



高等学校法学系列教材

法律英语教程

顾海根 姚骏华 主编

LAW



北京大学出版社
PEKING UNIVERSITY PRESS

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编者说明

随着中国改革开放的深入和市场经济的迅速发展,中国加入世界贸易组织,世界经济全球化趋势加快,中国社会对于具有较高素质的,既懂法律又通英语的复合型人才的需求大增。在同国外同行进行法律业务交流、跨国经商、投资、贸易、司法合作等方面均需要有这样的专业人员。法律英语课程的建设目标旨在寻找英语和法律相结合的最佳切入点,为培养高级涉外法律英语人才服务。法律英语课程的教学目标为研修英美法律体系的经典原著,掌握法律英语的必备知识和词汇,提高具体的阅读理解和双向翻译能力,为涉外法律双语教学服务。法律英语课程主要供政法学院三年级学生和涉外法律专业人员进修所用。

本书选材新颖、题材广泛。在编写过程中注重法学基础知识,并强调相关英语技能的操作。其中,法学研究、法律制度、正当程序法、合同法Ⅰ、合同法Ⅱ、商法由顾海根负责编写;刑法、家庭关系法、继承法、知识产权法由张朱平负责编写;宪法、民事诉讼法、侵权、财产法由张纯辉负责编写;证券法、法学教育、商法中补充阅读二由姚骏华负责编写;国际法、世界贸易组织由司小丽负责编写。全书由顾海根、姚骏华任主编。

本书所选资料主要来源于国内外的网站及已出版的英文著作(详见书后参考文献)。在编辑和出版的过程中,编者和出版者曾设法致函有关版权所有人,试图解决版权及版税事宜。但由于资料来源较多,一些著译者还在国外,此问题的解决尚需时日。为保障学生新学年用书,我们不得已只能先行付梓印刷。祈望相关权利人能够多多见谅,并在知悉有关情况后及时与我们联系,我们在此深表歉意和诚挚的谢意,并将竭尽全力,妥善解决相关版权及版税事宜。

本书在编写过程中参考了国内外前辈和同仁的研究成果,编者及出版者在此谨表谢忱。由于编者水平有限,书中疏漏之处在所难免,欢迎广大读者批评指正。

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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 society;⁵(4) to facilitate orderly change;⁶(5) to allow for maximum self-assertion by the individual; (6) to facilitate planning and the realization of reasonable expectations;⁷(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.

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	['æfluənt]	<i>a.</i> 富裕的
enactment	[i 'næktmənt]	<i>n.</i> 立法
precedent	['president]	<i>n.</i> 先例
equity	['ekwəti]	<i>n.</i> 衡平法
jurisdiction	[dʒʊəris 'dikʃən]	<i>n.</i> 管辖, 管辖权
statutory	['stætjutəri]	<i>a.</i> 制定法的
appellate	[ə 'pelət]	<i>a.</i> 上诉的
acknowledge	[ək 'nɒlɪdʒ]	<i>v.</i> 承认
execute	['eksɪkjʊt]	<i>v.</i> 执行; 处决
assurance	[ə 'ʃʊərəns]	<i>v.</i> 保证
coercive	[kəʊ 'ə:sɪv]	<i>a.</i> 强迫的, 强制的
enforcement	[in 'fɔ:smənt]	<i>n.</i> 实施; 强制执行
refrain	[ri 'freɪn]	<i>v.</i> 抑制, 克制
agent	['eɪdʒənt]	<i>n.</i> 代理人
entity	['entɪti]	<i>n.</i> 实体
psychological	[,saɪkə 'lɒdʒɪkəl]	<i>a.</i> 心理的
legislative	['ledʒɪslətɪv]	<i>a.</i> 立法的
judicial	[dʒʊ: 'dɪʃəl]	<i>a.</i> 司法的

arms	[ɑ:mz]	n. 武器; 部门
interpret	[in'tə:prɪt]	v. 解释
hallmark	[ˈhɔ:lma:k]	n. 标志
divine	[di'veɪn]	a. 上帝或神的
command	[kə'mɑ:nd]	n. 命令, 指令
sanction	[ˈsæŋkʃən]	n. 制裁; 约束力
manifold	[ˈmænɪfəʊld]	a. 各种各样的
<i>the status quo</i>		[拉丁文] 现状
facilitate	[fə'sɪlɪteɪt]	v. 使……容易
self-assertion	[ˌself ə'sə:ʃən]	n. 自我坚持, 自我主张
substantive	[ˈsʌbstəntɪv]	a. 实体的
procedural	[prə'sɪdʒərəl]	a. 程序的
procedure	[prə'sɪdʒə]	n. 程序, 诉讼
lawsuit	[ˈləʊsjʊ: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. 违反, 违约
		v. 违反, 违约
constitutional	[ˌkɒnstɪ'tju:ʃənəl]	a. 宪法的, 合宪的
tort	[tɔ:t]	n. 侵权
origin	[ˈɒrɪdʒɪn]	n. 起源
source	[sɔ:s]	n. 渊源
prevail	[pri'veɪl]	v. 优于
statute	[ˈstætʃʊt]	n. 成文法, 制定法
priority	[praɪ'ɒrəti]	n. 优先权, 优先次序



Terms and Expressions

cause of action	案由, 诉讼事由
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)
Anglo-American legal system	英美法系
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
code of law	法典
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	某个政治实体和制度的立法、 司法和行政部门
pervasive code	普遍性的法典
various competing conflicting interests	各种竞相冲突的利益
reasonable expectations	合理的预期
prevent nonconformity	防止不规范
legal philosophers	法哲学家, 法学家
social engineering	社会工程
rules are interpreted and enforceable	规则加以解释和执行
divine sources	神圣的渊源
a body of rules	一整套规则
interaction with its environment	与环境的相互作用

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固有的规则……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之甚少,或并不那么富足的成员。

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.

控制集团不一定是政治实体的代表。

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.

法律是社会的调节器。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纷争不同的权益和价值加以平衡。

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.

如果某一成文法条直接适用,法院不会到判例中去寻找法律依据。



Exercises

I. Reading Comprehension

1. What is false about the definition of law?
 - A. It is a tricky job to define a law.
 - B. The definition of law is manifold.
 - C. Law is regulation made by the judges.
 - D. Law comprises all the principles, rules, regulations and enactments that are applied in the courts and enforced by the power of the state.
2. What statement 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. What 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 can not tell what is right and wrong.
 - C. Law could serve as a means of social control.
 - D. Law is a body of rules merely serve the interest of the rulers.
4. Which of the following is not the function of law?
 - A. Maintain peace and order.
 - B. Influence and enforce standards of conduct.
 - C. Facilitate orderly change.
 - D. Promote the behavior that society has determined undesirable.
5. What 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 as in criminal justice.
 - C. Procedural law will replace substantive law.
 - D. Substantive and procedural law could be interchanged.
6. What 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 are sometimes classified as substantive law and procedural law.
7. What 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 of between individuals in an organized society
9. What 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. What 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:

1. Why do we say that a good definition of law is a tricky job?
2. How can you illustrate that "Ignorance of the law is no excuse"?
3. Why is the law a formal means of social control?
4. What is the difference between the substantive law and procedural law?
5. Is public law more important than private law?
6. What are the major sources of law in America?
7. What are the typical examples of private law?
8. What kind of priority is given to various sources of law in the United States?

III . Vocabulary Work

statue	social control	norm	excuse	mechanism
regulate	case of action	jurist	enforceable	source
conflicting	status quo	public	non-conformity	manifold

1. Law has been defined as a set of rules that _____ the actions of people in a community.

2. Some wrongful acts might not give rise to a _____.
3. A code of law consists of _____ only. It does not include case law.
4. Law is defined as a means of _____ which may guarantee peace and order.
5. Law is to oblige people to act in line with social _____.
6. Ignorance of law _____ no one, that is to say, a person can not have a defense in a case simply because he has no knowledge of the law.
7. Some _____ say that law is governmental social control.
8. If the rules of law are not _____, they become meaningless.
9. Law is a kind of social engineering, which seeks to balance various competing _____ interests and values within a society.
10. As society becomes more complex and developed, functions of law seem to be _____.
11. One of the major functions of law is to maintain the _____ in certain aspects of society.
12. Laws can be classified into _____ laws and private laws.
13. What are the major _____ of law in the United States?
14. Law is to provide a _____ for compromise solutions between polar principles and positions.
15. No one can deny that law is to punish and prevent undesirable social behavior or prevent _____.

IV. Phrase Translation from Chinese into English

- | | |
|--------------|------------|
| 1. 各种相互冲突的利益 | 6. 社会规范的总和 |
| 2. 实体法和程序法 | 7. 国家强制力 |
| 3. 公法和私法 | 8. 刑事司法体系 |
| 4. 法律的功能 | 9. 防止不规范 |
| 5. 法的渊源 | 10. 维持现状 |

V. Sentence Translation from Chinese into English

1. 在普通法系的国家中,法律不仅包括宪法和成文法,在一些司法管辖中,判例法也可能成为有约束力的法律的一部分。
2. 文明社会中法律最根本的目的是维护秩序。
3. 法律离不开一个强制性机构,这个机构通过强制人们遵守社会规范而保持控制。
4. 有时法律被划分为实体法和程序法。实体法被直接用于解决纠纷,而程序法规定法庭处理案件的程序。程序法也可能影响案件的结果。
5. 大陆法系国家已把它们的法律编纂成法典,因此,在这些国家,法的主要渊源是成文法而不是判例。

VI. Translation from English into Chinese

Laws are rules that define people's rights and responsibilities towards the society. They are agreed on by society and made official by governments.

Some people look on laws with fear or hatred. Laws seem to limit a person's freedom to do many things he would like to do. Though laws may prevent us from doing things or wish to do at the moment, laws also stop others from doing things that might harm us. Laws make everyone's life safer and more pleasant. Without laws we could not hold on to our property. We could not go to bed at night expecting to wake up in the morning and find we had not been robbed. No stores in which we buy food, clothes, and other necessities could stay open and sell to us. Our banks would not be safe places for our money.

Social life would be impossible without laws to control the way people treat each other. But unless laws are enforced, they cannot protect us.

Law enforcement has four steps: arrest of suspect, decision about his guilt or innocence; sentencing; and punishment. Primitive tribes in ancient times settled the question of guilt or innocence quickly. Sometimes they used torture. More common were trials by fights between the accused and the injured or his representative. The winner was thought innocent, because primitive people believed that gods helped the innocent. Primitive societies used many punishments. For personal injuries it was common to act according to the rule "an eye for an eye, a tooth for a tooth". If a man knocked out someone's tooth, his own tooth would be knocked out in return. Today capital punishment for murder is based on this idea: if a person kills someone, he must pay with his own life.

Supplementary Reading 1

Subdivisions of Law¹

There may have been a time when law could be studied as a single subject. That time has long since passed. The volume of material called law has become so vast and complex that, for convenience in handling, it has been broken up into subdivisions. These divisions have been made in a more or less arbitrary manner and are in many cases overlapping. The chief traditional classifications will be briefly traced.