法律英语

Legal English

◇ 吴喜梅　编著

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前　言

中国的入世，加速了中国市场与国际市场的接轨。我国经济贸易的发展将需要大批既熟悉国际规则又通晓外语的复合型法律人才。为此，我国高等法学教育将对学生的英语交际能力的培养列为入世后的工作重点。开设法律英语课程无疑是完成这一重点工作的不可缺少的手段。

根据教育部的规定，法律英语课程是为大学法学专业三、四年级学生或硕士研究生开设的必修课程。这是一门难度较大的交叉性学科。一本可读性强，与学生能力相适应的教材将有助于学生对这一课程的掌握，尤其是有助于学生法律英语交际能力的培养。

本人在多年法律英语的教学过程中，收集了大量中外法律英文资料。通过对这些资料的研究、整理、加工，编写成 *Legal English*，作为大学法律英语教材。本教材深入浅出地介绍了法学理论的基本框架，几乎囊括了所有法律部门，不仅包括实体法规范而且包括程序法规范，不仅有一般知识性介绍而且有典型案例分析。

本教材按单元编写，每单元设有 Text, New Words, Phrases & Expressions, Notes, Word Study, Exercises 栏目，并在 Exercises 中突出语言实际表达能力的训练，以确保学生在有限的课时内尽可能多地了解和欣赏到世界法律文化之精华，同时学习和掌握最基本的法律英语术语，从而达到用英语熟练地表达法律思想和观点的目的。

在本教材的编写过程中，郑州大学法学院领导给予编者很多关心和鼓励；在资料的收集过程中，郑州大学法学院资料室的张幸

枝老师，严正老师和周海燕老师都给予了许多帮助。本教材的出版得到河南大学出版社王超明编辑的大力支持。在此谨向他们表示由衷的谢意。

本人水平有限，书中疏忽失误之处定然不少，真诚地期盼师长和同道的指点和批评，欢迎读者提出意见。

吴喜梅

2001 年 12 月于郑州

CONTENTS

UNIT 1 LAW IN GENERAL

Text

A theory of law must begin by defining its object matter—law. However, the word law is very difficult to define. Even if we confine our attention to the legal theory of the last 150 years and neglect classical and medieval speculation about the nature of law, we shall find that few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question "What is law?"

One popular view of law holds that law is a set of rules that govern the actions of people in a community.

Another view of law is that it is a formal means of social control through enforcement of social norms by the coercive apparatus of a political community. This view is often stressed by legal positivists. In fact, it is the prime function of the body of law known as the criminal law, for it is to maintain some coercive orders, which react against certain events, regarded as undesirable because detrimental to society, with such coercive acts as deprivation of life, liberty or economic values of the responsible individual.

Most observers, however, believe that characteristic of law lies in its fusion of different types of rule. The above definition of law obscures more of law than that it reveals. For instance, law not only gives orders to require persons to do things and not to do, but also confers powers on them and offers facilities for their free creation of legal rights and duties within the coercive framework of the law. Legal rules defining the ways by which valid contracts or wills or marriage are made would be typical examples of such kind. So in a word, as society becomes more complex, the law has taken on many aspects and changing character. In attempting to define law, it is helpful to look at all its functions and leave it a wider content.

Law may be classified in many ways. They are sometimes classified as substantive law and procedural law. Substantive law defines rights and duties, and procedural law establishes the procedures by which these rights and duties are enforced. To be brief, procedural law determines how a lawsuit is begun, how the trial is conducted, how an appeal is taken, and how a judgment is enforced.

Law is also frequently classified into public law and private law, which is so basic for the systematization of law by modern legal science. Until this day it has not been possible to achieve an entirely satisfactory definition of the difference. According to the majority view, we are confronted here with a classification of legal relationships: private law represents a relationship between coordinate, legally equal-ranking subjects; public law, a relationship between a super and a subordinate subject. That is, between two subjects of whom one has a higher legal value as com-

pared with that of the other. The typical public-law relationship is that between state and subject. While constitutional law, administrative law and criminal law belong to public law, private law includes the subjects of contracts, torts and property.

The phrase "source of law" has more than one meaning. It can mean not only the methods and procedures by which law is created and developed, but also the origin from which particular laws derive their authority or coercive force. Legislation and custom are often referred to as the two "sources" of law. And if international law is considered, then only custom and treaty, not legislation, can be considered to be the "source" of this law.

The expression, however, is not used in a juristic sense, if such conceptions are designated which actually influence the law-creating or law-applying function, as moral and political principles, legal theories, expert views. These sources must be distinguished from sources in the sense of a positivistic law theory. The difference between them is this: the latter are legally binding, whereas the former are not, unless someday a legislature delegates them as legal sources, that is, makes them mandatory.

Laws require interpretation if they are to be applied to concrete cases. The myths that obscure the nature of the judicial processes will be dispelled by realistic study, so it is patent that the open texture of law leaves a vast field for a creative activity, which some call legislative. Neither in interpreting statutes nor in interpreting precedents are judges confined to the alternatives of blind, arbitrary choice, or "mechanical" deduction from rules with predetermined meaning. Very often their choice is guided by an assumption that the purpose of the rules which they are in-

terpreting is a reasonable one, so that the rules are not intended to work injustice or offend settled moral principles. Judicial decision, especially on matters of high constitutional import, often involves a choice among many different moral values, and not merely the application of some single outstanding moral principle. Besides it is folly to believe that where the meaning of the law is in doubt, morality always has a clear answer to offer. At this point judges may again make a choice that is neither arbitrary nor mechanical; and here often display characteristic judicial virtues: impartiality and neutrality in surveying the alternatives. The special appropriateness of judge-making decision to the changing society explains why some feel reluctant to call such judicial activity legislative, considering the interest of all that will be affected and the proper application of some acceptable general principles as a reasoned basis for decision. No doubt because a plurality of such principles is always possible it cannot be demonstrated that a decision is uniquely correct, but it may be made acceptable as the reasoned product of informed impartial choice. In all this we have the "weighing" and "balancing" characteristic of the effort to do justice between competing interests.

New Words

paradoxical *a.* 荒谬的;自相矛盾的
govern *vt.* 支配,决定,规制
coercive *a.* 强制性的
apparatus *n.* 机构,机关
positivist *n.* 实证主义者

criminal *a.* 犯罪的,刑事的
detrimental *a.* 有害的,不利的
fusion *n.* 融合,合成
contract *n.* 合同
will *n.* 遗嘱
lawsuit *n.* 诉讼
appeal *n.* 上诉
tort *n.* 侵权
treaty *n.* 条约
mandatory *a.* 强制性的;命令的
texture *n.* 结构
arbitrary *a.* 任意的;专断的
statute *n.* 法规;成文法
deduction *n.* 推论
offend *vt.* 冒犯;违犯

Phrases & Expressions

a theory of law(the legal theory) 法律理论;法律学说
confine...to 将……限定在……方面
the nature of law 法律性质
social norms 社会标准;社会规范
coercive order 强制性规范
the criminal law 刑法
deprive...of 将……剥夺
confer...on... 授予(称号;权利)
substantive law 实体法
procedural law 程序法

public law 公法
private law 私法
be confronted with 面对……;面临……
constitutional law 宪法
administrative law 行政法
international law 国际法
the judicial process 司法程序
judicial decision 司法裁决
It is patent that.... ……是显然的

Notes

1. Even if we confine our attention to the legal theory of the last 150 years and neglect classical and medieval speculation about the nature of law, we shall find that few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question "What is law?"

   即使我们将视线仅投向近 150 年以来的法律学说而不去考虑古代和中世纪关于法律性质的理论观点,我们也将仍然会发现在有关人类社会的问题中,很少有像"什么是法律?"这一问题那样被如此多的思维严密的思想家不断地提出,而对其回答又是如此的不同、怪异,甚至是荒谬的。

2. legal positivists

   法律实证主义者。法律实证主义者以实证主义哲学为其思想基础,认为法律的效力来源于可观察的现象及实在的事实,而不是抽象的概念。

3. In fact, it is the prime function of the body of law known as

the criminal law, for it is to maintain some coercive orders, which react against certain events, regarded as undesirable because detrimental to society, with such coercive acts as deprivation of life, liberty or economic values of the responsible individual.

事实上，这是被称做刑法的法律部门的主要功能。因为刑法是用诸如剥夺生命、自由和财产等强制性手段来保障强制性规范的实施。而这些强制性规范是用来制裁对社会有害的，不为社会所认可的行为的。

4. According to the majority view, we are confronted here with a classification of legal relationships: private law represents a relationship between coordinate, legally equal-ranking subjects; public law, a relationship between a super and a subordinated subject. That is, between two subjects of whom one has a higher legal value as compared with that of the other.

大多数人认为，公法和私法可根据法律关系分类：私法调整平等主体之间的关系；公法调整不平等主体之间的关系。也就是说，主体之间一方较另一方具有较高的法律地位。

5. Neither in interpreting statutes nor in interpreting precedents are judges confined to the alternatives of blind, arbitrary choice, or "mechanical" deduction from rules with predetermined meaning.

法官在解释成文法或案例法时，既不能采取盲目的、专断的解释方法，也不能从规则的既定含义中进行机械地推理。

Word Study

1. **valid** *a.* 有效的；有法律效力的

A valid contract is one that is in all respects in accordance with the legal requirements for a contract.

This contrast of sale of goods will be valid for three months.

validate *vt.* 使生效;批准

The parties have entered into agreement to the way to validate the convention.

validity *n.* 有效,效力

If a promise results from fraud or duress, its validity can be challenged for a lack of meeting of minds.

2. **trial** *n.* 审问,审判

try *vt.* 审问,审判

At the lowest level are the trial courts, which have fact-finding as their primary function.

In most actions for damages, the parties have a right to have the facts tried by jury.

3. **legislation** *n.* 立法;法规

The accepted social morality and wider moral ideals enter into law either abruptly and avowedly through legislation, or silently and piecemeal through the judicial process.

Legislation and custom are often referred to as the two "sources" of law.

legislature *n.* 立法机关

In England, where there are no formal restrictions on the competence of the supreme legislature, its legislation may yet no less scrupulously conform to justice or morality.

Each state retains a substantial degree of autonomy. Each has its own constitution, statutes made by its own legis-

lature, and a body of case law created by its own courts.

legislative *a.* 立法的

Impeachment is a charge of misconduct brought against a government official by a legislative body.

4. **enforce** *v.* 实施；执行

enforceable *a.* 可执行的

Parties are allowed to create rights and duties between themselves, and the state will enforce them through legal machinery.

For a contract to be enforceable, four requirements must be met.

5. **assume** *v.* 承担；假设

assumption *n.* 承担；假设

The detriment must be a special kind of detriment—a legal determent—that means the surrendering of a legal right or the assuming of a legal burden.

Assume that the court grants the mother's request for custody because, given the ages of the children, the court believes that it is in the children's best interest to remain with their mother.

Exercises

Ⅰ. Retell the main idea of the text in English.

Ⅱ. Fill in the blanks with the words and expressions in the box.

avowedly	liability	upon	conceded
justice	conform	express	positivist
competence	as		

The law of every modern state shows at a thousand points the influence of both the accepted social morality and wider moral ideals. These influences enter into law either abruptly and (1) _____ through legislation, or silently and piecemeal through the judicial process.

In some systems, as in the United States, the ultimate criteria of legal validity explicitly incorporate principles of (2) _____ or substantive moral values; in other systems, (3) _____ in England, where there are no formal restrictions on the (4) _____ of the supreme legislature, its legislation may yet no less scrupulously (5) _____ to justice or morality. The further ways in which law mirrors morality are myriad, and still insufficiently studied: statutes may be a mere legal shell and demand by their (6) _____ terms to be filled out with the aid of moral principles; the range of enforceable contracts may be limited by reference to conceptions of morality and fairness; (7) _____ for both civil and criminal wrongs may be adjusted to prevailing views of moral responsibility. No(8) _____ could deny that these are facts, or that the stability of legal systems depends in part(9) _____ such types of correspondence with morals. If this is what meant by the necessary connection of law and morals, its existence should be(10) _____ .

Ⅱ. After you read the following passage, write out a summary in

English with about 70 to 90 words.

It may be said that the distinction between a good legal system which conforms at certain points to morality and justice, and a legal system which does not, is a fallacious one, because a minimum of justice is necessarily realized whenever human behavior is controlled by general rules publicly announced and judicially applied. Indeed we have already pointed out, in analyzing the idea of justice, that its simplest form (justice in the application of the law) consists in no more than seriously taking the notion that what is to be applied to a multiplicity of different persons is the same general rule, undeflected by prejudice, interest, or caprice. This impartiality is what the procedural standards known to English and American lawyers as principles of "Natural Justice" are designed to secure. Hence, thought the most odious laws may be justly applied, we have, in the bare notion of applying a general rule of law, the germ at least of justice.

Further aspects of this minimum form of justice that might well be called "natural" emerge, if we study what is in fact involved in any method of social control-rules of games as well as law, which consists primarily of general standards of conduct communicated to classes of persons, who are then expected to understand and conform to the rules without further official direction. If social control of this sort is to function, the rules must satisfy certain conditions: they must be intelligible and within the capacity of most to obey, and in general they must not be retrospective, though exceptionally they may be. This means that, for the most part, those who