

教育部推荐教材


大学专业英语系列教材

法学专业 英语教程

(第二版·上)

主编 赵建 夏国佐



 中国人民大学出版社

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第二版前言

《法学专业英语教程》是1999年根据当时《大学英语教学大纲》的要求，为应用提高阶段专业英语教学编写的。自出版以来，得到很多大学的法学院采用，其教学效果显著，深得广大师生的喜爱。实践证明它是一套适应中国法律学生需要、有特色、富有生命力的教材。本着对使用者认真负责、精益求精的态度，编者根据教育部高等教育司2004年颁布的《大学英语课程教学要求》（试行）又作了全面仔细的修订。修订后，全书共分上、下两册。上册包括三个单元：美国法律制度导论、美国宪法和合同法；下册包括五个单元：票据、财产、侵权、企业组织和公司。本教程供大学本科学生第五、六学期使用，同时也可作为同等程度的法律学习者使用，对于准备到美国、英国等地深造的法律学习者也有很好的参考价值，对有志于提高法律英语水平的自学者来说也是一套易学、易练且趣味性较强的教材。读者只需具备一定的英语基础，循序渐进，持之以恒，便可在较短的时间内，使自己的法律知识和英语水平得到较大的提高。

本教程的编写宗旨是将学习英语与了解英美法律紧密结合，即在学习英语的同时，使学生系统地了解英美法律制度的概貌及民法、商法、民事程序和刑事程序等基本内容，在了解英美法律的同时，学习和操练英美法律涉及的常用词汇和表达方式，在巩固一般语言知识和运用能力的基础上，进一步扩展学生的语言知识，提高学生的语言应用能力，特别是涉及法律的语言知识和运用能力，力求在学完全书之后，学生能借助字典和工具书较为顺利地阅读英美法律条文及案例，并能对一般难度的法律文件进行英汉互译。根据这些原则，我们修正了原版中少数不妥和不够完善的地方，同时又根据美国法律近年来的一些变化，更新了部分课文的有关内容，尤其是增加了一些21世纪的最新案例，以反映在信息技术突飞猛进、社会经济发展日新月异、人们的法律意识日益增强的大背景下，法院面临的新挑战和作出的新判决；另外，在练习方面也增加了一些趣味性较强的内容。

本教程在介绍英美法律时，力求以简洁明了的文字，系统完整地介绍英美



法律若干方面的内容。每个单元后都附有若干经过精选的案例，进一步加深和拓宽课文的内容，帮助学生领会课文中介绍的法律原则及其在实践中的运用。为方便教学，每个案例前面均有“导读”，简明扼要地指出案件涉及的法律争议和背景，对案例的理解起到画龙点睛的作用。案例后面的问题旨在启发学生的思考，引导学生分析具体争议的法律实质。

在语言知识及文字难易度方面，本教程与大学英语四级紧密衔接，学生在学完大学英语四级之后，可以自然顺利地过渡使用本教程。每课课文之后，均附有较详尽的注释和重点词研究，并在附录中提供了参考译文及练习参考答案。课文练习的编写，同样兼顾学习法律和学习文字并重的原则，在引导学生进一步理解课文涉及的法律内容的同时，帮助学生全面提高读、说、写、译等各项语言能力。使用本教程时，可以根据不同水平学生的不同要求有不同的侧重。对英语基础较好的学生，可以在掌握课文的基础上侧重案例教学。对于一般水平的学生则应以课文为中心，力求掌握基本法律词语的理解和使用。学生回答有关案例的问题，可用汉语，以避免不求甚解照抄原文的情况。

由于本教程涉及法律内容较多，一些没有法律背景的英语教师有可能望而生畏。其实只要具备扎实的英语基础，即便是没有法律背景的英语教师，也完全可以一面教，一面学，在教与学的互动中求得教学相长。可以肯定，经过一轮教学的实践，教师就可以基本了解相关的法律内容与所涉及的法律词汇和表达，为以后的双语教学打下良好的基础，同时也为自己增加一门新的专长。已经使用该套教材的英语教师的实践已经证明，这是完全可能和可行的。

我们相信，经过修订的《法学专业英语教程》，将更加适应新形势下对大学英语专业教学的要求，并以其更加完善的体系、更加丰富的内容和精确的文字表达，为我国大学英语教学改革和法律英语教学的进一步深入，作出应有的贡献。

编者

2007年4月

第一版前言

《大学专业英语系列教材》是根据教育部最新颁布的《大学英语教学大纲》的基本要求，为大学英语学习四年不断线而编写的一套教材。该套教材的编写得到教育部高等教育司的大力支持。

本套教材分法学专业英语、经济专业英语、管理专业英语、人文科学专业英语四个系列，每一系列包含三个分册，每一分册供一个学期使用。全套教材由复旦大学、中国人民大学、南京大学、对外经济贸易大学联合编写，南京大学杨治中教授担任总主编。法学专业英语教程由赵建、夏国佐教授主编；管理专业英语教程由邱东林、华宏鸣教授主编；经济专业英语教程由翟俊教授主编，参加编写的有张勇先、王学文教授等；人文科学专业英语教程由湛馨荪教授主编，参加编写的有郭庆民、章安祺教授。全书由专业英语教师和公共英语教师共同编写。

本系列教材具有如下特点：

一、考虑到我国大学生学完两年后的实际水平，课文的选材、注解和练习以《大学英语教学大纲》所要求的四级为基础。

二、教材在内容和语言上贯彻循序渐进的原则。在内容上，第一册主要涉及本专业的原理和基础知识，第二、三册主要涉及本专业的历史及专家论点；其要旨在于帮助学生完成从基础英语到专业英语的过渡；在语言上，选材从难度、可读性等方面出发，贯穿了由浅入深的原则。

三、考虑到《大纲》对专业英语学时和阅读量的要求，我们采用了“主、副”课文制，对主课文从注解和练习两方面进行了重点处理，用作教师课内重点讲解的内容，副课文主要供学生课后自学，以便对主课文从语言和知识两方面起到巩固作用。

四、本教材强调整理解的准确性和学生的应用能力，因此，练习针对这两方面进行了重点编写，配有理解、语言应用（包括词汇应用、语篇应用）练习，理解题强调准确理解、思考、分析、评价、讨论，每课练习中所采用的例句从知识和语言上均与主课文或已学过的课文有关。



五、为方便自学，书后提供了主课文的参考译文和练习答案。

六、全套四种教材在遵循总的编写原则的同时，又根据各自课程的知识特点自成体系。

由于本书编写仓促，不足之处在所难免，敬请读者指正是幸。

编者

1999年6月





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Unit One

Introduction to the American Legal System

Lesson One

Law: Definition, Classification, and Sources

Lesson Two

Duality in the American Legal System

Lesson Three

The Adversary System in the American Judicial Process

Lesson Four

Commencing a Lawsuit

Lesson Five

Pre-trial Discovery

Lesson Six

The Trial

Lesson Seven

Judgment, Enforcement, and Appeal

Lesson Eight

Criminal Process

Cases for Supplementary Reading

Lesson One

Law: Definition, Classification, and Sources





Text



What is law? Though we use the word “law” very often in our daily conversation, we use it in so many ways that there is no simple answer to this question.

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. This view sees law 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 society¹.

Another view is that law is a method of establishing order by maintaining authority of a ruler over those ruled. According to this view, law begins only when a coercive apparatus comes into existence to maintain control through enforcement of social norms. The control group need not be agents of a political entity, but may be labor, business, or church organizations. And the coercion can be psychological as well as physical.

Most observers, however, believe that law exists only in a formal setting that involves the legislative, judicial, and executive arms of a political body and its system.² This view holds that although rules are an important part of the process, the emphasis is upon actions for the purpose of adherence to those rules. Law is thus defined as 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.

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 law suit 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, **A** and **B** have entered into an agreement, and **A** claims that **B** has breached the agreement. The rules that provide for bringing **B** into court and for the conduct of the trial are rather mechanical, and they constitute procedural law. Whether the agreement was enforceable and whether **A** 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 constitutional law, administrative law and criminal law. Private law includes the areas of law that concern 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. The law of torts is the primary source of litigation in America. It deals with wrongful acts against a person or his property and is based on the theory that in a civilized society, people who injure other persons or their property must compensate them for their loss.

Classification of law according to subject matter.³ 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. Assume that a person is injured by a product he has purchased. The law of sales, even though a part of the law of contracts, contains several aspects that could best be labeled a branch of the law of torts. Therefore, it is apparent 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 law is created and developed, or the origin from which particular laws derive their authority or coercive force.

Law in Western societies has developed along two lines. 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. The law with which Americans are more familiar is known as the common law, which developed in English speaking countries.

The major difference between the two systems lies in the operation of the judicial processes. 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 judge must apply the appropriate section of the code to the case in court. The common law, on the other hand, develops more through the decisions of judges applying prior decisions of courts to the new facts at hand. Under the common law system, a very substantial part of law is not to be found in statutes enacted by legislatures but rather in cases. A case once decided establishes a binding precedent to a certain extent,⁴ and will be followed by the courts when similar issues arise later. Although judges tend to focus more upon statutes or administrative rules these days, the





fact that they still review past cases before making a decision shows that adherence to decided cases is still kept as a tradition in American courts.

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 (uncodified law based on judicial decisions), and 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 decisions for law if a statute is directly in point.

New Words

cause *n.* 原因

cause of action 案由

affluent /'æfluənt/ *a.* 富裕的

coercive /kəu'ə:siv/ *a.* 强迫的, 强制的

enforcement /in'fɔ:smənt/ *n.* 实施; 强制执行

norm *n.* 标准; 规范

entity /'entiti/ *n.* 实体

coercion /kəu'ə:ʃən/ *n.* 强迫

legislative /'ledʒislətiv/ *a.* 立法的; 立法机构创立的

n. 立法机构

judicial /dʒu:'diʃəl/ *a.* 司法的

adherence /əd'hɪərəns/ *n.* 遵守

enforceable /in'fɔ:səbl/ *a.* 可实施的, 可强制执行的

hallmark *n.* 标志, 特点

substantive /'sʌbstəntiv/ *a.* 实体的

procedural /prə'si:dʒərəl/ *a.* 程序的

procedure /prə'si:dʒə/ *n.* 程序

lawsuit /'lɔ:sju:t/ *n.* 诉讼, 案件

appeal /ə'pi:l/ *n. & vi.* 上诉

enforce /in'fɔ:s/ *vt.* 实施, 强制执行

breach *n. & vt.* 违反; 违(约)

contract /'kɒntrækt/ *n.* 合同

constitutional /kɒnsti'tju:ʃənl/ *a.* 宪法的, 合宪的

tort *n.* 侵权

litigation /li'ti:geɪʃən/ *n.* 诉讼

litigate /'litigeɪt/ *v.* 诉讼

compensate /'kɒmpenseɪt/ *v.* 补偿

seamless *a.* 无缝的

web *n.* 网

overlap /,əʊvə'læp/ *v.* 迭盖; 重叠

civil law 大陆法

common law 普通法

adjudicate /ə'dʒu:dikeɪt/ *v.* 判决, 宣判; 裁定

adjudication *n.*

embody /im'bɒdi/ *vt.* 体现



statute /'stætju:t/ *n.* 成文法; 法条
 enact /i'nækt/ *vt.* 制定 (法律); 颁布;
 通过 (法案)
 legislature /'ledʒisleitʃə/ *n.* 立法机关
 issue /'isju:/ *n.* 问题, 争议

precedent /'presɪdənt/ *n.* 先例; 判例
 priority /praɪ'ɔ:ri/ *n.* 优先 (权); 优先
 (次序)
 constitution /,kɒnstɪ'tju:ʃən/ *n.* 宪法

Phrases & Expressions

give rise to 引起
 for the purpose of 为了…… (目的)
 in line with 与……一致, 符合
 provide for 规定
 be entitled to 有权……, 有资格……

compensate (sb.) for 补偿 (某人的) ……
 date back to 追溯到
 at hand 近在手边, 手头 (的)
 turn to... for 向……求, 从……找
 in point 恰当的, 切题的

Notes

1. ... ignorance of which excuses no one, not even the less knowledgeable or less affluent members of society. 这一部分为前句的定语从句, “which” 在从句中代 “a set of fixed principles”, 意思是: 不了解这套规则的人并不能因此被免除责任, 即使他们文化水平低或经济条件差也不能例外。
2. Most observers, however, believe that law exists only in a formal setting that involves the legislative, judicial, and executive arms of a political body and its system. 然而绝大多数人认为, 法律只有在一种正式的环境中才能产生, 而这种环境涉及一个政治实体的立法、司法和行政机构及其制度。本句的意思是, 只有在一个政治实体具有立法、司法和行政机构及其一整套制度、有了一种正式的环境的条件下, 法律才能产生。
3. classification of law according to subject matter 按内容把法律分类。“subject matter” 是指内容、题材或案件事由, 如: The subject matter of the case decides that it has to go to an admiralty court. (本案的事由决定了此案必须由海事法院处理。)
4. A case once decided establishes a binding precedent to a certain extent 案子一旦判决, 就在某种程度上确立了一个有约束力的先例。此句中, “某种程度上” 是指

