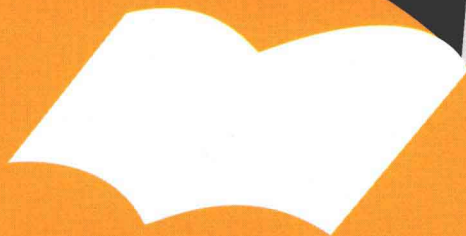


(第二版)

# 法律英语

沙丽金 ◆ 编著



高等政法院校规划教材

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司法部法学教材编辑部 审定



中国政法大学出版社

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**第二版说明**

《法律英语》自2007年出版以来受到广大读者的厚爱与支持,对此作者表示深深的谢意。自本教材问世,作者更加关注法律英语教材建设,注意搜集本教材使用情况信息,从校内外同行和学生那里获得了不少有益的建议。作者本人也在法律英语教学中一直使用本教材,在使用过程中,结合课程设置情况、课时量、教学对象等因素不断调整教学内容,使教材尽可能在内容、篇幅、难易度上适应本科法律英语教学的需要。

此次修订主要是内容方面的修订,原教材共有16个单元和5个案例。为了使案例更加具有代表性,将刑事诉讼法案例更换为搜查方面的案例。另外,考虑到在大部分院校,法律英语这门课一般都设在拓展课程模块中,也就是说比较适合那些有一定基础英语水平学习者。为了进一步提高学习者对法律案例的分析能力,在原有的案例基础上增加了案情简介、案例问题和案例摘要实践等内容并配有参考答案。案情简介用以引导学习者对案件事实及法院通过案件所制定的法律有更加明确的了解。案例问题是针对案件提出问题,培养学生在阅读案例的同时,观察法律语言所承载的法律知识。案例摘要实践旨在使学习者通过案例摘要的写作,领会法官的法律推理过程,提高思辨能力。同时,在修订过程中也对原书中的术语翻译、注释释义、篇章内容等方面进行修改与完善。

鉴于作者水平有限,不妥之处在所难免,敬请广大读者批评指正。

沙丽金

2011年8月于褐石

### 编写说明

《法律英语》的编写目的旨在培养学生使用英语对基本的法律专业文本的阅读理解能力。选材以英语原版材料为基础,以反映英美法系的内容为主,涉及法律体系、法学教育、法院体系以及宪法、刑法、刑事诉讼法、民事诉讼法、侵权法、合同法、国际法等部门法。使学生开拓视野,对英美法系的基本制度有一定了解,并熟悉和掌握基本法律术语的英语表达。为学生用英语开展专业文献阅读和从事法律实务奠定基础。

《法律英语》全书共 16 课,供一个学年使用。每课由课前练习、课文、注释、练习、补充阅读组成。编写原则是每一课中的所有部分都从不同的角度围绕一个主题展开。课前练习解决术语和预读问题。注释主要解决课文中出现的法律知识、文化、习惯用法等方面的问题。练习注重结合学生语言技能的训练和法律知识的运用,分为阅读理解、完型填空、术语翻译、段落翻译、命题讨论。阅读理解部分检查学生对课文中法律知识的理解程度,同时也可以使学生在回答问题时提高英语口语交际能力。完型填空部分主要选择与课文内容相关的材料,通过选择关键词填空,加深对相关知识的了解。术语翻译部分是将课文中出现的法律术语习惯搭配挑选出来,通过练习引起学生的重视。段落翻译的内容也与课文密切相关,通过该练习形式训练学生使用法律专业术语表述法律英语文本的内容。讨论练习是为了让学生根据所学内容就所给命题发表自己的见解,以达到训练口语的目的。另外,为了让学生了解法律实务,在书后附有经典案例。每一课的布局尽可能有机地将语言技能训练和法律知识学习相结合,通过全书的学习使学生不仅了解英美法律制度和相关部門法,也对法律文体、法律英语的特点以及法官填密的逻辑推

理有所了解，同时提高实际运用英语的能力。

由于编者水平有限，加之时间仓促，教材中的不妥之处在所难免，希望广大读者批评指正。

编 者

2007 年 1 月

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# Lesson 1 Law

The objective of the lesson is to introduce the concept of law. Students are required to use the legal terms and to express their understanding of law.

## Pre-class Activities

### I. Read the following terms and use them to make sentences in the legal context.

justice	n. 司法、正义	complaint	n. 诉状
enforce	v. 执行	decree	n. 判决, 法令
penalize	v. 处罚	jurisprudence	n. (英) 法律体系
anarchy	n. 无政府状态	enact	v. 颁布 (法律)
judicial	a. 司法的	statute	n. 成文法, 制定法
procedural	a. 程序的	antitrust	a. 反托拉斯的
relief	n. 救济	ordinance	n. 法令, 条例
petition	v. 请求	dealings	n. 交易, 行为
remedy	n. 救济	senate	n. 参议院, 上院
equity	n. 衡平法, 公平		
plaintiff	n. 原告		

### II. Please read the text and make notes while reading. Then find a partner to do the pair-work: Ask each other at least ten questions on the text.

## Text

### Law

Every government is the exact symbol of its people. So it is with law. The laws and legal system of a society reflect the values of its people. The fairness of a nation's laws and the extent to which the legal system justly administers the laws is a measure of the enlightenment, humanity, and degree of civilization of its people.

Law consists of the whole body of rules applied and enforced under the authority of established government in determining what conduct is proper and should be permitted and that which should be denied or penalized.

Without law, there would be anarchy. Law is the means through which society is able to exist by providing protection for the individual; by establishing and maintaining order, health, and safety; by providing a peaceful means of dispute resolution; by providing stability and flexibility in economic relations between people; and by prohibiting conduct destructive to society. Rules reflect the society and time in which they operate. Growth of law has been pragmatic, developing from society's need for reasonableness and flexibility in its day-to-day working.

Law is a dynamic process. It is a flow, constantly changing and continually expanding. In a sense, law is similar to language. It consists of rules and has a pattern, but the rules and pattern change as they are used over a period of time. Law is best understood by viewing the legal system as a process—a means of pulling together society's needs and goals and translating them into guides for fairness and reasonableness in conduct. Courts, through judicial decisions, reflect the controlling and important social, economic, and political goals and needs of the society in which they function.

The English system of law, on which the American legal system is based, developed after the Norman Conquest in the eleventh century. Upon conquering England, William, the Conqueror, replaced the local and highly varied systems of law with a common system of law. Over the years, as the court system grew, a

system of judge-made rules began to develop. These rules became known as “the common law”, because they were common to all the people in the land.

Because of the extremely rigid, frequently overly technical procedural requirements of the common-law system, people were sometimes unable to obtain fair relief in the courts. In time, some persons who felt that the form of relief was inadequate petitioned to the King directly. These petitions were turned over to the King’s Lord Chancellor. This practice gave rise to a second court system, called the Court of Chancery. Remedies granted by the Court of Chancery were known as equity.

The English colonists who settled North America based their legal system on what they had previously experienced, the common-law and equity systems of Europe. The colonies, and later the states established separate court systems to administer law and equity, as what England had done. American court systems in the nineteenth century resulted in simplification of judicial procedures and elimination of equity courts as separate courts in most states. While the two court systems have been joined in most states, the terminology in law and equity cases may remain different. For example, in a “lawsuit”, the “plaintiff” initiates an action by bringing a “complaint”. In an equity case, the person bringing the suit is a “petitioner”, who brings a “bill in equity”. The law judge renders “judgment” while the equity judge renders a “decree”.

While the common-law and equity system of jurisprudence in England resulted from judge-made decisions from the period following the Norman Conquest, the primary growth of law in the United States has resulted from statutes enacted by state legislatures and by Congress. Under the federal Constitution and the constitutions of all 50 states, it is the function and duty of the legislative branch of government to enact the laws ( statutes ) under which we live.

There exists in the American legal system, the common law and statutory law. Through historical development, some areas of law have resulted in less control by statutes than by judicial decisions. The law of contracts, for example, was developed extensively by the common-law judges during the growth of England’s legal system. This is not to say that there is no legislation in this area. Legislatures have indeed enacted statutes covering contracts, but the legislation has been phrased broadly and it is the common-law rules which fill out the details of the statutes.

Other areas of law, particularly business law, are entirely the result of statutes. For example, corporation and antitrust laws are created by legislation, not court decisions.

One type of statutory law consists of ordinances, which are enactments by the legislative body of a municipal corporation (city). An ordinance is a municipal law of a general and permanent nature. Examples include fire codes, parking regulations, and city elections.

A treaty, another form of statutory law, is a written contract between nations executed with the formality customary in dealings between nations, although not necessarily in a particular and prescribed form. In the United States, the power to make treaties with foreign nations is, under the Constitution, given to the President, acting with the advice and consent of the Senate.

(Adapted from *Business Law*, Purver, Farber, Tinsley, Bjorklund, San Francisco: Bancroft-Whitney Company, 1983: )

## Notes

1. Norman Conquest, 诺曼征服。1066 年诺曼底公爵威廉率军穿过英吉利海峡对英格兰进行军事征服, 建立诺曼底王朝, 史称“诺曼征服”。
2. William, 威廉。大约于 1028 年出生在法国诺曼底的一个城镇法雷兹。他是诺曼底公爵罗伯特一世的儿子。罗伯特于 1035 年在去耶路撒冷朝圣的归途中丧生。他在行前就已经委任威廉为他的继位人, 因此威廉 8 岁时就当上了诺曼底的公爵 (1035 ~ 1087)。威廉于 1066 年 12 月 25 日在威斯敏斯特 (Westminster) 加冕为英国国王 (1066 ~ 1087 年在位), 称威廉一世 (征服王) (King William I The Conqueror)。
3. King's Lord Chancellor, 中世纪英格兰的大法官 (Lord Chancellor), 他被称为是国王良心的守护者 (Keeper of the King's conscience); 他是国王法院理财法院分庭成员, 协助国王法院和理财法院的司法事务。但是随着衡平法的发展, Lord Chancellor 的含义逐渐发生了变化, 从行政职位演变为司法职位, “大法官”一词被用来专指发展了衡平法的“大法官法院” (High Court of Chancery) 的最高长官。
4. Court of Chancery, 大法官法院。指英国 15 世纪开始建立的隶属于大法官 (Chancellor) 的衡平法院, 用以向当事人提供某些不能从普通法法院获得的法律救济。

5. the common-law and equity systems, 在诺曼征服之后, 英国国王为了统治的便利, 在司法审判中大量适用各地的习惯法, 为了改变适用普通法而引起的不公平, 另生成一套衡平法制度。衡平法的适用与普通法是两套司法系统。这种划分是英国法律制度的一个特色。由于这种体制中的诉讼程序复杂, 成本高昂, 难以及时保护当事人的权利。英国议会 1875 年通过《司法条例》创设了最高法院, 取消了普通法院和衡平法院, 从而将普通法和衡平法这两种法律体系合并。
6. Congress, 美国国会, 是美国的立法机关。
7. ...it is the function and duty of the legislative branch of government to enact the law. 根据美国联邦宪法的三权分立原则, 美国联邦政府由三部分组成: 立法、司法、行政。其中立法部门的职能是制定法律。
8. ...the power to make treaties with foreign nations is ...given to the President, acting with the advice and consent of the Senate. 美国宪法赋予美国总统与外国签订条约的权力, 但是该权力的行使必须得到参议院的认可。这体现了立法部门与行政部门之间的制衡关系, “制衡”也是美国宪法中的重要原则。

## Exercises

### I. Answer the following questions according to the text.

1. What is the relationship between civilization and law?
2. What is law?
3. Can you list the roles of law in a society?
4. How can law be best understood?
5. What are the events that promote the development of the English legal system?
6. Why did the people in England petition to the King and what would be the result?
7. What was the situation of equity courts in North America?
8. Was the statutes developed fast in North America? Why?
9. What are the disadvantages of statutes and the advantages of the common law rules?
10. Who has the power to make the ordinances?

**II. Choose a proper word from the list given below for each of the following blanks, and change the form where necessary.**

freedom      property      right      rob      law  
money      enforce      harm      dispute      official

Laws are rules that define people's rights and responsibilities towards society. They are agreed on by society and made \_\_\_\_\_ by governments. Some people look on \_\_\_\_\_ with fear or hatred. Laws seem to limit a person's \_\_\_\_\_ to do many things he would like to. Though laws may prevent us from doing things we wish to do at the moment, laws also stop others from doing things that might \_\_\_\_\_ us. Laws make everyone's life safer and more pleasant. Without laws, we could not hold on to our \_\_\_\_\_. We could not go to bed at night expecting to wake up in the morning and find we had not been \_\_\_\_\_. No stores in which we buy food, clothes, and other necessities could stay open and sell to us. Our banks would not be safe places for our \_\_\_\_\_. Social life would be impossible without laws to control the way people treat each other. But unless laws are \_\_\_\_\_, they cannot protect us. Wherever people live together in communities, there will always be \_\_\_\_\_. Among animals, conflicts result in victory for the stronger or quicker. But human beings believe that in a dispute the one who is \_\_\_\_\_ should win. Sometimes the problem is so complicated that it can be settled only in a law court.

**III. Translate the following words or phrases into English.**

- |               |         |            |
|---------------|---------|------------|
| 1. 法律制度       | 2. 解决争端 | 3. 稳定性和灵活性 |
| 4. 法院判决       | 5. 开始起诉 | 6. 商法      |
| 7. (市/镇) 自治机关 | 8. 联邦宪法 | 9. 执行合同    |
| 10. 规定格式      |         |            |

**IV. Translate the following passage into Chinese.**

One of the foundations of our society is the belief that ours is a nation committed to the rule of law. No person is above the law. We use law to regulate people in their relationships with each other, and in their relationships with government. Law reflects our social aspirations, our culture, and our political and economic situation. It provides mechanisms for resolving disputes and for controlling

government officials. Private law includes property, family, tort, probate, and corporate law. Public law includes constitutional, criminal, and administrative law. Common to both, however, are certain legal objectives.

**V. What is your opinion of the following topic? Please support your opinion with examples.**

**Topic:** What is the right to equal protection of law?

## **Supplementary Reading**

### **Public Law and Private Law**

Public law is concerned with the distribution and exercise of the rules governing the powers and duties of local authorities. The operation of the National Health Service, the regulations of building standards, the issuing of passports and the compulsory purchase of land to build a motorway all fall within the ambit of public law. In contrast, private law is concerned with the legal relationships between individuals, such as the liability of employers towards their employees for injuries sustained at work, consumers' rights against shopkeepers and manufacturers over faulty goods, or owners' rights to prevent others walking across their land. The division of law into public and private law and civil and criminal law are two clear examples of categories that overlap. Thus, for example, some public law is civil and some is criminal.

The significance of the public/private law distinction operates at two levels. First, it is a very useful general classification through which we can highlight some broad differences, such as those in the purpose of law, in sources and forms of legal rules, and in remedies and enforcement. This is the way the idea of public/private law will be discussed here. However, the distinction is also used in a second, narrower sense; as a way of defining the procedure by which claims can be raised in court.

One way of thinking about a legal rule is to consider its purpose. The primary purpose underlying most private law rules is the protection of individual interests,

whereas the aim of most public law provisions is the promotion of social objectives and the protection of collective rather than individual interests. The methods used to achieve these purposes also differ. A characteristic feature of public law is the creation of a public body with special powers of investigation, decision-making and/or enforcement in relation to a particular problem, whereas private law achieves its ends by giving individuals the right to take action in defence of their interests.

Public and private law also show differences in their origins and forms. Some of the most important principles of private law are of ancient origin and were developed through the common law as individuals took their private disputes to court and demanded a remedy. The rules of private rights in contract, over land and inheritance, to compensation for physical injury or damage to property or reputation, were all first fashioned by judges in the course of deciding cases brought before them. In contrast, most public law rules are of comparatively recent origin first originating in statute, not judicial decisions. There are obvious exceptions. Criminal law and the criminal justice system itself are prime examples where standards of behaviour are set by the state and enforced by a network of public officials with powers of arrest, prosecution, trial and punishment. Lots of the early developments of this field of public law lies in common law. An important function of public law has its roots in constitutional theory. The actions of public bodies are only lawful when there is a legal rule granting the body authority to act in a given situation. A private individual needs no legal prohibiting or curtailing of that behaviour. Public law therefore has a facilitative function, for which there is no equivalent in private law, permitting a public body to take action that would otherwise be unlawful. A feature of most of recent public laws is a shift towards the grant of broad discretionary powers to public bodies. This characteristic form of modern public law contrasts quite sharply with the relatively specific rights and duties to be found in private law, and in turn affects the way public and private law can be enforced. All private law is enforced by granting individuals the right to take action in defence of a recognized personal interest. For example, a householder may make a contract with a builder over the repair of a roof, and may sue the builder if the work or materials are of a lower standard than was specified in the contract. Not all public law can be enforced by way of individual action.



Even where legislation lays a duty on a public authority, there may be no corresponding right of individual action. For example, under the Education Act 1996, local education authorities are under a duty to ensure that there are sufficient schools, in numbers, characters and equipments, for providing educational opportunities for all pupils in their area. However, nobody can sue the authority if the schools are overcrowded or badly equipped. The only remedy is to complain to the Secretary of State, who can make orders if satisfied that the authority is in default of its duties. The mechanism for controlling standards of public bodies is generally by way of political accountability to the electorate or ministers rather than the legal process.

(Adapted from *How to Study Law*, Bradney, Cownie, Masson, Neal, Newell, London: Sweet & Maxwell, 2005. )

### Further Reading

1. [法] 孟德斯鸠:《论法的精神》,张雁深译,商务印书馆 2004 年版。
2. [英] 亨利·梅因:《古代法》,沈景一译,商务印书馆 1996 年版。
3. [美] 伯纳德·施瓦茨:《美国法律史》,王军译,中国政法大学出版社 1990 年版。