面向21世纪课程教材

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Textbook Series for 21st Century

法律英语教程

齐筠 主编

高等教育出版社
HIGHER EDUCATION PRESS

配听力磁带

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内容提要

本教程选材以美国法为主，包括美国法律制度、美国宪法、刑法、刑事诉讼法、民事诉讼法、合同法、财产法、侵权法、公司法、证据法、知识产权法、反垄断法以及相关的经典案例等12个单元。每个单元自成体系，既包含系统的理论介绍，又包含美国法院的判决意见书。

单元后还特别设计了听力部分、案例讨论和翻译练习。书后附录部分的内容也很丰富，包括听力部分的书面材料、部分合同样本、案情摘要写作方法介绍、模拟法庭、《美国宪法》和词汇表。

本教程可供大学本科生、研究生、博士生使用，同时也可作为广大法律英语爱好者的学习用书。

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前　言

随着我国与国际间交往的日益增多，以及我国涉外经济合作的飞速发展和涉外法律业务的急剧增多，社会迫切需要越来越多具有较强英语语言运用能力的法律从业人员，法律英语教学已凸显其在法律院校英语教学中的重要地位。本书旨在向法律专业学生和法律从业人员传授法律英语知识和系统的普通法知识，帮助学生扩大法律英语专业词汇，了解法律英语的语言特点，提高阅读能力和语言运用能力，为今后进一步学习专业法律英语和实际工作奠定基础。本教程是培养既懂法律又懂英语的复合型人才的有效实用教材。

本教程选材以美国法为主，强调知识性、系统性和实用性。在内容选排上克服了许多法律英语教材内容不够全面的缺点。每个单元自成体系，力求结构完整，内容全面系统，形式丰富多样。既包含系统的理论介绍，又包含美国法院的判决意见书，改变了现有专业英语教材多为阅读—翻译的呆板模式。本书内容主要包括美国法律制度、美国宪法、刑法、刑事诉讼法、民事诉讼法、合同法、财产法、侵权法、公司法、证据法、知识产权法、反垄断法以及相关的经典案例。

本教程共包含十二个单元及附录部分，每个单元主要介绍一门法律，形式包含：

1. 听力部分，内容涉及案例事实、法庭辩论、法律知识介绍等。突出情景对话，让学生熟悉和模拟法律英语的常用表达方式，巩固法律英语词汇，培养语言运用能力。

2. 课文 A，概述一部门法的主要内容，旨在让学生系统了解有关部门法律制度、规则，掌握该部门法的主要词汇。

3. 课文 B，是对相关法中某个问题的重点论述，使学生在全面了解有关法的基础上，更深刻地理解某一具体原则或理论，同时也为第四部分的案例学习做准备。

4. 案例部分，选择相关部门法的经典案例，旨在增强实用性和趣味性，为使学习者能够接触到原汁原味的美国联邦法院及州法院的判例。学生在学习课文 A 和课文 B 的基础上，可以对案件展开辩论，进行口语练习。

5. 练习部分，本教程每部分后面都设计有练习。练习强调专业词汇的学习，在课文 B 后面还特别设计了词汇扩充练习，其中一些词汇没有在课文中出现，但属于相关法律的专业词汇，学生应予掌握。本教程练习的另一特点是突出学生的语言运用能力的训练，设计了听力部分、案例讨论和翻译练习。听力设计

在单元的开始部分，教师可根据学生的学习情况，将该练习放在完成课文学习以后进行。读者可以登录 http://lahep.com.cn 查找各部分练习的参考答案，检查自己的学习效果。

书后附录部分包括听力部分的书面材料、一些合同样本，如何写案情摘要、模拟法庭、《美国宪法》和词汇表。建议学习者提前阅读案情摘要(Case Brief)，以方便学习案例。

本书编写分工如下：高莲红：第一、五单元；陈延兵：第二、四单元；胡晋华：第三、十二单元；齐筠：第六、十、十一单元；张清：第七、八、九单元。齐筠对全书进行了统稿工作。

限于时间和水平，书中可能存在一些失误和不妥之处，恳请广大读者批评、指正。

编者

2004 年冬于北京

Contents

Unit One Legal System

Warm-up Exercises: Listening Practice

Words and expressions:

The Supreme Court of Texas Big Lake Oil Company Annie Lee Turner Big Lake Rylands v Fletcher the British House of Lords Anglo-American legal system stare decisis out of thin air statute law storage liable precautions spill legislature appoint determinative deliberation underlying legislator ambiguity doctrine cite repeal

I. Listen to the passage carefully and decide the best answer to each of the questions according to what you hear on the tape.

1. What was Big Lake Oil Company accused of?
   a. the damage done to the houses of Annie Lee Turner and her neighbors around the company.
   b. the damage done to the river bank near Annie Lee Turner and her neighbors.
   c. the damage done to the property of Annie Lee Turner and her neighbors.
   d. the pollution of the water.
2. What is the Texas court's conclusion?
   a. holding that Big Lake was not liable unless it had been negligent.
   b. holding that Big Lake was liable unless it had been negligent.
   c. holding that Big Lake was not liable if it had been negligent.

d. holding that Big Lake was negligent.

3. What are the two functions of The House of Lords in Great Britain according to the passage?
   a. making law and training lawyers.
   b. making law and appointing the officers for the government.
   c. making law and working in Britain's high court.
   d. making law and appointing a committee of judges who function as Britain's high court.
4. Why does an English judge have authority over an American case?
   a. just as an English scholar has authority over a dispute in his field carried on by American scholars.
   b. because the Americans respect their ancestors very much.
   c. because the Englishmen still have authority over the Americans.
   d. because the Americans don't want to solve problems by themselves.
5. In the Anglo-American legal system, who makes law?
   a. judges, not legislators
   b. judges and legislators
   c. expert and lawyers
   d. government officials

Ⅱ. Spot dictation. Listen to the passage again and fill in the blanks with the words you hear on the tape.

But judges do more than merely interpret _____ or _____. They also create law, gradually, through a long series of decisions, out of thin air. The Court's opinion in Turner v. Big Lake Oil did _____ one Texas statute but only to argue that, "_____... in the light of the Constitution and of the common law and Mexican _____ law" it was irrelevant to the case. The decision was based not on statute but on past _____, in Texas and elsewhere, demonstrating that American courts had generally refused to apply strict _____ in the fashion implied by Rylands v Fletcher.

One of the startling discoveries that students make in the first

year of law school is how much of law is _____, _____, and in some cases later _____, entirely by judges.

Text A

The Common Law and Its Competitors

There is a bewildering variety of legal systems in the world. Every country has its own, and in the United States, each state, too, has its own legal system, which governs the internal affairs of the state, generally speaking; the national (federal) system is imposed on top of that system. A law student usually studies the law of a single country—the one he or she plans to practice in. This is true of the United States too; legal education sticks largely to American law. Our legal education, though, is fairly national-minded; it tends to ignore many of the differences between the laws of the various states. The curriculum and the materials studied are much the same in all law schools, whether they are in Oregon or in Alabama. A student does not go to Harvard Law School to study the law of Massachusetts, or to Vanderbilt to study the law of Tennessee. Nonetheless, the study of law is in a sense quite parochial. 地方性的 Medicine is more or less the same all over the world, and so generally are all the natural and applied sciences: electrical engineering in Uganda is no different, in essence, from electrical engineering as 本质 understood in China or the United States. Even the social sciences lay claim to a kind of universality. 普遍性 But law is strictly defined by nationality: it stops at the border. Outside its home base, it has no validity at all.

No two legal systems, then, are exactly alike. Each is specific to its country or its jurisdiction. 管辖范围 This does not mean, of course, that every legal system is entirely different from every other legal system. Not at all. When two countries are similar in culture and tradition, their legal systems are likely to be similar as well. No doubt the law of El Salvador is very much like the law of Honduras. The laws of Australia and New Zealand are not that far apart.

使…结成团/群;丛

We can also clump legal systems together into clusters, or "families"—groups of legal systems that have important traits of structure, substance, or culture in common. The word "family" is used deliberately: in most cases, members of a legal family are in a sense genetically related, that is, they have a common parent or ancestor, or else have borrowed their laws from a common source. English settlers carried English law with them to the American colonies, and to Canada, Australia, New Zealand, Jamaica, Barbados, and the Bahamas. Many countries in the world once were part of the British Empire. These countries are now independent and have distinct legal systems of their own, but they have kept their basic traditions. The legal systems of the English-speaking world have a definite family resemblance. The Spanish brought their law to Latin America. Spanish-speaking countries in that part of the world share many traits and traditions.

慎重地

The largest, most important family is the so-called civil-law family. Members of this family owe a common debt to a modernized version of Roman law. The ancient Romans were great lawmakers. Their tradition never completely died out in Europe, even after the barbarians overran what was left of the Roman Empire. In the Middle Ages, Roman law, in its classic form, was rediscovered and revived; even today, codes of law in Europe reflect "the influence of Roman law and its medieval revival." Western Europe—France, Germany, Italy, Spain, Portugal, and the Low Countries, among others—is definitely civil-law country. Through Spain and Portugal, the civil law traveled to Latin America. The French brought it to their colonies in Africa. In Canada, the civil law is dominant in the French-speaking province of Quebec. It strongly colors the legal systems of two unlikely outposts, Scotland and Louisiana. It plays a major role, too, in countries like Japan and Turkey, which stand completely outside the historical tradition but borrowed chunks of European civil law in recent times, in hopes of getting modern in a hurry.

原始人,未开化的人/侵占

法典

边区村落,远离中心定居点

大量

Civil-law systems are, generally speaking, "codified" systems: the basic law is set out in codes. These are statutes, or rather

superstatutes, enacted by the national parliament, which arrange whole fields of law in an orderly, logical, and comprehensive way. Historically, the most important of the codes was the civil code of France, the so-called Napoleonic Code, which appeared in 1804. It has had a tremendous influence on the form and substance of most later codes. Another influential civil code was Germany's, which dates from the late nineteenth century.

制定法律

During the Renaissance, European legal scholarship was dazzled by the power and beauty of the rediscovered Roman law, and it profoundly influenced the style and content of legal change in country after country. There was one holdout, however—one nation that managed to resist the "reception" of Roman law. The English were not seduced by the majesty of Rome; they held fast to their native traditions. Many ideas and terms from Roman and European law did, to be sure, creep into English law, but the core of the legal system held firm. This tenacious local system was the so-called common law. It differed and continues to differ in many ways from the legal order in other European countries. For one thing, the common law resisted codification. There never was an English equivalent of the Napoleonic Code. The basic principles of law were not found primarily in acts of Parliament, and least of all in careful, systematic statements of law adopted by legislatures or imposed by decree. The principles were found in case law—in the body of opinions written by judges, and developed by judges in the course of deciding particular cases. The doctrine of "precedent"—the maxim that a judge is bound in some way by what has already been decided—is strictly a common-law doctrine. The common law also has its own peculiar features of substance, structure, and culture—some important and basic, some less so. For example, the jury is a common-law institution. So is the "trust," an arrangement in which a person (or bank) as trustee receives money or property to invest and manage for the benefit of certain beneficiaries.

文艺复兴

诱导/最高权威

顽强的

等同物

立法机关

判例/基本原则

受益者

The common law is no longer confined to a single small country. The English brought it to their colonies, and in most cases it took root and thrived. All common-law countries were once colonies

繁荣

of Great Britain, or, in some cases, colonies of colonies. Roughly speaking, the common law reigns wherever the English language is spoken. This means our own country for one, and Canada (outside Quebec), Australia, New Zealand, Jamaica, Trinidad, Barbados, and Singapore, among others. Other systems of law contributed bits and pieces here and there—remnants of Spanish-Mexican law poke through the surface in California and Texas—but English law is by far the strongest historical element in our own legal system (Louisiana, as we said, stands off in a corner by itself). England and the United States have been drifting apart, legally speaking, for more than two hundred years, and there are now big chasms between them, but still the relationship between the two legal systems is obvious, instantly recognizable to any lawyer who jets from one country to the other.

统治

剩余物/穿透

差别

快速移动;奔忙

The civil-law system was described above as the dominant system in Western Europe. No mention was made of Eastern Europe, which is a rather difficult area for purposes of classification. During the period when the Soviet Union dominated Eastern Europe, some scholars felt that the socialist countries were distinctive enough to make up a separate family of legal systems. Other scholars were not so sure; the Soviet Union and its satellites had close ties with the civil-law systems, and despite the revolutions and one-party rule there were strong resemblances in many details to the legal systems of Western Europe. For this reason, some scholars treated these systems as still part of the family—black sheep, perhaps, or oddball deviants, but family members nonetheless.

古怪的/不正常的人

Then, quite suddenly, at the end of the 1980s, the Soviet Union disintegrated. Its constituent parts became independent countries—from Latvia and Estonia to Uzbekistan. The countries of Eastern Europe, once under Russian domination, renounced communism and rushed helter-skelter into the arms of a market economy and Western ways of life (more or less). One legal system—the system of the German Democratic Republic—simply expired; the GDR was absorbed into the German Federal Republic (formerly "West Germany"). All of the countries that were formerly part of

分解,解体

放弃

匆忙地

终止

the Soviet bloc are busily reforming their legal systems, and in the process, they are drawing closer once more to the civil-law world. 集团

"Socialist law" is not, of course, extinct; it survives, for example, in Cuba. The controversy over whether socialist law was and is a separate system or is merely part of the civil-law family may be nothing but a question of words. Obviously, Cuba, which does not recognize private ownership of businesses, and has collectivized agriculture, has a lot in common with the now-defunct systems in Hungary or Poland and less in common with, say, the law of Mexico or Venezuela. In these countries there are private businesses; lawyers work in the private sector and are not employees of the government, as are lawyers in Cuba; the economy is not centrally planned; there is no censorship. Whether these differences mean we have to put Cuba in a separate family is not terribly important. What is important is to see how the form of the economy and the structure of society fundamentally alter the resulting legal system. 灭绝 使集体化 现已不存在的 部门 审查 由此产生的

In general, it is a fairly crude business to assign legal systems to this or that family. There are always troublesome cases at the margin. The Scandinavian countries, for example, do not fit very precisely the technical patterns of law among their European neighbors; some scholars assign them a family of their own. In general, we have to remember that a legal system is not an exercise in history; it is a working system, very much here and now. In essence, it can be looked at as a kind of problem-solving machine, and the problems that face it are the problems of today, not yesterday. Legal tradition may explain some aspects of the shape and style of a system, but history and tradition are probably not as decisive factors as most lawyers (and laymen) think. 粗制的/将…归为 边缘

Extracted and adapted from *American Law and Legal Systems* (*4th edition*) by James V. Calvi & Susan Coleman, Prentice - Hall, Inc. (2000)

Notes

1. Vanderbilt: Commodore Cornelius Vanderbilt was in his 79th year when he decided to make the gift that founded Vanderbilt

University in the spring of 1873. From the outset, Vanderbilt met two definitions of a university: It offered work in the liberal arts and sciences beyond the baccalaureate degree and it embraced several professional schools in addition to its college. Today Vanderbilt University is a private research university of 6 319 undergraduates and 4 566 graduate and professional students. The University comprises 10 schools, a public policy institute, a distinguished medical center and The Freedom Forum First Amendment Center. Vanderbilt offers undergraduate programs in the liberal arts and sciences, engineering, music, education and human development as well as a full range of graduate and professional degrees. Employing more than 2 000 full-time faculty, a part-time and clinical faculty of approximately 1 500 and a staff of more than 14 200, Vanderbilt is the largest private employer in Middle Tennessee and the second largest private employer in the state. 范德比尔特大学

2. the British Empire: the geographic and political units formerly under British control, including dominions, colonies, dependencies, trust territories, and protectorates. At the height of its power in the late 19th and early 20th centuries, it encompassed territories on all continents, comprising about one quarter of the world's land area and population. 大英帝国,地理上和政治上原属英国管辖的地区,包括自治领、殖民地、附属国、托管地和受保护国。19 世纪末和 20 世纪早期其国力达到巅峰,领土遍及各大洲,约占世界陆地面积和人口的四分之一。
3. Roman law: the legal system of ancient Rome which serves as the basis for modern civil law. 罗马法,作为现代罗马法律基础的古罗马的法制体系。
4. the Roman Empire: an empire that succeeded the Roman Republic during the time of Augustus, who ruled from 27 B. C to 14 A. D. At its greatest extent it encompassed territories stretching from Britain and Germany to North Africa and the Persian Gulf. After 395 it was split into the Byzantine Empire and the Western Roman Empire, which rapidly sank into anarchy under the onslaught of barbarian invaders from the north and east. The

last emperor of the West, Romulus Augustulus, was deposed by Goths in 476, the traditional date for the end of the empire. 罗马帝国,罗马继奥古斯都公元前 27 至公元 14 年时期的罗马共和国之后的帝国。它最强盛的时候包囊从不列颠和德意志延伸至北非和波斯湾的广阔领域。公元 395 年后帝国分裂成拜占庭帝国和西罗马帝国,后在从北部和东部来的野蛮人侵者的进攻下陷入无政府状态。西罗马帝国的末代皇帝是罗慕路斯·奥古斯图卢斯,他于公元 476 年被哥特人废黜,传统上把该年作为帝国灭亡的日期。

5. the Low Countries: a region of northwest Europe comprising Belgium, the Netherlands, and Luxemburg. 低地国家,欧洲西北部的地区,包括比利时,荷兰,卢森堡。
6. Napoleonic Code: The codification of laws by Napoleon I still forms the basis of French civil law. 拿破仑法典,拿破仑一世的法规汇编,至今仍是法国民法的基础。
7. black sheep: a member of a family or other group who is considered undesirable or disreputable. 败类。一家之中或其他集体中令人不满或名誉不好的成员。

Exercises

Check Your Understanding

Answer the following questions according to the text.

1. How many legal systems are listed in the text? Are there any other legal systems which are not included in the text?
2. Why does a law student usually study the law of a single country?
3. Would you please explain the sentences "the study of law is in a sense quite parochial." and "even the social sciences lay claim to a kind of universality"?
4. Why are there legal systems which are similar and at the same time not exactly alike?
5. What does the sentence "We can also clump legal systems together into clusters" mean? On what grounds can legal systems clump into clusters?