" Law

It is often said that the common law system consists of unwritten "judge-made" law while the civil law system is composed of written codes. For the most part, law in the United States today is "made" by the legislative branch. To some extent, however, the judge-made law analogy is true.

Historically, much law in the American common law system has been created by judicial decisions, especially in such important areas as the law of property, contracts and torts — what in civil law countries would be known as "private delicts." Civil law countries, in contrast, have adopted comprehensive civil codes covering such topics as persons, things, obligations and inheritance, as well as penal codes, codes of procedure and codes covering such matters as commercial law.

But it would be incorrect to say that common law is unwritten law. The judicial decisions that have interpreted the law have, in fact, been written and have always been accessible. From the earliest times —Magna Carta is a good example — there has been "legislation," what in civil law systems would be called "enacted law." In the United States, this includes constitutions (both federal and state) as well as enactments by Congress and state legislatures.

In addition, at both the federal and state levels, much law has in fact been codified. At the federal level, for example, there is an internal revenue code. State legislatures have adopted uniform codes in such areas as penal and commercial law. There are also uniform rules of civil and criminal procedure which, although typically adopted by the highest courts of the federal and state systems, are ultimately ratified by the legislatures. Still, it must be noted that many statutes and rules simply codify the results reached by common or "case" law. Judicial decisions interpreting constitutions and legislative enactments also become sources of the law themselves, so in the end the basic perception that the American system is one of judge-made law remains valid.

At the same time, not all law in civil law countries is codified in the sense that it is organized into a comprehensive organic, whole

statement of the law on a given subject. Sometimes individual statutes are enacted to deal with specific issues without being codified. These simply exist alongside the more comprehensive civil or penal codes of the system. And while decisions of the higher courts in a civil law jurisdiction may not have the binding force of law in succeeding cases (as they do in a common law system), the fact is that in many civil law countries lower courts tend to follow the decisions of higher courts in the system because of their persuasive argumentation. Nevertheless, a judge in the civil law system is not legally bound by the previous decision of a higher court in an identical or similar case and is quite free to ignore the decision altogether.

The Concept of Precedent

In the United States, judicial decisions do have the force of law and must be respected by the public, by lawyers and of course, by the courts themselves. This is what is signified by the "concept of precedent", as expressed in the Latin phrase *stare decisis* —"let it [the decision] stand". The decisions of a higher court in the same jurisdiction as a lower court must be respected in the same or similar cases decided by the lower court.

This tradition, inherited by the United States from England, is based on several policy considerations. These include predictability of results, the desire to treat equally everyone who faces the same or similar legal problems, the advantages to be gained when an issue is decided that affects all subsequent cases and respect for the accumulated wisdom of lawyers and judges in the past. But it is also understood that primary responsibility for making law belongs to the legislative authority; judges are expected to interpret the law, at most filling in gaps when constitutions or statutes are ambiguous or silent.

Thus, there are important limiting features to the concept of precedent. First and foremost, a court decision will only bind a lower court if the court rendering the decision is higher in the same line of authority. For example, a decision of the U. S. Supreme Court on a matter of constitutional or ordinary federal law will bind all U. S. courts everywhere because all courts are lower and in the

- argumentation 论证
- identical 相同的
- precedent 先例
- *stare decisis* 遵循先例的原则
- predictability 可预见性
- ambiguous 含糊不清的，引起歧义的
- render 做出

· sit
审案
· entertain
受理(案件)
· litigant
诉讼当事人
· pronouncement
宣告
· distinguish
区别于
· overrule
推翻;宣布无效
· integration
结合;一体化
· analogous
相似的

same line of authority as the Supreme Court in such matters. But decisions of one of the several U. S. Courts of Appeals — the intermediate federal appeals courts — will only bind federal trial courts within their respective regions. Decisions of a state supreme court on the meaning of a state law where that court sits will be binding everywhere, so long as the state court's decisions do not conflict with constitutional or federal statutory law.

American judges tend to be very cautious in their decision-making. As a rule, they only entertain actual cases or controversies brought by litigants whose interests are in some way directly affected. In addition, judges usually decide cases on the narrowest possible grounds, avoiding, for example, constitutional issues when cases may be disposed of on non-constitutional grounds. Then, too, the "law" that judges state is only so much of their decision as is absolutely necessary to decide the case. Any other pronouncement on the law is unofficial.

Another important limiting feature of the concept of precedent is that the later case must be the same or closely related to the previous one. Unless the facts are identical or substantially similar, the later court will be able to distinguish the earlier case and not be bound by it.

The highest court of a jurisdiction, e. g., the U. S. Supreme Court for the United States or a state supreme court within its own state, can overrule a precedent even where the facts of the later case are identical or substantially similar to the earlier case. In 1954, for example, in the famous school integration of *Brown v. Board of Education*, the U. S. Supreme Court overruled an analogous decision it had rendered in 1896.

But such direct over-ruling is not common. What is more likely is that the high court, by distinguishing later cases over time, will move away from an earlier precedent which has become undesirable. But for the most part, the long standing precedents of the high courts remain.

Common Law v. Civil Law

Apart from these features, there are a number of institutions