

Legal English

法律英语

■ 周 红 陈桂松 主编



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Legal English

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前 言

我国改革开放在广度和深度上的步伐不断加快。随着我国加入世贸组织,中国-东盟自由贸易区建成,涉外法律服务领域日益扩大,对既精通法律又能熟练使用英语的复合型法律人才需求迫切。国内编写法律英语类教材的热潮也是颇为高涨,然而绝大多数都把重点集中在英美法、国际法等方面的内容,而以中国法律为背景的且强调实用性与操作性的法律英语教材不多。在此背景下,我们组织了一批具有多年丰富教学经验的一线教师,编写了这本《法律英语 *Legal English*》。

与其他法律英语教材相比较,本教材在编写思路、体例结构、内容编排等方面都有所创新,更加注重结合教学实际,突出教材内容的实用性与针对性。既强调提高英语应用能力,也注重法律知识的学习和实践操作的训练,使学习者能够掌握英语法律专业术语及表述方式,掌握英文法律文书写作、翻译技能,并具备处理简单涉外法律事务的能力。教材的内容并重法律知识 with 英语语言两方面,涉及中国的基本法律制度以及主要的部门法。

本书适合法律专业以及其他法律相关专业的学生使用,也可供国际商务、金融、管理、文秘等专业的学生以及法律英语爱好者们学习法律和英语之用,亦可用于公、检、法、司等部门及律师行业中的法律工作者学习提高及培训使用。

《法律英语 *Legal English*》的结构为总一册,分上、下编。各编均为 18 个单元,配有学习光盘一张。

上编为理论知识,内容涉及法的分类、法的渊源、世界主要法系、我国法律基本制度等基本知识以及我国的主要部门法律、中国-东盟自由贸易区相关国际协议等。每个单元由课文、词汇表、注释及练习题组成(练习题的参考答案另附)。课文采用中英文对照的编排方式,以方便阅读学习。

下编为实务操练,包括民事、刑事、律师实务和公证等各类法律文书的中英对照文本以及法律题材影视作品赏析等,以促进学习者对本书内容的掌握与应用,同时拓展文化思维,陶冶道德情操。

建议本书的最佳教学计划安排为每周 4 个课时,每学期 70 学时,以 1 学年时间完成教学。

本书在编写过程中,阅读和借鉴了国内外一些相关资料,使用了国家有关部门颁布的法律法规及其英文版本,得到了较多的启发,拓宽了编写思路。

本书的顺利完稿,要感谢编写队伍诸位成员的积极参与。在编写过程中,经常

会出现场面激烈但气氛积极友好的“brainstorm”，大家为了共同的目标，集中智慧，群策群力，对编写工作提出了不少极为宝贵的意见及建议，对提高本书的内容质量帮助颇多。编委会主任谢元才具体指导本书的整体策划出版工作。

编写人员及具体分工如下：

上 编

周红，第一主编，负责第 1、2、3、4、5、6、7、8、15、16、17 单元课文部分的编写工作。全书统稿工作负责人。

陈桂松，第二主编，负责第 9、18 单元全部内容，第 12、14 单元课文部分，第 8 单元课文后部分的编写工作。本书“前言”的执笔人。

欧玉蓉，负责第 3、7、14、15、17 单元课文后部分的编写工作。

陈滢，负责第 10、11 单元全部内容，第 13 单元课文部分的编写工作及下编第 2 单元的中文译文。

陈婷，负责第 6、16 单元课文后部分的编写工作。

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邓柯，负责第 1、13 单元课文后部分的编写工作。

李雪桂，负责第 2 单元课文后部分的编写工作。

黄婉春，负责第 12、13 单元课文后部分的编写工作。

下 编

由周红负责内容编译，陈桂松负责文本格式、编排等工作。

对于文字内容，由各位承担具体编写工作的作者文责自负。在最后统稿时，由周红、陈桂松根据出版要求，对全书的文本格式、编排及标点符号等进行了技术性修改和调整。

外语系莫冰山、邓利、谢正霖、覃浩恒等同学参与了文字校对的部分工作。本书的编写及出版还得到了浙江大学出版社有关人员的大力支持与帮助。在此，我们一并表示真挚的谢意。

由于时间紧迫，本教材仍有一些遗憾，不足之处敬请读者提出宝贵的意见及建议，以待将来修订时改正。

编 者

2010 年春于“中国绿城”南宁

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上 编

Unit 1 Law and Its Classification

法及法的分类

Definition of Law

What is law? Though we use the word “law” in everyday conversation, we use it in so many ways that there is no simple answer to the question.

The definition of law depends on how we look at its purposes or functions.

There have been and will continue to be different definitions of law. Aristotle saw law as a rule of conduct. Plato believed that law was a form of social control. Cicero contended the law was the agreement of reason and nature, the distinction between the just and the unjust.

The following definition of law is commonly accepted in China: Law is the total sum of norms enacted by the authorities of the State combining the will of the ruling class, with rights and obligations as the regulation mechanism and enforced with the guarantee of the state power, serves as the means of class ruling in social management, and instrument for achieving social justice.

Classification of Law

There are several different classifications of law that are found around the world as follows:

1. Substantive Law vs. Procedural Law

Substantive law defines rights, and procedural

法的定义

什么是法律？虽然我们在日常交谈中在许多方面都使用“法律”一词，但对于什么是法律却没有简单的答案。

法律的定义取决于我们如何看待其目的或功能。

目前已经有而且今后还会有很多关于法的不同定义。亚里士多德认为法是行为的准则。柏拉图认为，法是一种社会控制的形式。西塞罗则主张法是自然与理性的统一，是正义与非正义之间的界限。

在中国，普遍接受的法的概念是：法是由国家制定、认可，反映统治阶级的意志，以规定权利义务为调整机制并依靠国家强制力保证其实施的行为规范总和，它作为阶级统治和社会管理之手段，是实现社会正义的工具。

法的分类

世界上有几种不同的法律分类，如下所述：

1. 实体法与程序法

实体法界定权利，程序法则确立保

law establishes the procedures by which rights are protected and enforced. It is the meaning of a law that explains what you can and cannot do. For example, the law states that you cannot kill another human being unless it was in self-defense. Unlike substantive law, procedural law is just the steps that must take place when filing a lawsuit against another party. *The Criminal Law of the PRC* is substantive law while *The Criminal Procedure Law of the PRC* is procedural law.

2. Public Law vs. Private Law

Public law deals with the relationship between the individuals and the government. It simply means that the government is involved. It includes constitutional law, administrative law and criminal law.

Private law governs the legal relationships among the individuals. It covers contract law, commercial law, tort law, property law, inheritance law, family law and corporation law.

3. Civil Law vs. Criminal Law

Civil law concerned with an individual's private rights and obligations, whereas criminal law deals with relations between the State and the individual.

To make it easy, civil law is all law other than criminal law, such as property law, which governs transfer and ownership of property, and contract law, which is the law of personal agreements.

The main purpose of criminal law is to give the state the power to protect the public from harm by punishing individuals whose actions threaten the social order of things. For criminal actions, the state initiates the legal proceedings by bringing charges against the criminal, then prosecuting him or her. Once it is determined that a criminal law was broken, the state will then proceed to impose a sentence against the defendant such as imprisonment, probation, or a fine, payable to the state.

4. Written Law vs. Unwritten Law

The written law, also known as statutory law, is

护权利并使其生效的程序。它解释你能做什么和不能做什么。例如,法律规定,你不能杀人除非是自我防卫。与实体法不同,程序法则是规定对另一方提起诉讼时所必须进行的步骤。《中华人民共和国刑法》是实体法,而《中华人民共和国刑事诉讼法》是程序法。

2. 公法和私法

公法调整个人与政府的关系,简单地说就是涉及政府的法律,包括宪法、行政法和刑法。

私法则是调整个人与个人之间的关系,包括合同法、商法、侵权法、财产法、继承法、家庭法和公司法。

3. 民法和刑法

民法涉及的是个人之间的私人权利和义务,而刑法调整的是国家与个人之间的关系。

简单地说,所有的如调整财产所有权转让的财产法及涉及个人协议的合同法都是民事法律而不是刑事法律。

刑法的主要目的是通过对危害社会秩序的行为予以惩罚,以国家权力来保护公众免于伤害。对于犯罪行为,国家则通过提起公诉来指控罪犯。一旦确定有违反刑法的行为,国家将对被告判处如监禁、缓刑、向国家支付罚款等刑罚。

4. 成文法和不成文法

成文法也称制定法,由国家制定和

enacted and promulgated by the State. The unwritten law is not expressed into written clauses, it is only confirmed by the state. Normally it refers to customary laws. In common law countries, it refers to precedents, i.e. the judge-made law.

颁布。不成文法没有书面条款形式，只由国家认可。一般指习惯法。在普通法国家，指先例，如法官创制的法律。

Glossary

just [dʒʌst] <i>adj.</i>	公道的，公正的，公平的；合理的；有充分根据的
jurisprudence [ˌdʒʊəris'pru:dəns] <i>n.</i>	法学；法理学
norm [nɔ:m] <i>n.</i>	标准，规范；准则，行为模式
enact [i'nækt] <i>vt.</i>	制定(法律)，颁布，规定；[常用于被动语态]发生
right [raɪt] <i>n.</i>	正当；公正；正义
obligation [ˌɒbli'geɪʃən] <i>n.</i>	义务；责任
lawsuit ['lɔ:su:t, 'lɔ:sju:t] <i>n.</i>	诉讼，诉讼案件；诉讼(尤指非刑事案件)
prosecute ['prɒsɪkjʊ:t] <i>vt.</i>	检举、告发某人；对某人提起公诉
sentence ['sentəns] <i>n.</i>	宣判，判决
defendant [di'fendənt] <i>n.</i>	被告
imprisonment [im'prɪznmənt] <i>n.</i>	关押，监禁
probation [prə'beɪʃən] <i>n.</i>	缓刑(期)
statutory ['stætjʊtəri] <i>adj.</i>	依照法令的，法定的，制定的
statutory law	制定法
precedent ['presɪdənt] <i>n.</i>	先例，判例

Notes

1. Aristotle: 亚里士多德(公元前 384—公元前 322，古希腊大哲学家，科学家)，著有《政治学》、《伦理学》、《雅典政制》等。
2. Plato: 柏拉图(公元前 427—公元前 347，古希腊哲学家)，师从苏格拉底(Socrates，公元前 469—公元前 399)，又是亚里士多德的老师。著有《理想国》、《政治家》、《法律篇》等。
3. Cicero: 西塞罗(Marcus Tullius Cicero，公元前 106—公元前 43)，古罗马政治家、辩论家、著作家，著有《共和国》、《论政治》、《论法律》。在法律思想方面，他根据斯多噶学派的观点，首先系统地提出了自然法学说。
4. norm *n.* stands of behavior that are typical of or accepted within a society 标准，规范；准则，行为模式
e.g. norm of the civil law 民法规范
norm of international law 国际法规范

Everyone should abide by our social norms. 我们每个人都应该遵守社会行为准则。

Administrative License Law of the People's Republic of China stipulates that norm document can not set administration permission. 《中华人民共和国行政许可法》明确规定：一般的规范性文件是不得设定行政许可的。

5. enact *vt.* to order by virtue of superior authority; decree 以至高的权威身份来下命令；命令或制定(法令)

e.g. to enact a law or regulation 制定制订颁布(法律或规章)

The people's congress of a national autonomous area may, in accordance with the principles of this Law and the actual practices of the local nationality or nationalities with regard to property inheritance, enact adaptive or supplementary provisions. 民族自治地方的人民代表大会可以根据本法的原则，结合当地民族财产继承的具体情况，制定变通的或者补充的规定。

The President's decision barred the door to any attempt to enact a new tax law. 总统的决定阻止了任何制定新税收法的企图。

enactive *adj.* 有制定权的；制定法律的；enactment *n.* 法令，条例，法规

6. lawsuit *n.* 诉讼

e.g. A bad compromise is better than a good lawsuit. [谚]吃亏的和解强似胜利的诉讼(指诉讼消耗时间及金钱的麻烦)。

He raised the hard question of the cost of the lawsuit. 他提出了诉讼费用的难题。

7. substantive law 实体法

8. procedural law 程序法

9. self-defense 正当防卫，自我防卫

10. constitutional law 宪法

11. administrative law 行政法

12. tort law 侵权法

13. property law 物权法

14. inheritance law 继承法

15. family law 家庭法

16. corporation law 公司法

17. civil law 民法；大陆法系

18. criminal law 刑法

19. bring...against

e.g. to bring an action against sb. 【法】对某人提出起诉
to bring a lawsuit against 向法院提起诉讼(的行为)

20. defendant

n. someone who has been accused of a crime and is on trial

e.g. This defendant is charged with fraud. 这名被告被控犯有欺诈罪。

Every defendant is entitled to a day in court. 每个被告都有机会出庭辩护。

The jury found the defendant innocent. 陪审团判定被告是无辜的。

adj. 被告人的; 辩护的

21. imprisonment *n.* the act of putting someone in prison 徒刑(期)

e.g. He was sentenced to life imprisonment. 他被判无期徒刑。

His punishment was commuted from life imprisonment to 15 years' imprisonment. 他的无期徒刑减轻为 15 年有期徒刑。

His punishment of death was commuted to life imprisonment. 他的死刑减轻为无期徒刑。

22. probation *n.* 缓刑(期), (以观后效的)察看

e.g. The judge did not jail the young man, but put him on probation for a year. 法官没有把那个年轻人关进监狱, 而是判他缓刑一年。

23. precedent *n.* 先例, 判例

e.g. This decision sets a precedent for future cases of a similar nature. 这一裁决为今后性质类似的案件提供了判例。

24. statutory *adj.* fixed or controlled by law

e.g. This guarantee does not affect your statutory rights.

The authority failed to carry out its statutory duties.

Exercises

I. Topics for discussion.

1. What is law?
2. How many different classifications of law that are found around the world? What are they?
3. Describe civil law briefly.
4. What is the major difference between private law and public law?

II. Vocabulary: Match the words in Column A with each of the numbered definitions in Column B.

Column A

- A. defendant
- B. obligation
- C. imprisonment
- D. just
- E. norm

Column B

- () 1. standard or pattern that is typical
- () 2. punishment given by a law court
- () 3. to make or pass (a decree)
- () 4. to bring a criminal charge against sb. in a court of law
- () 5. acting or being in accordance with what is morally right and

proper; fair

- F. sentence () 6. person accused or sued in a legal case
 G. prosecute () 7. state of being imprisoned
 H. enact () 8. law, moral pressure, promise, etc., that forces one to do sth.

III. Fill in the blanks with the words given below. Change the form if necessary.

authority

norm

citizen

principle

court

judge

define

order

Law has been 1 as a set of rules that govern the actions of people in a community. These rules must be followed by 2 and violation of these rules may give rise to a cause of action in the 3. This view sees law as a set of fixed 4 known to lawyers and 5, ignorance of which excuses no one, not even the less knowledgeable or less affluent members of society.

Another view of law is that it is a method of establishing 6 by maintaining 7 of a ruler over those governed. According to this view, law begins only when a coercive apparatus comes into existence to maintain control through enforcement of social 8. The control group need not be agents of a political entity, but may be labor, business, or church organizations. And the coercion can be psychological as well as physical.

IV. Translation.

1. Law has been defined as a set of rules that govern the actions of people in a community. These rules must be followed by citizens, and violation of these rules may give rise to a cause of action in the courts.

2. Most observers, however, believe that law exists only in a formal setting. This view holds that although rules are an important part of the process, the emphasis is upon actions for the purpose of adherence to those rules. Law is thus defined as the formal means of social control that involves the use of rules that are interpreted, and are enforceable, by the courts of a political community.

3. Law is also frequently classified into public law and private law. Public law includes those bodies of law that affect the public generally. It can be further divided into constitutional law, administrative law and criminal law. Private law includes the areas of law that concern the relationships among individuals in an organized society. It covers the subjects of contracts, torts and property, each of which can be subdivided into several bodies of law. It deals with wrongful acts against a person of his property and is based on the theory that in a civilized society, people who injure other persons of their property must compensate them for their loss.

4. 在法律与道德之间没有必然的联系，法律的唯一渊源应该是制定法，这种制定法被解释为政府实体或法院制定的法律。

5. 法律体系应该由合理的、清晰的、概括性的规则组成，并且事先为广大公民所知。

6. 法律应该是人民意志的反映。

法谚

Judges do not answer questions of fact; juries do not answer questions of law.

法官不负责事实问题；陪审员不负责法律问题。

Unit 2 Major Legal Systems in the World

世界主要法系

The major legal systems of the world today consist of civil law, common law, socialist and Islamic legal system.

Representatives of the Four Legal Systems

1. Civil law systems (Continental or Romano-Germanic law) are used in France, Germany, Austria, Belgium, Switzerland, Italy, Spain, Portugal, Japan, Mexico, Thailand, Turkey, Indonesia, Holland (the Netherlands).

2. Common law systems (Anglo-American law, case law) are used in England, Ireland, USA (except Louisiana), New Zealand, Pakistan, Singapore, Malaysia, Australia, Canada (excluding Quebec), Burma, India, Hong Kong (China).

3. Socialist legal systems are used in China, Cuba, Korea (D.P.R.), and Vietnam.

4. Islamic legal systems are used in Middle East countries: Egypt, Jordan, Lebanon, Syria, Iran, and Iraq.

Continental Legal System

Continental law (Civil law) is the predominant system of law in the world, and sets out a comprehensive system of rules, usually codified, which are applied and

当今世界上的主要法系可分为：大陆法系、普通法系、社会主义法系和伊斯兰法系。

四个法系的代表

1. 大陆法系(欧陆法、罗马—日耳曼法系)国家——法国、德国、奥地利、比利时、瑞士、意大利、西班牙、葡萄牙、日本、墨西哥、泰国、土耳其、印度尼西亚、荷兰。

2. 普通法系(英美法、判例法系)国家及地区——英格兰、爱尔兰、美国(除路易斯安那州)、新西兰、巴基斯坦、新加坡、马来西亚、澳大利亚、加拿大(除魁北克)、缅甸、印度、中国香港。

3. 社会主义法系国家——中国、古巴、朝鲜、越南。

4. 伊斯兰法系国家——中东国家：埃及、约旦、黎巴嫩、伊朗和伊拉克。

大陆法系

大陆法系是世界主要的法系，制定了全面系统的法规，通常为成文法典，由法官使用和解释。