



高等学校法学系列教材

新编法律英语

姚骏华 ◎主编 张朱平 ◎副主编

LAW



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编者说明

随着改革开放的不断深入和世界经济全球化进程的加快,我国与国外的交流日益增多。在金融、贸易、投资、证券、涉外诉讼以及与外国的司法合作等诸多领域中,对具有较高素质的,既懂法律又通英语的复合型人才的需求急剧增加。为适应这一需求,我们编写了《新编法律英语》,以培养更多的高素质涉外法律人才。

《新编法律英语》共二十课,每课包括一篇主课文、两篇补充阅读课文以及适量的练习。教材选材广泛,内容新颖,多为近年来网络中较新的文章;练习种类多样,涉及面广,旨在帮助读者通过大量的阅读和练习,掌握法律英语的基本词汇,熟悉法律英语的句法结构,提高法律英语阅读理解能力和双向翻译能力。《新编法律英语》适合法学专业高年级学生、法律硕士研究生和涉外法律专业人员学习之用。

《新编法律英语》的编写人员有顾海根、司小丽、张纯辉、张朱平、姚骏华。其中顾海根负责编写法学研究、法律制度、正当法律程序、合同法(一)、合同法(二)中的主课文;司小丽负责编写国际法、世界贸易组织;张纯辉负责编写宪法、民事诉讼法、侵权法、财产法;张朱平负责编写刑法、家庭法、继承法、知识产权法;姚骏华负责编写合同法(二)中的两篇补充阅读课文、商法、证券法、反垄断法、环境法、美国法学教育。全书最后由姚骏华统一修改定稿。

在编写《新编法律英语》过程中我们参考了国内外前辈和同仁的研究成果,编者和出版者在此谨表谢忱。鉴于编者水平有限,书中疏漏之处在所难免,欢迎广大读者批评指正。

编 者

2008年6月于华政园

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Legal Studies

(法学研究)



Text

Legal Studies

What is law? A good definition of law might be a tricky job. Law is an everyday word, yet it is a word of many meanings. No single definition can satisfactorily reflect the many aspects and changing character of the law.

Law has been defined as a set of rules that govern the actions of people in a community. These rules must be followed by citizens, and violation of these rules may give rise to a cause of action in the courts. Law is regarded as a set of fixed principles known to lawyers and judges, ignorance of which excuses no one, not even the less knowledgeable or less **affluent** members of society.¹ Law comprises all the principles, rules, regulations and **enactments** that are applied in the courts and enforced by the power of the state. The word law is often used in contrast with the separate set of rules and **precedents** known as **equity**, a distinction that is important in England and the United States, and in other **jurisdictions** that draw their legal systems from the same historical **source**. In the United States it is customary to identify a **legislative** enactment as a law, whereas in England the preferred term is

act.

Law occurs in various forms. It may be written or unwritten. It may be common law or **statutory** law, or a combination of both. The basic law of the Anglo-American legal system is common law, or case law which is popular in the English speaking countries. Case law is an unorganized form, consisting of a record of the decisions of past cases. As each case was decided by an **appellate** court, an opinion was written giving the reasons why the case was decided. Such opinions might become a precedent. Underlying this case law system is the basic theory that similar cases should be decided in similar fashion. This idea is represented in the so-called doctrine of *stare decisis*, which means to follow the precedent. Another type of law has been assuming an increasingly important role in the American legal system. This is the statutory law passed by the state legislatures. If carefully drafted, statutes can be much more precise than common law precedents. Sometimes a statutory law is enacted to provide rules for areas not covered by the existing common law.

In the countries of continental Europe and those areas influenced by them, the governing law dates back to Roman law and is known as the civil law system. Adjudication under the civil law is made by the judge following principles originating from Roman law and embodied at present under an extensive code of law in effect in that particular country. The most famous, and perhaps the most successful codification of law is the Napoleonic Code in France.

Some people might like the definition that law is the sum of norms enacted or **acknowledged** by the state according to the interest and will of the ruling class and is **executed** under the **assurance** of compulsory state power. Law is a method or a process to establish order by maintaining authority of a ruler over those governed. Law begins only when a **coercive** apparatus comes into existence to maintain control through **enforcement** of social norms.² Some jurists say that law is governmental social control which encourages good and useful conduct and **refrains** from bad conduct. The whole criminal justice system plainly aims in this

direction. The control group need not be **agents** of a political **entity**,³ but may be labor, business or church organizations. And the coercion can be **psychological** as well as physical. Law exists only in a formal setting that involves the legislative, **judicial** and executive **arms** of a political body, and its system. Law is the formal means of social control that involves the use of rules that are **interpreted**, and are enforceable, by the courts of a political community. The **hallmark** of law is the obligation to act in line with norms authoritatively determined.

Nature of Law

Over the centuries legal philosophers have discussed the nature of law and the related concept of “justice”. At least four basic concepts can be identified.

1. Law as what is right. Under this concept, there is some great and all pervasive code of what is right and wrong. This moral sense of what is right or wrong may be derived either from some **divine** source or from the nature of man himself.
2. Law as custom. Under this concept law is the accumulated customs and traditions of a society which reflects that society's interaction with its environment.
3. Law as **command**. Under this concept law is a body of rules which is issued by the political authority and enforced through various **sanctions**.
4. Law as social engineering. Under this concept law is regarded as a means of social control which seeks to balance various competing conflicting interests and values within a society.⁴

The Functions of Law

As society becomes more complex and developed, functions of law seem to be **manifold**. Today, at least eight major functions of law can be identified:

- (1) to keep the peace; (2) to influence and enforce standards of

conduct; (3) to maintain the *status quo* in certain aspects of society⁵; (4) to **facilitate** orderly change⁶; (5) to allow for maximum **self-assertion** by the individual; (6) to facilitate planning and the realization of reasonable expectations⁷; (7) to promote social justice; (8) to provide a mechanism for compromise solutions between polar principles and positions. Some jurists tend to view the function of law as to prevent behavior that society has determined undesirable and to punish and prevent undesirable social behavior, or prevent nonconformity.

Classification of Law

Laws may be classified in many ways. They are sometimes classified as **substantive** law and **procedural** law. The rules of law that are used to resolve disputes are referred to as substantive law. The legal procedures that determine how a **lawsuit** is begun, how the trial is conducted, how **appeals** are taken, and how a judgment is **enforced** are called procedural law. Substantive law defines rights, and procedural law establishes the procedures by which these rights are enforced and protected. For example, John and Smith have entered into an agreement, and John claims that Smith has **breached** the agreement. The rules that provided for bringing Smith into court and for the conduction of trial are rather mechanical, and they constitute procedural law. Whether the agreement is enforceable and whether John is entitled to damages are matters of substance and would be determined on the basis of the substantive law of contracts.

Law is also frequently classified into public law and private law. Public law includes those bodies of law that affect the public generally. It can be further divided into (a) **constitutional** law, which deals with the organization and functions of the state itself; (b) social security laws; (c) criminal law and (d) administrative law. Private law deals with the relationships between individuals in an organized society. It covers the subjects of contracts, **torts** and property, each of which can be subdivided into several bodies of law.

Classification of law according to subject matter can often be

difficult, because the law is indeed a seamless web, and overlapping is inevitable if we divide it according to a clear-cut definition. It is obvious that even the general classification of contract and tort is not accurate in describing the subject matter of various bodies of law.

Sources of Law

The phrase “sources of law” is often used to describe methods and procedures by which the law is created and developed, or the origin from which particular laws derive their authority or coercive force.

Because of the common law tradition, American law comes from four basic sources: the federal and state constitutions; statutes made by the United States Congress and the legislatures of the various states; case law or judge-made law (unwritten law based on judicial decision); rules and decisions formulated by administrative agencies collectively known as administrative law. However, the judicial system has established a general **priority** among the various sources of law. Constitution **prevails** over statutes, and statutes prevail over common law principles established in court decisions. Courts will not turn to case decision for law if a **statute** is directly in point.⁸

Judicial decisions as part of law is a unique characteristic of American law. It must be contrasted with the civil law system developed in continental Europe. The civil law countries have codified their law so that the main source of law in those countries is to be found in the statutes rather than in cases. Under the common law system, statutes as well as cases are sources of law.

New Words

| | | |
|--------------|-------------------|------------|
| affluent | [ˈæfluənt] | a. 富裕的 |
| enactment | [iˈnæktm(ə)nt] | n. 立法 |
| precedent | [priˈsɪdənt] | n. 先例 |
| equity | [ˈekwiti] | n. 衡平法 |
| jurisdiction | [ˌdʒʊərɪsˈdɪkʃən] | n. 管辖, 管辖权 |

| | | |
|----------------|---------------------|------------------|
| source | [sɔ:s] | n. 渊源 |
| legislative | ['ledʒɪs,leɪtɪv] | n. 立法的 |
| statutory | ['stætjʊt(ə)ri] | a. 制定法的 |
| appellate | [ə'pelɪt] | a. 上诉的 |
| acknowledge | [ək'nɒlɪdʒ] | v. 承认 |
| execute | ['eksɪkjʊ:t] | v. 执行, 处决 |
| assurance | [ə'ʃʊərəns] | n. 保证 |
| coercive | [kəu'ə:sɪv] | a. 强迫的, 强制的 |
| enforcement | [ɪn'fɔ:smənt] | n. 实施, 强制执行 |
| refrain | [rɪ'freɪn] | v. 抑制, 克制 |
| agent | ['eɪdʒənt] | n. 代理人 |
| entity | ['entɪti] | n. 实体 |
| psychological | [ˌsaɪkə'lɒdʒɪkəl] | a. 心理的 |
| judicial | [dʒu(:)'dɪʃəl] | a. 司法的 |
| arm | [ɑ:m] | n. 部门 |
| interpret | [ɪn'tə:pɪt] | v. 解释 |
| hallmark | ['hɔ:lma:k] | n. 标志 |
| divine | [dɪ'veɪn] | a. 上帝或神的 |
| command | [kə'mɑ:nd] | n. 命令, 指令 |
| sanction | ['sæŋkʃən] | n. 制裁, 约束力 |
| manifold | ['mænɪfəʊld] | a. 各种各样的 |
| facilitate | [fə'sɪlɪteɪt] | v. 使……容易 |
| self-assertion | [selfə'sə:ʃən] | n. 自我坚持, 自我主张 |
| substantive | ['sʌbstəntɪv] | a. 实体的 |
| procedural | [prə'sɪ:dʒərəl] | a. 程序的 |
| procedure | [prə'sɪ:dʒə] | n. 程序, 诉讼 |
| lawsuit | ['lə:sju:t] | n. 诉讼, 案件 |
| appeal | [ə'pi:l] | n. / v. 上诉 |
| enforce | [ɪn'fɔ:s] | v. 实施, 强制执行 |
| breach | [brɪ:tʃ] | n. / v. 违反, 违(约) |
| constitutional | [ˌkɒnstɪ'tju:ʃənəl] | a. 宪法的, 合宪的 |
| tort | [tɔ:t] | n. 侵权 |
| priority | ['praɪ'ɔ:ri] | n. 优先(权), 优先(次序) |

| | | |
|---------|-------------|--------|
| prevail | [pri'veil] | v. 优于 |
| statute | ['stætju:t] | n. 制定法 |

Terms and Expressions

| | |
|--|--------------------------|
| cause of action | 案由, 诉讼事由 |
| Anglo-American legal system | 英美法系 |
| sum of norms | 规范的总和 |
| under the assurance of compulsory state power | 由国家强制力保证 |
| criminal justice system | 刑事司法体系(制度) |
| common law system | 普通法系 |
| case law system | 判例法系 |
| Continental Legal System | 大陆法系 |
| civil law and civil law system | 民法和民法体系 |
| appellate court | 上诉法院 |
| <i>stare decisis</i> | [拉] 遵循先例 |
| Napoleonic Code | 拿破仑法典 |
| a formal setting | 正式的环境 |
| the legislative, judicial and executive arms of a political body and its system | 某个政治实体和体系的立法, 司法和行政部门 |
| legal philosophers | 法哲学家, 法学家 |
| pervasive code | 普遍性的法典 |
| divine sources | 神圣的渊源 |
| interaction with its environment | 与环境的相互作用 |
| various competing conflicting interests | 各种竞相冲突的利益 |
| <i>status quo</i> | [拉] 现状 |
| reasonable expectations | 理性的预期 |
| prevent nonconformity | 防止不规范 |
| rules that are interpreted and enforceable | 加以解释和执行的规则 |
| social engineering | 社会工程 |
| a body of rules | 一整套规则 |

Notes

1. Law is regarded as a set of fixed principles... ignorance of which excuses no one, not even the less knowledgeable or less affluent members of society.
法律被认为是一整套确定了规则……不了解这套规则的人并不能因此而免除责任,即使他是这个社会对此知识甚少,或不那么富足的成员。
2. Law begins only when a coercive apparatus comes into existence to maintain control through enforcement of social norms.
只有在有一种强制性的机构通过实施社会规范来维持控制时,法律才开始形成。
3. The control group need not be agents of a political entity.
控制集团不一定要是政治实体的代表。
4. Under this concept law is regarded as a means of social control which seeks to balance various competing conflicting interests and values within a society.
根据这个概念,法律作为社会控制的一种手段,力图将一个社会中各种竞相冲突的利益和价值观加以平衡。
5. to maintain *the status quo* in certain aspects of society.
维持社会某些方面的现状
6. to facilitate orderly change
有利于进行有序的变革
7. to facilitate planning and the realization of reasonable expectations
有利于计划和实现合理的预期目标
8. Courts will not turn to case decision for law if a statute is directly in point.
如果可直接适用某一成文法,法院不会到判例中寻找法律依据。

Exercises

I. Reading Comprehension

1. Which of the following is false about the definition of law?
 - A. Law is regulations made by the judges.
 - B. It is a tricky job to define law.

- C. The definition of law is manifold
- D. Law comprises all the principles, rules, regulations and enactments.
2. Which statement of the following seems to be true?
- A. Law is a set of rules that govern the criminals.
- B. Law is so complicated and important that no one could understand it.
- C. Law is a method or a process to serve the authority of a ruler.
- D. Law is a set of rules that govern the actions of people in a community.
3. Which of the following is true about the nature of law?
- A. Legal philosophers have not reached an agreement towards the issue.
- B. Some great and all pervasive code cannot tell what is right and wrong.
- C. Law could serve as a means of social control.
- D. Law is a body of rules merely serving the interest of the rulers.
4. Which of the following is not the function of law?
- A. To maintain peace and order.
- B. To influence and enforce standards of conduct.
- C. To facilitate orderly change.
- D. To promote the behavior that society has determined undesirable.
5. Which of the following is true about the relationship between substantive law and procedural law?
- A. Substantive law seems much more important than procedural law.
- B. Both substantive law and procedural law are very important in criminal justice.
- C. Procedural law will replace substantive law.
- D. Substantive law and procedural law could be interchanged.
6. Which of the following is true about classification of law?
- A. Law is rigidly classified by the scholars.
- B. There is only one way to classify laws.
- C. Laws are no longer classified into public law and private law.
- D. Laws can be classified as substantive law and procedural law.
7. Which of the following is not the content of public law?
- A. Constitutional law.
- B. Criminal law.
- C. Contracts and torts.

- D. Administrative law.
8. Private law seems to care about _____ only.
- A. those cases of domestic disputes
- B. the controversies related to property
- C. the relationship of the private entities
- D. the relationship between individuals in an organized society
9. Which of the following is not true about the basic source of American law?
- A. The Federal and state constitutions.
- B. Statutes made by the United States Congress and the legislatures of the states.
- C. Case law or judge-made law.
- D. Administrative law is never regarded as a basic source of law.
10. Which of the following is true about the general priority among the various sources of law?
- A. Constitution prevails over other statutes and laws.
- B. Statutes and common laws have the same priority.
- C. Common law is no longer given any priority.
- D. Case law is given the first priority.

II. Open Questions

- Why do we say that a good definition of law is a tricky job?
- How can you illustrate that "Ignorance of the law is no excuse"?
- Why is the law a formal means of social control?
- What is the difference between the substantive law and procedural law?
- What are the major sources of law in America?
- What are the typical examples of private law?
- What kind of priority is given to various sources of law in the United States?

III. Vocabulary Work

| | | | | |
|----------|-------------|-------------|----------------|-----------------|
| norm | excuse | statute | mechanism | social control |
| jurist | conflicting | enforceable | source | cause of action |
| regulate | public | manifold | non-conformity | status quo |