

# 法律英语 综合教程

清华法学专业英语系列教程



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清华大学出版社

*Legal English Comprehension Course Book*

# 法律英语 综合教程

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## 内 容 简 介

《法律英语综合教程》涉及法的概念、法的渊源、司法制度、主要法学流派、美国法学教育、美国宪法、行政法、美国刑法、诉讼法、国际法概述,以及 WTO 与国际经济法概述等。

本书分上下两篇,共 22 课。每课均包括课文正文、注释、词汇表、课后练习、补充阅读等,另外还在附录中提供常用刑事法律英语术语。本书作为学习法律专业英语的综合教程,在巩固和提高学生语言基本功的同时,还注重培养学生对法律英语的口语、阅读、写作以及翻译能力。

本书适用于已具有一定英语水平的英语院校和法学院本科生、研究生、涉外律师、法律翻译工作者以及法律英语爱好者。

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曾担任教务处处长、应用英语学院院长，现任大连外国语学院院长助理、加拿大研究室主任。兼任辽宁省普通高等学校外语教学研究会会长、全国高等教育自学考试英语专业指导委员会委员。曾连续五年在中央人民广播电台主持英语教学节目，连续三年兼任大连电视台英语新闻节目播音员，现任大连电视台国际频道《中国大连》译播员。从事加拿大文学与文化研究，已发表学术论文20余篇，出版教材、译著、专著等60余部。

七次被评为院级先进教师、两次被评为市级优秀教师；辽宁省有突出贡献的拔尖人才；辽宁省普通高校中青年学科带头人；大连市优秀专家；陈香梅教育奖励基金辽宁省高等学校重点学科青年学科带头人一等奖获得者；国务院特殊津贴获得者。



随

随着我国对外开放力度的不断加大,信息化社会、知识与经济全方位的迅猛发展,尤其是我国加入WTO之后,人才市场对英语专业人才的需求也从单纯的语言技能走向多元化,社会诸多领域都在渴望得到既精通英语又掌握某种专业的复合型人才。因此,全国诸多专门的外语类院校近些年加大了这方面人才的培养力度。有人可能会有这样的疑问:外语类院校能培养出外语以外的专业人才吗?其实,这个问题早在十多年前就已经随着多学科的发展迎刃而解了。不少人已经看到,近年来外语类院校不仅培养出了高水平的外语人才,还培养出了深受用人单位钟情的经贸、法律、新闻等专门人才。目前工作在涉外经贸、涉外法律和国际新闻战线上的优秀人才又有哪一个不是英语顶呱呱。

大连外国语学院作为外语类院校的佼佼者,近些年来同全国其他各大院校一样,也在加快人才培养模式调整的步伐,在深入探讨和实践双语、三语人才培养模式的基础上,又开设了法律、经贸、新闻等。而这些专业的最大特点是用英语学习专门知识,也许他们的法律(新闻、经贸)专业知识不及法律(新闻、经贸)专业的学生,但他们的外语水平,尤其是口语和笔头水平普遍受到用人单位的一致好评。对人才市场的调查也给了我们同样的启示,复合型外语人才不仅比单一的语言人才受欢迎,甚至比单一的专业人才更受欢迎(例如,同样是经贸专业,外语类院校的毕业生就比财经类院校的毕业生更具竞争力),这已是不争的事实。所以,利用英语来教授和学习法律知识也许会在未来的若干年中逐渐成熟,这种新的教授和学习法律英语的模式势必会提高学生将来从事涉外法律事务相关工作的能力。也正是因为这个缘由,我们精心组织了一批“复合型老师”编写了这套《法律英语综合教程》、《法律英语案例探究》和《法律英语阅读教程》,以满足广大法律英语爱好者的需求。

《法律英语综合教程》涉及法的概念、法的渊源、司



法制度、主要法学流派、美国法学教育、美国宪法、行政法、美国刑法、诉讼法、国际法概述,以及 WTO 与国际经济法概述等。

本书的内容广泛、选材新颖、语言地道,是获得法律知识和提高对法律英语学习兴趣的首推教材。其中被告人权利、沉默权制度等课文都具有浓厚的趣味性和广泛的知识性。

本书分上下两篇,共 22 课。每课均包括课文正文、注释、词汇表、课后练习、补充阅读等。本书作为学习法律和英语的综合教程,在巩固和提高学生语言基本功的同时,还注重培养学生对法律英语的口语、阅读、写作以及翻译能力。

鉴于各学校的学期长短不一,周课时和学生的英语水平不一,在使用本教材时可根据本校的情况自行确定进度。一般情况下,如果只注重知识的获得,在提前预习较充分的情况下(包括课后练习都应在课前完成),每课可用 2 学时完成;如果知识和语言并重,建议每课 4 学时。两者相比,我们更主张后者,这样,教师既可以将知识的获得交给学生完成,又可以腾出时间讲解语言难点和用法。

通过本书的学习,学习者可以在法律术语以及英语语言运用方面打下一个坚实的基础,为下一步较高阶段的学习作好精神和物质准备,进而增强实际运用法律英语的能力,如用英语进行谈判、起草法律文书、开展辩论等。

参加本书编写的有屈文生(上篇第 1、2、5、6、9;下篇第 1、2 课)、冯婧(上篇第 4 课;下篇第 6、7、8 课)、邢彩霞(下篇第 3、4 课)、张丽(上篇第 3、9 课;下篇第 5、9、12 课)、李群(上篇第 7、10 课;下篇第 10、11 课)、黄涛(上篇第 8 课)。

清华大学出版社刘细珍编辑为本书的出版付出了辛勤的劳动,在此表示衷心的感谢。

由于编者水平有限,加之时间仓促,错误和不当之处在所难免,恳请使用者指正,以便再版时更正。

主编 杨俊峰

2005 年 6 月于大连

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# PART 1

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# Lesson 1

Law is a rule of  
conduct, a contract,  
an ideal of reason.

—Aristotle.

法是行为的  
准则，是契约，  
是理性的典范。

——亚里士多德（古希腊，公元前384—322）

## Law and Its Classifications

### Text

#### I. WHAT IS LAW

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 that law was the agreement of reason and nature, the distinction between the just and the unjust. The British jurist Sir William Blackstone described law as “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.” In America, the eminent jurist Oliver Wendell Holmes, Jr.<sup>1</sup>, contended that law was a set of rules that allowed one to predict how a court would resolve a particular dispute: “the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law.”

Although these definitions vary in their particulars, all are based on the following general observation: *law consists of enforceable rules governing relationships among individuals and between individuals and their society.* This very broad definition of law implies the following:

(1) To have law, there must be established rules<sup>2</sup>,

such as constitutions, statutes, administrative agency<sup>3</sup> regulations, and judicial decisions<sup>4</sup>.

(2) These rules must be capable of enforcement; that is, law and order must prevail with resolution in a judicial system.

(3) The rules must establish approved conduct by which individuals deal with each other and participate in society.

National laws are made in Congress<sup>5</sup>, which is part of the legislative<sup>6</sup> branch and is made up of the House of Representatives<sup>7</sup> and the Senate<sup>8</sup>. Congress can make laws on all kinds of matters, such as setting speed limits on highways or regulating how much radon may be found in drinking water. During each Congress, senators and representatives introduce<sup>9</sup> numerous bills. Bills are passed by Congress and then signed into law<sup>10</sup> by the president.

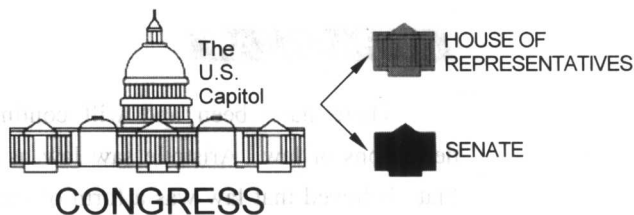


Figure 1-1

## II. CLASSIFICATIONS OF LAW

There are several different ways in which laws can be classified, depending on the criteria or characteristics which are applied for setting up the categories. One is to distinguish between public law and private law. Another important distinction is between criminal and civil law. Other classifications include civil law versus common law and substantive law versus procedural law. This section examines these legal classifications.

### a. Public Law v. Private Law

Law can be divided into two main branches: (1) public law and (2) private law<sup>11</sup>. Public law is the body of law dealing with the relations between private individuals and the government, and with the structure and operation of the government itself; it includes constitutional law, criminal law, and administrative law. Private law is the body of law dealing with private persons and their property and relationships. Private law can be divided into six major branches according to the kinds of legal rights and obligations involved. These branches are (1) contract and commercial law, (2) tort law, (3) property law, (4) inheritance law,



(5) family law, and (6) corporation law<sup>12</sup>.

## **b. Criminal Law v. Civil Law**

**Criminal law** defines breaches of duty to society at large. It is society, through government employees called prosecutors<sup>13</sup> (such as district attorneys), that brings court action against violators. If you are found guilty of a crime such as theft, you will be punished by imprisonment or a fine<sup>14</sup>. When a fine is paid, the money generally goes to the state, not the victim of the crime.

Private duties owed by one person (including corporations) to another are established by **civil law**. For example, we have a duty to carry out our contractual promises. Tort law defines a host of duties people owe to each other. One of the most common duties is a duty to exercise reasonable care<sup>15</sup> with regard to others. Failure to do so is the tort of negligence.

Suit for the breach of a civil duty must be brought by the person wronged<sup>16</sup>. Generally, the court does not seek to punish the wrongdoer but rather to make the wronged party whole through a money award called *damages*<sup>17</sup>. For example, if someone carelessly runs a car into yours, that person has committed the civil wrong (tort) of negligence. If you have suffered a broken leg, you will be able to recover damages from the driver (or his or her insurance company). The damages will be amount of money sufficient to repair your auto, to pay your medical bills, to pay for wages you have lost, and to give you something for any permanent disability such as a limp. Damages for “pain and suffering”<sup>18</sup> also may be awarded.

Although the civil law generally does not aim to punish, there is an exception. If the behavior of someone who commits a tort is outrageous, that person can be made to pay punitive damages<sup>19</sup> (also called “exemplary damages”). Unlike a fine paid in a criminal case, punitive damages go to the injured party.

Sometimes, the same behavior can violate both the civil law and the criminal law. For instance, a person whose drunken driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by the survivors of the victim. If both suits are successful, the driver would pay back society for the harm done with a criminal fine and/or prison sentence, and compensate the survivors with the payment of money damages.

See Figure 1-2 criminal law versus civil law, for a general comparison of criminal and civil cases.





	Criminal Cases	Civil Cases
Elements	Intentional or negligent violation of a statute	Harm to another person or property (tort) or breach of a contract
Actors	Prosecutor v. Defendant (government) (accused)	Plaintiff v. Defendant (wronged party) (wrong party)
Punishment	Fines, imprisonment, execution etc.	Defendant may have to pay the plaintiff compensatory and punitive damages

Figure 1-2

### c. Civil Law v. Common Law

We have already seen that our system of law can be divided into two branches: Criminal law and non-criminal, or civil-law. However, although “non-criminal” is indeed one meaning of the term “civil law”, it is not the one with which we are concerned here. **Civil law** is the name of a particular system of jurisprudence<sup>20</sup> that is followed in a great many countries of the world. Put in its simplest form, we can say that civil-law systems are those based on legal codes (or *statutes*) that spell out a society’s basic laws on a variety of subjects, such as acts that constitute crimes, tax obligations, and rules about owning and transferring property.

The term “civil law” and the basis of the law itself are derived originally from the law of ancient Rome, the *jus civile*<sup>21</sup>. As time passed, ancient Roman law was reworked into comprehensive legal codes. The code of the emperor Justinian (A. D. 483-565)<sup>22</sup> was revived after the Dark Ages<sup>23</sup>, and it became the basis of modern law in Italy, the German Empire, the Netherlands, France, and Spain, as well as in their colonial offshoots. State of Louisiana historically also shares the civil-law tradition. Today, most Western European countries have civil-law systems, as do the countries of Latin America, most African countries, Japan, Thailand, and Turkey.

Besides the United States and England, a system known as *common law* prevails in Australia, Burma, Canada, India, Iraq, Liberia, Malaya, New Zealand, Singapore, and in Britain’s former colonies in Africa, such as Ghana and Nigeria. The basis of **common law** is not a comprehensive code; Rather, the basic building block<sup>24</sup> of common-law system is *case law*, which is composed of decisions handed down by judges who rule on individual cases. Because each judicial opinion serves as a precedent<sup>25</sup> for later decisions, as a result, common law is sometimes called *judge-made law*. Common-law judges have very wide powers of interpretation to apply previous judicial rulings and to interpret statutes.

The most obvious distinction between civil law and common law systems is that civil law

system is a codified system, whereas the common law is not created by means of legislation but is based mainly on case law. The principle is that earlier judicial decisions, usually of the higher courts, made in a similar case, should be followed in the subsequent cases, i. e. that precedents should be respected. This principle is known as *stare decisis*. The claim that common law is created by the case law is only partly true, as the common law is based in large part on statutes, which the judges are supposed to apply and interpret in much the same way as the judges in civil law (eg the *Sale of Goods Act 1979*, the *Uniform Commercial Code*).

#### **d. Substantive Law v. Procedural Law**

The branches of our legal system can be divided into substantive law and procedural law.

Procedural law establishes the rules or the guidelines—that is, the procedures—under which our legal system operates. In our legal system, for example, procedural law specifies the length of a statute of limitations<sup>26</sup> for instituting a lawsuit<sup>27</sup>. Procedural law can be divided into criminal procedures, such as the list of rights that must be read to a suspect before being questioned by the police<sup>28</sup>, and civil procedures such as pleadings<sup>29</sup>, the written statements of the positions to be advanced at trial by the parties in lawsuit. Some procedures are common to both civil and criminal law.

Substantive law embraces rights, obligations, or limitations applicable to people and businesses in a variety of situations. Substantive law may be based in the Constitution of the United States, in legislative enactments such as statutes, or in case law developed by judges. In criminal law, for example, the actual definitions of the acts that constitute crimes are substantive law. In the law of contracts, substantive law includes the rights and remedies<sup>30</sup> that are available when one party to a contract violates the terms of the agreement.

### **III. GODDESS OF LAW**

A common representation of Justice is a blind-folded woman holding a set of scales<sup>31</sup>. The origin of the Goddess of Justice goes back to antiquity. She was referred to as Maat by the ancient Egyptians and was often depicted carrying a sword with an ostrich feather in her hair (but no scales) to symbolize truth and justice. The term magistrate is derived from Maat because she assisted Osiris<sup>32</sup> in the judgment of the dead by weighing their hearts.

To the ancient Greeks she was known as Themis, originally the organizer of the “communal affairs of humans, particularly assemblies.” Her ability to foresee the future enabled her to become one of the oracles at Delphi ( Temple of Apollo ), which in turn led to her establishment as “the goddess of divine justice.” Classical representations of Themis did not



show her blindfolded (because of her talent for prophecy, she had no need to be blinded) nor was she holding a sword (because she represents common consent, not coercion).

The Roman goddess of justice was called Justitia and was often portrayed as evenly balancing both scales and a sword and wearing a blindfold. She was sometimes portrayed holding the fasces (a bundle of rods around an ax symbolizing judicial authority) in one hand and a flame in the other (symbolizing truth).

## Glossary

administrative agency 行政机关

administrative law 行政法

antiquity 古代

assembly 大会, 公民大会

building block (本义) 积木; 这里指组成部分

Congress 国会

constitutional law 宪法

criminal law 刑法

damages 损害赔偿金

Dark Ages 黑暗世纪

exemplary damages 惩戒性损害赔偿金

fine 罚金

House of Representatives 众议院

introduce 提出议案等

judicial decisions 司法判决

Jurisprudence 法律体系; 法理学; 法哲学

jus civile 市民法

legislative 关于立法的, 有立法权的, 立法的

pain and suffering 痛苦与创伤

pleadings 诉讼文件, 民事诉状; 答辩状

precedent 先例

private law 私法

prosecutor 检察官

public law 公法

punitive damages 惩罚性损害赔偿金

radon [化] 氡

remedy 救济

scales 天平

Senate 参议院

spell out 详细规定, 详细说明

statute of limitations 时效; 诉讼时效

survivor 尚存者

violator 违法者, 违反者

Notes (注释)

## Notes

● Oliver Wendell Holmes (1841—1935): 奥利弗·温德尔·霍姆斯, 1902 年西奥多·罗斯福总统任命他为联邦最高法院法官, 任期直到 1932 年。其传世之作首推 1881 年《普通法》(The Common Law, 1881)。

● established rules: 固定下来的规则, 成文规则。

● administrative agency: 行政机关。A governmental body with the authority to implement and administer particular legislation. 在英国, 该词更多用于指 19 世纪末兴起的行政裁判机构。