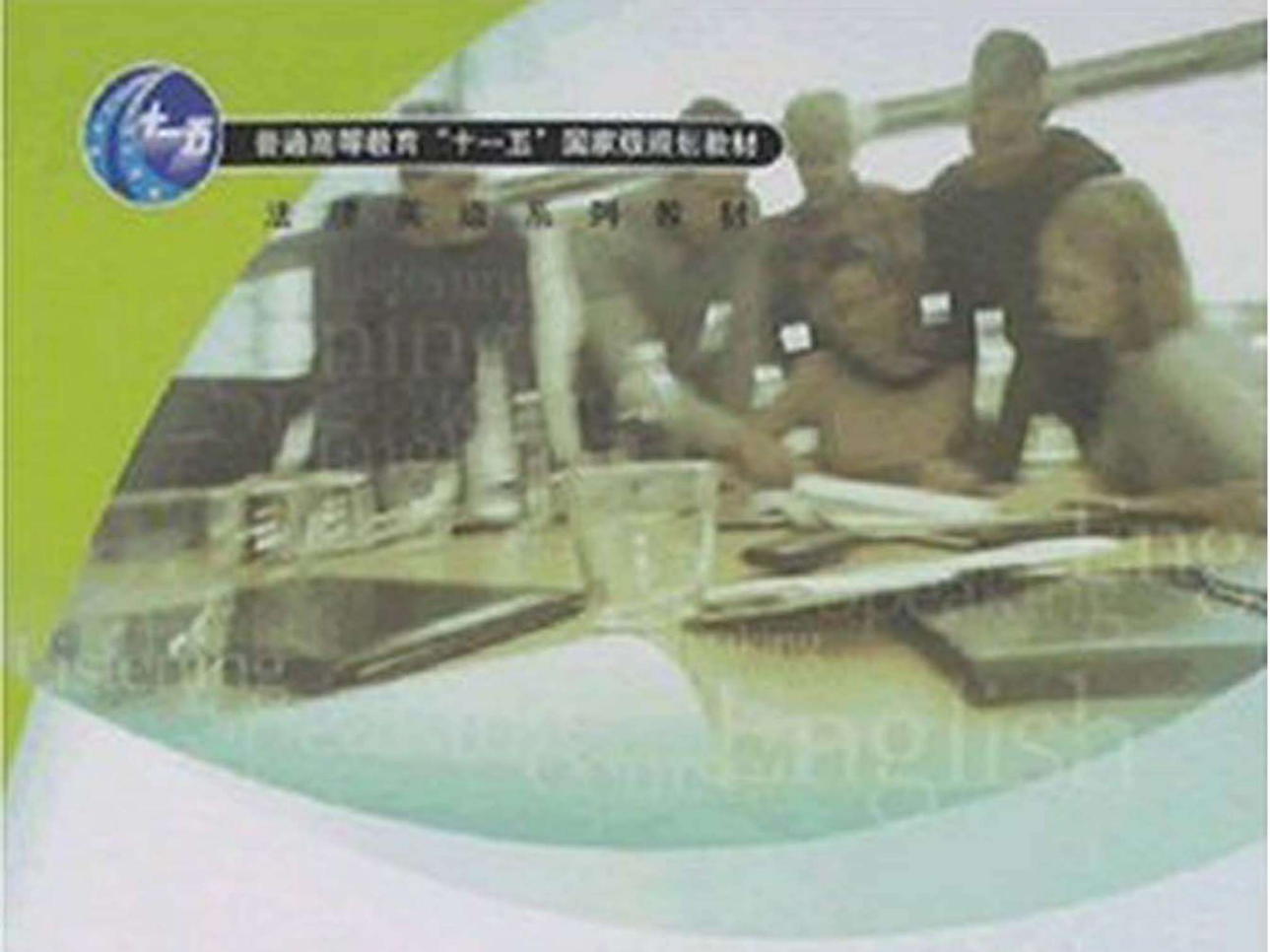
普通高等教育"十一五"国家级规划教材

法律英语系列教材



A Core Course of English for Law Book One (2nd Edition)

法律英语核心教程

（第一册）（第二版）

杜金榜 张新红 主编

刘诒廷 主审

对外经济贸易大学出版社

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法律英语系列教材编写委员会

序　言

杜金榜、张新红两位教授主编的《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，涉外法律人才的需求必将日益增加。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。这套教材的编者们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第一本，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关系日益紧密的今天发展起来的一门新兴的语言学科，具有很强的生命力。语言在法律活动中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、更先进、更科学的教程。

是为序。

桂诗春

2011 年 9 月

编 写 说 明

编写宗旨

随着对外开放步伐的加快，尤其是新近加入世界贸易组织，中国对涉外法律人才的需求急剧增加，为了适应这一需求，尽快培养高素质的法律英语复合型人才，必须编写合用的专门教材。在此背景下，我们陆续推出《法律英语系列教材》，包括《法律英语核心教程》、《法律英语听说教程》、《法律英语阅读教程》、《法律英汉翻译教程》以及《法律英语写作教程》。与普通的英语教材相比，《法律英语系列教材》不仅注重英语能力的培养，也强调法律专业知识的传授和技能的训练。与普通的法学英语教材相比，本教程对英语能力的培养和训练更为丰富全面，更为系统化。因此是培养兼具法律专业技能和英语能力双高人才的合适教材。

《法律英语系列教材》除了适合英语＋法律、法律＋英语的涉外型、复合型本科学生使用外，也可供法律、外交、国际贸易、国际金融和国际政治等专业的本科生学习法律和英语之用。可供辅修法律或英语的商务、经济、管理、金融、文化交流等专业的在读生和毕业生学习之用。本教材还可作为立法、司法等部门的公务员提高专业和英语水平的教材。

体例说明

《法律英语核心教程》共有三册，每册 16 单元左右，每单元由 2—3 篇课文和系列的语言、法律技能练习组成，练习的种类丰富，涵盖面广。作为培养法律＋英语和英语＋法律的复合型人才的综合基础教材（或称精读教材），本套教材除了在练习中注重读、写、说、译等英语技能的培养外，还格外注重法学知识的输入，各单元课文具有连贯系统性和知识的循序渐进性。第一册课文主要是有关法学的基础知识，第二册侧重于国际经济法，第三册注重法学原理应用及案例分析，以深入探讨的形式来培养学生的法律技能和分析能力，同时注重培养学生使用英语材料进行法律实践与研究的能力，使学生能够充分发挥和利用自己的英语优势。本教材每单元都配有针对该单元法律主题的案例，使学习者通过法律实例掌握该单元的法律知识和技能。

本册为第一册，共分 16 个单元。其内容涉及法学各方面的基础知识，如法的定义、分类、渊源，法律与社会、道德、财产以及商务活动之间的关系，立法、司法和执法的基本概念，法庭的构成以及不同审判制度之间的异同，等等。每单元含三篇法律英语课文，第一篇课文为整个单元的学习重点，第二篇课文是对第一篇的深化与补充，第三篇课文由相关案例构成，以促进学习者对本单元法律知识的领会、巩固和应用，并提高法律英语的阅读能力。

每一篇课文前面首先列出了本课的生词和难词，特别是与法律相关的词语，

然后是涉及背景知识的问答题，帮助学习者了解和预习本课的内容；课文的正文部分每个自然段都标注了序号，以方便学习者快速查找和阅读；正文后附有课文的长度说明，可以方便学习者掌握自己的阅读速度。每一篇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以及课文中所涉及的部分语言要点，之后是为加强课文理解、巩固所学知识而编写的紧扣课文的练习题，包括阅读理解题、词汇和重要的短语和搭配。下一部分是综合练习，分词汇、语法、完型填空、英汉互译、课堂讨论和写作等。许多练习实际上是针对英语中的“法言法语”的练习，使学英语和学法律融为一体。练习题有多种类型，既有主观题，也有客观题。有些题目结合课文编写，另外一些则不局限于课文。语法部分和写作部分按照循序渐进的原则编写，具有较强的指导性。第二篇和第三篇课文均为泛读课文，其中的难词、生词已经通过注释提供了基本意义或汉语译文。每篇文章之后都设有针对该篇文章的问答题，以检查学习者的理解。本教程最后还给学习者提供了词汇表，以方便查阅和复习。

本套教材未包括英语听力的训练，也较少涉及英语口语训练，这是由于法律英语听说能力的训练要求较高，需要大量的材料，限于本教程的容量，放在《法律英语听说教程》中集中训练。

使用说明

本教程一共三册。建议第二学年开始使用，每学年一册（每周2学时）。

使用本教材的教师也可以视课时量和学习者的具体情况制定不同的授课进度、采取不同的授课方法。如果每周课时为4节，则每册可供一学期之用。

如上所述，本教材是法律英语核心教程，属于法律英语综合基础教材，涉及大量法律基础知识和英语词汇、语法和语篇知识，以及读、写、说、译等基本技能。因此建议学习者在学习每一单元之前认真预习，查阅生词和相关的法律知识，上课除认真听讲外应积极参与课堂讨论，课后及时复习并阅读中文版和英文版法学原著作为补充。

为方便本教程编写者和使用者进行直接交流，我们还建立了专门的网页，教师和学生可以通过 http://www.gdufs.edu.cn/jwc/bestcourse/kecheng/35/index.htm/参加讨论并索取本教程的有关参考资料。

我们感谢对外经济贸易大学出版社对本套教材的出版所作的一切工作，感谢宓智瑛副总编的鼓励、支持、督促、高瞻远瞩和忘我的劳动，感谢广东外语外贸大学国际商务英语学院的积极首肯、精神鼓励和物质支持。感谢我们所引用的一些原材料的作者，尽管他们的名字无法在此一一列出，但他们为本教材所作的贡献将铭记在我们心中。

编　者

广东外语外贸大学

2011年9月于广州

CONTENTS

Unit 1

Introduction to Law

Text I What Is Law?

Dictionary Work

evict	marijuana	jurisprudence	admonition	justify
enforce	pretentious	temporal	legitimacy	coercion
conformity	avenge	implement	contend	induce
administrative	litigation	adjudication	penal	compensatory
therapeutic	conciliatory	restitution	debtor	creditor
accusatory	deviant	sanction		

Pre-reading Questions

1. How do you understand law?
2. What do you think law deals with?
3. Why is law important in our social life?

1 In everyday speech, the term *law*[1] conjures up a variety of images. For some, law may mean getting a parking ticket, not being able to get a beer legally if under age, or complaining about the local "pooper-scooper"[2] ordinance. For others, law is paying income tax, being evicted, or going to prison for growing marijuana. For still others, law is concerned with what legislators enact or judges declare. Law means all of the above and more. Even among scholars, there is no agreement on the term. The purpose here is to introduce some of the classic and contemporary conceptualizations of law to illustrate the diverse ways of defining it.

2 The question "What is law?" haunts legal thought, and probably more scholarship has gone into defining and explaining the concept of law than into any other concept

still in use in sociology and jurisprudence. Comprehensive reviews of the law literature by some scholars indicate that there are almost as many definitions of law as there are theorists. Hoebel(1954: 18)[3] comments that "to seek a definition of the legal is like the quest for the Holy Grail[4]. "He cites Max Radin's warning "Those of us who have learned humility have given over the attempt to define law." In spite of these warnings, law can be defined. In any definition of law, however, we must keep Julius Stone's admonition in mind that "law is necessarily an abstract term, and the definer is free to choose a level of abstraction; but by the same token, in these as in other choices, the choice must be such as to make sense and be significant in terms of the experience and present interest of those who are addressed."

3 In our illustrative review of the diverse conceptualizations of law, let us first turn to two great American jurists, Cardozo and Holmes. Cardozo defines law as "a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged. "Holmes declares that "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law. "For Holmes, judges make the law on the basis of past experience. In both of these definitions, the courts play an important role. These are pragmatic approaches to law as revealed by court-rendered decisions. Although implicit in these definitions is the notion of courts being backed by the authoritative force of a political state, these definitions of law seem to have a temporal character: What is the law at this time?

4 From a sociological perspective[5], one of the most influential conceptualizations of law is that of Max Weber. Starting with the idea of an *order* characterized by legitimacy, he suggests "An order will be called law if it is externally guaranteed by the probability that coercion (physical or psychological), to bring about conformity or avenge violation, will be applied by a *staff* of people holding themselves specially ready for that purpose". Weber argues that law has three basic features that, taken together, distinguish it from other normative orders, such as custom or convention. First, pressures to comply with the law must come externally in the form of actions or threats of action by others regardless of whether a person wants to obey the law or does so out of habit. Second, these external actions or threats always involve coercion or force. Third, those who implement the coercive threats are individuals whose official role is to enforce the law. Weber refers to "state" law when the persons who are charged to enforce the law are part of an agency of political authority.

5 Weber contends that customs and conventions can be distinguished from law because they do not entail one or more of these features. *Customs* are rules of conduct in defined situations that are of relatively long duration and are generally observed without deliberation and "without thinking". Customary rules of conduct are called

usages, and there is no sense of duty or obligation to follow them. *Conventions*, by contrast, are rules for conduct, and they involve a sense of duty and obligation. Pressures, which usually include expressions of disapproval, are exerted on individuals who do not conform to conventions. Weber points out that unlike law, a conventional order "lacks specialized personnel for the implementation of coercive power".

6 Although a number of scholars accept the essentials of Weber's definition of law, they question two important points. First, some contend that Weber places too much emphasis on coercion and ignores other considerations that may induce individuals to obey the law. For example, Selznick argues that the authoritative nature of legal rules brings about a special kind of obligation that is not dependent on the use or threat of coercion or force. Many laws are obeyed because people feel it is their duty to obey. The second point concerns Weber's use of a special staff. Some scholars claim that Weber's definition limits the use of the term *law* in cross-cultural and historical contexts. They argue that the word *staff* implies an organized administrative apparatus that may not exist in certain illiterate societies. Hoebel, for instance, proposes a less restrictive term by referring to individuals possessing "a socially recognized privilege", and Ronald Akers suggests a "socially authorized third party." Of course, in modern societies, law provides for a specific administrative apparatus. Still, these suggestions should be kept in mind while studying the historical developments of law or primitive societies.

7 From a different perspective, Donald Black, a leading figure in law and society studies, contends that law is essentially governmental social control. In this sense, law is "the normative life of a state and its citizens, such as legislation, litigation, and adjudication". He maintains that several styles of law may be observed in a society, each corresponding to a style of social control. Four styles of social control are represented in law: penal, compensatory, therapeutic, and conciliatory. In the penal style, the deviant is viewed as a violator of a prohibition and an offender to be subjected to condemnation and punishment (for example, a drug pusher). In the compensatory style, a person is considered to have a contractual obligation and, therefore, owes the victim restitution (for example, a debtor failing to pay the creditor[6]). Both of these styles are accusatory where there is a complainant and a defendant, a winner and a loser. According to the therapeutic style, the deviant's conduct is defined as abnormal; the person needs help, such as treatment by a psychiatrist. In the conciliatory style, deviant behavior represents one side of a social conflict in need of resolution without consideration as to who is right or who is wrong (for example, marital disputes). These last two styles are remedial, designed to help people in trouble and improve a bad social situation.

8 The foregoing definitions illustrate some of the alternative ways of looking at

law. It is the law's specificity in substance, its universality of applicability, and the formality of its enactment and enforcement that set it apart from other devices for social control. Implicit in these definitions of law is the notion that law can be analytically separated from other normative systems in societies with developed political institutions and specialized lawmaking and law enforcement agencies. The principal function of law is to regulate and constrain the behavior of individuals in their relationships with one another. Ideally, law is to be employed only when other formal and informal methods of social control fail to operate or are inadequate for the job. Finally, law can be distinguished from other forms of social control primarily in that it is a formal system embodying explicit rules of conduct, the planned use of sanctions to ensure compliance with the rules, and a group of authorized officials designated to interpret the rules and apply sanctions to violators. From a sociological perspective, the rules of law are simply a guide for action. Without interpretation and enforcement, law would remain meaningless. As Hart points out, law can be analyzed sociologically as a "method"of doing something. In this context, law can be studied as a social process, implemented by individuals during social interaction. Sociologically, law consists of the behaviors, situations, and conditions for making, interpreting, and applying legal rules that are backed by the state's legitimate coercive apparatus for enforcement.

(1,390 words)

Notes

1. Law can be understood and studied from different perspectives, including the philosophical, psychological, political, anthropological, historical and sociological ones. Here in this text the sociological approach to the discussion and definition of law is taken. Readers can feel free to decide whether to accept or discard the views provided in this text.
2. pooper-scooper: A pooper-scooper is a scoop(a shovel-like utensil) for picking up and removing the feces of a dog or other pet(长柄粪铲) .
3. Hoebel(1954: 18) : Since the chosen text is of an academic and serious nature, the views and ideas of other scholars have to be cited in a formal way to indicate their sources, as is also true with the following scholars mentioned later in the text. In this case, *Adamson* Hoebel is the name of the scholar(most often only the family name is enough) , 1954 is the year of publication and 18 is page number of the particular published work. Of course, a list of references known as bibliography needs to be attached after each article or book. In this way, the sources of ideas and views which are not of your own are shown clearly and, with the help of these sources, interested readers can go on to read more about the same topic so as to arrive at their own understanding, conclusions and decisions. Notice that there are

different ways for citing and referring to different learned works such as journal articles, articles in a collection, and books. To be serious students of law, our students can now start to learn all these different rules of citation and reference, thus different academic conventions and norms.

4. Holy Grail: (also known as "Grail") a cup or plate that, according to medieval legend, was used by Jesus Christ at the Last Supper and that later became the object of many chivalrous quests ([传说中耶稣在最后的晚餐中用过的]圣杯, 圣盘).
5. From a sociological perspective: A perspective is a way in which a matter is judged or evaluated (albeit subjectively) so that (proper) consideration and importance is given to each part. It is often used technically to refer to a point of view or theory. There are usually many different perspectives of looking at the same thing, topic, or problem, such as sociological, philosophical and ethnographical (refer back to Note 1). One should notice, however, that there could be different conclusions for the same subject matter if they are treated from different perspectives.
6. a debtor failing to pay the creditor: Debtor-creditor law governs situations where one party is unable to pay a monetary debt to another. There are three types of creditors. First are those who have a lien (留置权) to have a charge against a particular piece of property. This property must be used to satisfy the debt to the lien-creditor before it can be used to satisfy debts to other creditors. A lien may arise through statute, agreement between the parties, or judicial proceedings (审判程序, 诉讼手续). Secondly, a creditor may have a priority interest. A priority arises through statuory law. If a creditor has a priority his debt must be paid when the debtor becomes insolvent before other debts. The final type of creditor is one who has neither a lien against the debtor's property nor is the subject of a statutory priority.

Language Points

1. Notice the difference between "be concerned with" and "be concerned about" (Paragraph 1):

   This part of the book is concerned with body-building. (关于, 涉及)

   These researches are concerned with alpha rays. (关于, 涉及)

   Both sides are deeply concerned about the grave situation there. (关心, 关切, 担心)

   We're rather concerned about father's health. (关心, 关切, 担心)
2. ... what legislators enact or judges declare (Paragraph 1):

   There are many other legal or semi-legal terms in the text. Find them and study their usages (Some of them are already listed in Dictionary Work).

3. ... the choice must be such as to make sense and be significant in terms of the experience and present interest of those who are addressed (Paragraph 2):
   Pay attention to the structure "*such as to*" in this sentence which is used differently from that in "at such cost as to ruin the whole family."
4. ... the prophecies of what the courts will do in fact, *and nothing more pretentious*, are what I mean by the law (Paragraph 3):
   Parenthetical structures (such as the italicized part in this sentence) are often used in serious writings to achieve the effect of seriousness and completeness.
5. Although implicit in these definitions is the notion of courts being backed by the authoritative force of a political state, ... (Paragraph 3):
   This part of the sentence is in inverted order. Please rewrite it in the normal sentence order.
6. An order will be called law if it is externally guaranteed by the probability... (Paragraph 4):
   Notice that sentences in passive voice are used frequently in academic writings.
7. From a different perspective, Donald Black (1976: 2; 1993: 1–26), a leading figure in law and society studies, contends that... (Paragraph 7):
   Notice that "Donald Black" is in apposition to "a leading figure in law and society studies".
8. Finally, law can be distinguished from other forms of social control primarily in that it is a formal system embodying explicit rules of conduct... (Paragraph 8):
   "In that" means "for the reason that" or "because". For example:
   The higher income tax is harmful in that it discourages people to earn more.
   He can't speak English well in that he was foreign-born.
   I prefer your plan to hers in that yours is more applicable.

Comprehension

Questions about the Text

Decide whether each of the following statements is true or false.

1. It is against the law to grow marijuana.
2. Law refers to the legal rules made by government officials.
3. There can be as many definitions of law as there are theories.
4. Law is an abstract and philosophical term which can hardly be grasped by contemporary theorists.
5. According to Weber, law is coercion for the sake of making people conform to the legal rules and punishing the violators of them.

6. Law is a type of normative order.
7. Law is a type of external pressure.
8. Custom does not involve coercion and obligation.
9. A person who is entitled to enforce the law has a socially recognized privilege.
10. All citizens of a society are subjected to the four types of social control as described by Donald Black.

Vocabulary

Match the words in Column A with the corresponding definitions in Column B.

A	B
a. restitution	1. a statute or regulation, especially one enacted by a city government
b. prophecy	2. affected; ostentatious; pompous; showy
c. pretentious	3. appeasing; reconciling; peace-making
d. ordinance	4. being in compliance with the law; lawfulness; authenticity
e. litigation	5. compensation; recompense; repayment; refund; reimbursement
f. legitimacy	6. compliance; action or behavior in correspondence with current customs, rules, or styles
g. jurisprudence	7. forcing to act or think in a certain way by use of pressure, threats, or intimidation
h. induce	8. give permission for; grant authority or power to; sanction
i. implement	9. legal action; proceedings; lawsuit
j. enforce	10. warning or caution
k. deviant	11. one to whom money or its equivalent is owed
l. creditor	12. prediction; foretelling
m. conformity	13. put into effect; put in force; make compulsory
n. conciliatory	14. put into practice; execute; apply
o. complainant	15. take revenge; retaliate; even the score
p. coercion	16. tempt; encourage; bring on; stimulate
q. avenge	17. the party that makes a complaint or files a formal charge, as in a court of law; plaintiff
r. authorize	18. the philosophy or science of law
s. admonition	19. the settling of a case or dispute by judicial procedure
t. adjudication	20. one that differs from a norm, especially a person whose behavior and attitudes differ from accepted social standards