

法学基础英语

(下册)

法律出版社
PUBLISHING HOUSE OF LAW

法 学 基 础 英 语

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法 律 出 版 社

(京)新登字080号

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法律出版社出版发行

(北京宣武区广内登莱胡同17号)

新华书店经销

北京外文印刷厂印刷

856×1168毫米 32开本 17.5印张 453,000字

1992年8月第一版 1992年8月第一次印刷

印数 0,001—8,100

ISBN 7-5036-1136-7/D·900

定价(上、下册)9.70元

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LESSON ONE

TEXT

LAW AND LINGUISTICS

Language being the law's vehicle of expression, it is important for the lawyer to give special attention to the study of language. Lord Mansfield, one of the most famous English judges, once observed that "most of the disputes in the world arise from words". This is a direct result of the lack of precision in the meaning of nearly every word. Einsteinian physics also indicated to the world of scholarship the lack of exactitude even in scientific language and the lack of certainty in concepts.

The work of scientists and logicians thus gave a fillip to semantics, a branch of study concerned with the meanings of words. Developments in semantics caused lawyers to see legal language in a new light, especially through the stress laid by semantics on the lack of "referents" for much legal terminology. Jerome Frank, the American realist jurist, took up this study in relation to the law and from his work there has resulted a greater realization of the uncertainties of many concepts and terms which lawyers had earlier assumed to be definite. The sciences have also been showing that most words turn "cloudy at the edges", for, apart from their core meaning, every word has overtones which are different to different recipients.

All these difficulties make for problems of draftsmanship as

well as of interpretation. The legal draftsman attempts to cover every situation that might arise in the operation of his statute but may fail to foreshadow some interpretations which may be placed upon the words he has chosen. Likewise he may fail to foreshadow some situation which arise under the statute and when it does arise there is again a question of interpretation of the words he has used to determine whether they can be stretched to cover the unforeseen situation. Rules of interpretation have been worked out to assist judges and lawyers in this process. One difficulty peculiar to legal language is that neither draftsman nor judge nor legislator can be consulted at a later point of time regarding the meanings of words used by them. It is therefore necessary for the language to be construed objectively and for a reasonable meaning to be placed upon it even though that meaning might in fact be different to that which was in fact intended by the writer.

Stuart Chase, a semanticist, has pointed out that the more culture grows in complexity the less reliable language becomes and the more simple it is to undermine people's rights. In the legal process there is so much confusion that he even suggests a mandatory study of some kind of semantic discipline for every judge, lawyer and juror.

Law is an exercise in communication between authority and the public. There was a time when the rudiments of the law applicable to a community could have been communicated adequately to the public by discussion among the tribe or in the market place. Today the problem is too complex to be attempted without specialized study. Especially in multilingual societies, there is a great problem for there is often for some sections of the population a legal blackout caused by difficulties in communication.

The question whether language can be planned to suit the needs of a community is becoming the subject of specialized study. This is an inter-disciplinary study where law and linguistics must go hand in hand.

Words and Expressions

linguistics [lɪŋ'ɡwɪstɪks] *n.* 语言学

vehicle ['vi:ɪkl] *n.* 工具

observe [əb'zə:v] *v.* 评论、观察

arise [ə'raɪz] *vi.* 升起, 出现

result [rɪ'zʌlt] *n.* 结果, 答案; *vi.* 产生、导致

lack [læk] *n.* 缺乏, 不足

precision [pri'sɪʒən] *n.* 精确

physics ['fɪzɪks] *n.* 物理学、物理现象

indicate ['ɪndɪkeɪt] *vt.* 指出, 表示

scholarship ['skələʃɪp] *n.* 学识, 学术

exactitude [ɪg'zæktɪtju:d] *n.* 确切, 精确性

scientific [ˌsaɪən'tɪfɪk] *a.* 科学的, 系统的

certainty ['sɜ:tənti] *n.* 必然, 肯定

concept ['kɒnsept] *n.* 概念

logician [ləu'dʒɪʃən] *n.* 逻辑学家

fillip ['fɪlɪp] *n.* 刺激

semantics [si'mæntɪks] *a.* 语意学的

meaning ['mi:nɪŋ] *n.* 意义, 含意

development [dɪ'veləpmənt] *n.* 发展, 进展

especially [ɪs'peʃəli] *ad.* 特别, 尤其

stress [stres] *n.* 强调, 重点

lay [leɪ] *vt.* 放, 搁

referent [ˈrefərənt] *n.* 被谈到的事物
terminology [təːmiˈnɒlədʒi] *n.* 术语学; 术语, 专门名词
realist [ˈriəlɪst] *n.* 现实主义者
jurist [ˈdʒʊərɪst] *n.* 法理学者; 律师, 法官
realization [ˌriəlɪəˈzeɪʃən] *n.* 认识、意识
uncertainty [ʌnˈsəːntɪ] *n.* 无常, 不确定
assume [əˈsjuːm] *vt.* 假定, 设想
definite [ˈdefɪnɪt] *a.* 明确的, 确切的
science [ˈsaɪəns] *n.* 科学, 学科
cloudy [ˈklaʊdi] *a.* 多云的; 模糊的
apart [əˈpaːt] *ad.* 相距; 分别; ~ from 除……之外
core [kəː] *n.* 核心
overtone [ˈouvətoun] *n.* 言外之意, 次要的意义
different [ˈdɪfrənt] *a.* 不同的, 各种
recipient [rɪˈsɪpiənt] *n.* 接受者
draftsmanship [ˈdraːftsmənʃɪp] *n.* 起草, 起草工作
interpretation [ɪn təˈprɪˈteɪʃən] *n.* 解释, 含意
draftsman [ˈdraːftsmən] *n.* 起草者
attempt [əˈtempt] *vt.* 尝试, 企图
situation [ˌsɪtʃuˈeɪʃən] *n.* 情况, 处境
operation [ˌɒpəˈreɪʃən] *n.* 运作, 操作
statute [ˈstætjuːt] *n.* 法令, 条例
fail [feɪl] *v.* 失败, 不能
foreshadow [fəʊˈʃædou] *vt.* 预示
likewise [ˈlaɪk-waɪz] *ad.* 同样地, 照样地
stretch [stretʃ] *v.* 伸展, 延伸
unforeseen [ˈʌn-fəˈsiːn] *a.* 未预见到的
assist [əˈsɪst] *vt.* 帮助, 援助
peculiar [pɪˈkjuːljə] *a.* 特有的, 罕有的

legislator ['ledʒɪsleɪtə] *n.* 立法者
 consult [kən'sʌlt] *vi.* 商量, 咨询
 point [pɔɪnt] *n.* 点, 尖端; *v.* 指向; ~ out 指出
 regarding [rɪ'ga:diŋ] *prep.* 关于
 therefore ['ðeəfə:] *ad.* 因此, 所以
 construe [kən'stru:] *v.* 解释, 分析
 objectively [əb'dʒektivli] *ad.* 客观地
 reasonable ['ri:znəbl] *ad.* 有道理的
 intend [ɪn'tend] *vt.* 打算, 意指
 writer ['raɪtə] *n.* 作者
 semanticist [si'mæntɪsɪst] *n.* 语义学家
 culture ['kʌltʃə] *n.* 文化、修养
 complexity [kəm'pleksɪti] *n.* 复杂的状态, 复杂的事物
 reliable [rɪ'laɪəbl] *a.* 可靠的
 undermine [ˌʌndə'maɪn] *vt.* 削弱……的基础, 逐渐损害
 process ['prəʊses] *n.* 进程, 过程
 confusion [kən'fju:ʒən] *n.* 混乱, 纷乱
 suggest [sə'dʒest] *vt.* 建议, 提出
 mandatory ['mændətəri] *a.* 命令的, 强制的
 discipline ['dɪsɪplɪn] *n.* 学科, 戒律
 communication [kə'mju:nɪ'keɪʃən] *n.* 交流, 交往
 rudiment ['ru:dɪmənt] *n.* 基本原理
 applicable [æ'plɪkəbl] *a.* 适当的, 适用的
 community [kə'mju:nɪti] *n.* 社团, 社区
 communicate [kə'mju:nɪkeɪt] *v.* 传达, 通讯
 adequately [ædɪkwɪtli] *ad.* 足够的, 适当的
 tribe [traɪb] *n.* 部落, 种族
 market ['mɑ:kit] *n.* 市场, 行情
 complex ['kəmpleks] *a.* 复杂的, 综合的

specialize ['speʃəlaɪz] *v.* 专攻, 专修
 multilingual [ˌmʌltiˈlɪŋɡwəl] *a.* 多种语言的
 society [səˈsaɪəti] *n.* 社会, 团体
 section ['sekʃən] *n.* 一部分
 population [ˌpɒpjuˈleɪʃən] *n.* 人口, 总体
 blackout ['blækaut] *v.* 封锁, 使停刊
 suit [sju:t] *n.* 诉讼, 恳求
 interdisciplinary [ˌɪntəˈdɪsəplɪnəri] *a.* 学科间的

Proper Names

Lord Mansfield [lə:d, ˌmænsfi:ld] 曼斯斐尔德勋爵
 Jerome Frank [ˈdʒərəʊm, ˈfræŋk] 杰罗姆·弗兰克
 Stuart Chase [stut, tʃæs] 司徒契士

Notes

1. Lord Mansfield: 曼斯斐尔德勋爵 (1705—1793), 生于苏格兰, 姓 Nurray 名 William, 历任英司法部次长 (1742 年), 司法总长 (1754) 和王座法院院长 (1756—1788), 继 Sir John Holt (1642—1710) 之后, 最终完成了把商事习惯法 (Law merchant) 纳入普通法 (common law) 的工作。

2. Jerome Frank: 杰罗姆·弗兰克 (1889—1957), 美国法学家, 曾长期当律师。1941年后任联邦巡回上诉法院法官, 继承了霍姆斯的现实主义而成了新现实主义法学派的代表人物。他认为, 在作出判决之前, 只能有法律的推测, 而超脱于一个个具体判决的一般地抽象的法律, 那纯粹是徒有其名。由此出发, 他认为所谓法律的稳定性, 只是出于儿童心理的一种错觉而已。

3. it is important for the lawyer to give special attention to the study of language.

因此从事法律的人应特别重视语言研究。

句中的 *it* 只是形式主语，真正的主语是动词不定或 *to give special attention to the study of language*。

4. *Jerome Frank, to be definite.*

美国现实主义法学家杰罗姆·弗兰克结合法律，对此进行了研究。他的研究成果使人们进一步认识到许多概念和术语是不确定的，而在此之前，法律工作者们还以为那许多概念和术语已是确定不移的呢。

The American realist jurist 是 *Jerome Frank* 的同位语，*which lawyers to be definite* 是定语从句，*which* 修饰 *concepts and terms*。

5. *One difficulty words used by them.*

法律语言所特有的一个困难是：不论是起草人，法官还是立法者所使用的词语，其含义如何，事后是无法再去请教他们的。句中的 “*neither nor*” 是并列连词。

又如 *He neither drinks nor smokes.*

他既不喝酒，也不抽烟。

Neither he nor I speak Japanese.

他和我都不讲日语

used 是过去分词，作定语，修饰 *words*。

6. *... the more culture grows in complexity the less ... people's rights.*

文化越复杂，语言越不可靠，于是就更容易侵犯人民的权利。

the + 比较级, the + 比较级 是比较状语从句，意为越……越……。

GRAMMAR

一、现在完成进行时(The Present Perfect Continuous Tense)

1. 形式

have (或 has) + been + 现在分词

2. 用法

现在完成进行时表示在过去某一时刻开始并一直持续到现在的动作，这一动作可能刚完成，也可能仍在进行。现在完成进行时常与 **for a long time, for three years, since last April, how long, all the time** 等表示一段时间的状语连用。如：

What case have you been handling recently?

最近你在办什么案件？

We've been thinking to end the unjust charge for a long time.

很久我们一直在想了结那冤案。

I've been waiting for you since early morning.

我从一清早就在等你。

3. 现在完成进行时与现在完成时的区别

(1) 这两种时态有时可以互换，但在强调动作延续时间长永久性时，常用现在完成进行时。

试比较：

I've been considering the robbery — and — murder case.

我一直在考虑，这桩抢劫谋杀案。

I've considered the robbery — and — murder case.

这桩抢劫谋杀案我已考虑过了。

I've been reading the records this week.

本周我一直在阅读案卷。

I've read the records this week.

我本周阅读了案卷。

(2) 现在完成进行时可用来表示一个阶段内反复发生的动作。

如：

I suppose you have been making up stories again.

我猜想你又在信口开河了。

I've been meeting her at the court.

我一直在法院里遇到他。

(3) 有些动词如 be, know, love, remember, understand 等本身表示一种持续状态,一般不用进行时态,所以也不用现在完成进行时,只用现在完成时。

如: They have been to the Procuratorate for hours. 他们在检察院已有几个小时了。

We have known her for years.

我们认识她已经多年了。

二. 过去完成进行时 (The Past Perfect Continuous Tense)

1. 形式

had + been + 现在分词

2. 用法

过去完成进行时表示在过去某一时刻以前一直进行的动作,这一动作在那个时刻可能刚完成,也可能仍在进行。如:

They said they had been having a talk with the witness of the incident.

他们说刚才和那事件的证人交谈。

Nobody knew what this rascal had been doing all these years.

没有人知道这个坏家伙这些年都在干什么。

He had been sleeping for hours, then he woke up all of a sudden.

他睡了几个小时,突然醒了过来。

EXERCISES

I. Answer the following questions:

1. Why is it important for the lawyer to give special attention to the study of language?
2. Who was Lord Mansfield?
3. Most of the disputes in the world arise from words, don't

they?

4. Who was Jerome Frank?
5. Most words turn "cloudy at the edges", why?
6. Rules of interpretation have been worked out, why?
7. Why is it necessary for the language to be construed objectively and for a reasonable meaning to be placed upon it even though that meaning might in fact be different to that which was in fact intended by the writer?
8. Who is Stuart Chase?
9. What is law?

II. Complete the following sentences after the models, using the present perfect continuous or the past perfect continuous tense:

Model 1: She's looking very ill. (overwork)

She's looking very ill because she's been overworking.

1. She's got brown fingers. (smoke too much)
2. We've spent all our money. (buy a lot of presents)
3. He's got a black eye. (fight)
4. I feel tired. (walk too much)
5. He speaks French quite well. (stay in Paris for years)

Model 2: Chichester flew around for three hours. Then he landed the plane in a field.

Chichester landed the plane in a field after he had been flying around for three hours.

1. They travelled for six hours. Then they stopped for a meal.
2. They walked for four hours. Then they had a rest.
3. He looked at the photo for ten minutes. Then he real-

ized it was the very one he wanted.

4. She studied French for six months. Then she went to France.
5. He worked there for five years. Then he found another job.

Model 3: He was staying at the hotel. (for two days)

He decided to leave.

He'd only been staying at the hotel for two days when he decided to leave.

1. We were doing our exercises. (for half an hour) Our friends arrived.
2. They were living in the house. (for less than two years) They decided to move.
3. I was waiting for the bus. (for two minutes) It came.

4. She was sitting. (for a few minutes)

She stood up again.

5. We were swimming in the sea. (for ten minutes) It began to rain.

III. Fill in each blank with the given verb in its proper tense:

1. In 1773, Boston _____ (be) the only port where difficulty _____ (arise).
2. They were brown because they _____ (lie) in the sun.
3. After you _____ (read) the newspaper, please let me have it.
4. At the time when Madame Curie was born, scientific discoveries _____ (bring) about great changes in the world.
5. Let's sit for a while. My feet _____ (kill) me.