高等院校法学教材

AN ADVANCED COURSE BOOK OF THE ENGLISH LANGUAGE OF LAW

法律英语高级教程

主编/宋　雷

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前 言

(PREFACE)

法律语言(Legal Language 或 the Language of Law)属应用语言学(applied linguistics)范畴,在我国被称为法律英语(Legal English 或 the English Language of Law)。近年来,随着世界政治、法律、经济、贸易、金融、文化等交流活动的日益发展,以及中国加入 WTO,法律语言学作为一种应用性极强的交叉性学科(Interdisciplinary Subject),其重要性日渐为学术界所关注。有关法律英语的学习和翻译在我国也日益普及,相关教材不断问世,然而严格地讲,能够达到一定深度,即达到法律语言真正应用程度的教科书目前在国内却十分鲜见。基于此目的,我们编写了这本教程,旨在让读者认识"真正的"为"法律人"(Lawyer)所运用的法律语言,帮助读者提高法律英语水平,让他们最终能掌握和比较熟练地运用法律英语,开展相关工作和进行研究。

法律英语的涉及面极广,有关材料本身可大致分为两大类:即 Black Letter Law(严谨的法律原则,包括法律、法规、条例、命令、合同等等)和 Literature(法学著述)。本教程从此着手,所收材料的文体包括正式的法律条文、案例、合同、判决、书评、论文等各个方面,内容涉及法律语言学以及许多法律部门,多属于最新的知识领域范畴。

鉴于课文的语篇、语义及语用结构等均属中等以上难度,故编者对不少课文都作有比较详尽的注释。此外,每课课文之后还附有大量的涉及法律英语的词汇、语法、阅读理解等练习。更具特色的是每课练习均设有一定的法律英语翻译知识及技巧简介,并配有相关的翻译练习,以期帮助读者提高法律英语的翻译能力。

本教程编写人员为:宋雷、郑达轩、熊德米、张家慧、高尚昆、朱元庆等人。其中,宋雷主要负责材料收集,13、14、15、16、17 课的编写以及全书统编、刊校工作,并参与 20 课部分编写;郑达轩主要负责 1、9、10、12、21 课的编写,并参与 6、7、8、9、18、19 课部分编写;熊德米负责 2、3、4、5 课的编写;张家慧负责第 20、6、7、8、9 课的部分编写及其他课文的校对和刊误;高尚昆负责 18、19、20 课部分编写;朱元庆负责 6、7、8、9 课部分编写。

本书为"重庆市高等教育面向 21 世纪教学内容和课程体系改革计划"首批科研项目成果。

教程编写是件极科学和极艰巨的任务,鉴于编者的经验、水平等关系,错误在所难免,恳请读者批评指正。

宋 雷

2001 年 7 月于重庆西南政法大学

CONTENTS

LESSON ONE

Text

Law, Language, and Thinking like a Lawyer

SCOPE AND PURPOSE

"We must think things not words, or at least we must constantly translate our words into the facts for which they stand, if we are to keep to the real and the true", said Holmes. Holmes left it at that,[1] an isolated ornament dropped to float in no readily discernible context of an address at a bar association meeting.

In this less frequently quoted of his legacy of magisterial pronouncements, he touched upon a broad range of age－old conundrums of philosophy, psychology, and education: the "reality" consisting of what he called facts and things, and the relationship between this reality and the process of "thinking". Even more intriguing is the relationship of language to both facts and thinking. As usual, Holmes did not stop for side trips of interminable definition of philosophical subtleties, including such questions as the extent to which one can think at all except in language.[2]

His adjuration is readily recognizable as his own unique version of the ideal of "thinking like a lawyer". And he omitted what is missing from both versions: recognition that they state objectives, no less so than exhortations to virtue itself.[3] The crucial question is: How can such thinking be taught and achieved?

My objective in the present endeavor is to examine aspects of the nature of language as they bear upon the processes of teaching and learning, the continuing life-long development of learning by experience, and the consequent operational effectiveness toward which teaching and learning are directed. Its immediate context is the teaching, learning, and operational functioning of lawyers. In my analysis of the structure and functioning of language, I have taken into account its application to the learning process in education generally, but specific adaptation to

areas beyond the law is left to others.

The pervasive durability of the problem is attested by the current cyclical resurgence of interest in teaching in education generally, and in the legal profession's equally cyclical self-criticism. Implicit in most of the latter is the unexamined difference between what may be "learnable", and what is "teachable" at law school.[4]

My thesis can be stated briefly. The importance of competence in the traditional skills of grammar and composition is not to be minimized but, while some improvement in these skills may be an incidental consequence, this is not the subject of the present study. The vaunted aspiration of legal education to train its products to "think like lawyers" is a heroic objective. My concern is with how this can be achieved. It is my conviction, now confirmed by many years of feedback from former students, that a conscious, analytical awareness of the structure and functioning of language provides a foundation for enhanced sophistication and effectiveness in the professional operations of the practicing lawyer, legal scholar, and law teacher. My focus goes beyond language as a medium of communication, vital though this is, reaching to the process of precise analysis, whether this process precedes or accompanies its verbal expression. The structure of language as a symbolic system is such as to create a world of its own, setting up barriers against the effective handling of the underlying world of behavior, the "real" world of persons, places, things, and their interaction. Moreover, language is the product of analytical processes that are learned with the language, influencing and in some measure determining observational habits and patterns of thinking, particularly at abstract levels[5]. This is acutely exemplified by rules, principles, and the doctrinal structure of the law.

Any venture into the thickets of philosophy, psychology, and linguistics hazards the threat of hidden mine fields. Perhaps a more formidable obstacle is what Walter Wheeler Cook called the "anathema to the average member of the legal profession" of "that supposedly useless study known as philosophy". Much of the literature on language may well be "theoretical" in the sense expressed by some of my students in commenting on courses in linguistics; "So what?" they have asked. "What do we do with it?"

It may well be that some of the inconclusive speculations of philosophy may not be congenial to the preemptory demand for decision that distinguishes the law from most other learned disciplines. With Cook, I tender my assurance that my "aim is severely practical." While drawing on some of the insights of philosophy and psychology, my pragmatic analysis is not dependent upon a solution of the theoretical riddles of "mind" and "thinking". My endeavor is to avoid unfamiliar terminology not susceptible to brief explanation. There is some enlargement beyond the bare bones[6] of necessity, at times in footnote commentary, as a foundation for further development and application to education generally.

The learning process includes, of course, many extra-rational ingredients, as reflected in the distinction made in the literature between "cognitive" and "affective" factors in learning and thinking. A related distinction is found in the law in examining the unarticulated values operat-

ing in the ostensibly neutral choice of alternatives. The philosophers make similar distinctions.

I note this by way of setting another one of the limits to the scope of this paper. In accordance with my operational perspective, my major concern is with the precision of the analytical processes in legal teaching, learning, and practice. In so doing, I do not minimize the importance of "affective" or "emotional" factors. It may well be that the decisive roots of even the most rigorously reasoned positions are extra-rational, whether this be termed unconscious, emotive, or judgmental. The persuasiveness of advocacy is sometimes a coldly rational and skillfully calculated appeal to emotional prejudice. As my analysis of language will show, advocacy's fundamental structure is the outcome of a purposive process. Such aspects will not be ignored where they necessarily arise in the course of discussion. But recognizing the inseparability of the rational and non-rational elements in human development, the major contribution of the law has been the management of human conflict on a rational basis, broadly successful despite its many human imperfections, failures, and frustrations. Whatever be the use (along with the consequent risk of abuse) to which we devote our legal skills, the starting point must be bottomed upon a rigorously precise analytical recognition of our subject matter. Put in less fancy terms: knowing what we are talking about.

It need hardly be said that the full comprehension, let alone validity, of my position as thus far stated is dependent on concrete, factual demonstration, a Jamesian "cash value in experiential terms". In Part II, I give an analytical description of the relevant characteristics of language. Part III sets forth specific applications to several legal operations, including the analysis of doctrinal aspects of the law, the structure of rules of law, the unending controversy on the reality of the "control" of rules of law, legal drafting, cross-examination, and advocacy. Adequate examples require some substantial detail, and these will be left to Part III. However, at this point I will venture a few highly simplified preliminary illustrations.

As indicated, I distinguish between a "world of language" (later called the "verbal world") and the underlying world of behavior (later called the "nonverbal world", which will sometimes include language in its role as "events"). I have said that there is a separation between the two, setting up a barrier to the effective handling of professional problems. The mechanism of this barrier is examined in Part II. In some applications this barrier or separation produces strikingly unrealistic legal treatment of transactions which, if handled by participation in the events themselves (the "nonverbal world"), would be virtually inconceivable. This should be observed in the examples that follow.

In one of my courses, I use a commercial problem involving the transfer of a manufacturing enterprise as a going concern[7]. In the contract of sale it becomes necessary to provide for compliance with the Bulk Sales Act so that the purchaser may take free of claims of the seller's unpaid merchandise creditors. Among the requirements of the Act is the preparation of a "list of existing creditors" and the sending of notices to creditors, describing the proposed transfer. Other provisions of the Act show the date as of which "existing creditors" are to be ascertained,

albeit not with perfect clarity. To avoid uncogitated copying from the form books, the facts of our problem are so designed as to require analysis resulting in the choice of a date for determination of the group of creditors to whom notice must be sent, other than the standardized date applicable to the usual transaction as reflected in the Bulk Sales Act. Selection of a date, preferably the proper one, thus becomes an important part of the contract.

Students submit contracts that provide nicely for preparation of a "list of creditors". But almost invariably there is no provision whatever for the date as of which the creditors are to be ascertained. Under our facts, recourse to "incorporation" of provisions of the Act to justify omission of a date is not available since a non-standardized date must be determined. The omission of any date is so widespread as to bear no correlation to the usual range of varying student capacities.

In our class discussion after the student contracts have been submitted, I use the omission of a date to illustrate the "gap" between our verbal and nonverbal worlds, as one of a series of repeated demonstrations in many varying contexts. Using the somewhat gadgety shorthand that soon becomes familiar for convenience of discussion, I suggest that students "visualize factually" the nonverbal process of rounding up creditors as persons. Often with audibly stunned recognition comes the realization that this process simply could not be done in a vacuum, in some timeless cloud. Doing it as of some time would be physically inescapable, quite apart from any analysis or exercise of intelligence in the selection of the correct date. Yet by "talking about it" (the "verbal world") it becomes possible and in fact frequent to escape what would be inescapable in the nonverbal world of behavior. As later elaborated, this "gap" arises from the "illusion of meaning" inherent in language, chiefly attributable to its "abstractness", with consequent shortcomings in observation, analysis, and thinking.

Here is another highly simplified preliminary illustration. As part of another commercial problem, it becomes necessary to provide for an "escrow" arrangement,[8] a common security device. Adequate provisions would include four elements: (1) Ascertainment and provision for a specific sum of money (in some cases there can be non-monetary escrows). (2) Delivery to someone. Thus, a provision naming the "escrow agent". (3) Determination of what the escrow agent is to do with the money. Thus, directions to this effect to the agent, taking into account protection of the parties and the potentiality of a claim against the agent. This will sometimes constitute a subsidiary agreement of some complexity. (4) The need for a provision as to who will pay the escrow fee. Commercial organizations (e.g., banks) frequently act as escrow agents, and they are certainly not eleemosynary institutions.

Student contracts omit entirely one or more of these elements with a high degree of frequency, quite apart from the adequacy of each. In many years of practice I have encountered lawyers' contracts that are similarly defective, with almost the same frequency.

However, if we proceed in what we have called the "nonverbal world of behavior", that is, if we physically went through the conduct of setting up an escrow arrangement, omission of

any one of the elements would be physically inescapable. Yet in the verbal world of language, when we "talk about" (actually write) it, it becomes possible to escape the inescapable. The same comments are applicable in our Bulk Sales Act illustration described earlier.

A final example is included here because it is representative of the widespread professional practice in the preparation of agreements of pouring in a profusion of near - synonyms ("pleonasms") when one carefully chosen word would suffice. This familiar habit has become a hoary tradition, possibly originating in the wordage charges of old-tune scriveners and nurtured by an uneasy compulsion to leave no stone unturned, as strings of verbiage accumulate with every ingenious discovery that still another word may fit, all becoming embedded in the standardized forms waiting for new excrescences.[9] Some kind of nadir of absurdity is reached in the general release. This piece of effortless law practice is even sought to be justified by the wonder it creates in clients, a guild mystery like the incomprehensible prescriptions of physicians,[10] overlooking the equal likelihood of its contribution to the lay attitude[11] toward lawyers as eccentric beings. More substantially, on the assumption that every word was intended, with a meaning other than the rest, it is likely to invite dispute, violating the cardinal principle that the counselor's job is to prevent disputes, not invite them.

This practice of word multiplication can be pointed out and corrected as simply bad English composition, without the need for a massive analytical superstructure. Yet it dies hard,[12] and the assumption that the teaching of English composition is "simple" is hardly supported by experience. Moreover, the illustration that follows implicates an aspect of our more fundamental linguistic approach in which as a corollary of the mere elimination of superfluous repetition we discover an undetected substantial omission. It incidentally suggests how the same approach may serve as a contribution to the teaching of freshman English.

This final illustration involves a partnership agreement which commonly includes provisions for termination of the partnership on the occurrence of specified events. Among these is usually the voluntary determination of a partner to leave the firm. As almost universally provided in the standard forms (and consequently in agreements encountered in practice), this is expressed as the "withdrawal or retirement" of a partner. In my handling of this small example with students I have asked them to "visualize factually" the nonverbal behavior to which each of the terms refers. Skipping the minutiae of class discussion, the outcome is often that all we are thinking about is a simple voluntary determination to get out, making two terms unnecessary. By itself, the mere redundancy in the use of two terms may be a trivial consequence. Yet as a pervasive habit in legal drafting its consequences may become far from trivial. A systematically developed "visualization" of the nonverbal behavior will go far toward rejection of the absurdities, which sometimes result in more substantial complications. But in our particular transaction it also leads to consideration of "retirement" as referring to the distinct problem of separation on reaching a particular age. So understood as an event other than voluntary separation at any time, our continued "visualization" of the sequence of nonverbal events leads to recognition of

the term as wholly inadequate standing by itself, since "retirement" in this sense normally will require consideration of questions such as voluntary or mandatory separation and setting up of a pension or other plan usually associated with retirement.

In my preliminary illustrations, correction can be effected without the need for a heavy theoretical linguistic apparatus, and this may be so with respect to other more complex applications to be considered. But even a large accumulation of particular exercises, while probably of some educational value, still remain ad hoc instances. In the vast multiplicity of lawyers' operations, it is certain that wholly unanticipated problems will arise, and the particular instances used as examples are unlikely to repeat themselves. Moreover, the applications differ greatly in character, as we will see when we consider the following examples: the character of rules of law as "learned patterns of analysis"; the"control" of rules of law in the process of judicial decision (what I call "factual advocacy"); the process of cross-examination; and the process of teaching. I use this last term as embodying a teacher's contribution to learning, which goes beyond the determination of the subject matters of study, chairmanship of class proceedings (a custodial function at some levels), "learning by example and imitation", and the"motivation" stimulated by the inspiring teacher.

A common mechanism underlying all of the applications is the structure of language and its relationship to precise analysis, a major sense of thinking and, as here considered, "thinking like a lawyer". Lawyers, scholars, and teachers perform these operations naturally, with varying effectiveness, without self-conscious analysis of the intellectual processes. Indeed, this is how learning, as distinguished from teaching, occurs. It is my position that in the teaching-learning process, a conscious, explicit understanding of the many faceted underlying mechanism provides a comprehensive framework and foundation for a profound, personal integration of the significant ingredients of the ad hoc examples, illumined but not limited to them, effecting an important species of the old "transfer of learning". Particularly in teaching, the relationship between language and thinking provides an accessible linguistic handle in reaching teaching's inaccessible thinking counterpart. Reinforced by this avenue to rigorous, disciplined analysis, perhaps even the good lawyer, scholar, and teacher can do better.

Summary of the Text

This paper examines the aspects of the nature of language as they bear upon the processes of teaching and learning, the continuing life-long development of learning by experience, and the consequent operational effectiveness toward which teaching and learning are directed. The author's concern is with how 'thinking like a lawyer' can be achieved. He believes that a conscious, analytical awareness of the structure and functioning of language provides a foundation for enhanced sophistication and effectiveness in the professional operations of the practicing lawyer, legal scholar, and law teacher. The writer's focus goes beyond language as a medium

of communication, reaching to the process of precise analysis, a major sense of thinking and "thinking like a lawyer". In this writer's mind, the structure of language as a symbolic system is such as to create a world of its own, setting up barriers against the effective handling of the underlying world of behavior, the "real" world of persons, places, things, and their interaction. Besides, language is the product of analytical processes that are learned with the language, influencing and in some measure determining observational habits and patterns of thinking, particularly at abstract levels.

Proper Names

1. Holmes: 全称为 Oliver Wendell Holmes, Jr. (1841 – 1935), 美国联邦最高法院法官(1902 – 32), 生于 Boston, 1866 年哈佛大学法学院毕业, 曾开律师事务所, 毕生致力于法学研究。1870 – 1873 年主编《美国法律评论》, 并在哈佛大学教授宪法。1881 年出版《普通法》一书, 在法理学方面开创了注重实际的新思路。该书的第一句话被广泛引用:"法律的生命并非逻辑, 而在于经验"(The life of the law has not been logic; it has been experience)。1882 年被任命为马萨诸塞州最高法院法官, 任职 20 年。1902 年西奥多·罗斯福总统任命他为联邦最高法院法官, 任此职 30 年。由于其观点与更为保守的同僚相左, 意见尖锐泼辣, 故常常被人称为"伟大的异议者"(the Great Dissenter)。他主张"司法约束"(judicial restraint), 认为最高法院不得根据其自身的社会哲学来解释宪法。91 岁时退休。

2. Walter Wheeler Cook: 沃尔特·惠勒·库克(人名)。

3. Jamesian "cash value in experiential terms": (詹姆斯哲学中的"用经验术语表达的市场价值") William James (威廉·詹姆斯)(1842 – 1910)。哲学家, 心理学家。生于纽约市。其父为神学家, 其弟为亨利·詹姆斯(Henry James, 著名作家)。威廉·詹姆斯毕业于哈佛大学和哈佛医学院, 后长期在该校执教(1873 – 1907), 先后教授解剖学、生理学、心理学和哲学。他是美国实用主义哲学(pragmatism)的创始人之, 曾发展和传播查尔斯·皮尔斯(Charles Peirece)的理论, 在哲学界的影响甚大。他认为一个观念是否是真理要由实践效果加以批评, 能带来良好效果的观念即为真理。在心理学方面, 他是机能心理学(functionalism)的创始人, 主张心理学应研究意识的机能和功用。其心理学著作《心理学原理》(The Principles of Psychology)(1890)是一部具有划时代意义的作品。其他著作有:《信仰的意志》(The Will to Believe)(1897)《宗教经验的类型》(The Varieties of Religious Experiences)(1902)《实用主义》(Pragmatism)(1907)等等。

4. Bulk Sales Act: "大宗销售法"(In America, Article 6 of the Uniform Commercial Code governs the bulk sales. Under section 6 – 102 (c), in order for a sale to be considered a bulk sale, the buyer (or an auctioneer or liquidator if the sale is an auction) must have been given notice or been able upon reasonable inquiry to have had notice that the seller will not afterward continue to operate the same or a similar kind of business.)。

5. Pleonasms: A term in rhetoric for repetition or superfluous expression(修辞学中的

冗词、冗句或冗言)。

6. Plato and Aristotle: Plato, 柏拉图(公元前 427? －347 年), 古希腊哲学家(One of Plato's shorter dialogues, the Cratylus, is the earliest discussion in the Western tradition of the relations between words and things, the main character, Socrates, is represented as disputing first the view that relations are justified by convention only, and then the view that, interfering factors apart, they are systematic and natural. The main conclusion is that words cannot be taken as a guide to reality. A central idea in Plato's philosophy is the doctrine of ideal forms that underlie the world as we perceive it. Thus an ideal 'horse' underlies the varying forms of goodness, and so on. As one form of realism this remains influential: e. g. a language is an ideal entity underlies the varying concrete manifestations of speech. Aristotle, 亚里斯多德(公元前 384－322 年), 古希腊哲学家(Aristotle was very important in the early history of western linguistics both for his general contributions to logic, rhetoric, and poetics and for specific classification of speech units. These included minimal sounds and syllables, both distinguished as units that do not in themselves have meanings; the sentence as a unit which is meaningful and had parts that are also meaningful; and the beginnings, though in a form hard to interpret, of the system of parts of speech developed later by the Stoics and others. Many of the terms that are later used in grammars are in Aristotle's work, though not necessarily with the same sense.)。

7. Freudian analysis of personality structure: 弗洛伊德的人格结构分析; Sigmund. Freud(1856－1939 年), 奥地利精神病学家。

8. Semantics: 语义学, 语义哲学; 语义学派。语义学乃一门突破传统语言学关于"语音、词汇和语法是语言三要素"的局限, 从"语言是音义结合的词汇和语法的体系"的观点, 对语义、结构、形式化等问题对语言进行研究的学科。在本门学科的研究中, 人们注意到一个意义的最小语义特征(义素)、共同义素所组成的语义场。此外, 语义学还对聚合关系与组合关系进行了研究。现代语义学还采用逻辑方法描述语义, 并从蕴涵命题演算和句子的谓词演算等来说明语义。

9. cybernetics: 控制论。学习过程中应注意识别"cyber－"这个构词前缀。英语中许多新近的与计算机网络有关的词汇大多由"cyber－"加其他词根构成新词, 如"网络犯罪"称"cyber-crime"; 网络用户叫"cybernaut"; 电脑文化叫"cyber-culture"等等。

10. "logophobia": 可以将此词译为"语言恐惧症"或"词语恐惧症"。该词中的"logo－"表示"词语、语符、语言、说话"等意义; 而"－phobia"表示"对……的恐惧", 如 Anglophobia(英国恐惧症)、hydrophobia(恐水症)等。

11. binary digits ("bits"): 二进制。

12. Phonemes; morphemes; allophones 这三个词乃语言学中重要术语。Allophones 指"音位变体"(an audibly distinct variant of a phoneme.); morphemes(a minimal meaningful structural unit of a language, the smallest unit that has a meaning. A morpheme is not in principle identical with a letter, since letters do not generally possess meaning, nor was it identical with a word, since words are composed of morphemes, but certain morphemes may appear as a single letter, and certain words may possess only a

single morpheme.)指不同于字母和英语单词的一种最小的语义单位,即语素、词素、形素或形位;Phonemes 指音位或音素。

13."kinesics":人体动作学,或称体语学、举止神态学,指研究人类姿势、表情等非言语的人体动作与人际沟通关系的一门科学。

Notes to the Text

1. left it at that:就到此为止,指 Holmes 没有就此作进一步说明阐述。

2. As usual, Holmes did not stop for side trips of interminable definition of philosophical subtleties, including such questions as the extent to which one can think at all except in language:句中 side trip 指"旅行中偶然附带的短途旅行",作者在此处指的是"顺带需要阐释的问题";as usual 是"照例、照常、仍然"的意思;philosophical subtleties 指的是"哲学中微妙而难以捉摸的事物"。该句子可以译为"如以往一样,霍姆斯并没有停留在对哲学中那些难以捉摸的问题进行无止境的界定,包括那些人们只可意会而不能言传的问题在内"。

3. no less so than exhortations to virtue itself:句中的 no less than 表示"不下于,和…同样"的意思。如 He is no less clever than his brother(他和他弟弟一样聪明)。其他类似的结构还包括:no less than (有时用 nothing less than 表示)(正好,至少,有……那么多;原来就是);not less than(不少于;至少);not less than(在…方面不下于);nothing less than(完全一样;简直就是);sth. less than(较…少几分);still less than(常用于否定句中,表示"更不用说,何况"的意思);none the less = no less,表示"依旧,仍然"的意思。

4. Implicit in most of the latter is the unexamined difference between what may be "learnable", and what is "teachable" at law school:"尚未得到论证的有关法学院中可作为'能学'和正作为'能教'内容之间的差异是后者中最为含蓄未决的问题"。本句为倒装句,真正的主语是"the unexamined difference between what may be "learnable", and what is "teachable" at law school"。

5. in some measure determining observational habits and patterns of thinking, particularly at abstract levels:"在某种程度上可以决定(人们的)观察习惯和思维模式,特别是在抽象层次"。句中 in some measure 有时可以用 in a measure 表示,"在某种程度上"的意思。类似由 measure 所构成的短语还有:beyond(out of/above) measure(无可估量、过分、极度);by measure(按大小、论尺寸);in (a) great/large measure(很,大半,大部分);to measure(照尺寸,按拍子,和调子);within measure(适度地,适可地);without measure(非常,过度)。

6. bare bones:梗概;最基本的东西;基本内容。

7. going concern:business that is actively trading (H. P. Collin, Dictionary of Law);business that is in operation(Merriam Webster's Dictionary of Law)兴旺企业,一种被证明为赢利的企业,其招牌、信誉等可以获得一种无形价值。

8."escrow" arrangement:"待条件完成后的转让协议",escrow 是指一种将契据或款项或财产暂交第三方保管、待某种条件实现后方具有效力的契据(an instrument esp.

a deed or money or property held by the third party to be turned over to the guarantee and become effective only upon the fulfillment of some condition)。

9. This familiar habit has become a hoary tradition, possibly originating in the wordage charges of old-tune scriveners and nurtured by an uneasy compulsion to leave no stone unturned, as strings of verbiage accumulate with every ingenious discovery that still another word may fit, all becoming embedded in the standardized forms waiting for new excrescences. "此种习惯已由来已久，它或许是源于旧时代书人的文笔措辞，后经强制性致力呵护，由单个的现仍可由其他单词替代的独创生造堆积成连串的冗词赘语，其全附着在标准文书格式里，且新的赘言也将源源而至"。该句中 leave no stone unturned 是"挖空心思、用尽一切手段去做某事"的意思。all becoming embedded in the standardized forms waiting for new excrescences 是个 nominal absolute construction(独立结构)。

10. a guild mystery like the incomprehensible prescriptions of physicians: 一种行业的难以理解之事物，如同无法看懂的医生处方。

11. lay attitude: 此处的 lay 指的是 layman，即非法律人士；lay attitude 是指"非法律人士们的态度"。

12. dies hard: (旧习惯、旧信仰等)难改掉，难消除。

EXERCISES

I. VERBAL ABILITIES

Part One

Directions: *For each of these completing questions, read each item carefully to get the sense of it. Then, in the proper space, complete each statement by supplying the missing word or phrase.*

1. Every mature system of law has a long history from its _____ as a system, back through its archaic and almost forgotten predecessors, to its remote origin in its primitive law background.

A) inducements B) incrimination
C) inception D) incertitude
E) incarceration

2. By legal history, we mean at minimum the development of the concepts, doctrine and rules which have been used to keep order in the society, which arose at particular times of particular circumstances and the extent possible, should be examined and interpreted _____ those times and circumstances.

A) in the course of
B) in exact agreement
C) in the company of
D) in the light of
E) in want of

3. Social conditions affect statutes, which are usually _____ in the hope of curing some apparent evil or providing some remedy.

A) enjoined B) proscribed
C) encumbered D) employed
E) enacted

4. In the process of judicial interpretation, the law may be led a long way from the original intention of the legislators and inter-

pretation may result, _____, a new statute.

A) in effect B) in dispute
C) in force D) in prospect
E) in the fad

5. William the Conqueror in Norman Conquest of 1066 _____ to enter as legitimate occupant of the throne, and one of his first acts was to promise that the law would be enforced as it was in King Edward's time (1043—1066).

A) proposed B) purported
C) intimidated D) alluded
E) insinuate

6. The rules of blood _____ were closely regulated by law and custom: in the type of vengeance that might be taken, in the amount of compensation that might be exacted, in the place at which the compensation should be paid, and in the circumstances under which compensation need not be paid.

A) aversions B) enmity
C) grudge D) animosity
E) feuds

7. The Great Council, or Magna Curia, was headed by the British King and composed of the lords to whom he had given extensive _____ of land as a reward for their faithfulness, and the great ecclesiastics also held church land, from this Council and those added to it the House of Lords and the House of Commons developed.

A) hounds B) tracts
C) traits D) locality
E) expanses

8. The doctrine stare decisis, the essence of the common law system, states that the Courts should adhere to the law set forth in prior cases decided by the highest court of a given _____ as long as the principle derived from those case is logically essential to their decision, is reasonable and is appropriate to contemporary circumstance.

A) jurisdiction B) command
C) authority D) domain
E) periphery

9. It is considered opinion of the English courts that no court in England may declare a statute _____ on the ground that it is unconstitutional.

A) exhausted B) invalidated
C) nugatory D) void
E) revoked

10. A trial court usually consists of one judge who presides over the trial and rules on question including the adequacy of the lawyers' written pleadings, the _____ of evidence and the law in the case.

A) admittance B) adoption
C) admissibility D) ejectability
E) permissiveness

Part Two

Directions: *Choose the one word or phase that best keep the meaning of the original sentence if it were substituted for the underlined part.*

1. In the medieval period, and dating back before the Norman Conquest, a common method of fact-finding in civil cases was wager of law or canonical purgation in the church courts.

A) compurgation B) complicity
C) condonation D) concurrence
E) reprieve

2. The bill of exchange, now commonly referred to as a draft, is a basic and essential