法律英语系列教材

法律英语阅读教程 第一册

Reading Course of English for Law Book One

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Book One

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序　言

杜金榜、张新红两教授主编的《法律英语核心教程》即将问世，嘱我为序。我感到十分高兴，竭诚向读者推荐。我国已经加入世界贸易组织，涉外法律人才的需要必将日益增加。对外经济贸易大学出版社宓智瑛副总编组稿、策划的这套教材的出现是“及时雨”，必将受到广大读者的欢迎。

在专门用途英语（English for Specific Purposes）中，法律英语是最具特色的一种。从法律用语到法律文件，都有鲜明的特点，要求严格的、规范的、正式的语体。如果说专门用途英语必须经过“专门的”训练才能学到，那么法律英语应该是属于“最专门的”一种；就是以英语为母语的人也未必具有这样的知识。这就是说，为我国读者编写的法律英语的教科书必须从选材、编注、练习体系设计等方面精心安排。这套教材的编者们在法律英语的教学方面积累了许多行之有效的宝贵经验，在编写中从我国学生的特点出发，既注意到读、写、说、译等语言技能的培养，又注意到法学知识的输入。既强调教材体系的连贯性，又强调知识的循序渐进性，覆盖了法学的基础知识、国际经济法、法律专题讨论等领域。这就保证了学生既学到英语，又学到法律知识。从本书的编写说明中可以看出，目前这套教材仅是法律英语系列教材的一本，还会继续有《法律英语听说教程》、《法律英语阅读教程》、《法律英语写作教程》、《法律英汉翻译教程》等问世。这套系列教材的出版将会大大地有利于法律英语专业学生的培养，我们翘首以待。

法律语言学（forensic linguistics）是在各民族和国家之间的关系日益紧密的基础上发展起来的一门新兴的语言学科，具有很大的生命力。语言在商贸谈判和法律诉讼中往往具有举足轻重的地位。我们经常说“在法律面前人人平等”，但是语言不沟通，平等就难以维持。我热切地希望编者们能够把法律语言学的一些新进展消化和融合到这套教材里面，千锤百炼，使之成为一套更实用、更先进、更科学的教程。

是为序。

桂诗春

编 写 说 明

体例说明

《法律英语阅读教程》是《法律英语核心教程》的配套教材，共三册，每册20单元，每单元由两篇课文和系统的语言、法律技能练习组成，练习的种类丰富，涵盖面广。本套教材保持了《核心教程》的系统性和循序渐进性，第一册主要是关于英国法律的知识，第二册介绍的是美国法律的知识，第三册是关于美国商法的内容。

本册为第一册，分20个单元，每单元含两篇法律英语课文，TEXT I系统介绍英国法律的基础知识，内容涉及宪法、民商法、刑法、行政法、程序法；为了让学习者对法律知识有更广泛的了解，TEXT II是一篇快速阅读文章，取材自英国法和美国法，除了巩固Text I的学习以外，还可为学习第二册、第三册奠定基础。

TEXT I课文前面的**Before You Read**部分，有两三个简单的问题，让学习者在阅读课文之前回答，以引起他们思考。紧接着是**First Reading Exercises**部分，要求学习者较快地读一遍之后完成，以训练学习者的阅读速度。每篇课文的正文部分每个自然段都标注了序号，方便学习者快速查找和阅读；正文后附有课文的字数说明，以便学习者掌握自己的阅读速度。课文后附有理解课文所需的法律、社会、文化等背景知识的注释。之后是词汇表，列出了课文中较难的词汇和短语，给出了音标、词性和中文意思。最后是**After – reading Exercises**部分，包括多种练习题，其中有主观题，也有客观题，加强学习者对课文内容的理解和对关键词汇的掌握。其中的**Oral Practice**，可以让学习者在了解法律知识的基础上发表自己的看法，达到提高口语表达能力的目的。

使用说明

本套教程一共三册，建议第二学年开始使用，第二学年上学期用第一册（每周二至四学时），第二学年下学期用第二册（每周二至四学时），第三学年用第三册（每周二学时）。

使用本教程的教师也可视课时量和学习者的具体情况制定不同的授课进度并采取不同的授课方法。如果每周课时为四节，则每册可供一学期之用。另外，由于第一、二册的体例相同，涉及的法律专题相同，还可以两册同时使用，对英国和美国的法律作对比性的学习。

在使用过程中，建议学习者课前认真预习，查阅生词和相关的法律知识，课上认真听讲并积极参与课堂讨论，课后及时复习并阅读中文版和英文版法学原著作为补充。

为方便本教程的编写者与使用者进行直接交流，我们还建立了专门的网站 http://www.beschool.net/corecourse/index.html，欢迎使用该教程的酵师、学生和广大法律英语自学者参加讨论并索取本教材的有关参考资料。

我们感谢对外经济贸易大学出版社对本套教材的出版所做的一切工作。

编　者

2002 年 12 月 于广州白云山脚下

CONTENTS

UNIT 1

Jurisprudence

Text I Reasoning

Before You Read

1. Perhaps the term 'legal reasoning' is much familiar to you. Can you explain the proposition that "Reason is the life of the law"?
2. Can you name some elements of legal reasoning?
3. Can you give examples to show how to use inductive or deductive methods in legal reasoning?

First Reading Exercises

1. What is the type of rigor stated in Paragraph 2?
2. What is the author's opinion about judges' discretion in applying rules?
3. Can the most important elements of legal reasoning be accounted for by induction? Why?
4. What gave rise to "rule skepticism"?
5. Is the situation with regard to statutes much the same as that of legal rules? Why?

1 Ever since law became a specialized discipline, it has been assumed that legal reasoning exhibits a greater rigor than other types of non-formal argumentation. Explaining why this is so, however, has not been easy. It is this inability to articulate a satisfactory theory of legal reasoning that has undercut the perceptive criticisms of the United States Supreme Court by the late Professor Henry M. Hart[1], who was unable to do much more than

remind the legal profession that "reason is the life of the law", and by Professor Wechsler in his famous call for "neutral principles"[2] for the adjudication of constitutional issues.

2 The type of rigor in reasoning that scholars are seeking to find in the law is the type that would permit people who strongly disagree over the merits of a judicial decision to agree that the case was properly decided or, if this is impossible, at least to agree that the decision was adequately justified. Most scholars attempting to identify an "objective" method of legal reasoning, in the sense just described, have assumed that the law consists of rules. When they have been unable to account for actual decisions solely in terms of rules, some scholars have enlarged their description of the law to include more general rulelike statements called principles and still broader propositions called standards. It has been recognized, however, that if objectivity in legal reasoning exists because legal reasoning consists of reasoning from rules, then legal rules must theoretically be capable of complete statement, although as a practical matter such completeness may be difficult to attain.

3 Furthermore, once the rule has been completely stated, it must be possible to ascertain from the formulation itself the factual situations to which the rule applies. Unless this can be done, one is obliged to admit that judges have a large measure of discretion in applying legal rules and to conclude that the assumption that the law consists of general rules precludes any possibility of objective decision-making. But experienced lawyers would agree that it is counter-intuitive to contend that the so-called rules of law can be completely stated and that it is still more implausible to maintain that the statement of a rule can completely indicate the situations to which it is applicable. Even the Restatement's formulation of the Rule in Shelley's Case[3] specifically disclaims completeness. Indeed, the difficulty of adequately formulating legal "rules" is acknowledged as a factor that seriously limits the benefits that might be obtained from applying the techniques of modern logic to legal analysis.

4 It is not surprising that legal rules are unable to fulfill such stringent requirements. If legal rules were complete and self-applying, their application by the courts would be largely a deductive process, which it

clearly is not; and this is the nub of the problem. To put the matter another way, it is precisely because legal reasoning is not primarily deductive that one is unable to state a legal rule completely or to ascertain from the statement of the rule when it is applicable. As a simple illustration, consider whether a statute requiring "motor vehicles" to pay a road tax is applicable to go-karts. Only if the statute had defined "motor vehicle" to include go-karts would the decision be primarily deductive; if there were such a statutory definition, moreover, the case would probably never be litigated. Without such a definition, the decision cannot be deduced until the court has supplied a minor premise by deciding whether a go-kart is a motor vehicle for the purposes of the statute.

5 Consider, as another example, the statute prohibiting the transportation of women in interstate commerce for prostitution, debauchery, or any other immoral purpose. Suppose a man transports a woman from one state to another where she undresses in a motel room and cavorts in the nude before her escort and a male photographer who takes obscene photographs of her. Here also, deduction only enters the situation in a very minor way. The major question is whether these actions constitute transportation for an "immoral purpose" within the meaning of the statute. If the purpose is found to be immoral, a simple logical operation will determine that the statute has been violated and that the prescribed penalties should be applied. But this second or logical part of the problem is relatively trivial. These examples should suffice to illustrate that the two aspects of the problem —the substantive or classificatory aspect, and the logical one —seldom, if ever, merge. Nor, it should finally be observed, can the most important elements of legal reasoning be accounted for by induction, the second branch of classical logic.

6 In its most usual sense, induction refers to the process of inferring from known facts the existence of unknown facts, an inference often expressed in terms of rulelike general statements which can serve as the starting point of deductive reasoning and which can be verified or refuted by future observation. But no serious observer any longer believes that law consists of preexisting rules which men somehow discover. The application of the law is always at least partially a creative process. Even if one were to suppose

that inductive arguments are as sound and compelling as deductive ones, legal decisions are no more compelled by induction than by deduction. Induction, like deduction, is largely only a tool in judicial decisionmaking.

7 Because identifiable "rules," "principles" and "standards" in this strict sense do not exist, any theory of legal reasoning that requires them is necessarily incomplete. If one asks himself what the so-called rules of law are, he would, it is submitted, be obliged to conclude that they are constructs formed by scholars writing books and articles, by lawyers litigating cases, and by judges preparing to decide cases. As such they serve a very useful purpose. They are, first of all, a helpful mnemonic device for classifying large numbers of cases. They provide a concise shorthand for referring to matters which, at any particular moment, are not in issue. As general statements of our expectations and preferences, they also provide a means of predicting the outcomes of future cases and for arguing about the desirability of those outcomes. Yet the position that such rules are the actual content of the law, rather than a means of understanding it, is untenable because there are any number of so-called rules which logically can be constructed out of any given number of cases, and there is no authoritative statement of which is correct. Under traditional theory, as we shall see, not even a court's express attempt to state the correct rule is authoritative; it is only evidence of what the rule is, and sometimes not even the best evidence. It is these inadequacies of a model of rules which gave rise to the "rule skepticism" of the American legal realists. It is these same inadequacies which, as we shall see, have led legal scholars —many of whom did not share the rule skepticism of the realists —to devote so much time and effort to the subject of legal reasoning over the years. Finally, we might briefly note that the situation is not really much different with regard to statutes. It is true a statute has a fixed verbal form, but what the statute means is another question. Statutes, like common-law rules, require interpretation and application by the courts.

8 The subject of legal reasoning is a vast one. It is one of the most important questions in any detailed study of the law from a philosophical point of view. However, we cannot present anything like a complete view of this vast subject. Indeed, anything like a "complete" view would take a

lifetime and more of study.

(1 275 words)

Notes

1. H. M. Hart, Foreword: The Time Chart of the Justices, The Supreme Court 1958 Term, 73 HARV. L. REV. 84, 125 (1959).
2. Toward Neutral Principles of Constitutional Law, by Professor Wechsler, an article published in 73 Harvard Law Review, 1, 7, 9 Selected Essays 1938 – 62 (1963) at pp. 463 and 468.
3. Rule in Shelley's Case: an important decision in the law of real property. The litigation was brought about by the settlement made by Sir William Shelley (c. 1480 – 1549), a judge of the common pleas, of an estate which he had purchased on the dissolution of Sion Monastery. After prolonged argument the celebrated rule was laid down by Lord Chancellor Sir Thomas Bromley, who presided over an assembly of all the judges to hear the case in Easter term 1580 – 1581.

Vocabulary

adjudication	[əˌdʒuːdiˈkeiʃən]	n.	（法庭的）判决；裁定
discretion	[disˈkreʃən]	n.	自由裁量权
contend	[kənˈtend]	v.	争论，争辩
implausible	[imˈplɔːzəbl]	adj.	难以置信的，似乎不合情理的
disclaim	[disˈkleim]	v.	放弃，否认
stringent	[ˈstrindʒənt]	adj.	严苛的，严格的，严厉的
nub	[nʌb]	n.	要点；核心
go-karts	[ˈgənˌkaːt]	n.	微型赛车
litigate	[ˈlitigeit]	v.	诉讼，打官司
debauchery	[diˈbɔːtʃəri]	n.	堕落，道德败坏
cavort	[kəˈvɔːt]	v.	欢跃；跳跃
refute	[riˈfjuːt]	v.	驳斥，驳倒
compelling	[kəmˈpeliŋ]	adj.	强制的，强迫的
mnemonic	[ni (:)ˈmɔnik]	adj.	记忆的，记忆术的
untenable	[ˈʌnˈtenəbl]	adj.	站不住脚的，难以维持的
skepticism	[ˈskeptisizəm]	n.	怀疑论

After-reading Exercises

Ⅰ. Multiple Choice

1. The first paragraph mainly exemplifies _____.
   A. the importance of legal reasoning
   B. the significance of the discussion on legal reasoning
   C. the inability of experts to explain legal reasoning
   D. the inadequacies of criticisms
2. Which is NOT what scholars are seeking? _____
   A. A type of rigor of legal reasoning
   B. Objective method of legal reasoning
   C. Complete statement of the legal rule
   D. Disagreement over the merits of judicial decisions
3. Experienced lawyers would agree that _____.
   A. rules of law can be completely stated
   B. the statement of a rule can not completely indicate the situations to which it is applicable
   C. legal rules can be adequately formulated
   D. legal rules can not be formulated
4. The woman-transporting case explains that _____.
   A. the purpose of the act is immoral
   B. the act is trivial
   C. the substantive and logical concepts do not merge
   D. the inductive method cannot be applied
5. Because application of legal rules by the courts is not a deductive process, _____.
   A. legal rules are complete and self-applying
   B. one is able to ascertain from the statement of the rule when it is applicable
   C. one is unable to state a legal rule completely
   D. the statute that defines "motor vehicles" can include go-karts
6. Application of law is _____.
   A. basically a deductive process
   B. basically an inductive process
   C. at least partially a creative process

D. a process of applying preexisting rules

7. According to the author, rules of law _____.
   A. do not exist
   B. are the actual content of the law
   C. are constructs formed by scholars, lawyers and judges
   D. only provide a means of predicting the outcomes of future cases
8. The author's opinion about statutes is _____.
   A. that because of their fixed verbal form, they are different from common-law rules
   B. what the rule means is as its verbal form suggests
   C. statutes do not involve interpretation
   D. statutes require interpretation by the courts

Ⅱ. True or False Statements

1. The author thinks that it's possible to identify an objective method of legal reasoning. _____
2. Scholars have the desire that adequate formulation of legal rules can facilitate the application of modern logic to legal analysis. _____
3. It is not known when the rule is applicable because legal reasoning is primarily deductive. _____
4. The author thinks that any theory of legal reasoning is incomplete. _____
5. The inadequacies of a model of rules gave rise to rule skepticism and have led scholars to spend much time on the subject of legal reasoning. _____

Ⅲ. Vocabulary Exercises

Fill in the blanks with one of the words in the box. Change the form if necessary. Each word can be used only once.

articulate, cavort, discretion, litigate, contend, formulate, suffice, stringent, compel, untenable, submit, disclaim, verify, refute, implausible

1. Law students are expected to be able to _____ their opinions on the