最新版

研究生英语教程系列

LEGAL ENGLISH

主编：沙丽金　副主编：刘艳萍

法律英语

中国民主法制出版社

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《法律英语》

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编写说明

随着我国改革开放的进一步深入，特别是我国加入WTO之后，对既懂外语又熟知法律知识高素质复合型人才的需求不断增加。为了适应这一形势要求，有着丰富英语教学经验和法律教育背景的老师共同编写了《法律英语》一书，希望通过本书能够对国家人才培养做出微薄的贡献。

本书编写遵循语言学习规律和法律英语的特点，力求使之具有科学性、实用性和针对性。在选材上，以介绍世界主要法律制度和部门法为主，每一个单元尽可能体现某一个部门法主要内容，并覆盖相关法律术语。在练习编排上，以培养学生运用听、说、读、写、译等技能为基点，以法律知识为内容，全面提高学生及其他法律英语学习者的法律英语水平。练习版块包括：阅读理解、术语练习、完型填空、短文翻译、听写、补充阅读、词义辨析和讨论。

本书供法律专业研究生一年级学生及水平相当的学习者使用。

全书共20个单元。编写人员分工如下：

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由于时间仓促，编者水平有限，书中若有疏漏之处，请读者指正。

编　者

2005年6月

Contents

Unit 1

Text

The U.S. Legal Tradition in Western Legal Systems

Because the United States is federation, Americans are usually well aware that the law may vary from jurisdiction to jurisdiction. Politically, it is certainly true to say that each independent jurisdiction has its own independent legal system. However, in terms of legal traditions and legal methods, most of the world's legal systems belong to one of a few legal traditions. In the Western World, and in parts of the world that have been colonized or strongly influenced by the West, there are two main legal traditions or legal families—the civil law and the common law. The U.S. legal system belongs to the common law tradition (Louisiana excepted.)

This note will introduce you to the origins and development of the common law and the civil law and to the main distinctions between these two systems, especially in terms of legal methods.

1. Origins of the two legal traditions and their diffusion around the world

a) the common law

The common law tradition originated in England. A new legal order was established as early as 1066 by the Norman conquest, but the common law did not exist in 1066. William the Conqueror did

not abolish the local customs and the local courts. Local courts continued to apply local customs. There was no law common to the whole kingdom. The King did however establish some royal courts at Westminster. Their jurisdiction was at first very limited but eventually expanded to the point where the local courts fell into disuse. The decisions of the royal courts became the law common to the whole kingdom, the common law.

The common law has its source in previous court decisions. The main traditional source of the common law is therefore not legislation but cases. This is so true that when the common law evolved into an unfair set of rigid and formal procedural rules the King, rather than legislate to amend the law, created a new court. When a subject thought that a common law decision lead to an unfair result he (and at the time usually not she) would petition the King. There were so many petitions that the King created the court of Chancery which could grant a discretionary relief "in equity" to correct the common law. The decisions of this court gave birth to a body of law called equity which is also based on previous judicial decisions. Both law and equity are part of what is called the common law tradition.

The British Empire brought the common law to all continents. The common law was "received" in many countries but its reception has been most successful in countries where the European settlers became a majority and imposed their law over indigenous populations. This is the case in Australia, English Canada, New Zealand and the United States (except Louisiana where the civil law was in place before the United States gained jurisdiction.) The common law was also imposed on many other colonies but usually with some adaption to take into account the local customs. In some cases, the United States imposed parts of the common law on newly entrusted territories (e.g. the Philippines). Still today in Africa and Asia, former British colonies continue to apply the common law. Today, India is the most populous common law country.

Following the second world war, the economic hegemony of the United States also contributed to the expansion of the common law. Contracts were drafted in common law terms and international arbitrators often applied common law principles.

A note about the common law in the United States. Because of the early independence of the United States, the common law here has evolved separately from the common law of England and of other Commonwealth countries. Commonwealth nations became independent only fairly recently, and even long after they were independent, some nations continued to allow appeals to the Judicial Committee of the Privy Council in London (some countries still allow such appeals). This has had a unifying effect on the law of these countries and still today the courts of one country will consider the decisions of the courts of another Commonwealth country as very persuasive. By contrast, only rarely, if ever, does a United States court determining a matter of domestic law invoke a decision of a foreign country's courts. It is therefore even more striking that notwithstanding years of "legal separation" the law of this country still has so much in common with the law of other common law countries.

b) the civil law

The origins of the civil law go further back. They can be traced to the Twelve Tables of the Republic of Rome (probably in the fifth century B.C.). In its origin, it is the law of the city of Rome, the law applied to a citizen (in Latin, civis) of Rome as opposed to the law applied to a non-citizen. The expression "civil law", in Latin jus civilis, literally means the law of the citizens of Rome.

After the fall of the Western Roman Empire (476 A.D.), the so-called barbarians brought their law to Rome, and although Roman law continued to apply to the Romans, the Germanic influence grew quickly and the law became more and more a mixture of Germanic and Roman law. This would later be known as the vulgarized Roman law. This law had very little in common with the classic Roman law.

Canon law, the law of the Catholic Church, was the only Western legal system that kept intact many elements of the Roman law. However, in 529-34, the Eastern Roman Emperor Justinian published the Corpus Juris Civilis, an articulation and reformulation of Roman law. The Justinian Code and accompanying compendia in force in Byzantium until and even after the fifteenth-century conquest by the Ottoman Turks.

At the end of the eleventh century, the University of Bologna started teaching Roman law, more specifically the Corpus Juris Civilis. This was at first a purely intellectual endeavor since Roman law was no longer the law anywhere in Western Europe. This marked the beginning of what would later be known as the resources of Roman law. Soon other Western European universities followed the Bologna's lead and after a few centuries and for reasons too complex to be considered here, the Roman law was received almost everywhere in continental Europe. It became the jus commune (the "common law") of continental Europe.

The Roman law actually "received" was in fact limited to what we call "private law" (property, torts, contracts, etc.). That is why civilian jurists refer to what we call private law simply as "the civil law" (persons, property and obligations).

Although most civil law countries now have a civil code, codification is in fact a fairly recent phenomenon. The first French Civil Code dates back only to 1804 and the first German Civil Code, to 1896 (in force in 1900).

The French and German Codes are the two main civil law models. Napoleon brought his Code wherever he and his armies traveled. The French model has been influential in Latin countries both in Europe and in America (Central and South America, Louisiana and Quebec). It has also influenced former European countries before the Soviet occupation. German law has also been received by Japan.

2. Legal methods-a comparison

You must understand that a civil-law legal method course would be completely different from the course you are now taking. It is important at the beginning of your legal career that you realize that law can take different forms and play different roles in different societies and cultures. What you will be studying is not the law as it necessarily has to be but the law as it is in the United States. Here are a few differences between the civil law and common law.

First and foremost, in common law countries, cases are usually considered to be the primary source of law. Your legal method class starts with the study of cases. In civil law countries, cases are simply not a source of law-at least in theory. The reality might well be that legislation has become extremely relevant in common law countries and that cases are becoming more and more relevant in civil law countries, but the attitudes of civilians and common lawyers toward legislation and cases differ greatly.

Civil law jurists will consider the civil code as an all encompassing document. They will interpret it generously in order to allow it to reach its goal of regulating the whole private law. The code lends itself to this kind of interpretation since its articles are usually drafted in very general and abstract terms.

On the contrary in common law jurisdictions legislation tends to be considered as an exception to the case law. The courts therefore have a tendency to interpret legislation more restrictively. In consequence both the courts and the legislator tend to enunciate legal rules in very specific terms meant to resolve very specific problems. Generally, cases and legislation will not tend to use abstract terms or to enunciate general principles.

Civil law students will read "law doctrine" more than cases. The "doctrine" is the cumulated writings of law professors on what the law is or should be. In civil law the "doctrine" is considered to be

a source of law and a highly respected one. You have to remember that the University, not the courts, reintroduced the civil law in Continental Europe. It is therefore not surprising that law professors still have an important role in defining the law. Common law professors generally do not enjoy a similar prestige within their own jurisdiction. Here the judges get most of the prestige.

Legal education differs a lot from country to country but it is fair to say that American legal education is very original and in many respects unique. The case method or Socratic method is peculiar to this country. It must be clear to you by now that the "case" method could not have been thought of in a civil law country. In those countries (as in the case in England) law is an undergraduate degree. Legal education tends to be longer than in the United States. The teaching style is magisterial-the professor exposes the law to his or her students, who take notes and do not intervene in class.

New Words and Expressions

federation	a league or union of states, groups or peoples arranged with a strong central authority and no regional sovereignties, though the individual states, groups, or peoples may retain rights of varying degrees
jurisdiction	authority to carry out justice and to interpret and apply laws; right to exercise legal authority
common law	the body of law derived from judicial decisions and opinions, rather than from statutes or constitutions; the body of law based on the English legal system, as distinct from a civil-law system.
civil law	the civil law of Rome. Also termed Roman Law; one of the two prominent systems of jurisprudence

	in the Western World, originally administered in the Roman Empire and still in effect in continental Europe, Latin America, Scotland, and Louisiana; the law dealing with private rights of citizens, rather than with crime
legislation	the process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process; the law so enacted; the whole body of enacted laws.
petition	a formal written request presented to the court or other governmental or official body; some states use this term in place of complaint when referring to a lawsuit's first pleading.
equity	fairness; impartiality; evenhanded dealing; the body of principles constituting what is fair and right; the system of law or body of principles originating in the English Court of Chancery and superceding the common and statute law.
Chancery	court of equity. Also termed court of chancery; chancery court.
judicial	of, relating to, or by the court; in court; of or relating to a judgment.
Privy Council	body of statesmen, politicians, etc., appointed by the sovereign formerly as advisers on affairs of State, but now (in Britain) more as a personal honor for its members.
canon law	a body of Roman ecclesiastical jurisprudence that was compiled between the 12th and 14th centuries; a body of religious jurisprudence developed within a Christian church or denomination.

Proper Names

1. Westminster　威斯敏斯特（英国议会所在地）
2. Emperor Justinian　查士丁尼皇帝（东罗马帝国皇帝）
3. Justinian Code　查士丁尼法典
4. Byzantium　拜占庭
5. Ottoman Turks　土耳其人;Ottoman Empire 奥斯曼帝国
6. Privy Council　枢密院

Notes

1. This passage is contributed by Professor Gary F. Bell of McGill University (Montreal, QC, Canada) to the *Legal Methods* by Jane Ginsgurg who is the Justice of the U.S.Supreme Court.
2. William the Conqueror did not abolish the local customs and the local courts. William wanted to be seen as the successor of the previous king and not as a conqueror.
3. The decisions of this court gave birth to a body of law called equity which is also based on previous judicial decisions.
   Today, in almost all common law countries, the same court exercises both the common law and the equity jurisdictions.
4. The common law was "received" in many countries but its reception has been most successful in countries where the European settlers became a majority and imposed their law over indigenous populations.
   "Reception" refers to the process by which one political entity adopts the law of another.
5. Twelve Tables.
   The earliest statute or code of Roman law, framed by a

commission of ten men, B. C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the whole later development of Roman jurisprudence. They exist now only in fragmentary form. These laws were substantially codification, and not merely an incorporation, of the customary law of the people. There were Greek elements in them, but still they were essentially Roman.

6. In its origins, it is the law of the city of Rome, the law applied to a citizen of Rome as opposed to the law applied to a non-citizen. In the New Testament, St. Paul, because he was a citizen of Rome, was entitled to be tried according to Roman law. In fact, according to the New Testament, Paul was even entitled to be tried in Rome in front of an imperial court.
7. Although most civil law countries now have a civil code, codification is in fact a fairly recent phenomenon.
   Scotland-in many respects a civil law jurisdiction-does not have a civil code.

Exercises and Practices

Ⅰ. Answer the following questions.

1. How was common law established?
2. What does the common law tradition include, according to the text?
3. How different is the legal system of Louisiana from the rest of the

United States?

4. What does "civil law" mean?

5. What is the main difference between the civil law system and the common law system?

6. What different attitudes do the civil law system and the common law system hold toward case law?

7. What is significant about the American legal education? How does law school teaching different from ours?

8. Is law degree an undergraduate degree in the U. S.? How do people get a law degree in the U. S.?

9. Can you compare the legal method employed in American legal education and the legal method used in other countries?

10. Who play an important role in defining the law in civil law system, the law professors or the judges? What about the common law system?

Ⅱ. Fill in the blanks with the legal terms given below, and change the form if necessary.

jurisdiction, legislation, equity, common law, civil law, judicial, petition, arbitration, private law, precedent

1. In 1848 the state of New York enacted a code of civil procedure (drafted by David Dudley Field) that merged law and equity into one _____.

2. The concept of "inalienable rights" reflects the influence of _____ on the Declaration of Independence.

3. Veto power is one of the most important and most specific powers of the President, the power to veto _____.

4. The term "_____" is sometimes used to refer to all judicial decisions in a system where those decisions have precedential effect.

5. _____ independence was thought necessary to assure immunity from pressure from the political branches to decide cases a