

高等学校文科教材

英语

6

非英语专业用 法律分册

安徽大学外语系文科英语教材编写组编

ENGLISH

商务印书馆



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1990 年 · 北京

说 明

本书的主要目的是：在高等学校法律专业的学生完成基础阶段英语学习后，为了保证教学的延续性，培养学生能以英语为工具阅读有关的法律专业书刊，获取专业信息而编写的结合专业打基础的英语教材。

全书共选原文课文和补充课文各十篇。课文生词及词组约有1,200个，平均每4—6学时讲授一课。补充读物不占授课时间。

本书每课配备的练习较多，重点是对有关法律的生词和表现法的理解和掌握。教师可根据学生的实际情况决定取舍，不必划一。

本书附有课文中出现的拉丁文及其音标，每课的生词均列入书后所附的总词汇表里。凡是基础阶段出现过的词，除出现有旧词新义外，均不再列入总词汇表之中。

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商 务 印 书 馆 出 版

(北京王府井大街36号)

新华书店总店北京发行所发行

北京第二新华印刷厂印刷

ISBN 7-100-00180-3/G·46

1986年5月第1版

开本850×1168 1/32

1990年2月北京第4次印刷

字数209千

印数1,600册

印张7 1/4

定价：1.65元

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前 言

本册是继复旦大学在前，南开大学在后编写的五册文科英语教材(非英语专业)之后而编写的供高等院校法律专业高年级学生使用的结合专业的英语教材。

本册的编写人员是：陈华、孙稼田。曾由周栢教授和外籍教员 Barbara Rothenburger 等协助审阅部分初稿。

本册初稿完成后，曾邀请南开大学(特聘主审单位)、北京大学、复旦大学、华东师范大学、华东政法学院、中国政法大学、中国人民大学、中山大学、西南政法学院、吉林大学等院校的有关同志参加审稿。对他们的大力支持，我们在此谨致谢忱。此外，本册又承蒙复旦大学董亚芬教授审阅部分稿件，南开大学张成祯、华东师范大学郭念祖、华东政法学院陈忠诚等教授审校全部稿件，对此我们表示衷心的感谢。

限于编者的水平和经验，教材中错误和不妥之处在所难免，欢迎同志们批评指正。

编 者

1984年11月

Lesson One

TRIAL BY JURY

O. Hood Phillips and A. H. Hudson

Origins. Trial by jury in its modern form is a means of ascertaining the facts in issue in a judicial proceeding according to the evidence adduced in court. Its history can be traced back to the use by Norman and Plantagenet Kings of the Continental *inquisitio*, an inquiry into the conduct of local administration. It is only as a judicial institution that the jury may be said to be of English origin, and to have been borrowed for criminal trials by foreign countries.

Civil Jury. As a judicial institution in England we trace the history of the jury in civil cases back to legislation of Henry II providing for bodies of neighbours to be summoned to decide questions relating to the ownership or possession of land. In questions of ownership this procedure was the Grand Assize, which was introduced in real actions as an alternative to trial by battle, probably by a Council at Windsor about the year 1179. The cases of dispossession arose under the Petty or Possessory Assizes introduced from the year 1166 onwards. At first, and for a long time, the twelve jurors answered questions of fact of their own knowledge, though not necessarily as eye-witnesses. By a gradual process, culminating perhaps by the end of the fifteenth century, the jury came to determine facts from the sworn evidence of witnesses produced by the parties.

Criminal Juries. In criminal cases we trace the history of the *petty (petit)* jury of twelve back to the thirteenth and early fourteenth centuries, when the courts were inducing prisoners to accept this mode of trial as a substitute for the ancient

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ordeals which disappeared after the Lateran Council in 1215 had forbidden the clergy to assist at them. The Grand Jury (now abolished) originated with the jury of presentment provided for by the Assize of Clarendon, 1166, and the Assize of Northampton, 1176, to prefer charges or indictments of serious crime.

Civil Jury at the Present Day. The use of the jury in civil cases has greatly declined in the past hundred years or more. The Common Law Procedure Act, 1854, allowed the jury to be dispensed with if both parties consented, and after the Judicature Acts of 1873—75 the influence of Chancery practice exerted itself on the common law courts. Thus by 1933 a jury was used in only about half the civil actions in the King's Bench Division. In that year the Administration of Justice (Miscellaneous Provisions) Act provided that the court should have a discretion whether or not a jury should be summoned; except that a jury must be ordered on the application of either party in cases of defamation, malicious prosecution or false imprisonment, or on the application of a party against whom fraud is alleged, unless the court considers that the trial will involve a prolonged examination of documents or accounts, or a scientific or local investigation which cannot conveniently be made with a jury. Civil juries are now most commonly used in defamation cases, though the Faulks Committee on Defamation has recommended that these actions should be put on the same footing as other actions in tort.

Where the court has a discretion under the Act it must be exercised judicially, in the same way as any other discretion. Actions for personal injuries, which include the results of motor accidents, constitute 40 per cent of the cases in the Queen's Bench Division. The Court of Appeal has ruled that these should be tried by the judge alone in the absence of special

circumstances; and the Faulks Committee (*supra*) has recommended that where a jury is used in such cases its function in the assessment of damages should be limited. Where a judge sits without a jury, of course, he determines the facts as well as the law, and also assesses the damages. The number of jury trials in this Division is likely to be not much more than one per cent in the future.

It has been the practice to accept a majority verdict with the consent of the parties. The Juries Act, 1974, now provides that the verdict of a jury in proceedings in the High Court or Crown Court need not be unanimous if ten out of eleven or twelve jurors, or nine out of ten jurors, agree on the verdict.

Trial by jury was not used in the Court of Chancery before the Chancery Amendment Act, 1858, and the power to summon juries in the Chancery Division given by the Judicature Acts, 1873—1925, has been practically neglected. Juries are occasionally applied for in defended divorce petitions and contested probate causes, but this is very rarely done. A jury of eight may be applied for in a county court, but this also is very rare.

Criminal Juries at the Present Day. The Grand Jury of twenty-three county gentlemen, which had for centuries considered the *prima facie* guilt of the accused by preferring or throwing out bills of indictment, was abolished (except for certain purposes in London and Middlesex) by the Administration of Justice (Miscellaneous Provisions) Act, 1933, and altogether by the Criminal Justice Act, 1948.

Criminal proceedings take place either on indictment or summarily before the magistrates. An indictment is a written or printed accusation of crime (whether arrestable or non-arrestable), usually against a person who has been committed for trial by examining justices, and signed by the proper officer of

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the court. A trial on indictment is now by the Crown Court with a jury (Courts Act, 1971).

A (petty) jury traditionally consists of twelve persons, but the Juries Act, 1974, provides that where in the course of a criminal trial any member of the jury dies or is discharged because of illness or otherwise, the trial may continue, provided the number of jurors is not reduced below nine. This does not apply to a trial for murder or for any offence punishable with death, unless both the prosecution and the accused assent.

“Ever since 1367,” said Denning J., in *Brain v. Minister of Pensions*, “the law has required that the decision of a jury should be unanimous. If they cannot agree, even if only one dissents, the case must be tried before another jury.” The Juries Act, 1974, however, allows a majority verdict to be taken in criminal proceedings under the following conditions: (i) where there are not less than eleven jurors, ten of them agree on the verdict; or where there are ten jurors, nine of them agree on the verdict; (ii) a majority verdict of *Guilty* may not be accepted unless the foreman states in open court the number of jurors who agree with the verdict; and (iii) a majority verdict may not be accepted unless the jury have had at least two hours for deliberation. Condition (ii) and the practice of the court ensure that it will not be known that a verdict of *Not guilty* is by majority. The judge must encourage the jury in the first instance to try to reach a unanimous decision. He may not accept a majority verdict after less than two hours’ deliberation. If they are not agreed after two hours, he should send them back at least once to try to reach unanimity; and then (if necessary) should send them back at least once to see if they can reach the required majority. If all these efforts fail, the jury will have to be discharged, and the case tried before another jury.

Minor offences, including a large number of violations of

statutory regulations, are triable on information or complaint by Magistrates' Courts summarily, that is to say, without formal indictment or jury. There is also a third category of offences triable either on indictment or summarily. At the present day the vast majority of indictable offences are in fact tried without a jury.

Jury Service. The Juries Act, 1974, a consolidating Act, incorporates many of the recommendations of the Morris Committee on Jury Service, reforming the law which in some respects dated back to 1825. To qualify for jury service a person must be on the register of electors, aged from eighteen to sixty-five years, and have been ordinarily resident in the United Kingdom for at least five years. The Lord Chancellor is responsible for summoning jurors in the Crown Court, High Court and county courts, and he is to prepare lists ("panels") of persons summoned as jurors. The court may now permit a jury to separate at any time before they consider their verdict. A juror is entitled to an allowance: (a) for travelling and subsistence, and (b) for consequential financial loss or loss of earnings. If a person summoned fails to attend, he is liable to a fine of up to £100.

The judiciary, justices of the peace, barristers and solicitors (whether or not in practice), clergy and the mentally ill are ineligible for jury service. Persons sentenced to imprisonment for life or for a term of five years or to be detained during Her Majesty's pleasure or (within the last ten years) to imprisonment for three months or Borstal, are disqualified. Members of Parliament, the Forces, medical and other professions are excusable as of right.

(from *A First Book of English Law*)

Proper Names

Norman Kings 指从 1066 年开始 征服英格兰的诺曼国王	教皇的神权和俗权)
Plantagenet [plæn'tædʒinit] (a.) (英史) 金雀花王朝的 (1154— 1399)	Assize of Clarendon ['klærəndən] 克拉伦登巡回法庭
Henry II (Henry the Second) 亨 利二世 (1133—1189 金雀花王朝 时第一代英国国王)	Assize of Northampton [nɔ:'θæ- mptən] 诺桑普敦巡回法院
Council at Windsor ['winzə] 温 莎市政会	Faulks [fɔ:ks] Committee 福克斯 委员会
Lateran ['lætərən] Council 拉特 兰议会 (拉特兰议会先后开过五 次: 1123, 1139, 1179, 1215, 1512。 这次议会是第四次, 会上确立了	Middlesex ['midlseks] 密德萨克斯 (英格兰东南部的一个郡)
	Denning ['deniŋ] 丹宁(人名)
	Brain [brein] 布雷恩(人名)
	Morris ['mɔris] Committee 莫里 斯委员会

Notes

1. inquisitio (拉丁)(法律)调查
2. Grand Assize 大巡回法庭
3. Petty or Possessory Assizes 小或占有诉讼巡回法庭
4. ..., when the courts were inducing prisoners to accept this mode of trial as a substitute for the ancient ordeals ...
句中的 prisoners 原为“犯人”,但此处系指尚未定案的“人犯”。
ancient ordeals (古代的神明裁判)包括探火神判(烧伤后用布包裹伤口,三天后伤口不愈,便判定有罪),热水神判(与探火神判相似),冰水神判(把被告投入水中,浮便有罪)等。
5. ... which disappeared after the Lateran Council in 1215 had forbidden the clergy to assist at them.
句中的 assist at 相当于 attend; them 是指 courts。

6. (the) Common Law Procedure Act 普通法程序法
7. (the) Judicature Acts 司法机构法
8. (the) King's (Queen's) Bench Division 王座分庭
9. Administration of Justice (Miscellaneous Provisions) Act 司法 (杂项律定)法
10. ... that the court should have a discretion whether or not a jury should be summoned;
句中的 discretion 是指斟酌决定权。
11. ..., he determines the facts as well as the law,, 他不但决定法律问题, 而且也决定事实问题...
(..., he not only gives (passes) judgment, but (also) determines the facts of the case)
12. (the) Juries Act 陪审团法
13. (the) Crown Court 巡回刑事法庭
14. Court of Chancery 大法官法庭
15. (the) Chancery Amendment Act 大法官法庭 (或衡平法院) 修正法
16. (the) Chancery Division 大法官(法庭)分庭
17. (the) Criminal Justice Act 刑事司法法
18. Criminal proceedings take place either on indictment or summari-

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ly before the magistrates.

句中的 on indictment 等于 based on indictment; summarily before the magistrates 相当于 (take place) speedily without ceremony before the magistrates.

19. "Ever since 1367," said Denning J., in *Brain v. Minister of Pensions*, ...

句中的 J. 是 Justice (法官)的缩写; v. 是 versus (against) 的缩写。

... said Denning J., in *Brain v. Minister of Pensions* 丹宁法官在布雷恩诉年金部长一案中说……

20. agree on something 往往在强调经过了讨论或争论后才同意的 (或者还不得不同意)。如:

We agreed on a price for the car. 我们谈好了这部车子的价格。

It seemed as though the two sides would never agree on an end to hostilities. 双方似乎一辈子也解决不了彼此之间存在的
不和。

21. Condition (ii) and the practice of the court ensure that it will not be known that a verdict of Not guilty is by majority.

句中的 that a verdict of Not guilty is by majority 是 that 从句中的真正主语。Not 大写是要和上面的 Guilty 大写相呼应,同时也有强调的意思。

22. information 起诉(由 public officer 提出) complaint 控告(常与自己有关) indictment 起诉(由 Grand Jury 提出)

23. (the) Lord Chancellor 大法官

24. the judiciary 司法人员(统称),司法部门

25. ... or to be detained during Her Majesty's pleasure or

本句相当于 ... or to be kept in a place of control for as long as the ruler considers necessary or

句中的 pleasure 相当于 wish 或 desire。

26. ... and other professions are excusable as of right.

句中的 as of right 相当于 by right (按理说)。

27. barristers and solicitors: 在英国律师分为两种。 barrister 有权出席高等法院诉讼,包括上议院的上诉庭。 solicitor 指办理法律事务;受人委托,办理诉讼,一般只能在下级法院出庭的律师。两种律师国内尚无定译。前者常译为:专门律师、出庭律师、巴律师、大律师等;后者则常译为:事务律师、诉状律师、沙律师、初级律师等。

28. ... ascertaining the facts in issue in a judicial

句中的 in issue 是习语,意为“在争论中”; the facts in issue 可译为“争执中的是非曲直”。

29. ... which was introduced in real actions as an alternative to

句中的 real actions 指不动产的诉讼案件。

30. supra [拉]上述

31. prima facie [拉]足以构成案件(事实等)的

EXERCISES

- I. Choose the best alternative (A, B, C, or D) under each question:
- The history of trial by jury can be traced back to the use of
 - an inquiry
 - the Continental inquisitio
 - criminal trials
 - a custom of Plantagenet regime
 - Trial by jury was introduced in issues of ownership to
 - compete with trial by battle.

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- B) compete with trial by God.
 - C) offer an alternative to trial by battle.
 - D) wage a war against trial by battle.
3. An ordeal could take place
- A) when priests were necessarily present.
 - B) when priests were not necessarily present.
 - C) when priests gave their grant.
 - D) after priests were not allowed to attend.
4. The Grand Jury (now abolished) originated with the jury which
- A) preferred charges or indictments of serious crime.
 - B) provided that the Assize of Clarendon should put forward charges or indictments of serious crime.
 - C) provided that the Assize of Northampton should prefer charges or indictments of serious crime.
 - D) was required by the two Assizes to make investigation and prefer charges or indictments of serious crime.
5. The use of jury was made less necessary because of
- A) the Common Law Procedure Act, 1854.
 - B) the Judicature Acts of 1873—75.
 - C) the limitation of the jury's discretion.
 - D) what the two above-mentioned Acts provided.
6. The jury is commonly used in civil cases of
- A) injury.
 - B) divorce.
 - C) defamation.
 - D) fraud.
7. The jury could be dispensed with when the court
- A) could operate independently.
 - B) had a good judge
 - C) was able to make responsible decisions.
 - D) had an Act to go by.
8. A qualified juror must
- A) meet the qualifications of age, suffrage, and residence.
 - B) be an elector.
 - C) be aged from 18 to 65.
 - D) be aged from 18 to 65 as well as have lived in the United Kingdom for at least 5 years.