21世纪法学通用教材
General Textbook

法律英语教程 Lessons

Legal English

主 编 | 宋 雷

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21世纪法学通用教材

法律英语教程

A Course in Legal English

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前　言
PREFACE

法律语言学(forensic linguistics)是语言学与法学交叉而衍生的一门新的跨学科科目(interdisciplinary subject)。法律英语(legal English 或 the English language of law)隶属于法律语言学之下,也可以算做是应用语言学中的一种专门用途英语(ESP)。近年来,随着全球化进程的推进,世界政治、经济、贸易、法律、文化等互动活动日益加强,我国也越来越多地参与进世界大舞台的各项活动之中,由此使得法律英语的重要性和必要性不断彰显,法律英语学习实践和研究也引社会广泛的关注。

尽管没有单独的语音、语法、拼写体系,法律语言却仍旧能作为一门"亚学科"独立存在,其自身的词语、文体、风格等特征,以及内含的政治、社会和文化等诸多因素自然起到了关键作用。法律语言的最大特征在于它的"精英性",在于它是法律人(lawyer)所掌控的一种技术。事实上,所谓的"法律语言"由两部分内容组成。其中一部分为一般性的,处于法律科学与民族大众语言邻接区域的既含法律常识,又未脱离民族大众之语言,也即为普通民众能够而且应当理解、运用或掌握的通俗法律语言。从严格意义上讲,这种语言不是真正意义上的法律语言,其最多可以被称为"准"法律语言(quasi-legal language)或"边沿性"法律语言(peripheral legal language)。另一部分才是严格意义上的,属于真正特殊法律技术层面上的法律语言,即"法律人的法律语言",这也是本教材力图让读者掌握之语言。由于西方法治建设的超前,法律英语的"精英性"尤为突出。致使法律英语成为令许多人生畏的特殊技术性语言。然而通过系统科学的训练和学习,法律英语也并非不可逾越的火海刀山。当然,学好法律英语也绝非能一蹴而就。任何法律英语文本,无论是国会立法、地方法规、条例、章程、合同、协议、遗嘱或者法庭书证等,要想彻底解读并翻译它们,必须精通英、汉两种语言,熟悉中国的法律以及英美法系的背景知识,并具有法律人(lawyer)的基本理论修养,即做到"法人法思维"(thinking like a lawyer)与"法人法语"(speaking like a lawyer)。

为尽快培养如此合格的法律英语人才,满足我国对外开放和市场经济发展形势之需求,我们特在原司法部组织五所部属政法院校编写的统编教材《法律英语

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教程》(上册为中国政法大学李荣甫教授主编,下册为西南政法大学宋雷教授主编。编者为:李荣甫、宋雷、刘槛生、沙丽金、吴月祥、范晓玲、顾海根、秦洁、龚兵、樊林波)中精选了24课课文重新编辑成册,并对练习作了大量修改,以期最大限度地帮助读者迅速掌握精英性法律英语。

本书在改编过程中更加注意语言的实用性,且注重增加词汇输入量,提高复现率,加强语感的培养。

该教程主要使用对象为达到大学英语四级左右的大专院校学生。其以培养学生阅读和理解法学各专业文章及书籍能力为目的,同时要求学生能掌握一定的法律英语翻译技巧,对中等难度的文章的翻译速度达到每小时1000单词左右,准确率不低于70%。

宋 雷

2007年7月6日

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Lesson 1 Bases of the Legal System

A. The Main Categories

The law is the set of rules by which the citizens of a country regulate their conduct in relation to their fellow citizens and to the state.

In the United Kingdom there is no written set of rules; whether an action is recognized as being in conformity with the law is determined by a consideration of the authorities. These may be statutes (such as royal proclamations or Acts of Parliament), statements by legal experts (like Blackstone in England or Stair in Scotland), or reports of decided cases. If none of these fits the circumstances, the judge makes his decision by analogy with the past decisions made in somewhat similar circumstances.

The bases of the legal system, in historical order, are:

(a) common law;

(b) case law; and

(c) statute law.

Common Law: When the English legal system first began to take shape, judges were appointed to administer the "law and custom of the realm". They built up their own set of rules and principles based on general custom; and this part of the law was called "common" in contrast to that which was particular or special, such as canon (ecclesiastical) law or local custom.

The Scottish common law is different from that of England and Wales because ancient differences were perpetuated by the 1707 Act of Union, under which Scotland retained her own system of law.

The essence of common law is that it grew through judicial decisions recorded by lawyers and is not based on express enactment. It is administered by examination of decisions made in previous cases of the same kind, known as "precedents", and arrival at a commonsense decision on that basis.

Case Law: Case Law is a development of the common law brought about through the process of time. Reports exist of leading cases raising points of interest to lawyers. These

reports give the facts found by the court, the arguments put forward and the reasons given by the judge for coming to his decision. The principles on which these judgments are based are binding on all lesser courts. Thus, the House of Lords, apex of the judicial system, decided in 1861 that it could not reverse its own previous decisions, so a House of Lords decision is binding on every court. A High court decision is binding on a County court. But it can be disregarded by another High Court judge and can be overruled by the Court of Appeal.

Statute Law: the earliest enacted law was made by the sovereign with the concurrence of his Council. Then, with the establishment of the authority of Parliament, new laws were made or existing laws changed by a statute, or Act of Parliament. Since the Reform Act of 1832 statute law has become more and more important and the chief contributor to our "set of rules".

Statute law includes royal proclamations; orders made by Ministers under delegated powers, known as statutory instruments; and the by-laws of local authorities or other bodies having statutory powers.

The greater part of statute law applies uniformly in England, Wales and Scotland, although in many fields of legislation there are statutes, or sections of statutes, applying to England and Wales only or to Scotland only.

A statute intended to apply to the whole of the United Kingdom will be drawn by English legal draftsmen. But since the statute is also to apply to Scotland, it must be brought into line with Scots law and practice. This is generally done in a separate clause-often an interpretative clause-which sets out the appropriate Scottish courts and equivalent Scottish legal terms.

Whatever court we turn to in our system, the authoritative sources of the law are confined to statute and reported decisions. The works of great jurists are often quoted in legal argument, but while these may be of assistance to the judge they have not the force of law.

The two main branches of the law are criminal law and civil law. But criminal law and civil law also overlap; and many acts or omissions are not only "wrongs" for which the person injured is entitled to recover compensation for his own personal injury or damage, but also "offences" for which the offender may be prosecuted and punished in the interest of the state.

B. Criminal Law

Criminal law, therefore, deals with offences which are deemed to harm the whole community and thus to be an offence against the Sovereign. So a criminal case is calls "*Rex*(*or Regina*) *versus So-and-So*"[1], and it takes the form of an action against the alleged wrongdoer. ("*Rex*" and "*Regina*" are Latin words meaning "the King" and "the Queen. ")

English criminal law has been classified as "treason, felony and misdemeanor" with a tentative fourth class described as "summary offences[2]. " Felonies are those crimes which formerly involved capital punishment[3] and, until 1870, forfeiture of the offender's property. Misdemeanors are offences against the criminal law which are not by common law or statute law treason or felony. They range from serious offences such as perjury to trifling breaches of local by-laws. The distinction today is of much less importance than formerly. A private citizen is required by law to arrest anyone committing a felony in his sight. "In pursuit of felony[4]", as the phrase has it, no warrant for arrest is necessary.

Burden of Proof[5]

In the court the burden of proof is on the prosecution to prove their case; and until, by the evidence they call before the court, they have made out a case which requires answering, the accused is not obliged to say anything or to explain away the charge made against him. He must, however, answer to the charge by pleading "guilty" or "not guilty". The accused throughout is presumed to be innocent unless he admits the offence or until he is proved beyond reasonable doubt to be guilty[6].

Although prosecutions are in the name of the Crown[7], prosecution in England and Wales is mostly in the hands of the police. An Information (a written or verbal statement) is laid before a magistrate that an offence has been committed. The magistrate, if satisfied that there are reasonable grounds, issues a summons to the accused to attend court to answer the charge, or in certain circumstances issues a warrant for his arrest.

If a person is arrested he must be taken before a magistrate within 24 hours, omitting Sundays. If it is not practicable to do so within that period he must be granted bail. When necessary the police are legally represented in court.

Director of Public Prosecutions

A substantial number of offences have to be reported to the Director of Public Prosecutions(an official appointed by the Home Secretary) either because they are

serious or because they are difficult. He can advise for or against prosecution.

Apart from this, it is the Director's duty to prosecute in all cases of murder, attempted murder, and other serious crimes, in appropriate cases referred to him by government departments and in cases of importance or difficulty where he deems his intervention to be advisable. The number of cases handled in this way is relatively few-about a thousand or so in a year. The papers are passed to him when preliminary investigation and the collection of evidence are completed.

However, the basic principle of prosecutions in England and Wales is that it is open to any member of the public to institute criminal proceedings. When a policeman lays an Information he does so basically as a member of the public.

In addition to those instituted by the police, many thousands of cases yearly are instituted by government departments and local authorities who have their own legal departments.

But there are also so-called "private prosecutions" in which an aggrieved person starts criminal proceedings either because the police are reluctant to prosecute or perhaps because he feels he can put up a more vigorous prosecution. Conduct of such cases even in the most favorable circumstances must of necessity involve the prosecutor in financial outlay and so private prosecutions are rare except where there is a substantial interest involved, such as cases brought by large commercial undertakings for offences that interfere with their business.

Differences in Scotland

In Scotland the police do not act as prosecutors and have no title as such to do so. This duty mainly falls on the Crown Officers. The principal of the Crown Officers is the Lord Advocate. His deputy is the Solicitor General. In addition he appoints a number of Advocates-Depute to whom he usually delegates authority in criminal matters. In every district there is a Procurator-Fiscal, who in addition to investigation has the duty of prosecuting in the Sheriff Court. The Procurator-fiscal ("Fiscal" for short) is a public official under the control of the Lord Advocate.

As in England, the police carry out the preliminary inquiries, but whereas in England the first examination of witnesses takes place in public before magistrates, in Scotland this is undertaken in private by the Fiscal. After interrogating the witnesses in his office the Fiscal reports to the Crown Agent in Edinburgh, who decides whether a suspect shall stand trial. Prosecutions in the High Court of Justiciary are conducted by the Lord Advocate or one of his deputies.

Private prosecutions are possible but rare. A public body such as British Railways or a

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County Council may prosecute in terms of the statutes under which it operates. Such prosecutions are regarded as being in the public interest. No private party may prosecute without the consent of the Lord Advocate or leave of the High Court, or in less serious cases the consent of the Procurator Fiscal.

Another difference is that in Scottish criminal law a third verdict of "not proven" is possible intermediate between guilty and not guilty. It is equivalent to an acquittal; and a further trial is not possible on the same charge.

C. Civil Law

Civil Law concerns the maintenance of private claims and redress of private wrongs, which may or may not also be crimes. The bulk of the work of administering civil law is concerned with breaches of contract, including debt; torts (that is, civil wrongs for which damages are recoverable, such as defamation, enticement, trespass, or cases where negligence is alleged); property relationships (such as bankruptcy, winding up companies and administration of estates); and matrimonial causes (separation and divorce).

In England it is based on the common law; Scotland retains a separate system which is in considerable measure based upon Roman law as in most Continental countries, but also in important respects upon the canon law. In Scotland, the law of tort is known as the law of delict; and there are also vital differences from the English system in the law respecting land tenure, trespass and marriage.

Proper Names

1. the United Kingdom (U. K.) 联合王国
2. Acts of Parliament 议会立法
3. Scotland 苏格兰;Scottish 苏格兰(人,语);Scot 苏格兰人。
4. Wales 威尔士
5. the House of Lords (英)上议院,具有立法与司法双重职权,即同时可是"作为法院之上议院"与"作为立法机关之上议院"。
6. the High Court (英)高等法院,也称为 High Court of Justice,与上诉法院(Court of Appeals)和刑事法院(Crown Court)共同组成英国最高司法法院(Supreme Court of Judicature)。高等法院的管辖权行使只限于英格兰和威尔士,既包括初审,也包括上诉审。
7. the Director of Public Prosecutions (英格兰和威尔士的)检察长,该职位于1879

年设立，在总检察长监督下履行职责，负责承办或提起刑事诉讼，并对警察及其他负责检举之部门提出建议。

8. the Home Secretary （英）内政大臣
9. the Lord Advocate （苏格兰）检察总长，是苏格兰刑事公诉系统的首脑，所有重要刑事案件由其向刑事部汇报以获得公诉指示，时常亲自出庭起诉。
10. the Solicitor General （苏格兰）副检察长
11. the Advocate-Deputy （苏格兰）检察总长助理，协助检察总长履行职务，尤其是对刑事罪犯起诉；现一般设有 8—10 名助理。
12. procurator fiscal （苏格兰）地方检察官
13. Sheriff Court 苏格兰郡法院，是苏格兰主要的初级法院，在主要城镇定期开庭，相当于英格兰郡法院（county court）和高等刑事法院的系统中间审级的法院。
14. crown agent （苏格兰）刑事部主事官，苏格兰检察总长之下属，由检察总长任命，随检察总长的变化而离任。
15. High Court of Justiciary （苏格兰）高等司法法院，为苏格兰最高刑事法院。
16. Blackstone 布莱克斯通，即 Sir William Blackstone（1723—1780）布莱克斯通·威廉爵士，1746 年取得律师资格，后任牛津大学法律教授。其主要著作《英格兰法释义》被公认为经典著作。
17. Stair 即 John Dalrymple，1st Earl of Stair（1648—1707）达尔林普尔·斯太尔子爵第一，杰出的苏格兰法学家，曾任苏格兰最高民事法院院长。其著作《苏格兰法律制度》一直被公认为有关苏格兰法律的最有权威的著作。
18. The Reform Act of 1832 即 1832 年的《改革法案》，也称做“Reform Bill”，其主要内容为扩大公民选举权，改革议会代表制。

Notes to the Text

1. *Rex* (*or Regina*) *versus So-and-So* 国王（或女王）诉某某人。其中 *Rex* 为拉丁语的“国王”，*Regina* 为拉丁语的“女王”，*versus* 也是拉丁语，常略作 *v.* 或 *vs*，意为“诉，告，对”，习惯上常为原告在前，被告在后。
2. summary offences “简易程序罪”，指可迅速判决的犯罪（行为）。英国对刑事犯罪概括分为“简易程序罪”和“陪审审决罪”（indictable offense），前者不用陪审团参与；后者即使审理时无陪审团参与，其在起诉时也必须有陪审团参与。
3. capital punishment 死刑，极刑；（英）绞刑（英国《1965 年反谋杀法》虽把死刑废除，但叛逆罪、暴力海盗罪和放火焚烧皇家舰艇罪仍可处绞刑）。
4. “In pursuit of felony”, as the phrase has it, no warrant for arrest is necessary. “追捕重犯罪”，按此话所说，勿需逮捕令。

在英格兰普通法上，重罪（felony）是涉及没收该罪的罪犯的土地与财务归国王所有的严重犯罪。谋杀、伤害、纵火、强奸与抢劫都是重罪。

5. burden of proof (Latin: *onus probandi*) 证明责任，包括 burden of production（举证责任）与 burden of persuasion（说服责任）。按照证据法，诉讼双方在有关事实的辩论中，必须承担证明有争议的事实的责任。

6. The accused throughout is presumed to be innocent unless he admits the offence or until he is proved beyond reasonable doubt to be guilty. 在全案件过程中，应当推定被告无罪，除非他承认犯罪或毋庸置疑地证明其有罪。
这句话体现出刑法中重要的 presumption of innocence（无罪推定原则）精神。

7. in the name of the Crown 以英国王室的名义（提起诉讼）。Crown 小写指"王位，君权"，大写特指"英王室"。因英国刑事案件是以王室名义提起，因而 Crown 经常翻译成"刑事"或与之相关的意义，如 Crown Agent 刑事部主事官；Crown case 刑事案件；Crown counsel 检察官；Crown Office（英高等法院）刑事部。

Exercises

Ⅰ. Discuss the following questions:

1. In the United Kingdom, how can the judge decide whether an action is in conformity with the law?
2. What is the relationship between common law and case law?
3. What are the two main branches of the law? How do they overlap?
4. Why does an aggrieved person start criminal proceedings in the name of "private prosecutions"?
5. What is civil law mainly concerned about?

Ⅱ. Read the text again and decide whether these statements are true or false:

1. The bases of the English legal system are common law, case law, past decisions, and statute law. ( )
2. In common law, the word "common" is so called in contrast to what is particular or special custom, thus common law is a set of rules and principles based on general custom. ( )
3. The essence of common law is that it grew through judicial decisions recorded by lawyers and is not based on express enactment. In common laws, decisions, especially those made by superior courts in previous cases of the same kind are called

"precedents". ( )

4. Felonies in English criminal law involve capital punishment and forfeiture of the offender's property. ( )
5. The burden of proof is on the prosecution to prove their case and the accused is not obliged to say anything or to explain away the charge made against him. ( )
6. In civil law administration, the work is concerned with breaches of contract and other civil wrongs for which damages are recoverable. ( )

Ⅲ. Complete the sentences below using the words or phrases given:

perpetuate; judicial; precedents; summons; separation; preliminary; institute; presumption of innocence; undertakings; information

1. The decision of the case has set a(n) _____ for civil wrongs in English law.
2. When a prosecutor institute a(n) _____ against someone, he is doing this basically as a member of the public.
3. Do you know why they bring _____ proceedings against their business partner?
4. The Chinese people will _____ the memory of Dr. Norman Bethune because of his great contributions to the Chinese Anti-Japanese War.
5. Who is to serve the defendant with a(n) _____ ?
6. A(n) _____ is a legal arrangement by which a married couple live apart but do not end the marriage.
7. All this is just _____ to the main election struggle.
8. Police have _____ inquiries into the matter.
9. Usually an air transport _____ is not a small business, which may be a risky one.
10. _____ is a principle by which the accused is throughout presumed to be innocent unless he admits the offence or until he is proved beyond reasonable doubt to be guilty.

Ⅳ. Match each of the following words or phrases with its definition:

1. overrule	a. a private or civil wrong or injury for which the court will provide a remedy in the form of an action for damages
2. verdict	b. the formal decision or finding made by a jury
3. reversal	c. to rule against; to reject; (of superior court) to overturn or set aside (a precedent) by expressly deciding it should no longer be controlling law
4. tort	d. the way that summary offences are tried

5. civil proceeding	e. an appellate court's overturning of a lower court's decision
6. offence	f. a felony or misdemeanor, or a breach of the criminal laws
7. summary justice	g. the ordinance, local laws or municipal statutes of a city or town
8. by-law	h. that relating to the state or its citizenry or private rights as contrasted with criminal proceeding

V. Put the underlined part of each sentence into Chinese:

1. Although American criminal law was derived from that of England at a time when criminal law was largely case law, its basis is now statutory. Each state has its own penal statutes defining both major crimes (felonies) and minor ones (misdemeanors) as well as innumerable petty offenses.
2. There exists in the law, a separate discipline designed to investigate the nature of law, its guiding ideas and social goals, and the general character of the methods and techniques employed for the effectuation of its ends. This discipline is known as "Jurisprudence".
3. The beginnings of common law are lost in the mists of the history of northern Europe and Scandinavia, which were scarcely touched by the influence of the Roman Empire and from which England was frequently invaded by peoples who remained, intermarried with the local citizens and greatly affected their customs and habits.
4. The explosion of scientific knowledge and its translation into technology have profoundly affected the content and procedures of the law, and they are also affecting some of the basic assumptions of the law.
5. Criminal law and civil law, as the two main branches of the law also overlap, and many acts or omissions are not only "wrongs" for which the person injured is entitled to recover compensation for his own personal injury or damage.

VI. Supplementary Reading:

The decisions of judges, or of other officials empowered by the constitution or laws of a political entity to hear and decide controversies, create case law. As the name "case law" goes, a particular decision, or a collection of particular decisions, generate law—that is, rules of general application. How is it that a court's determination of the rights and obligations of the particular parties before it can apply to the disputes of persons who were not before the court? From the point of view of parties to a lawsuit or other contested controversy, what matters is the immediate outcome, the result the tribunal

reaches in their case. For A and B, the decision has immediate and specific significance: B either will or will not have to pay a determined amount of damages to A. In the view of judges, lawyers, and law students, however, the decision takes on broader perspective. The decision becomes a possible source of general applicable case law. In other words, the decision in A v. B becomes authority for determining subsequent controversies. Just as the court in A v. B will have sought guidance from prior, similar decisions, so later judges and advocates will look to A v. B for a rule by which to measure later parties' conduct.

The wider authority of prior decisions in individual cases may not seem self-evident at first, but consider the possible proposition. Suppose a society in which every disputed claim is heard and decided on its own individual merits and with no regard whatever for consistency of the results from case to case, this society offers the means of settling disputes, but the society has no "case law". Each decision presents a result unto itself. Each decision is therefore unpredictable. Unpredictability in adjudication may provoke both instability in social relations, and the fear that little more than personal whim controls the judge's decisions.

There is in fact, in most societies, a strong urge to make general law from particular decisions.

How are we to account for this widespread inclination to make general law from particular decisions? Karl N. Llewellyn, the leading spokesman for the group of legal philosophers known as the American Legal Realists, offered the following explanations:

"Case law in some form and to some extent is found wherever there is law. A mere series of decisions of individual cases does not of itself constitute a system of law. But in any judicial system rules of law arise sooner or later out of such decisions of cases, as rules of action arise out of the solution of particular problems, whether or not such formulations are desired, intended or consciously recognized. These generalizations contained in, or built upon, past decision, when taken as normative for future disputes, create a legal system of precedent. Precedent, however, is operative before it is recognized. Toward its operation drive all those phases of human make-up which build habit in the individual and institutions in the group: laziness as to the reworking of a problem once solved; the time and energy saved by routine as a curb on arbitrariness and as a prop of weakness, inexperience and instability; the social values of predictability; the power of whatever exists to produce expectations and the power of expectations to become normative. The force of precedent in the law is heightened by an additional factor: that curious, almost universal, sense of justice which urges that all men are properly to be treated alike in like circumstances. As the social system varies,

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