

普通高校专业英语教程系列

法律专业英语

实用教程

姜彦君 司爱侠 编著



清华大学出版社

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北 京

内 容 简 介

本书的目的在于切实提高读者专业英语能力。

本书体例上以 Unit 为单位,每一 Unit 由以下几部分组成: Text A——这些课文选自西方法律材料,语言地道;单词——给出课文中出现的新词,读者由此可以积累法律专业的基本词汇;词组——给出课文中的常用词组;缩略语——给出课文中出现的、业内人士必须掌握的缩略语;难句讲解——讲解课文中出现的疑难句子,培养读者的阅读理解能力;习题——可有效地巩固学习效果; Text B——这些课文选自中国法律材料,切合我国法律实际; Text C——案例分析,培养读者的法律实务能力;参考答案——可供读者检查学习效果。

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序

我国英语教育成就非凡，但也面临着许多新的课题。英语教育的根本目标是培养人，培养各行各业人员实际应用英语的能力，使英语成为提高人才能力的助推器。随着英语基础教学水平的日益提高，随着市场对从业人员英语运用能力门槛的不断攀升，专业英语教学得到空前的重视。尽管英语教学界对此还有种种争论，但现实却无视这些争论，“看不见的手”有力地推动了专业英语教学的进程：各个高校专业英语课越开越多、社会上各种专业英语培训班日益火爆、从业人员急切地自我充电。正是为了满足这些需要，我们编写了这套“普通高校专业英语系列教材”。

本丛书主要遵循以下原则：其一，实用。我们在兼顾理论体系完整性的同时，尽可能多地从应用角度取材。以期读者在学过本丛书后，感觉工作中的材料就像是本书的一个单元；其二，新颖。我们对各专业的最新发展都给予非常充分的关注；其三，以 E-learn 理念为指导，构筑开放、互动的教学体系。每本书的前面作者都留有电子邮件地址，读者学习中遇到问题可以与作者及时联系。我们亦可拜读者之赐，把本丛书打造成精品教材。

本丛书的作者都有编写教材的经验，都在教学一线，其中相当一些编著者还有从事行业工作的实际经历。因此，本套教材会更贴近读者。

本丛书可作普通高校专业英语教材；各种短期培训班使用本丛书亦颇得当；个人使用本丛书“充电”也极有收益。

受我们才学之窘、时间之迫，书中必有不当之处，望各位读者不吝赐教。

司爱侠

随着我国与外界交流日益增加,对法律从业人员专业英语水平的要求也日益提高。为此,就必须进行针对性的专门学习。本书的目的就在于切实提高读者实际使用法律专业英语的能力。

本书体例上以 Unit 为单位,每一 Unit 由以下几部分组成: Text A——这些课文选自西方法律材料,语言地道; 单词——给出课文中出现的新词,读者由此可以积累法律专业的基本词汇; 词组——给出课文中的常用词组; 缩略语——给出课文中出现的、业内人士必须掌握的缩略语; 难句讲解——讲解课文中出现的疑难句子,培养读者的阅读理解能力; 习题——可有效巩固学习效果; Text B——这些课文选自中国法律材料,切合我国法律实际; Text C——案例分析,培养读者的法律实务能力; 参考答案——可供读者检查学习效果。

本书内容比较全面,涉及宪法、刑法、民法、经济法、诉讼法、商法等。从现行法律规定出发,以常用法律基本知识为主线,运用概念解释、定义描述、概述性介绍、典型案例等多种形式,使读者能掌握现行法律的基本术语和表达方式,切实提高法律工作者专业英语的实际运用能力。

本书结构非常适合组织教学,词汇加注了音标。

在使用本书过程中,有任何问题,都可以通过电子邮件与我们交流。我们一定会给予答复。如果读者没有收到回复,请再次联系。邮件标题请注明姓名及“法律专业英语教程(清华大学版)”字样,否则会被当作垃圾邮件删除。教师也可索取参考试卷。

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Unit

1

Text A

The Concept of Law

A legal system is the most explicit, institutionalized, and complex mode of regulating human conduct. It plays only one part in the congeries of rules which influence behavior, for social and moral rules of a less institutionalized kind are also of great importance. The complexity of the organization and operations of a legal system has led to disagreements about the best terms to describe the nature of law, while the coexistence of law with social and moral rules affecting conduct has generated discussion about the exact nature of the relationships between the different sets of rules. A further source of difficulty is caused by the opposition or tension that sometimes exists between legal and moral rules, as when a legal prescription appears to violate the dictates of conscience. This has led to discussion of the relationship between the concept of law and ethical criteria.

In primitive societies legal rules are often not sharply distinguished from religious prescriptions and the dictates of social morality or convention. It is only with the emergence of law as a distinct and organized form of social control in a relatively advanced civilization that the problems mentioned above become apparent.

The Greek sophists raised such questions in the fourth and fifth centuries B.C. They distinguished between nature and convention or law and regarded law as an artificial, man-made scheme of regulation which encroached upon natural freedoms.

In their view there could be no explanation of law-making and no reason for obedience to law other than self-interest. This is a position which recurs throughout later thought about law; it is echoed in the writings of Thomas Hobbes. But it should be noticed that while this position seems to deny the possibility of incorporating natural reason in positive law, it does at the same time leave room for an argument that there are good reasons for complying with the law.

This argument would be that the security and relative satisfaction of desires guaranteed by a legal system are to be preferred to the constant conflict of an anarchic society, where even the strongest cannot expect peace.

This argument from enlightened self-interest, so strongly urged by Hobbes, also characterizes nineteenth-century utilitarianism. Discussion in the 1960's of the obligation to obey the law tended to rely less on utilitarian considerations and more on arguments of fairness derived from notions of reciprocity.

The sophists' view of law as an arbitrary expression of self-interest was opposed, even in the ancient world, by the more hopeful tendencies of Platonic and Aristotelian thought. Plato denied that law could be constituted by the mere application of coercive power; he defined it rather as public regulations which express the results of a process of reasoning. Aristotle, though he was more concerned with an analysis of justice than with the concept of law or a legal system, spoke always of law as "order" or "reason".

This opposition in Greek thought, between those who viewed positive law as simply the working out of coercive power and those who saw in law some necessary expression of reason, continues to be a matter of debate in modern legal theory.

The pattern of discourse about the concept of law in modern legal philosophy emerged in the nineteenth century with the work of the English jurist, John Austin. Austin described law as a set of general commands issuing from a sovereign. The sovereign he defined as a determinate human superior who receives habitual obedience from the bulk of a given society and is not himself in the habit of obedience to any superior. The command of the sovereign is characterized by the sanction which is held out as a threat in the event of noncompliance and such a command backed by a sanction imposes a duty on the citizen.

Command, sanction, and duty are thus key terms in the Austinian scheme. Austin was bent on freeing the concept of positive law from entanglements and confusion with notions of justice and natural law. Not only did he select hard and concrete key terms for his description of law but he also insisted explicitly on the separation of law and morals. "The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry".

This severance of the realms of law and morality has characterized a continuing school of legal philosophy which is sometimes known as analytical positivism, signifying its preoccupation with the analysis of the content and structure of law as found in a given legal system. Austin's position on this issue is reiterated in the work of the most distinguished contemporary analytical positivist, H. L. A. Hart. But while the positivist thesis on the separation of law and



morals has held firm, there has been radical revision since Austin's time of the terms used in elucidating the nature of positive law.

Here the foremost architect of the modern positivist position has been the Austrian legal philosopher, Hans Kelsen, who has lived for many years in the United States. Kelsen, in two celebrated works, *Allgemeine Staatslehre* (*General Theory of Law and State*, 1925) and *Reine Rechtslehre* (*The Pure Theory of Law*, 1934), departed from Austin's attempt to describe law in terms of a human commander laying down rules for subjects and put forward that the notion of laws consisted of normative ought-propositions.

With respect to the relation between law and morals Kelsen is squarely within the positivist tradition. In *What is Justice?* he tells us that questions of justice "cannot be answered by means of rational cognition", and takes up a thoroughly noncognitivist position in ethics, asserting that choices about values and ends ultimately rest on intuitions.

Kelsen's system is a powerful demonstration of the unity and scheme of action of a legal system. His pyramidal image of a set of norms linked ascendingly to a basic norm reveals the essentially common features of the legislative and judicial roles, for both judge and legislator are creating new legal norms while at the same time drawing upon and applying superior norms which confer validity upon their actions. Just as Austin insisted on the central place of sanctions in a legal system, so does Kelsen find the distinctive element of law in the element of coercion institutionally applied through the normative structure. For Kelsen all legal norms are directives to officials to apply force in certain prescribed circumstances though this may not be superficially obvious. For example, a rule that directs that a will should have two witnesses appears to say nothing directly about the imposition of coercion. For Kelsen, however, the aspect of the rule which gives it a legal character is to be found in the proposition that coercion will be applied to those who seek to act in defiance of the terms of a valid will. This, in Kelsen's scheme, is the primary rule, and the direction to private citizens about how they should make a will is a secondary or derivative rule. The terms "secondary" or "derivative" here do not imply any sense of precedence or superiority but are only a figurative way of expressing the notion that the distinctive characteristic of a legal rule is in its reference to the prescribed circumstances for the application of institutional force.

The most powerful and subtle contemporary exponent of analytical positivism is the English jurist, H.L. A. Hart. In his book, *The Concept of Law* (1961), Hart offers a devastating critique of Austin's attempt to elucidate the nature of law in terms of a human superior issuing commands, backed up by sanctions which create duties. This elucidation, Hart argues, will not serve to explain the nature of laws which confer powers (such as the power to make a will)

and which cannot be seen as imposing duties, while the notion of law being founded in the habit of obedience to a sovereign commander does not explain the continuity of a legal system which, by the operation of basic constitutional procedures of succession, proceeds uninterrupted after the death of the head of state. Who, after all, are those determinate human beings whose commands the law could be said to be? The members of the legislature know only a little of the law and are themselves bound by the law.

Hart suggests that the key to understanding the nature of a legal system is to distinguish between what he calls primary and secondary rules. Primary rules are those which impose duties and secondary rules are those which confer powers. It is the union of primary and secondary rules that gives a legal system its dynamic, highly structured, and rapidly creative character as compared with a body of customary rules.

Secondary rules are rules about rules. They provide procedures for the creation, modification, and abrogation of primary rules. At the base of a legal system we find secondary rules which are fundamental rules of recognition and which embody the constitutional procedures for valid lawmaking in the system.

It is apparent that Hart's analysis owes a great deal to the earlier work of Kelsen but it differs in some significant aspects. For Hart the basic rules of recognition are not described in terms of validity which Kelsen used in constructing his concept.

The existence of a basic rule of recognition is presented rather as an empirical phenomenon evidenced by the actual acceptance of the rules in a given society. The notions of obligation and duty are also analyzed by Hart in more subtle and complex terms than Kelsen's reduction of all legal rules to a uniform pattern of directives to officials about the application of coercion. Hart elucidates the meaning of statements about duty and obligation in the context of a legal system as involving social practices of reference to certain standards. In the light of these standards we justify criticism and condemnation of the behavior of others and the application of sanctions to them, and we offer reasons to explain and justify our own behavior. The maintenance of a general system of coercion in society no doubt psychologically sustains feelings of obligation, but statements of obligation are not simply statements of the probability that coercion will be applied. Our ordinary speech ways evidence this, for we do not cease to speak of a person as being in breach of an obligatory rule simply because he has effectively removed himself from the jurisdiction and so from any threat of sanction.

Statements of obligation do entail a general acceptance in society of the basic rule which is taken to validate the primary rules which formulate particular duties, but this is to be distinguished from an individual's acceptance of any particular rule. So if I say that X has broken

his legal obligations by smoking opium, this does imply my recognition that the rule against smoking opium (primary rule) is properly derived from the constitutional procedures for law-making in the jurisdiction (basic rule). But it does not logically entail the prediction that X will probably be prosecuted and punished, and it says nothing at all about what I or X may feel about the sense and wisdom of the particular law in question.

New Words

concept	['kɒnsɛpt]	<i>n.</i> 观念, 概念
law	[lɔ:]	<i>n.</i> 法律, 法, 法令, 法规
legal	['li:gəl]	<i>adj.</i> 法律的, 法定的, 合法的
system	['sɪstəm]	<i>n.</i> 制度, 体系, 系统, 体制
explicit	[ɪk'splɪt]	<i>adj.</i> 明确的; 清楚的
conduct	['kɒndʌkt]	<i>n.</i> 行为, 举止, 举动, 品行
congeries	[kən'dʒɪəri:z]	<i>n.</i> 堆积, 聚集, 一大堆
behavior	[bi'heɪvjə]	<i>n.</i> 举止, 行为
moral	['mɔrəl]	<i>adj.</i> 道德上的, 精神的
institutionalized	[ɪnstɪ'tju:ʃənəlaɪz]	<i>adj.</i> 制度化的
complex	['kɒmpleks]	<i>adj.</i> 复杂的, 合成的, 综合的
complexity	[kəm'pleksɪti]	<i>n.</i> 复杂(性), 复杂的事物, 复杂性
operation	[ɒpə'reɪʃən]	<i>n.</i> 运作, 操作, 实施
disagreement	[dɪsə'ɡri:mənt]	<i>n.</i> 意见不同, 争执, 争论
term	[tɜ:m]	<i>n.</i> 术语, 专门名词
coexistence	[kəuɪg'zɪstəns]	<i>n.</i> 共存, 并存
opposition	[ɒpə'zɪʃən]	<i>n.</i> 反对; 反抗
tension	['tenʃən]	<i>n.</i> 张力; 拉力; 牵力
violate	['vaɪəleɪt]	<i>vt.</i> 违犯, 亵渎, 冒犯, 干扰, 违反
dictate	[dɪk'teɪt]	<i>n.</i> 指令, 指示, 命令, 规定
primitive	['prɪmɪtɪv]	<i>adj.</i> 原始的, 远古的
prescription	[pri'skrɪpʃən]	<i>n.</i> 指示, 规定, 命令
morality	[mɔ'rælɪti]	<i>n.</i> 道德; 道义
convention	[kən'venʃən]	<i>n.</i> 习俗; 习惯; 条约; 协议; 契约
emergence	[ɪ'mə:dʒəns]	<i>n.</i> 出现, 显露, 暴露
distinct	[dɪ'stɪŋkt]	<i>adj.</i> 清楚的, 明显的, 截然不同的, 独特的
civilization	[ˌsɪvɪlaɪ'zeɪʃən]	<i>n.</i> 文明, 文化

sophist	['sɒfɪst]	<i>n.</i> 学者, 思想家, 诡辩哲学家
lawmaking	['lɔːmeɪkɪŋ]	<i>n.</i> 立法
position	[pə'zɪʃən]	<i>n.</i> 观点, 见解, 主张, 立场
self-interest	['self'ɪntrɪst]	<i>n.</i> 自身利益, 私利
deny	[di'naɪ]	<i>vt.</i> 否认, 拒绝
incorporate	[ɪn'kɔːpəreɪt]	<i>vt.</i> 合并, 混合, <i>adj.</i> 合并的, 结社的, 一体化的
argument	['ɑːɡjʊmənt]	<i>n.</i> 争论, 辩论
guarantee	[gæərən'tiː]	<i>vt.</i> 保证, 担保 <i>n.</i> 保证, 保证书, 担保
conflict	['kɒnflikt]	<i>n.</i> 斗争, 冲突
anarchic	[æ'nɑːkɪk]	<i>adj.</i> 无政府主义的, 无法无天的
enlightened	[ɪn'laitənd]	<i>adj.</i> 开通的, 开明的
utilitarianism	[ju'tɪli'teəriənɪzəm]	<i>n.</i> 功利主义; 实利主义
obligation	[ɒbli'geɪʃən]	<i>n.</i> 义务, 职责; 债务
utilitarian	[ju'tɪli'teəriən]	<i>adj.</i> 功利的, 实利的, 功利主义的 <i>n.</i> 功利论者, [哲]功利主义
consideration	[kənsɪdə'reɪʃən]	<i>n.</i> 深思; 考虑
notion	['nəʊʃən]	<i>n.</i> 概念, 观念; 想法, 意见
reciprocity	[rɪsɪ'prɒsɪti]	<i>n.</i> 互惠
arbitrary	['ɑːbɪtrəri]	<i>adj.</i> 武断的, 独裁的, 专断的, 任意的
Platonic	[plə'tɒnɪk]	<i>adj.</i> 柏拉图哲学的, 柏拉图主义的, 理想的, 不切实际的
Aristotelian	[æristə'tiːliən]	<i>adj.</i> 亚里斯多德的, 亚里斯多德学派的
constitute	['kɒnstɪtjuːt]	<i>vt.</i> 制定, 建立
coercive	[kəʊ'ə:sɪv]	<i>adj.</i> 强制的, 强迫的
reason	['riːzn]	<i>vi.</i> 推论, 思考, 推理 <i>n.</i> 理性; 理智
justice	['dʒʌstɪs]	<i>n.</i> 正义, 正当, 公平
discourse	['dɪskɔːs]	<i>n.</i> 演说, 演讲, 谈话, 论文
emerge	[ɪ'meɪdʒ]	<i>vi.</i> 显现, 浮现, 暴露, 形成
jurist	['dʒʊərɪst]	<i>n.</i> 法学家, 法理学家
sovereign	['sɒvrɪn]	<i>n.</i> 最高统治者, 君主, 元首
determinate	[dɪ'tɜːmɪnət]	<i>adj.</i> 确定的, 限定的, 明确的

superior	[sju:'piəriə]	<i>n.</i> 长者, 高手, 上级 <i>adj.</i> 较高的, 上级的
habitual	[hə'bitjuəl]	<i>adj.</i> 习惯的, 惯常的
obedience	[əu'bi:diəns]	<i>n.</i> 服从, 顺从
bulk	[bʌlk]	<i>n.</i> 大批, 大多数, 大部分
given	['gɪvən]	<i>adj.</i> 约定的; 特定的, 指定的
sanction	['sæŋkʃən]	<i>n.</i> 制裁, 批准, 允许, 认可
threat	[θret]	<i>n.</i> 恐吓, 威胁, 凶兆
noncompliance	['nɒnkəm'plaiəns]	<i>n.</i> 不服从, 不顺从
duty	['dju:ti]	<i>n.</i> 义务, 责任, 职责, 职务
entanglement	[in'tæŋɡlmənt]	<i>n.</i> 纠缠
confusion	[kən'fju:ʒən]	<i>n.</i> 混乱, 紊乱; 无秩序
merit	['merit]	<i>n.</i> 优点, 价值
demerit	[di'merit]	<i>n.</i> 缺点
enquiry	[in'kwaiəri]	<i>n.</i> 提问, 询问
assumed	[ə'sju:md]	<i>adj.</i> 假定的, 假装的, 装的
severance	['severəns]	<i>n.</i> 断绝, 隔绝
realm	[reɪlm]	<i>n.</i> 王国, 领域, 范畴
analytical	[.æne'litikəl]	<i>adj.</i> 分析的, 解析的
positivism	['pɒzitivizəm]	<i>n.</i> [哲]实证论, 实证主义
signify	['signifai]	<i>vt.</i> 表示, 意味
analysis	[ə'næləsis]	<i>n.</i> 分析, 剖析, 分解
reiterate	[ri:'itəreit]	<i>vt.</i> 反复地说, 重申
distinguished	[di'stingwiʃt]	<i>adj.</i> 卓越的, 杰出的, 著名的
contemporary	[kən'tempərəri]	<i>adj.</i> 当代的, 同时代的
positivist	['pɒzitivist]	<i>n.</i> 实证哲学家, 实证主义者
radical	['rædikəl]	<i>adj.</i> 根本的, 基本的
revision	[ri'viʒən]	<i>n.</i> 修订, 修改, 修正, 修订本
foremost	['fɔ:məʊst]	<i>adj.</i> 最重要的, 主要的, 最先的, 第一的
architect	['ɑ:kitekt]	<i>n.</i> 建筑师, 计划者, 设计者
philosopher	['fi'lɒsəfə]	<i>n.</i> 哲学家, 哲人
celebrated	['selibreitid]	<i>adj.</i> 著名的
subject	['sʌbdʒikt]	<i>n.</i> 国民, 臣民
squarely	['skweəli]	<i>adv.</i> 公平地, 公正地; 直接地, 面对面地

rational	['ræʃənəl]
cognition	[kɒɡ'nɪʃən]
noncognitivist	[nɒn'kɒgnɪvɪst]
ethics	['eθɪks]
assert	[ə'se:t]
end	[end]
ultimately	['ʌltɪmətli]
intuition	[.ɪntju:'ɪʃən]
unity	['ju:nɪti]
pyramidal	[pi'ræmɪdɪ]
reveal	[ri'vi:l]
legislative	['ledʒɪs.leɪtɪv]
judicial	[dʒu:'dɪʃəl]
legislator	['ledʒɪs.leɪtə]
validity	[və'lɪdɪti]
norm	[nɔ:m]
institutionally	[.ɪnstɪ'tju:ʃənəli]
normative	['nɔ:metɪv]
directive	[dɪ'rektɪv]
imposition	[ɪmpe'zɪʃən]
proposition	[.prəpe'zɪʃən]
derivation	[derɪ'veɪʃən]
subtle	['sʌtl]
exponent	[eks'peunənt]
devastating	['devəsteɪtɪŋ]
critique	[kri'tɪ:k]
elucidate	[ɪ'lju:sɪdeɪt]
elucidation	[ɪlju:sɪ'deɪʃən]
continuity	[.kɒntɪ'njuɪti]
confer	[kən'fe:]
uninterruptedly	['ʌnɪntə'rʌptɪd]
legislature	['ledʒɪs.leɪtʃə]
union	['ju:njən]

<i>adj.</i> 合理的, 讲道理的, 懂道理的, 有理性的
<i>n.</i> 认识; 认知
<i>adj.</i> 非认知主义的, 非认知的, 非认识的
<i>n.</i> 道德规范
<i>vt.</i> 坚持, 主张, 断言, 声称
<i>n.</i> 目标; 末端, 尽头, 结束
<i>adv.</i> 最后, 最终
<i>n.</i> 直觉
<i>n.</i> 团结, 联合, 统一, 一致
<i>adj.</i> 金字塔形的, 锥体的
<i>vt.</i> 展现, 显示, 揭示, 暴露
<i>adj.</i> 立法的, 立法机关的
<i>adj.</i> 司法的, 法院的, 公正的, 明断的
<i>n.</i> 立法者
<i>n.</i> 有效性, 合法性, 正确性
<i>n.</i> 标准, 规范, 准则, 行为标准
<i>adv.</i> 从制度上
<i>adj.</i> 标准的, 规范的, 合乎规范的
<i>n.</i> 指示, 指令
<i>n.</i> 强迫接受, 不合理要求
<i>n.</i> 主张, 建议, 陈述, 命题
<i>n.</i> 引出, 来历, 出处
<i>adj.</i> 敏锐的, 精明的
<i>n.</i> 拥护者, 倡导者, 代表者
<i>adj.</i> 毁灭性的, 使荒废的, 破坏性的; 极佳的, 非常好的
<i>n.</i> 批评
<i>vt.</i> 阐明, 说明
<i>n.</i> 阐明, 说明
<i>n.</i> 连续性, 连贯性
<i>vt.</i> 授予, 赋予, 赠与, 把……赠与
<i>adv.</i> 不间断地, 连续地, 未受干扰的
<i>n.</i> 立法机关, 立法机构
<i>n.</i> 联合, 合并, 结合