

21 世纪专业英语系列教程



法 律专业英语

主 编 徐嘉辉 刘 骥

The Course for Legal English

Series of
English Courses
of 21st Century

哈尔滨工程大学出版社

21 世纪专业英语系列教程

法律专业英语

The course for Legal English

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内 容 简 介

本书共设十五个单元,包括法律制度、法律职业、宪法、行政法、刑法、合同法、侵权法、财产法、家庭法、知识产权法、公司法、商法、保险法、程序法。每单元的内容分为两部分:课文与补充读物。课文后附有单词表与注释,并设置有练习题;补充读物有助于进一步了解相关法律背景和知识。本书还附有经典案例选读。

本书具有较强的实用性。每单元练习中针对课文内容设置了问题讨论、完型填空、英汉互译等内容,以帮助学生理解课文,并提高学生的英语综合能力。补充读物范围较为广泛,有助于扩充学生的视野,提高学生的涉外法律事务能力。

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随着中国入世及市场经济的发展,对既懂法律又懂英语的人才的需求量日渐增长。为了适应这种需要,有必要加强法律英语教育,提高在校本科生、研究生和相关人员的法律英语水平,使其能够深入了解外国法律制度的基本情况,以便更好地适应中国入世带来的挑战以及参与国际竞争。

本教材适用于具备较高英语水平的法学专业高年级本科生、研究生,其他专业的学生和法律英语爱好者。本书选材丰富,难度适中,学生能从中接触到外国法律,尤其是英美法律系的不同侧面,能够掌握规范的法律英语语言和大量的法律英语词汇,进而能够较好地提高自身阅读法律原著的能力。

本书由徐嘉辉负责编写 Unit 1 ~ Unit 3,李佳新负责编写 Unit 4 ~ Unit 6,刘骥负责编写 Unit 7 ~ Unit 9,任悦姝负责编写 Unit 10 ~ Unit 12,何宏莲负责编写 Unit 13 ~ Unit 15。全书由徐嘉辉统稿,孙丹、左辉负责校对工作。由于编者水平有限,错误和不当之处在所难免,望读者朋友批评指正。

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Unit 1

... Part A ...

Introduction to Legal System

In modern society, the legal system is everywhere with us and around us. To be sure, most of us do not have much contact with courts and lawyers except in emergencies. But not a day goes by, and hardly a waking hour, without contact with law in its broader sense, or with people whose behavior is modified or influenced by law¹. Law is a vast, though sometimes invisible, presence.

Society, by one means or another, has developed a formal system of rules that are designed to be both observed and enforced². The police and the courts are the principal enforcement agencies. If a person breaks a legal rule, he will be penalized in some way. That is what the law is about: it consists of minimum standards of conduct, which all members of society are expected to follow³.

What is law? Law is a complete body of general norms, principles or rules that bind society or those are made for the guidance of human affairs imposed by a sovereign body on the people of a given state, and enforced by law enforcement agencies consisting of the police, the courts and the prison services⁴. The law also means the process by which rules are made and applied. The development, the content and the application of those rules add up to a legal system, complete with judges, courts, solicitors, barristers, police and indeed politicians in their role as lawmakers⁵. Let us set out a number of definitions of law which may be considered representative and which have influenced the course of legal development⁶:

Cicero: "Law is the highest reason, implanted in nature, which commands what ought to

be done and forbids the opposite.⁷”

St. Thomas Aquinas: “Law is an ordinance of reason for the common good, made by him who has care of the community, and promulgated.”⁸”

Hobbes: “Civil law is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong; that is to say, of what is contrary, and what is not contrary to the rule.”⁹”

Austin: “Every positive law ... is set by a sovereign person, or a sovereign body of persons, to a member of the independent political society wherein that person or body is sovereign or supreme. Or (changing the expression) it is set by a monarch or sovereign member to a person or persons in a state of subjection to its author.”¹⁰”

Locke: “The end of law is not to abolish or restrain, but to preserve and enlarge freedom.”¹¹”

Jhering: “Law is the sum of the conditions of social life in the widest sense of the term, as secured by the power of the State through the means of external compulsion.”¹²”

Carter: “Law is not a command or body of commands, but consists of rules springing from the social standard of justice or from the habits and customs from which that standard has itself been derived.”¹³”

Recasens-Siches: “Law was not born into human life by reason of the desire to render tribute or homage to the idea of justice, but to fulfil an inescapable urgency for security and certainty in social life. The question of why and wherefore men make law is not answered in the structure of the idea of justice, nor in the suite of outstanding values which accompany it as presupposed by it, but in a subordinate value—security—corresponding to a human need.”¹⁴”

The law may give people some unfriendly overtones with prison, the expense of hiring a lawyer, or sheer frustration of trying to establish what a particular legal rule means in everyday context, for legal language is often a “law unto itself”.

The law, as indicated above affects every citizen at many points in his life. We marry, we inherit property, and we die with or without making a will. We make almost daily contracts or agreements, if only in the purchase of a minor item of food. All these activities are subject to rules that society has intended to be legally binding¹⁵.

The law does not stand still. In the climate of opinions the legal system including judicial outlook has to accommodate itself to the changing attitudes and habits of the public.

The public plays its part in many areas of the law. This was clearly reflected in the changing nature of the law of contract and the law of tort from the late nineteenth century onwards. In the recent years, people have come to expect a greater degree of governmental and parliamentary interference than our forefathers ever encountered¹⁶. The era of economic freewheeling as epitomized by the Industrial Revolution has probably gone for all time. Truism as it may sound, we live a technological, informational and complex society. Nowadays the emphasis is much more upon regulation and standardization and upon fairness and equality of opportunity. Both the legislature and the judiciary were not enthusiastic about extending the boundaries of the law of tort, for fear of opening up a Pandora's Box of litigation¹⁷. Only in the twentieth century have certain tortious liabilities such as negligent misstatements been clearly established by the legislators and the courts¹⁸. The law, therefore, is by no means a static, rigid structure, despite on occasion a popular image to that effect. On the contrary, the legal system is full of contrasting colors, many of them of a political hue. From time to time the law must embrace freshly defined values and codes of behavior. Nonetheless the law may move slowly: change, whether societal or legal, is not necessarily rapid. As John Farrar has argued, the legal system is rooted in political compromise, at least where it attempts to pursue the twin yet contradictory goals of stability and change¹⁹.

The law can be divided into public law and private law. Public law is that part of law which deals with the state and its relations with its citizens²⁰. The state will itself enforce public law, the elements of which are constitutional law, criminal law, administrative law, etc. Private law is law that the state will not enforce except at the request of an aggrieved party²¹. Sometimes called civil law, and it provides a framework within which individual citizens operate on such matters as contracts, torts (civil wrongs), and the law of property and the laws of succession. The object of civil law is to compensate the injured party, rather than to punish the "wrong-doer"²². The term "civil" is used in opposition to "criminal". In the United States the term "civil law" is not ordinarily used to refer to the subject matter of a civil code, in opposition, for example, to "commercial law".

New Words

legal <i>adj.</i>	法律的,法定的,合法的	court <i>n.</i>	法院
lawyer <i>n.</i>	律师	observe <i>v.</i>	遵守

enforce <i>v.</i>	强迫, 执行	judge <i>n.</i>	法官, 审判员, 裁判员
solicitor <i>n.</i>	(初级诉状) 律师, 法律顾问	barrister <i>n.</i>	[英](有资格出席高等法庭并辩护的) 律师 [美] 法律顾问, 律师
lawmakers <i>n.</i>	立法者	ordinance <i>n.</i>	条令
promulgate <i>v.</i>	公布	sovereign <i>adj.</i>	主权的
		<i>n.</i>	主权者
monarch <i>n.</i>	君主	justice <i>n.</i>	法制
overtone <i>n.</i>	联想, 暗示	frustration <i>n.</i>	挫败, 挫折
onto <i>prep.</i>	在……之上	inherit <i>v.</i>	继承, 遗传而得
will <i>n.</i>	遗嘱	contract <i>n.</i>	合同, 契约
agreement <i>n.</i>	协议, 协定	judicial <i>n.</i>	司法的, 法院的, 公正的, 明断的
accommodate <i>v.</i>	适应	tort <i>n.</i>	民事侵权行为
epitomize <i>v.</i>	概括	standardization <i>n.</i>	标准化
legislature <i>n.</i>	立法机关, 立法机构	judiciary <i>n.</i>	司法部, 司法官, 审判员
litigation <i>n.</i>	诉讼, 起诉	misstatement <i>n.</i>	误述, 虚伪陈述
legislator <i>n.</i>	立法者	aggrieve <i>v.</i>	侵害
framework <i>n.</i>	框架	succession <i>n.</i>	继承
compensate <i>v.</i>	偿还, 补偿	criminal <i>adj.</i>	犯罪的, 犯法的, 罪恶的
commercial <i>adj.</i>	商业的, 贸易的		

Notes

1. To be sure, most of us do not have much contact with courts and lawyers except in emergencies. But not a day goes by, and hardly a waking hour, without contact with law in its broader sense, or with people whose behavior is modified or influenced by law. 可以确定, 我们大多数人除了紧急情况下以外, 跟法庭和律师都没有太多接触。但是没有一天, 甚至一个小时, 我们没有与广义的法律打交道, 或者没有与行为受到法律规制或影响的人打交道。

2. Society, by one means or another, has developed a formal system of rules that are designed to be both observed and enforced. 社会靠一种或另一种方式发展和设计出一套正规

的既供人们遵守又供司法机关强制执行的法规体系。

3. If a person breaks a legal rule, he will be penalized in some way. That is what the law is about: it consists of minimum standards of conduct, which all members of society are expected to follow. 如果一个人违反了法律规则, 他会以一定的方式受到惩罚。那就是法律: 它由最低行为准则构成, 而社会的所有成员都要遵守。
4. Law is a complete body of general norms, principles or rules that bind society or those are made for the guidance of human affairs imposed by a sovereign body on the people of a given state, and enforced by law enforcement agencies consisting of the police, the courts and the prison services. 法律是一个完整的一般标准、原则或规则的体系, 这些标准、原则或规则约束着社会, 或者用来指导人们的事务, 它们由特定国家的统治机构强加于人民, 并由法律实施机构强制施行, 这些机构包括警察、法庭和监狱。
5. The development, the content and the application of those rules add up to a legal system, complete with judges, courts, solicitors, barristers, police and indeed politicians in their role as lawmakers. 那些规则的发展, 充实和运用共同形成一种法律体系; 加上法官, 法院, 律师, 警察, 还有起立法作用的政治家们构成一种完整的法律体系。
6. Let us set out a number of definitions of law which may be considered representative and which have influenced the course of legal development: 让我们列出一些可认为是有代表性的和影响了法律发展进程的关于法律的定义:
7. Cicero: "Law is the highest reason, implanted in nature, which commands what ought to be done and forbids the opposite." 西塞罗: "法律是扎根于自然的最高理性, 它命令该做什么而禁止不该做的。"
8. St. Thomas Aquinas: "Law is an ordinance of reason for the common good, made by him who has care of the community, and promulgated." 圣托马斯·阿塞那斯: "法律是旨在维护公众利益的理性的条令, 由管理本社会的人制定并颁布的。"
9. Hobbes: "Civil law is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong; that is to say, of what is contrary, and what is not contrary to the rule." 郝勃慈: "对每一臣民而言, 内国法者, 乃共和政体以话语、文字或表示意志之其他有效符号命令臣民用以区别是非的那些规则; 即: 什么是违反规则, 什么是不违反规则的。"
10. Austin: "Every positive law ... is set by a sovereign person, or a sovereign body of persons, to a member of the independent political society wherein that person or body is sovereign or supreme. Or (changing the expression) it is set by a monarch or sovereign

member to a person or persons in a state of subjection to its author.”奥斯丁：“凡成文法律……均由主权者个体或主权者群体为由其占主权或至高地位的独立政治社会之成员而制定。易言之，它是由君主或主权成员给处于其下属地位者而制定的。”

11. Locke: “The end of law is not to abolish or restrain, but to preserve and enlarge freedom.” 洛克：“法律之目的不是要废止或约束而是要维护并扩大自由。”
12. Jhering: “Law is the sum of the conditions of social life in the widest sense of the term, as secured by the power of the State through the means of external compulsion.” 优林：“法律乃最广义的社会生活条件之诸条件的总和，由国家权力通过外在的强制手段而予以保证。”
13. Carter: “Law is not a command or body of commands, but consists of rules springing from the social standard of justice or from the habits and customs from which that standard has itself been derived.” 卡特：“法律并非命令或命令之总体，而是产生于法制的社会标准或由该标准所派生的种种习俗之各种规则所组成。”
14. Recasens-Siches: “Law was not born into human life by reason of the desire to render tribute or homage to the idea of justice, but to fulfil an inescapable urgency for security and certainty in social life. The question of why and wherefore men make law is not answered in the structure of the idea of justice, nor in the suite of outstanding values which accompany it as presupposed by it, but in a subordinate value—security—corresponding to a human need.” 吕卡先·薛克氏：“法律之所以诞生于人类生活，并非由于邀来称颂或崇敬法制这一概念，而是为了满足社会生活中对安全和确定之不可避免的迫切需要。关于人们所以立法的理由和原因何在这个问题，其答案既不在于法治概念的结构，也不在于如同法所预期的那样地伴随于法的那些突出的价值观，而在于一个从属的适应认为需要的价值观——安全。”
15. We marry, we inherit property, and we die with or without making a will. We make almost daily contracts or agreements, if only in the purchase of a minor item of food. All these activities are subject to rules that society has intended to be legally binding. 我们结婚，我们继承财产，我们制定或没有制定遗嘱地死亡。我们每天都签订合同或协议，即使购买的是极微小的食物。所有这些活动都受制于社会试图通过立法加以限制的法规。
16. In the recent years, people have come to expect a greater degree of governmental and parliamentary interference than our forefathers ever encountered. 近些年来，人们开始期待于政府和议会的更为强大的干预，这是我们的祖先所不曾遇到过的。

17. Both the legislature and the judiciary were not enthusiastic about extending the boundaries of the law of tort, for fear of opening up a Pandora's Box of litigation. 立法机关和司法机关都不热衷于扩大侵权法的范围,因为他们害怕会使诉讼成灾。 Pandora's Box of litigation 据希腊神话,宙斯命潘多拉带着一个盒子下凡,潘多拉私自打开盒子,于是里面的疾病、罪恶、疯狂等各种祸害全都跑出来散布到世上。此处用来比喻诉讼成灾。
18. Only in the twentieth century have certain tortious liabilities such as negligent misstatements been clearly established by the legislators and the courts. 只是在 20 世纪,特定的侵权责任,例如因疏忽而导致的不真实陈述才被立法者和法院所确立。
19. As John Farrar has argued, the legal system is rooted in political compromise, at least where it attempts to pursue the twin yet contradictory goals of stability and change. 正如约翰·法拉所说,法律制度,至少是在试图寻求两个既相关又对立的目标——稳定和变更时,扎根于政治上的妥协。
20. Public law is that part of law which deals with the state and its relations with its citizens. 公法是处理国家以及国家同它的公民之间关系的法律。
21. Private law is law that the state will not enforce except at the request of an aggrieved party. 私法是除非受侵害一方请求,否则国家不会强制干预的法律。
22. The object of civil law is to compensate the injured party, rather than to punish the "wrong-doer". 民法的目的是对受害的一方做出赔偿,而不是惩罚民事过失行为人。

Exercises

I. Questions about the text.

1. What do you think of rules?
2. What is law?
3. What are the meanings of the terms "imposed by a sovereign body" and "enforced by a legal regime of courts"?
4. Please give some examples to illustrate what aspects of life legal rules influence.
5. How do you understand legal language is often a law unto itself?
6. Why do we say the law does not stand still?

7. What is the emphasis of law nowadays?
8. What does the phrase mean "for fear of opening up a Pandora's Box of litigation"?
9. Talk something about the classification of law.
10. What subject matter does civil law refer to in the United States?

II. Special terms.

legal system 法律体系

civil law 民法

law of contract 契约法

law of tort 侵权行为法

public law 公法

private law 私法

constitutional law 宪法

criminal law 刑法

administrative law 行政法

civil wrong 民事不法行为

law of succession 继承法

wrong-doer 民事过失行为人

commercial law 商法

III. Fill in the blanks with the words chosen from the text. Change the form where necessary.

1. Investments that may be _____ made by certain institutions, such as savings banks and insurance companies.
2. He praised me with _____ of envy.
3. The new administration _____ the economic problems of the last four years.
4. Their firm have _____ to build a double-purpose bridge across the river.
5. The eye can _____ itself to seeing objects at different distances.
6. This bridge over the river has a steel _____.
7. He was first in _____ to the throne.
8. Management _____ us for the time we worked.
9. A _____ college teaches things that would be useful in business.
10. He was _____ at the insult from his friend.

IV. Translate the following sentences into English.

1. 社会靠一种或另一种方式发展和设计出一套正规的既供人们遵守又供司法机关强制执行的法规体系。
2. 如果一个人违反了法律规则,他会以一定的方式受到惩罚。那就是法律:它由最低行为准则构成,而社会的所有成员都要遵守。
3. 法律是旨在维护公众利益的理性的条令,由管理本社会的人制定并颁布的。
4. 近些年来,人们开始期待于政府和议会的更为强大的干预,这是我们的祖先所不曾遭遇过的。

5. 民法的目的是对受害的一方做出赔偿,而不是惩罚民事过失行为人。

V. Translate the following sentences into Chinese.

1. If a person breaks a legal rule, he will be penalized in some way. That is what the law is about: it consists of minimum standards of conduct, which all members of society are expected to follow.
2. Law is a complete body of general norms, principles or rules that bind society or that are made for the guidance of human affairs imposed by a sovereign body on the people of a given state, and enforced by law enforcement agencies consisting of the police, the courts and the prison services.
3. We marry, we inherit property, and we die with or without making a will. We make almost daily contracts or agreements, if only in the purchase of a minor item of food. All these activities are subject to rules that society has intended to be legally binding.
4. Civil law is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of for the distinction of right and wrong; that is to say, of what is contrary, and what is not contrary to the Rule.
5. It provides a framework within which individual citizens operate on such matters as contracts, torts (civil wrongs), and the law of property and the laws of succession.

... Part B ...

Some Preliminary Definitions

The law, in common with other areas of learning, has specialized meanings for certain words and phrases. Since recurrent use will be made of some of these terms, the most usual of them will be explained, preliminarily, at this point.

The common law and the civil law. The term "common law" refers to the system of law developed in England and transferred to most of the English-speaking world. It is distinguished from the civil-law system used in Continental Europe and in those nations settled by European peoples. One or the other of the systems is the basis of law in most of the Western world.

Many ancient systems of law, such as the Egyptian, Babylonian, and Greek, have totally disappeared. Others, such as the Hindu, Japanese, and Chinese, have been incorporated in some measure into modern systems. Islamic law is based on the Koran, as interpreted by tradition and juristic writings. As Islamic nations separate law from religion, however, non-Islamic models tend to be followed.

The civil-law system can be traced back to Roman law, Which extended to the limits of the Empire. With the disintegration of Rome, its law lost its universality. Wherever it was applied, it received admixtures of local customs and differed in content in the various parts of Europe. Civil law received its modern impetus from the early nineteenth century French codes of law created by French jurists under the direct leadership of Napoleon Bonaparte. The basic distinction between the two systems lies in the sources of law upon which they rely. The common-law system uses prior decided cases as very high sources of authority. The doctrine of stare decision (let the decision stand) in one of its forms is the essence of the common-law system. That doctrine states that courts should adhere to the law as set forth in prior cases decided by the highest court of a given jurisdiction as long as the principle derived from those cases is logically essential to their decision, is reasonable, and is appropriate to contemporary