



法学系列

董世忠 赵 建 主编

法律英语

(第二版)



复旦大学出版社

www.fudanpress.com.cn



法学系列

董世忠 赵 建 主编

法律英语

(第二版)



复旦大学出版社

www.fudanpress.com.cn

图书在版编目(CIP)数据

法律英语/董世忠,赵建主编.—2版.—上海:复旦大学出版社,2006.7
(博学·法学系列)
ISBN 7-309-04938-1

I. 法… II. ①董…②赵… III. 法律-英语-教材
IV. H31

中国版本图书馆 CIP 数据核字(2006)第 017502 号

法律英语(第二版)

董世忠 赵 建 主编

出版发行 复旦大学出版社 上海市国权路 579 号 邮编 200433
86-21-65642857(门市零售)
86-21-65118853(团体订购) 86-21-65109143(外埠邮购)
fupnet@fudanpress.com <http://www.fudanpress.com>

责任编辑 计美娟
总 编 辑 高若海
出 品 人 贺圣遂

印 刷 上海浦东北联印刷厂
开 本 787×960 1/16
印 张 43
字 数 749 千
版 次 2006 年 7 月第二版第一次印刷
印 数 1—5 100

书 号 ISBN 7-309-04938-1/H·970
定 价 49.00 元

如有印装质量问题,请向复旦大学出版社发行部调换。

版权所有 侵权必究

二 版 前 言

《法律英语》是在 20 世纪 90 年代为上海紧缺人才培训工程编写的一本教材,供具有大学三级以上英语水平的法学学生和涉外法律工作者使用。它自 1997 年初问世以来,受到了广大师生及其他使用者的欢迎。近十年来,随着我国改革开放的步步深入,社会对法律工作者的英语要求不断提高,大学生的总体英语水平也今非昔比。考虑到使用者要求的提高,也考虑到近年来美国法律的一些变化,亦应广大读者的要求,编者对本教材进行了比较大的修改,使其进一步完善,以期更好地满足读者的需要。

本书编者多年来从事法律英语的教学,同时兼职法律事务的翻译,既了解英语教学的普遍规律,又了解法律英语的特殊要求。本次修订中,编者结合自己长期教学的体会和工作中积累的丰富经验,对原书进行了比较全面的修改和充实。新版的《法律英语》保持了原版的整体格局,一方面它涵盖的法律内容较为完整和系统,另一方面语言地道、难度适中,既有供课堂讲练的课文和练习,也有丰富的案例可供学生自学和阅读,如果使用得当,教师和学生密切配合,定可在较短的时间内获得法律英语的长足进步。

新版《法律英语》中,第一单元突出介绍了美国的法律和司法制度;商业票据单元全部刷新,反映了美国商法变化的新动态;侵权法单元增加了关于产品责任的内容;其他单元的课文也均有一定程度的扩展和充实,同时对各单元的先后次序安排也作适当的调整。作为泛读阅读材料的案例,内容全部更新,覆盖面更广,其增添的案例又多为本世纪的判例,更好地反映了当前美国法律的情况和发展趋向。考虑到所选的案例在文字和内容上有一定难度,除了增加文字注释外,还在每个案例后加了点评,以画龙点睛的方式简述案件的要点,有助于学生理解法官的分析思路和判案原则。

本次修订工作主要由赵建执笔,刘海虹参加修订了第六和第七单元。全书由赵建最后审定。

在本书修订过程中,计美娟副编审不辞辛劳,做了大量工作,特此表示感谢。

编者

2006 年 6 月

序

上海市副市长谢丽娟

由上海市人民政府教育卫生办公室、市成人教育委员会、中共上海市委组织部、市人事局联合组织编写的“90年代上海紧缺人才培训工程教学系列丛书”将陆续出版。编写、出版这套丛书是实施上海紧缺人才培训工程的基础工作之一,对推动培养和造就适应上海经济建设和社会发展急需的专业技术人才必将起到积极的作用。

90年代是振兴上海、开发浦东关键的十年。上海要成为国际经济、金融、贸易中心之一,成为长江流域经济发展的“龙头”,很大程度上取决于上海能否有效地提高上海人的整体素质,能否培养和造就出一大批坚持为上海经济建设和社会发展建设,既懂经济,懂法律,懂外语,又善于经济管理,擅长国际竞争,适应社会主义市场经济新秩序的多层次专业人才。这已越来越成为广大上海人民的共同认识。

目前上海人才的状况与经济建设、社会发展的需求矛盾日趋显著。它集中表现在:社会主义市场经济的逐步确立,外向型经济的迅速发展,新兴产业的不断崛起,产业产品结构的适时调整,城市建设和管理任务的日益繁重,使原来习惯于在计划经济体制下工作的各类专业技术人才进入了一个颇感生疏的境地,使原来以面向国内市场为主的各类专业技术人才进入一个同时面向国内外市场并参与国际竞争的新天地,金融、旅游、房地产、城市建设和管理等以及许多高新技术产业又急切地呼唤一大批新的专业技术人才。这就加剧了本市专业人才总量不足、结构不合理的矛盾。此外,本市的从业人员和市民的外语水平与计算机的应用能力普遍不高,这种情况如不迅速改变,必将影响上海的经济走向世界,必将影响上海在国际经济、金融、贸易中的地位和在长江流域乃至全国经济发展中的作用。紧缺人才培训问题已引起市委、市政府的高度重视。

“机不可失,时不再来。”我们要大力加强紧缺人才的培训工作和外语、计算机的推广普及工作。鉴于此,及时编写、出版本丛书,是当前形势之急需,其



意义是现实的和深远的。诚然,要全面组织实施 90 年代上海紧缺人才培训工程,还有待于各有关方面的共同努力。

在“90 年代紧缺人才培训工程教学系列丛书”开始出版之际,感触颇多,简述代序。

1997 年 1 月



编 者 的 话

《法律英语》(第二版)是一本法律专业英语教材,供具有大学英语三级以上的大学法律专业学生以及法律工作者学习专业英语使用。

本教材有以下特点:

一、内容上的完整性:本教材的八个单元介绍了美国法律的八个重要部分:导论、民事诉讼、宪法、财产、合同、票据、公司、侵权。每个单元的课文力求用最简练的语言,勾画出一门法律的全貌。因此,每学一个单元,就会对美国的一门法律有一个总体概念,并掌握这一门法律所常用的术语和基本概念的表述。

二、使用上的可操作性:本教材的课文文字由浅入深,词汇重复率高,符合外语学习循序渐进的要求。每课配有大量口头与笔头练习,旨在帮助学生理解课文、操练基本法律词汇和用语。书后附有答案,无论对教师和自学者都十分方便。

三、使用对象的兼容性:由于课文内容浅显,注释充分,具有一般水平的学生通过自学完全能够理解。如果能做完练习的Ⅰ、Ⅱ、Ⅲ部分,则达到了巩固的效果。练习的Ⅳ、Ⅴ部分有一定难度,供水平较高的学生使用。每单元配有的案例阅读材料,是课文中涉及的法律原则在实际生活中的体现,可作为泛读材料,用以加深、拓宽对课文的理解,也可作为教师的参考资料,用以解释课文。

参加本教材编写的,除主编外,还有刘海虹同志,她参加编写了财产法和侵权法两个单元。

本教材在编写过程中,得到了上海市司法局教育处戴鸿儒处长、黄立群干事和复旦大学出版社张永彬同志的大力支持,特在此表示感谢。

我们热诚欢迎使用本教材的教师和学生对其中的不足之处加以指正。

编者

2006年6月

Contents

| | |
|--|-----|
| UNIT ONE Introduction to American Law | 1 |
| Lesson One Law under American Federalism | 1 |
| Lesson Two The Dual Court System | 9 |
| UNIT TWO Civil Litigation | 17 |
| Lesson One The Adversary System | 17 |
| Lesson Two Commencing a Legal Action | 26 |
| Lesson Three Pleadings and Motions Attacking Pleadings | 34 |
| Lesson Four Discovery | 42 |
| Lesson Five The Trial | 50 |
| Lesson Six Appeal and Enforcement | 58 |
| 案例阅读指导 | 67 |
| CASES FOR SUPPLEMENTARY READING | 68 |
| Clearfield Trust Co. v. United States | 68 |
| Alderman v. Baltimore & Ohio Railway Co. | 72 |
| Cross v. United States | 76 |
| Lindberger v. General Motors Corp. | 81 |
| Kozlowski v. Sears, Roebuck & Co. | 83 |
| Thiel v. Southern Pac. Co. | 88 |
| Dobson v. Masonite Corp. | 93 |
| Jones v. Morris Plan Bank of Portsmouth | 97 |
| UNIT THREE Constitutional Law | 102 |
| Lesson One The Institutions of Government | 102 |
| Lesson Two Separation of Powers | 111 |
| Lesson Three Federal-State Relations | 120 |
| Lesson Four Basic Rights | 129 |
| CASES FOR SUPPLEMENTARY READING | 139 |
| Marbury v. Madison | 139 |



| | |
|--|-----|
| Youngstown Sheet & Tube Co. v. Sawyer | 145 |
| City of Philadelphia v. New Jersey | 150 |
| Board of Regents v. Roth | 155 |
| Brown v. Board of Education (First Case) | 159 |
| United States v. Darby | 164 |
| Heart of Atlanta Motel v. United States | 169 |
| Ashcroft v. American Civil Liberties Union et al. | 174 |
| Employment Division, Dept. of Human Resources of Oregon v. Smith | 180 |
| UNIT FOUR Contracts | 185 |
| Lesson One Contract Formation and Classification | 185 |
| Lesson Two Performance and Non-Performance | 195 |
| Lesson Three Remedies and Computation of Damages | 204 |
| Lesson Four Rights of Third Parties | 212 |
| CASES FOR SUPPLEMENTARY READING | 220 |
| McDonald v. Mobil Coal Producing, Inc. | 220 |
| Louisa W. Hamer v. Franklin Sidway | 225 |
| John D. R. Leibard v. PepsiCo, Inc. | 230 |
| ACE Service Inc. v. General Service Administration | 235 |
| Handicapped Children's Education Board of Sheboygan County v. Lukaszewski | 241 |
| Acme Mills & Elevator Co. v. Johnson | 246 |
| Equilease Corp. v. State Federal S & L Association | 249 |
| United States ex rel. Coastal Steel Erectors, Inc. v. Algernon Blair, Inc. | 254 |
| Trippe Manufacturing Company v. Niles Audio Corporation | 258 |
| Finger Furniture Company Inc. v. Commonwealth Insurance Company | 263 |
| UNIT FIVE Commercial Paper | 269 |
| Lesson One Negotiable Instruments | 269 |
| Lesson Two Rights of Holder in Due Course | 277 |
| Lesson Three Check Collection | 287 |
| Lesson Four The Bank and Its Customer: Rights, Duties and | |



Contents

| | |
|---|------------|
| Liabilities | 296 |
| CASES FOR SUPPLEMENTARY READING | 305 |
| Bank of Miami v. Florida City Express, Inc. | 305 |
| Money Mart Check Cashing Center v. Epicycle | 308 |
| Huber Glass Co. v. First Nat. Bank of Kenosha | 312 |
| H. Schultz & Sons, Inc. v. Bank of Suffolk County | 317 |
| Dziurak v. The Chase Manhattan Bank, NA | 322 |
| MidWisconsin Bank v. Forsgard Trading, Inc. | 326 |
| Wachovia Bank, N. A. v. Federal Reserve Bank | 330 |
| Guardian Life Insurance Co. v. Weisman | 336 |
| UNIT SIX Property Law | 343 |
| Lesson One Basic Categories of Property | 343 |
| Lesson Two Real Property (I) | 351 |
| Lesson Three Real Property (II) | 359 |
| Lesson Four Personal Property | 367 |
| Lesson Five Intellectual Property | 375 |
| CASES FOR SUPPLEMENTARY READING | 384 |
| Susette Kelo, <i>et al.</i> v. City of New London, Connecticut, | |
| <i>et al.</i> | 384 |
| Baker v. Weedon | 391 |
| Matter of Cohn | 395 |
| Ray v. Flower Hospital | 398 |
| Tenhet v. Boswell | 401 |
| Hayes v. Hayes | 407 |
| Baker v. Selden | 412 |
| UNIT SEVEN Tort Law | 418 |
| Lesson One Introduction to Tort Law | 418 |
| Lesson Two Intentional Torts (I) | 426 |
| Lesson Three Intentional Torts (II) | 434 |
| Lesson Four Torts of Negligence | 442 |
| Lesson Five Strict Liability and Tort Reform | 450 |
| Lesson Six Product Liability | 458 |
| CASES FOR SUPPLEMENTARY READING | 466 |



| | |
|--|-----|
| Quinones v. United States | 466 |
| Faniel v. Chesapeake & Potomac Telephone Co. | 469 |
| Hustler Magazine, Inc. <i>et al.</i> v. Jerry Falwell | 472 |
| Palsgraf v. Long Island Railroad Co. | 479 |
| Chrystal v. The Hawkes Hospital | 484 |
| Katko v. Briney | 486 |
| Chemawa Country Golf v. Wnuk | 489 |
| Greenman v. Yuba Power Products, Inc. | 492 |
| UNIT EIGHT Corporate Law | 498 |
| Lesson One Introduction | 498 |
| Lesson Two Incorporation, Organization and House Keeping | 507 |
| Lesson Three Corporate Management and Control | 515 |
| Lesson Four Dissolutions, Mergers and Consolidations | 523 |
| Lesson Five Securities Regulation | 531 |
| Lesson Six Contests for Control | 540 |
| CASES FOR SUPPLEMENTARY READING | 549 |
| Lurie v. Arizona Fertilizer & Chemical Co. | 549 |
| Heller v. Boylan | 555 |
| Perlman v. Feldmann | 559 |
| Unilever Acquisition Corp. v. Richardson-Vicks, Inc. | 565 |
| Halperin v. Ebanker USA. Com. Inc. | 570 |
| Jernberg v. Mann | 576 |
| Dellastatious v. Williams | 582 |
| Key to Exercises | 589 |
| Vocabulary | 640 |



UNIT ONE

Introduction to American Law

Lesson One

Law under American Federalism

Text

The United States has a federal system of government. What this means is that under the US Constitution there is a national, or federal, government, and there are individual states, each enjoying a substantial degree of autonomy. Each state has its own constitution, its own government, its own set of statutory laws made by its own legislature, and, because of the common law tradition, a body of case law created by its own courts.

The US Constitution gives certain law-making powers to the federal government, others to the state governments, and yet others to both.

The law-making powers granted to the United States Congress are specific and limited. They include areas of interstate and foreign commerce, federal taxation, currency, the postal service, declaration of war, maritime law, bankruptcy, patent and copyright, and the establishment of armed forces. In addition, Congress is also empowered to make "all laws which should be necessary and proper for carrying into execution the foregoing powers". Among these enumerated and implied powers, some are exclusive and others are shared with the states¹. In areas where there are both federal and state laws, federal law prevails if the two are in conflict².



The powers not specifically granted to Congress are reserved to the states or to the people. Thus, most areas of private law, such as contracts, torts, business and corporate governance, are governed by the statutes and common law of each state.

Beginning in the mid-20th century, a number of trends combined to enhance the federal role within the legal system. Even so, much of that system remains within the state domain. While no state may deny a citizen any right guaranteed by the federal Constitution, many interpret their own constitutions as bestowing even more generous rights and privileges. State courts applying state law continue to decide most contractual disputes. The same is true of most criminal cases, and of civil tort actions. Family law, including such matters as marriage and divorce, is almost exclusively a state matter. For most Americans most of the time, the legal system means the police officers and courts of their own state, or of the various municipalities and other political subdivisions within that state.

As a consequence of this federal scheme, choice of law questions confront judges and lawyers in multi-jurisdiction disputes almost as frequently as in international litigation³. If a dispute arises out of a series of activities in different states or between parties who are residents of different states, and the substantive rights at issue are defined differently in these states, the choice of applicable law may become a crucial and hotly contested issue, thus giving an added dimension of complexity to the legal situation.

Let's first look at a case involving claims of securities fraud. Since securities transactions are governed by both federal and state laws, the applicable law in such cases includes both federal law and the laws of relevant states.

A tort claim typically does not involve federal law. The law applicable to a tort claim is generally said to be the law of the place of injury. Thus, a court sitting in state X would follow its own rules of procedure, but it would use the tort law of state Y if the injury occurred in Y.

The choice of law question with respect to contract disputes is much more complicated. Several choice of law rules are used by different courts on issues involving the law of contracts. Suppose a contract is concluded in one state (State A), performed in another (State B), and the parties are from still others (State C and State D). In this multi-jurisdiction case, which state's substantive

law is applicable? The question will be answered by the court which hears the case. Suppose the plaintiff brings his contract claim before a court in his home state C. Suppose also that according to the choice of law rules of State C, contract disputes should be governed by the law at the place of contract performance. The court in State C will apply the contract law (both statutory and case law) of state B in resolving the dispute. However, if the plaintiff brings the dispute before a court sitting in defendant's home state D, whose choice of law rules direct the court to apply the law of the state most involved with the contract⁴, the outcome of the lawsuit may be different.

The trend toward uniform statutes has tended to decrease these conflicts, but many of them still exist. So, in studying American law, students should be aware that different states may have different substantive laws and different choice of law rules regarding a particular legal situation, resulting in the possibility that the choice of forum may affect the substantive rights of parties concerned.

Words & Expressions

| | | |
|-----------------------------|---------|------------------|
| substantial /səb'stænʃəl/ | adj. | 实质性的,重要的 |
| autonomy /ɔ:'tɒnəmi/ | n. | 自治(权) |
| statutory /'stætjʊtəri/ | adj. | 成文的 |
| statute /'stætʃu:t/ | n. | 成文法,法规 |
| legislature /'ledʒɪsleɪtʃə/ | n. | 立法机构 |
| common law | | 普通法 |
| specific /spə'sɪfɪk/ | adj. | 具体的,特定的 |
| interstate /,ɪntə'steɪt/ | adj. | 州际的 |
| currency /'kʌrənsɪ/ | n. | 货币 |
| maritime /'mæɪtائم/ | adj. | 海事的 |
| bankruptcy /'bæŋkrəptʃɪ/ | n. | 破产 |
| patent /'pætənt/ | n., vt. | 专利,专利权;授予专利,申请专利 |
| copyright /'kɒprɪraɪt/ | n. | 版权 |
| execution /,eksɪ'kju:fən/ | n. | 执行,生效,正式签订 |
| enumerate /ɪ'nju:məreɪt/ | vt. | 列举 |



| | | |
|--------------------------------|-----------|----------------------|
| exclusive /ɪk'sklʊ:sɪv/ | adj. | 排除其他一切的,独有的 |
| prevail /pri'veɪl/ | vi. | 获胜,压倒 |
| govern /'gʌvən/ | vt. , vi. | 统治,管理;支配,决定;适用于 |
| domain /dəʊ'meɪn/ | n. | 领域,范围 |
| bestow /brɪ'stəʊ/ | vt. | 将……授予 |
| tort /tɔ:t/ | n. | 侵权 |
| municipality /mju:nɪsɪ'pæləti/ | n. | 市,市政府 |
| subdivision /'sʌbdɪvɪʒən/ | n. | 分支 |
| choice of law | | 法律选择 |
| jurisdiction /,dʒʊərɪs'dɪkʃən/ | n. | 管辖权,辖区 |
| multi-jurisdiction dispute | | 涉及多辖区的纠纷 |
| litigation /lɪtɪ'geɪʃən/ | n. | 诉讼 |
| substantive /səb'stæntɪv/ | adj. | 实体的 |
| complexity /kəm'pleksəti/ | n. | 复杂性 |
| relevant /'reləvənt/ | adj. | 相关的 |
| claim /kleɪm/ | n. , vt. | 要求,请求(权);索赔(权);声称;主张 |
| securities /sɪ'kjʊərətɪz/ | n. | 证券 |
| fraud /frɔ:d/ | n. | 欺诈,欺骗 |
| uniform /'ju:nɪfɔ:m/ | adj. | 一致的,同样的 |
| forum /'fɔ:rəm/ | n. | 法庭,进行公开讨论的地方 |

Notes

1. Among these enumerated and implied powers, some are exclusive and others are shared with the states.
在这些列举的和默示的权力中,有一些是只属于联邦的,有一些则是与州共享的。
2. In areas where there are both federal and state laws, federal law prevails if the two are in conflict.
在既有联邦也有州法律的领域,如果两者相冲突,则以联邦法为准。
3. As a consequence of this federal scheme, choice of law questions confront judges and lawyers in multi-jurisdiction disputes almost as frequently as in international litigation.



联邦制造成的后果之一是,法官和律师在跨辖区的纠纷中和在国际诉讼中一样都面临法律选择问题。

4. ...whose choice of law rules direct the court to apply the law of the state most involved with the contract.

该州的法律选择规则规定法院适用与合同关系最密切的州的法律。

Word Study

1. specify *vt.* 指定,指明,详述

specific *adj.* 具体的,明确的,特定的

You said you wanted me to buy a cell phone for you. I will not do that unless you specify the brand and model you want.

The task would have been easier for us if your instructions were specific.

2. enumerate; to name a list of things one by one 列举

In his closing speech the chairman enumerated the objections to the proposal that were raised by committee members.

To enumerate the works of Mark Twain will take more than a page, I think.

3. prevail *vi.* 获胜,压倒

The Parties agree in their contract that the English version will prevail over the Chinese if the two give rise to different interpretations.

The prevailing party won a damage award of one million.

4. govern *vt., vi.* 支配,决定;适用于

The law of supply and demand governs the prices of goods.

The governing law for this dispute is Chinese law.

5. with respect to 关于,就……而言

The manager wants to talk to you with respect to your employment contract.

With respect to tort claims the choice of law is quite simple.

Exercises

I. Tell whether each of the following statements is true or false:

1. The states in the federal system have their own legal systems.
2. The legislative power of the United States Congress is limited.



3. The powers granted to Congress are exclusive.
4. Federal law-making power has been expanded over the years.
5. Federal law is now a dominant part of American law.
6. Substantive laws are uniform in all states.
7. With respect to securities transaction, the governing law is state law.
8. The law for a tort claim is the law at the place of injury. This is a choice of law rule.
9. Choice of law rules may affect courts' judgments on substantive issues.
10. The courts in different states follow the same set of choice of law rules.
11. Choice of forum does not affect the outcome of a lawsuit.
12. Conflict of law problems still exist despite of many uniform statutes.

II. Answer the following questions:

1. Does America have a uniform legal system?
2. How does the Constitution divide the law making power between the federal and state governments?
3. Why is it said that the states have a substantial degree of autonomy?
4. Explain the concept of American federalism and its effect on the American legal system.
5. What law making powers does the US Congress have? Are they granted to the Congress exclusively?
6. What happens if a state law conflicts with a federal law?
7. Is it possible for a court in State A to apply the laws of State B? If the answer is yes, when does it happen?
8. What kinds of cases are most likely to be governed by state laws?
9. Explain how choice of law may affect the substantive rights of the parties to a dispute.
10. Explain how choice of forum may affect the outcome of a lawsuit.

III. Fill in the blanks with proper words:

1. The powers _____ to Congress are enumerated in the US Constitution. They are _____ and limited. However, they can be stretched through the elastic clause or the "necessary and proper" clause

