

(第三版)

法律英语

沙丽金 ◆ 编著



高等政法院校规划教材

司法部法学教材编辑部 审定



中国政法大学出版社

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本书为司法部国家法治与法学理论研究项目

“基于语义学方法论的立法语言研究”（项目编号 07SFB2003）成果

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出版说明

长期以来,在司法部的领导下,法学教材编辑部认真履行为法学教育服务的职能,为满足我国不同层次法学教育发展的需要,在全国高等院校和科研院所的大力支持下,动员了包括中国社会科学院法学研究所、北京大学、清华大学、中国人民大学、浙江大学、厦门大学、中山大学、南京大学、武汉大学、吉林大学、山东大学、四川大学、苏州大学、烟台大学、上海大学、中国政法大学、西南政法大学、中南财经政法大学、华东政法大学、西北政法大学、国家行政学院、国家法官学院、中国人民公安大学、中央司法警官学院、广东商学院、山东政法管理干部学院、河南政法管理干部学院等单位的教学、科研骨干力量,组织编写了《高等政法院校法学主干课程教材》、《高等政法院校规划教材》等多层次、多品种的法学教材。

这些教材的出版均经过了严格的策划、研讨、甄选、撰稿、统稿、修订等程序,由一流的教授、专家、学术带头人担纲,严把质量关,由教学科研骨干合力共著,每一本教材都系统准确地阐述了本学科的基本原理和基本理论,做到了知识性、科学性、系统性的统一,可谓“集大家之智慧,成经典之通说”。这些教材的出版对中国法学教育的发展,起了非常重要的推动作用,受到广大读者的欢迎和法学界、法律界的高度评价。

教材是一定时期学术发展和教学、科研成果的系统反映,所以,随着科研的不断进步,教学实践的不断发展,必然导致教科书的不断修订。国际上许多经典的教科书,都是隔几年修订一次,一版、五版、二十版,使其与时俱进,不断成熟,日臻完善,成为经典,广为流传,这已成为教科书编写的一种规律。

《高等政法院校规划教材》出版至今已有十余年的时间,本套系列教材已修订多次,其中不少种教材多次荣获国家教育部、国家司法部等有关部门的各类优秀教材奖。由于其历史长久,积淀雄厚,已经形成自己独具特色的

II 法律英语

科学、系统、稳定的教材体系，在法学教育中，既保持了学术发展的连续性、传承性，又及时吸纳新的科研成果，推动了学科的发展与普及。它已成为国内目前最有影响力的一套法学本科教材。

进入 21 世纪，依法治国，建设社会主义法治国家是我国的基本方略。为了更好地适应新世纪法学教育的发展，为了迎接新时代的挑战，尤其是我国加入 WTO 带来的各种新的法律问题，我们结合近年来法治建设的新发展，吸收国内外法学研究和法学教育的新成果、新经验，对这套教材再次进行了全面修订。我们相信重修之规划教材定能对广大师生提供更有效的帮助。

司法部法学教材编辑部

第三版说明

《法律英语》自2007年出版以来受到广大同仁和学生的厚爱与支持，对此，作者表示深深的谢意。在近十年的时间里，本教材成为很多高校法律英语课程的指定教材，为支撑法律英语课程建设，培养懂法律、懂外语的高端法律人才起到了一定的作用。作者时刻关注着该教材的使用情况，与使用者保持联系，同时也通过自己的教学实践体验该教材在教学中的作用。为了凝练精品，现再版以全面提高教材质量。

第三版主要就两个方面进行了调整：一是全部内容的文字润色、练习优化和版式调整，二是内容的局部替换和调整。考虑到教材中的第九单元有关民事诉讼的内容理论性比较强，实务内容不足，便选用《美国联邦民事诉讼规则》中的有关条款，以增强实务性。所选条款涉及“证据展示”。证据展示制度是普通法系民事诉讼中最有特色的诉讼制度，通过该调整，可以使学习者更好地学习和了解诉讼法及其相关术语表达。另外，为了增加本书的体系化特点，把“证据”调整到第十五单元，把“国际法”调整到第十六单元。

鉴于作者水平有限，不妥之处在所难免，敬请广大读者批评指正。

沙丽金

2016年5月于褐石

编写说明

《法律英语》的编写目的旨在培养学生使用英语对基本的法律专业文本的阅读理解能力。选材以英语原版材料为基础，以反映英美法系的内容为主，涉及法律体系、法学教育、法院体系以及宪法、刑法、刑事诉讼法、民事诉讼法、侵权法、合同法、国际法等部门法，从而使学生开阔视野，对英美法系的基本制度有一定了解，并熟悉和掌握基本法律术语的英语表达，为学生用英语开展专业文献阅读和从事法律实务奠定基础。

《法律英语》全书共 16 课，供一个学年使用。每课由课前练习、课文、注释、练习、补充阅读组成。编写原则是每一课中的所有部分都从不同的角度围绕一个主题展开。课前练习解决术语和预读问题。注释主要解决课文中出现的法律知识、文化、习惯用法等方面的问题。练习注重结合学生语言技能的训练和法律知识的运用，分为阅读理解、完形填空、术语翻译、段落翻译、命题讨论。其中，阅读理解部分检查学生对课文中法律知识的理解程度，同时也可以使学生在回答问题时提高英语口语交际能力；完形填空部分主要选择与课文内容相关的材料，通过选择关键词填空，加深对相关知识的了解；术语翻译部分是将课文中出现的法律术语习惯搭配挑选出来，通过练习引起学生的重视；段落翻译的内容也与课文密切相关，通过该练习形式训练学生使用法律专业术语表述法律英语文本的内容；命题讨论是为了让学生根据所学内容就所给命题发表自己的见解，以达到训练口语的目的。另外，为了让学生了解法律实务，在书后附有经典案例。每一课的布局尽可能有机地将语言技能训练和法律知识学习相结合，通过全书的学习使学生不仅了解英美法律制度和相关部門法，也对法律文体、法律英语的特点以及法官缜密的逻辑

推理有所了解，同时提高实际运用英语的能力。

由于编者水平有限，加之时间仓促，教材中的不妥之处在所难免，希望广大读者批评指正。

编 者

2007 年 1 月

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Lesson 1 Law

The objective of the lesson is to introduce the concept of law. Students are required to use the legal terms and to express their understanding of law.

Pre-class Activities

I. Read the following terms and use them to make sentences in the legal context.

justice	n. 司法、正义	complaint	n. 诉状
enforce	v. 执行	decree	n. 判决, 法令
penalize	v. 处罚	jurisprudence	n. [英] 法律体系
anarchy	n. 无政府状态	enact	v. 颁布 (法律)
judicial	a. 司法的	statute	n. 成文法, 制定法
procedural	a. 程序的	antitrust	a. 反托拉斯的
relief	n. 救济	ordinance	n. 法令, 条例
petition	v. 请求	dealings	n. 交易, 行为
remedy	n. 救济	senate	n. 参议院, 上院
equity	n. 衡平法, 公平		
plaintiff	n. 原告		

II. Please read the text and make notes while reading. Then find a partner to do the pair-work; Ask each other at least ten questions on the text.

Text

Law

Every government is the exact symbol of its people. So it is with law. The laws and legal system of a society reflect the values of its people. The fairness of a nation's laws and the extent to which the legal system justly administers the laws is a measure of the enlightenment, humanity, and degree of civilization of its people.

Law consists of the whole body of rules applied and enforced under the authority of established government in determining what conduct is proper and should be permitted and that which should be denied or penalized.

Without law, there would be anarchy. Law is the means through which society is able to exist by providing protection for the individual; by establishing and maintaining order, health, and safety; by providing a peaceful means of dispute resolution; by providing stability and flexibility in economic relations between people; and by prohibiting conduct destructive to society. Rules reflect the society and time in which they operate. Growth of law has been pragmatic, developing from society's need for reasonableness and flexibility in its day-to-day working.

Law is a dynamic process. It is a flow, constantly changing and continually expanding. In a sense, law is similar to language. It consists of rules and has a pattern, but the rules and pattern change as they are used over a period of time. Law is best understood by viewing the legal system as a process—a means of pulling together society's needs and goals and translating them into guides for fairness and reasonableness in conduct. Courts, through judicial decisions, reflect the controlling and important social, economic, and political goals and needs of the society in which they function.

The English system of law, on which the American legal system is based, developed after the Norman Conquest in the eleventh century. Upon conquering England, William, the Conqueror, replaced the local and highly varied systems of law with a common system of law. Over the years, as the court system grew, a

system of judge-made rules began to develop. These rules became known as "the common law", because they were common to all the people in the land.

Because of the extremely rigid, frequently overly technical procedural requirements of the common-law system, people were sometimes unable to obtain fair relief in the courts. In time, some persons who felt that the form of relief was inadequate petitioned to the King directly. These petitions were turned over to the King's Lord Chancellor. This practice gave rise to a second court system, called the Court of Chancery. Remedies granted by the Court of Chancery were known as equity.

The English colonists who settled North America based their legal system on what they had previously experienced, the common-law and equity systems of Europe. The colonies, and later the states established separate court systems to administer law and equity, as what England had done. American court systems in the nineteenth century resulted in simplification of judicial procedures and elimination of equity courts as separate courts in most states. While the two court systems have been joined in most states, the terminology in law and equity cases may remain different. For example, in a "lawsuit", the "plaintiff" initiates an action by bringing a "complaint". In an equity case, the person bringing the suit is a "petitioner", who brings a "bill in equity". The law judge renders "judgment" while the equity judge renders a "decree".

While the common-law and equity system of jurisprudence in England resulted from judge-made decisions from the period following the Norman Conquest, the primary growth of law in the United States has resulted from statutes enacted by state legislatures and by Congress. Under the federal Constitution and the constitutions of all 50 states, it is the function and duty of the legislative branch of government to enact the laws (statutes) under which we live.

There exists in the American legal system, the common law and statutory law. Through historical development, some areas of law have resulted in less control by statutes than by judicial decisions. The law of contracts, for example, was developed extensively by the common-law judges during the growth of England's legal system. This is not to say that there is no legislation in this area. Legislatures have indeed enacted statutes covering contracts, but the legislation has been phrased broadly and it is the common-law rules which fill out the details of the statutes.

Other areas of law, particularly business law, are entirely the result of statutes. For example, corporation and antitrust laws are created by legislation, not court decisions.

One type of statutory law consists of ordinances, which are enactments by the legislative body of a municipal corporation (city). An ordinance is a municipal law of a general and permanent nature. Examples include fire codes, parking regulations, and city elections.

A treaty, another form of statutory law, is a written contract between nations executed with the formality customary in dealings between nations, although not necessarily in a particular and prescribed form. In the United States, the power to make treaties with foreign nations is, under the Constitution, given to the President, acting with the advice and consent of the Senate.

(Adapted from *Business Law*, Purver, Farber, Tinsley, Bjorklund, San Francisco: Bancroft-Whitney Company, 1983.)

Notes

1. Norman Conquest, 诺曼征服。1066 年, 诺曼底公爵威廉率军穿过英吉利海峡对英格兰进行军事征服, 建立诺曼底王朝, 史称“诺曼征服”。
2. William, 威廉。威廉大约于 1028 年出生在法国诺曼底的一个城镇法雷兹, 他是诺曼底公爵罗伯特一世的儿子。罗伯特于 1035 年在去耶路撒冷朝圣的归途中丧生, 他在行前就已经委任威廉为他的继位人, 因此, 威廉 8 岁时就当上了诺曼底的公爵 (1035 ~ 1087)。威廉于 1066 年 12 月 25 日在威斯敏斯特 (Westminster) 加冕为英国国王 (1066 ~ 1087 年在位), 称威廉一世 (征服王) (King William I The Conqueror)。
3. King's Lord Chancellor, 中世纪英格兰的大法官 (Lord Chancellor), 他被称为国王良心的守护者 (Keeper of the King's conscience); 他是国王法院理财法院分庭成员, 协助国王法院和理财法院的司法事务。但是, 随着衡平法的发展, Lord Chancellor 的含义逐渐发生了变化, 从行政职位演变为司法职位, “大法官”一词被用来专指发展了衡平法的“大法官法院” (High Court of Chancery) 的最高长官。
4. Court of Chancery, 大法官法院。大法官法院是指英国 15 世纪开始建立的隶属于大法官 (Chancellor) 的衡平法法院, 用以向当事人提供某些不能从普通法法院获得的法律救济。

5. the common-law and equity systems, 普通法和衡平法法律体系。在诺曼征服之后, 英国国王为了统治的便利, 在司法审判中大量适用各地的习惯法, 为了改变适用普通法而引起的不公平, 另生成一套衡平法制度。衡平法与普通法的适用是两套司法系统, 这种划分是英国法律制度的一个特色。由于这种体制中的诉讼程序复杂, 成本高昂, 难以及时保护当事人的权利。英国议会于 1875 年通过《司法条例》创设了最高法院, 取消了普通法院和衡平法院, 从而将普通法和衡平法这两种法律体系合并。
6. Congress, 美国国会, 它是美国的立法机关, 由参议院 (Senate) 和众议院 (House of Representatives) 构成。
7. ...it is the function and duty of the legislative branch of government to enact the law. 根据美国联邦宪法的三权分立原则, 美国联邦政府由三部分组成: 立法、司法、行政。其中, 立法部门的职能是制定法律。
8. ...the power to make treaties with foreign nations is ...given to the President, acting with the advice and consent of the Senate. 美国宪法赋予美国总统与外国签订条约的权力, 但是该权力的行使必须得到参议院的认可。这体现了立法部门与行政部门之间的制衡关系, “制衡” 也是美国宪法中的重要原则。

Exercises

I. Answer the following questions according to the text.

1. Why is a government the symbol of its people?
2. What is law?
3. Can you list the roles of law in a society?
4. How can law be best understood?
5. What are the events that promote the development of the English legal system?
6. Why did the people in England petition to the King?
7. What was the situation of equity courts in North America?
8. Was the statutes developed fast in North America? Why?
9. What are the comments on statutes and the common law rules?
10. What is your understanding about the ordinances?

II. Choose a proper word from the list given below for each of the following blanks, and change the form where necessary.

freedom property right rob law
money enforce harm dispute official

Laws are rules that define people's rights and responsibilities towards society. They are agreed on by society and made _____ by governments. Some people look on _____ with fear or hatred. Laws seem to limit a person's _____ to do many things he would like to. Though laws may prevent us from doing things we wish to do at the moment, laws also stop others from doing things that might _____ us. Laws make everyone's life safer and more pleasant. Without laws, we could not hold on to our _____. We could not go to bed at night expecting to wake up in the morning and find we had not been _____. 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 _____. Social life would be impossible without laws to control the way people treat each other. But unless laws are _____, they cannot protect us. Wherever people live together in communities, there will always be _____. Among animals, conflicts result in victory for the stronger or quicker. But human beings believe that in a dispute the one who is _____ should win. Sometimes the problem is so complicated that it can be settled only in a law court.

III. Translate the following words or phrases into English.

- | | | |
|---------------|---------|------------|
| 1. 法律制度 | 2. 解决争端 | 3. 稳定性和灵活性 |
| 4. 法院判决 | 5. 开始起诉 | 6. 商法 |
| 7. (市/镇) 自治机关 | 8. 联邦宪法 | 9. 执行合同 |
| 10. 规定格式 | | |

IV. Translate the following passage into Chinese.

One of the foundations of our society is the belief that ours is a nation committed to the rule of law. No person is above the law. We use law to regulate people in their relationships with each other, and in their relationships with government. Law reflects our social aspirations, our culture, and our political and economic situation. It provides mechanisms for resolving disputes and for controlling