

法律英语系列教材

法律英语阅读教程

第二册

Reading Course of English for Law

Book Two

■ 杜金榜 主编 麦小梅 孙 红 副主编
■ 刘诒廷 主审



对外经济贸易大学出版社

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Book Two

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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。这套教材的编写者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，具有很强的生命力。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”，但是语言不能沟通，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的、更先进的、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。

本册为第二册，分20个单元，每单元含两篇法律英语课文，Text I 系统介绍美国法律的基础知识，内容涉及宪法、民商法、刑法、行政法、程序法；为了让学生对法律知识有更广泛的了解，Text II 是一篇快速阅读文章，取材来自美国法和英国法及其他国家的法律，除了巩固 Text I 的学习以外，还可为学习第三册奠定基础。

Text I 课文前面的 **Before You Read** 部分，有两至三个简单的问题，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完一遍之后完成，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、词类和中文意思。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>，欢迎使用该教程的教师、
学习者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

2004 年 6 月 于广州白云山脚下

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UNIT 1

Jurisprudence

Text I Law as the Union of Primary and Secondary Rules

Before You Read

1. Can you make a distinction between a pre-legal society and a legal society?
2. As far as rules are concerned, what do you think is lacking in a primitive society compared to a modern society?

First Reading Exercises

1. How are primary rules defined?
2. What are the instances of the static character of the primary rules given in the text?
3. What are the remedies for the three defects?
4. What is the general function of the secondary rules?
5. Why are secondary rules all concerned with primary rules themselves?

1 It is, of course, possible to imagine a society without a legislature, courts, or officials of any kind. Indeed, there are many studies of primitive communities which not only claim that this possibility is realized but depict in detail the life of a society where the only means of social control is that general attitude of the group towards its own standard modes of behaviour in terms of which we have characterized rules of obligation. A social

structure of this kind is often referred to as one of 'customs'; but we shall not use this term, because it often implies that the customary rules are very old and supported with less social pressure than other rules. To avoid these implications we shall refer to such a social structure as one of primary rules of obligation¹.

2 It is plain that only a small community closely knit by ties of kinship, common sentiment, and belief, and placed in a stable environment could live successfully by such a regime of unofficial rules. In any other conditions such a simple form of social control must prove defective and will require supplementation in different ways. In the first place, the rules by which the group lives will not form a system, but will simply be a set of separate standards, without any identifying or common mark, except of course that they are the rules which a particular group of human beings accepts. They will in this respect resemble our own rules of etiquette. Hence if doubts arise as to what the rules are or as to the precise scope of some given rules, there will be no procedure for settling this doubt, either by reference to an authoritative text or to an official whose declarations on this point are authoritative. For, plainly, such a procedure and the acknowledgement of either authoritative text or persons involve the existence of rules of a type different from the rules of obligation or duty which *ex hypothesi* are all that the group has. This defect in the simple social structure of primary rules we may call its uncertainty².

3 A second defect is the static character of the rules. The only mode of change in the rules known to such a society will be the slow process of growth, whereby courses of conduct once thought optional become first habitual or usual, and then obligatory, and the converse process of decay, when deviations, once severely dealt with, are first tolerated and then pass unnoticed. There will be no means, in such a society, of deliberately adapting the rules to changing circumstances, either by eliminating old rules or introducing new ones: for, again, the possibility of doing this presupposes the existence of rules of a different type from the primary rules of obligation by which alone the society lives.

4 The third defect of this simple form of social life is the inefficiency of the diffuse social pressure by which the rules are maintained. Disputes as to whether

• an admitted rule has or has not been violated will always occur and will, in any but the smallest societies, continue interminably, if there is no agency specially empowered to ascertain finally, and authoritatively, the fact of violation. Lack of such final and authoritative determinations is to be distinguished from another weakness associated with it. This is the fact that punishments for violations of the rules, and other forms of social pressure involving physical effort or the use of force, are not administered by a special agency but are left to the individuals affected or to the group at large.

5 The remedy for each of these three main defects in this simplest form of social structure consists in supplementing the primary rules of obligation with secondary rules which are rules of a different kind. The introduction of the remedy for each defect might, in itself, be considered a step from the pre-legal into the legal world; since each remedy brings with it many elements that permeate law: certainly all three remedies together are enough to convert the regime of primary rules into what is indisputably a legal system. We shall consider in turn each of these remedies and show why law may most illuminatingly be characterized as a union of primary rules of obligation with such secondary rules.

6 Before we do this, however, the following general points should be noted. Though the remedies consist in the introduction of rules which are certainly different from each other, as well as from the primary rules of obligation which they supplement, they have important features in common and are connected in various ways. Thus they may all be said to be on a different level from the primary rules, for they are all about such rules; in the sense that while primary rules are concerned with the actions that individuals must or must not do, these secondary rules are all concerned with the primary rules themselves. They specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined.

7 The simplest form of remedy for the uncertainty of the regime of primary rules is the introduction of what we shall call a 'rule of recognition'. This will specify some feature or features possession of which by a suggested rule is taken as a conclusive affirmative indication that it is a rule of the group to be supported by the social pressure it exerts. The

existence of such a rule of recognition may take any of a huge variety of forms, simple or complex. It may, as in the early law of many societies, be no more than that an authoritative list or text of the rules is to be found in a written document or carved on some public monument. No doubt as a matter of history this step from the pre-legal to the legal may be accomplished in distinguishable stages, of which the first is the mere reduction to writing of hitherto unwritten rules. This is not itself the crucial step, though it is a very important one: what is crucial is the acknowledgement of reference to the writing or inscription as authoritative, i.e. as the proper way of disposing of doubts as to the existence of the rule³.

8 The remedy for the static quality of the regime of primary rules consists in the introduction of what we shall call 'rules of change'. The simplest form of such a rule is that which empowers an individual or body of persons to introduce new primary rules for the conduct of the life of the group, or of some class within it, and to eliminate old rules. It is in terms of such a rule, and not in terms of orders backed by threats, that the ideas of legislative enactment and repeal are to be understood. Such rules of change may be very simple or very complex; the powers conferred may be unrestricted or limited in various ways; and the rules may, besides specifying the persons who are to legislate, define in more or less rigid terms the procedure to be followed in legislation. Plainly, there will be a very close connection between the rules of change and the rules of recognition, for where the former exists the latter will necessarily incorporate a reference to legislation as an identifying feature of the rules, though it needs not refer to all the details of procedure involved in legislation.

9 The third supplement to the simple regime of primary rules, intended to remedy the inefficiency of its diffused social pressure, consists of secondary rules empowering individuals to make authoritative determinations of the question whether, on a particular occasion, a primary rule has been broken. The minimal form of adjudication consists in such determinations, and we shall call the secondary rules which confer the power to make them 'rules of adjudication'. Besides identifying the individuals who are to

adjudicate, such rules will also define the procedure to be followed. Like the other secondary rules these are on a different level from the primary rules, though they may be reinforced by further rules imposing duties on judges to adjudicate, they do not impose duties but confer judicial powers and a special status on judicial declarations about the breach of obligations. Again these rules, like the other secondary rules, define a group of important legal concepts: in this case the concepts of judge or court, jurisdiction and judgment. Besides these resemblances to the other secondary rules, rules of adjudication have intimate connections with them.

10 If we stand back and consider the structure which has resulted from the combination of primary rules of obligation with the secondary rules of recognition, change and adjudication, it is plain that we have here not only the heart of a legal system, but a most powerful tool for the analysis of much that has puzzled both the jurist and the political theorist.

11 Not only are the specifically legal concepts with which the lawyer is professionally concerned, such as those of obligation and rights, validity and source of law, legislation and jurisdiction, and sanction, best elucidated in terms of this combination of elements. The concepts (which bestride both law and political theory) of the state, of authority, and of an official require a similar analysis if the obscurity which still lingers about them is to be dissipated. The reason why an analysis in these terms of primary and secondary rules has this explanatory power is not far to seek.

12 We shall conclude our discussion with a warning: though the combination of primary and secondary rules merits, because it explains many aspects of law, the central place assigned to it, this cannot by itself illuminate every problem. The union of primary and secondary rules is at the centre of a legal system, but it is not the whole.

(1 638 words)

Notes

1. Hart states that a legal system must consist of valid obligation rules, which he then splits into two distinct categories. These are the primary rules of obligation, and the secondary rules of obligation. The former category he sees as imposing duties, requiring people to do or not do certain things, whether they wish to or not. The

secondary rules, which he sees as in a sense “parasitic” on the primary rules, provide that people may, by doing or stating certain things, introduce new primary rules, extinguish or modify old ones, or in various ways determine their incidence and control their operations.

2. Hart's nomenclature casts the defects of a society based only on primary rules as “uncertainty”, “staticity” and “inefficiency”.
3. According to Hart, in a more complex legal system such as our own, the rule of recognition is unlikely to be stated or expressly formulated as a rule, but instead, its existence is “shown” by the way courts or officials identify particular rules.

Vocabulary

kinship	[ˈkɪnʃɪp]	n.	亲属关系
sentiment	[ˈsentɪmənt]	n.	情感, 情绪, 感情
regime	[reiˈʒi:m]	n.	制度, 政体, 政权
supplementation	[ˌsʌplɪmenˈteɪʃən]	n.	增补, 追加, 补充
etiquette	[etiˈket]	n.	礼节, 礼仪
ex hypothesi	[ekʃhaiˈpəθɪsai]		〈拉〉按假说, 据推测, 假定地
converse	[kənˈvɜ:s]	adj.	相反的
decay	[diˈkeɪ]	n.	衰落, 衰退
deviation	[ˌdi:viˈeɪʃən]	n.	背离, 偏离
presuppose	[ˌpriˈsəpəʊz]	v.	预先假定, 以……为前提条件
diffuse	[diˈfju:z]	v.	散布, 扩散
interminably	[inˈtə:miːnəbli]	adv.	无限地
ascertain	[ˌæsəˈteɪn]	v.	确定, 发现, 查明, 断定
pre-legal	[priˈli:ɡəl]	adj.	法前阶段的, 法前的
permeate	[ˈpɜ:miːt]	v.	弥漫, 渗透
illuminatingly	[ɪˈljʊ:mineɪtɪŋli]	adv.	启发地, 说明地
hitherto	[ˌhiðəˈtu:]	adv.	迄今
dispose	[disˈpəʊz]	v.	处置, 安排
repeal	[riˈpi:l]	v.	废除, 撤销
confer	[kənˈfə:]	v.	授予, 赠与
empower	[imˈpaʊə]	v.	授权与, 使能够

resemblance	[ri'zembləns]	n.	相象, 类同
sanction	['sæŋkʃən]	n.	批准, 认可, 制裁
bestride	[bi'sitraid]	v.	跨过, 跨越
linger	['liŋgə]	v.	拖延, 耽搁
dissipate	['disipeit]	v.	驱散, 消除
merit	['merit]	v.	值得, 应受赏(罚)

After-reading Exercises

I . Multiple Choice

1. The author uses “primary rules” instead of “customary rules” because _____.
 - A. he thinks that “customary rules” is not a legal term
 - B. he thinks that the term “customary rules” is only related to primitive communities
 - C. there is the implication that “customary rules” is not supported with much social pressure
 - D. because primary rules of obligation can be used to refer to any social structure
2. Uncertainty in the text means _____.
 - A. the lack of a system and the lack of procedure for settling the doubt
 - B. the lack of a set of separate standards
 - C. the lack of an authoritative text or an official whose declarations are authoritative
 - D. the defect of the rules a particular group of human being accepts
3. The static character of the rules is defective because _____.
 - A. there will be no means of deliberately adapting the rules to changing circumstances
 - B. there will be no process of growth in such a society
 - C. there will be neither growth nor decay
 - D. there will be the only possibility which presupposes the existence of primary rules
4. Inefficiency in the text refers to _____.
 - A. lack of final and authoritative determinations