

大学英语选修课系列教材



World Famous Readings in Law

# 世界法律名著选读

侯一麟 编 / 沙丽金 王云霞 选注



清华大学出版社  
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IN LAW

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## 内 容 提 要

本书收集了世界法律史上各重要发展时期经典著作的重要篇章,从第一部成文法典到 20 世纪国际法,主线明析,详略得当,重要法学家的思想精髓都包括其中。注释者充分考虑到了法律英语的特点和各篇章的难点、重点,为读者学习法律英语和法律原著提供了实用而有效的指导。

读者对象:法律专业师生,大学英语四、六级后学生,英语爱好者。

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# 学习外语与立国兴邦

清华大学 侯一麟

一个国家、一个民族,对于学习外语津津乐道、乐此不疲,这是一件大好事。这个民族肯定会兴旺,这个国家必然会昌盛。

其中的原因很明显:一个国家、一个民族,不固步自封,不闭关锁国,不夜郎自大,而是敞开胸怀,开动脑筋,主动、诚恳、虚心地向其他国家学习,向其他民族学习,学习、借鉴、吸收全人类的一切优秀文明成果,长此以往,怎么会不兴旺昌盛呢?

学习外语到底是为了什么?不只是查资料,学习国外高新技术;不只是出国留学。外语是一种技能,也是一种文化素质,对于大学生来说,还是很重要的一种文化素质。学习外语的过程也是提高人的基本素质的过程:可以开阔胸怀,拓宽视野,增加看待事物、分析问题的角度,提高对不同事物的宽容度、理解力和接受性,使我们能够对世界文化有比较深入的了解,比较透彻和准确的把握,比较高的批判吸收能力。

如何才能学好外语呢?主要有三条:

- 一、不要依赖教师,主要靠自己。教师只是指导、教导、辅导,自己多学多用才能领会,掌握。
- 二、主要是课下学。透彻的理解、准确熟练的掌握全是课下的功夫。
- 三、多用才能学好。一是日常用,二是工作学习中用,后者尤其关键。

现在人们日常用外语逐步多一些了,但在工作学习中,用还远

未跟上。应当做到寓学于用,学用结合,以用促学。

通过外语学习新知识,是事半功倍的事情。学,不仅要学最新的、技术的、本专业的东西;几千年的人类文明史中有许多经世不变的道理,对我们来说也是新知识,也是要学的。社会的发展,科学技术的进步,是以正确把握和处理人与自然的关系、人与人之间的关系为基础的。这些道理和关系就是人文,就是广义的文史哲。

我们习惯中办事凭经验缺理性,重实践轻理论,富清谈乏思辩,多抱怨少方案,结果往往造成思维不够严密,设计不够科学,论证不够彻底,讲事缺乏说服力。通过阅读英语文史哲读物,学习新知识,培养外语应用能力,提高文化素质,这就是编注本书及其它英语文史哲读物的目的。

我们的大学生做到知识面宽,外语能力强,文化素质高,我国的经济、社会、文化各项事业就会发展得更快,中华民族的繁荣昌盛就会来得更早。

这是我们的期待和企盼。

在这本《世界法律名篇选读》中我们还选用江平教授发表的《罗马法精神在中国的复兴》一文供读者参考。

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# 汉穆拉比法典

《汉穆拉比法典》是古巴比伦王国第六代国王汉穆拉比(公元前 1792—前 1750 年)颁布的法典,是东方法典的典型代表,楔形文字法系的经典作品。分序言、正文和结语三个部分。本节选为正文的最后 54 条。这些条文充分反映出法典的东方奴隶制特征和人类早期立法水平。

## Hammurabi Code

228. If a builder has built a house for a man<sup>①</sup> and has completed it, he shall give him as his fee two shekels<sup>②</sup> of silver per SAR<sup>③</sup> of house.
229. If a builder has built a house for a man and has not made strong his work, and the house he built has fallen, and he has caused the death of the owner of the house, that builder shall be put to death.
230. If he has caused the son of the owner of the house to die, one shall put to death the son of that builder.
231. If he has caused the slave of the owner of the house to die, he shall give slave for slave<sup>④</sup> to the owner of the house.
232. If he has caused the loss of goods, he shall render back<sup>⑤</sup> whatever he has caused the loss of, and because he did not make strong the house he built, and it fell, from his own goods he shall rebuild

---

① a man: 指自由人

② shekel: 舍克勒。古希伯来或古巴比伦的衡量单位,约 8.3 公分

③ SAR: 沙。约 35 平方尺

④ slave for slave: 以奴还奴,犹“以眼还眼”(an eye for an eye)

⑤ render back: 归还



the house that fell.

233. If a builder has built a house for a man, and has not jointed his work<sup>①</sup>, and the wall has fallen, that builder at his own cost shall make good<sup>②</sup> that wall.
234. If a boatman has navigated a ship of sixty GUR<sup>③</sup> for a man, he shall give him two shekels of silver for his fee<sup>④</sup>.
235. If a boatman has navigated a ship for a man and has not made his work trustworthy, and in that same year that he worked that ship it has suffered an injury<sup>⑤</sup>, the boatman shall exchange that ship or shall make it strong at his own expense and shall give a strong ship to the owner of the ship.
236. If a man has given his ship to a boatman, on hire<sup>⑥</sup>, and the boatman has been careless, has grounded the ship, or has caused it to be lost, the boatman shall render ship for ship to the owner.
237. If a man has hired a boatman and ship, and with corn, wool, oil, dates<sup>⑦</sup>, or whatever it be as freight, has freighted her, that boatman has been careless and grounded the ship, or has caused what is in her to be lost, the boatman shall render back the ship which he has grounded and whatever in her he has caused to be lost.
238. If a boatman has grounded the ship of a man and has refloated her, he shall give money to half her price<sup>⑧</sup>.
239. If a man has hired a boatman, he shall give him six GUR of corn per year.

---

① and has not jointed his work: 没有把房子造得很坚固

② make good: 赔偿

③ GUR: 库鲁。约合 121 公升

④ for his fee: 作为报酬。fee = as payment in return

⑤ suffered an injury: 出现损坏情况(如漏水等)

⑥ on hire: (供)出租

⑦ date: 枣

⑧ If a boatman...her price: 如果船工把船主的船弄沉后又使其再次浮起来,他将按船价的一半进行赔偿

240. If a ship that is going forward has struck a ship at anchor<sup>①</sup> and has sunk her, the owner of the ship that has been sunk whatever he has lost in his ship shall recount before God<sup>②</sup>, and that of the ship going forward which sunk the ship at anchor shall render to him his ship and whatever of his was lost.
241. If a man has taken an ox on distraint<sup>③</sup>, he shall pay one-third of a mina<sup>④</sup> of silver.
242. If a man has hired a working ox for one year, he shall pay four GUR of corn as its hire.
243. If a milch cow<sup>⑤</sup>, he shall give three GUR of corn to its owner.
244. If a man has hired an ox or sheep and a lion has killed it in the open field, that loss is for its owner forsooth<sup>⑥</sup>.
245. If a man has hired an ox and through neglect or by blows<sup>⑦</sup> has caused it to die, ox for ox to the owner of the ox he shall render.
246. If a man has hired an ox and has crushed its foot or has cut its nape<sup>⑧</sup>, ox for ox to the owner of the ox he shall render.
247. If a man has hired an ox and has caused it to lose its eye, he shall pay half its price to the owner of the ox.
248. If a man has hired an ox, and has crushed its horn, cut off its tail, or pierced its nostrils, he shall pay a quarter of its price<sup>⑨</sup>.

---

① a ship at anchore: 停泊的船

② recount before God: 在神面前叙说。意即“对神起誓。”这是古巴比伦法中常见的举证方式,其证明被认为最有效

③ on distraint: 扣押财产

④ mina: 明那(计量单位)。约半公斤

⑤ If a milch cow: 此句为略语,全句应为 If a man has hired a milchcow. milch cow: 乳牛。

⑥ If a man...its owner forsooth: 如果自由人租用的牛或羊在野外被狮子弄死,损失当然由牛或羊的主人承受。forsooth: *ad.* 当然

⑦ through neglect or by blows: 由于管理不善或打伤(致死)

⑧ nape: *n.* 颈

⑨ If a man...a quarter of its price: 如果自由人把租来的牛的牛角折断了,或把牛尾巴割断了,或刺穿了牛鼻孔,他要按牛的价格的四分之一进行赔偿

249. If a man has hired an ox, and God has struck it<sup>①</sup> and it has died, the man who has hired the ox shall swear before God and shall go free.
250. If a wild bull in his charge<sup>②</sup> has gored<sup>③</sup> a man and caused him to die, that case has no remedy.
251. If the ox has pushed a man, by pushing has made known his vice<sup>④</sup>, and he has not blunted<sup>⑤</sup> his horn, has not shut up his ox, and that ox has gored a man of gentle<sup>⑥</sup> birth and caused him to die, he shall pay half a mina of silver.
252. If a gentleman's servant, he shall pay one-third of a mina of silver.
253. If a man has hired a man to reside<sup>⑦</sup> in his field and has furnished him seed, has entrusted him the oxen<sup>⑧</sup> and harnessed them for cultivating the field – if that man has stolen the corn or plants, and they have been seized in his hands, one shall cut off his hands.
254. If he has taken the seed, worn out the oxen, from the seed which he has hoe he shall restore<sup>⑨</sup>.
255. If he has hired out the oxen of the man or has stolen the corn and has not caused it to grow in the field, that man one shall put him to account<sup>⑩</sup> and he shall measure out sixty GUR of corn per GAN of land.

- 
- ① God has struck if: 非租用者致死。西方人发誓必言: God struck me dead, if I... (如果我...天打五雷轰)
- ② a wild bull in his charge: 奔跑中的野牛。that case has no remedy: 这种案子没有赔偿问题
- ③ gore: *vt.* 抵伤
- ④ vice: *n.* (马、犬等)牲口的恶癖
- ⑤ blunt: *vt.* 弄钝
- ⑥ a man of gentle birth: 生来自由之人,贵族出身的人,即下一条中出现的 gentleman
- ⑦ reside: *v.* 居住
- ⑧ has entrusted him the oxen: 把牛交给他
- ⑨ If he has...he shall restore: 如果他把种子据为己有或使牛劳累过度,则应用他所种的谷物来赔偿
- ⑩ put him to account: 使之受检举

256. If his compensation he is not able to pay, one shall remove the oxen from that field<sup>①</sup>.
257. If a man has hired a harvester, he shall give him eight GUR of corn per year.
258. If a man has hired an ox-driver, he shall give him six GUR of corn per year.
259. If a man has stolen a watering machine from the meadow, he shall give five shekels of silver to the owner of the watering machine.
260. If he has stolen a watering bucket or a harrow<sup>②</sup>, he shall pay three shekels of silver.
261. If a man has hired a herdsman<sup>③</sup> for the cows or a shepherd for the sheep, he shall give him eight GUR of corn per annum.
262. If a man, ox, or sheep to [this section is defaced<sup>④</sup>].
263. If he has caused an ox or sheep which was given him to be lost, ox for ox, sheep for sheep, he shall render to their owner.
264. If a herdsman who has had cows or sheep given him to shepherd, has received his hire, whatever was agreed, and his heart was contented, has diminished, the cows, diminished the sheep, lessened the offspring, he shall give offspring and produce according to the tenour of his bonds<sup>⑤</sup>.
265. If a shepherd to whom cows and sheep have been given him to breed, has falsified<sup>⑥</sup> and changed their price, or has sold them, one shall put him to account, and he shall render cows and sheep

---

① If...that field: 此条英译似有问题。据此英译文可译为“倘彼无力偿付彼所应偿之物,牛则被牵出该地。”而根据俄文本转译的中文本是:“倘彼无力偿付彼所偿付之物,则应用牲口将彼撕裂于此田中”

② harrow: *n.* 耙

③ herdsman: *n.* 牧牛人

④ this section is defaced: 此部分残缺

⑤ If a herdsman...his bonds: 如果为他人放牧牛羊的牧人,收领雇佣金并已表示满意,而牛羊数量减少,增殖率少,该牧人则应按契约交付增殖数额及收入

⑥ falsify: *vt.* 伪造

- to their owner tenfold<sup>①</sup> what he has stolen.
266. If in a sheepfold<sup>②</sup> a stroke of God<sup>③</sup> has taken place or a lion has killed, the shepherd shall purge<sup>④</sup> himself before God, and the accident to the fold the owner of the fold shall face it.
267. If a shepherd has been careless and in a sheepfold caused a loss to take place, the shepherd shall make good the fault of the loss which he has caused to be in the fold and shall pay cows or sheep and shall give to their owner.
268. If a man has hired an ox, for threshing<sup>⑤</sup>, twenty KA<sup>⑥</sup> of corn is its hire.
269. If he has hired an ass<sup>⑦</sup>, for threshing, ten KA of corn is its hire.
270. If he has hired a calf<sup>⑧</sup> (goat), for threshing, one KA of corn is its hire.
271. If a man has hired oxen, a wagon, and its driver, he shall give one hundred and eighty KA of corn per diem<sup>⑨</sup>.
272. If a man has hired a wagon by itself, he shall give forty KA of corn per diem.
273. If a man has hired a labourer, from the beginning of the year till the fifth month, he shall give six ŠE<sup>⑩</sup> of silver per diem; from the sixth month to the end of the year, he shall give five ŠE of silver per diem.
274. If a man shall hire an artisan<sup>⑪</sup>

① tenfold: 十倍。fold 在此意为“倍”

② sheepfold: *n.* 羊栏

③ a stroke of God: 天灾

④ purge: *vt.* 以认错作为…的补偿

⑤ threshing: *n.* 打谷

⑥ KA: 卡(计量单位), 约 0.4 公升

⑦ ass: *n.* 驴

⑧ calf: *n.* 小牛

⑨ per diem: (拉丁文)每日

⑩ ŠE: 塞(计量单位), 约 0.05 公分

⑪ artisan: *n.* 工匠

- (a) the hire of a . . . . . five ŠE of silver
- (b) the hire of a brick-maker . . . . . five ŠE of silver
- (c) the hire of a tailor . . . . . five ŠE of silver
- (d) the hire of a stone-cutter . . . . . ŠE of silver
- (e) the hire of a . . . . . ŠE of silver
- (f) the hire of a . . . . . ŠE of silver
- (g) the hire of a . . . . . carpenter four ŠE of silver
- (h) the hire of a . . . . . four ŠE of silver
- (i) the hire of a . . . . . ŠE of silver
- (j) the hire of a builder . . . . . ŠE of silver

*per diem* he shall give.

- 275. If a man has hired a (boat) *per diem*, her hire is three SE of silver.
- 276. If a man has hired a fast ship, he shall give two and a half SE of silver *per diem* as her hire.
- 277. If a man has hired a ship of sixty GUR, he shall give one-sixth of a shekel of silver *per diem* as her hire.
- 278. If a man has bought a manservant or a maidservant, and he has not fulfilled his month and the bennu sickness<sup>①</sup> has fallen upon him, he shall return him to the seller, and the buyer shall take the money he paid.
- 279. If a man has bought a manservant or a maidservant and has a complaint, his seller shall answer the complaint<sup>②</sup>.
- 280. If a man has bought in a foreign land the manservant or the maidservant of a man, when he has come into the land, and the owner of the manservant or the maidservant has recognized his manservant or his maidservant, if the manservant or maidservant are natives without price he shall grant them their freedom<sup>③</sup>.

① bennu sickness: 癩痢病

② If a man...the complaint: 如自由人因购买奴婢而涉讼,则由卖主负责该诉讼

③ If the manservant...their freedom: 如果此奴婢为本国人,则应无偿予以自由

281. If they are natives of another land the buyer shall tell out before God the money he paid, and the owner of the manservant or the maidservant shall give to the merchant the money he paid, and shall recover his manservant or his maidservant<sup>①</sup>.
282. If a slave has said to his master "Thou art not my master," as his slave one shall put him to account and his master shall cut off his ear.

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① shall recover his manservant or maidservant: 此部分意为“赎回其奴婢”

# 法 律 篇

柏拉图 (Plato, 公元前 427—公元前 347 年), 古希腊哲学家、政治法律思想家。其法律思想以正义为基础, 认为法律是维护正义的手段, 倡导贤人政治, 晚年开始提倡法治。《法律篇》为其晚年代表作, 与其早期名著《理想国》相比《法律篇》更注重法律的作用, 更倾向于混合政体(即君主制与民主)制的结合。

## The Laws

### Book 3

#### TWO MOTHER-CONSTITUTIONS

**CLEINIAS**<sup>①</sup>: Yes, when we think back over the argument we' ll certainly try to remember that. But you wanted to explain what the legislator ought to aim at in the matter of friendship and good judgement and liberty. So tell us now what you were going to say.

**ATHENIAN**<sup>②</sup>: Listen to me then. There are two mother-constitutions, so to speak, which you could fairly say have given birth to all the others. Monarchy<sup>③</sup> is the proper name for the first, and democracy for the second. The former has been taken to extreme lengths by the Persians<sup>④</sup>, the latter by my country; virtually all the others, as

---

① Cleinias: 谈话者之一

② Athenian: *n.* 雅典人。谈话者之一

③ monarchy: *n.* 君主制

④ Persian: *n.* 波斯人



I said, are varieties of these two. It is absolutely vital for a political system to combine them, if (and this is of course the point of our advice, when we insist that no state formed without these two elements can be constituted properly) – if it is to enjoy freedom and friendship allied<sup>①</sup> with good judgement.

**CLEINIAS:** Of course.

**ATHENIAN:** One state was overeager in embracing only the principle of monarchy, the other in embracing only the ideal of liberty; neither has achieved a balance between the two. Your Spartan<sup>②</sup> and Cretan<sup>③</sup> states have done better, and time was when you could say much the same of the Athenians and Persians, but things have changed since then. Let's run through the reasons for this, shall we?

**CLEINIAS:** Yes, of course – if, that is, we mean to finish what we have set out to do.

## Book 3

### RECAPITULATION<sup>④</sup>

**ATHENIAN:** The point is one we've made before.

**MEGILLUS:** What?

**ATHENIAN:** We said that a lawgiver should frame his code with an eye on three things: the freedom, unity and wisdom of the city for which he legislates. That's right, isn't it?

**MEGILLUS:** Certainly.

**ATHENIAN:** That was why we selected two political systems, one au-

---

① allied: *a.* 性质上有密切联系的

② Spartan: *n.* 斯巴达人

③ Cretan: *n.* 克里特人

④ Recapitulation: 扼要的重述