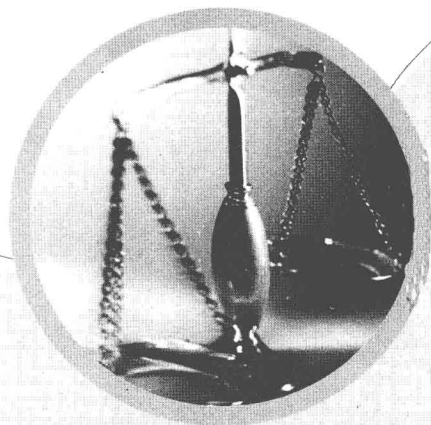


Twenty-first Century English for Law

# 21世纪法律英语

(上册) 第三版

董世忠 赵建 主编 ● 赵建 刘海虹 修订



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## 内 容 提 要

《21 世纪法律英语》(上册)系法律专业英语教材之一,供具有大学英语三级以上水平的法律系学生及法律工作者使用。编写这套教材的宗旨是使其既具有法律内容上的系统性,又在语言上由浅入深,循序渐进,更有外语教材所必备的可操作性。

全书包含的五个单元,简明而完整地介绍了美国法律的五个部分:导论、宪法、民事诉讼、合同和票据。每单元都有若干篇课文,并配有大量口笔头练习,帮助学生熟练掌握课文内容。此外,每单元还配有较多的案例阅读材料,以助学生深化对课文的理解。使用本教材可达到一举两得的效果:取得对美国的司法制度及主要的民事商事法律的初步了解,并掌握基本的法律英语词汇和概念的英语表述。因此,对于有志于日后从事涉外业务的法律专业的学生和法律工作者,它将是一本不可多得理想教材。

## 第三版前言

《法律英语》前二版是在 20 世纪 90 年代为上海紧缺人才培训工程编写的一本教材,可供具有大学三级以上英语水平的法学学生和涉外法律工作者使用。它自 1997 年初问世以来,受到了广大师生及其他使用者的欢迎。近 10 年来,随着我国改革开放的步步深入,社会对法律工作者的英语要求不断提高,大学生的总体英语水平也今非昔比。考虑到使用者要求的提高,也考虑到近年来美国法律的一些变化,亦应广大读者的要求,编者对本教材进行了比较大的修改,使其进一步完善,以期更好地满足读者的需要。

本书编者多年来从事法律英语的教学,同时兼职法律事务的翻译,既了解英语教学的普遍规律,又了解法律英语的特殊要求。第二版修订中,编者结合自己长期教学的体会和工作中积累的丰富经验,对原书进行了比较全面的修改和充实。再版的《法律英语》保持了原版的整体格局,一方面它涵盖的法律内容较为完整和系统;另一方面语言地道、难度适中,既有供课堂讲练的课文和练习,也有丰富的案例可供学生自学和阅读,如果使用得当,教师和学生密切配合,定可在较短的时间内获得法律英语的长足进步。

第二版《法律英语》中,第一单元突出介绍了美国的法律和司法制度;商业票据单元全部刷新,反映了美国商法变化的新动态;侵权法单元增加了产品责任;其他单元的课文也均有一定程度的扩展和充实,同时对各单元的先后次序安排也有适当的调整。作为泛读阅读材料的案例,内容几乎全部更新,覆盖面更广,增添的案例多为本世纪的判例,更好地反映了当前美国法律的情况和发展趋向。考虑到所选的案例在文字和内容上有一定难度,除了增加文字注释外,还在每个案例后加了点评,以画龙点睛的方式简述案件的要点,有助于学生理解法官的分析思路和判案原则。

修订工作主要由赵建执笔,刘海虹参加修订了第六和第七单元。全书由赵建最后审定。



最新版《21 世纪法律英语》对《法律英语》第二版的个别章节进行了充实和完善,并根据一些使用者的要求,将原书分为上、下两册,以方便学生携带和使用。

在本书的修订中,计美娟编辑不辞辛劳,做了大量工作,特此表示感谢。

编者

2010 年 3 月



# 序

谢丽娟

由上海市人民政府教育卫生办公室、市成人教育委员会、中共上海市委组织部、市人事局联合组织编写的“90年代上海紧缺人才培训工程教学系列丛书”将陆续出版。编写、出版这套丛书是实施上海紧缺人才培训工程的基础工作之一,对推动培养和造就适应上海经济建设和社会发展急需的专业技术人才必将起到积极的作用。

90年代是振兴上海、开发浦东关键的十年。上海要成为国际经济、金融、贸易中心之一,成为长江流域经济发展的“龙头”,很大程度上取决于上海能否有效地提高上海人的整体素质,能否培养和造就出一大批坚持为上海经济建设和社会发展建设,既懂经济、懂法律、懂外语,又善于经济管理,擅长国际竞争,适应社会主义市场经济新秩序的多层次专业人才。这已越来越成为广大上海人民的共同认识。

目前上海人才的状况与经济建设、社会发展的需求矛盾日趋显著。它集中表现在:社会主义市场经济的逐步确立,外向型经济的迅速发展,新兴产业的不断崛起,产业产品结构的适时调整,城市建设和管理任务的日益繁重,使原来习惯于在计划经济体制下工作的各类专业技术人才进入了一个颇感生疏的境地,使原来以面向国内市场为主的各类专业技术人才进入一个同时面向国内外市场并参与国际竞争的新天地,金融、旅游、房地产、城市建设和管理等以及许多高新技术产业又急切地呼唤一大批新的专业技术人才。这就加剧了本市专业人才总量不足、结构不合理的矛盾。此外,本市的从业人员和市民的外语水平与计算机的应用能力普遍不高,这种情况如不迅速改变,必将影响上海的经济走向世界,必将影响上海在国际经济、金融、贸易中的地位和在长江流域乃至全国经济发展中的作用。紧缺人才培训问题已引起市委、市政府的高度重视。

“机不可失,时不再来。”我们要大力加强紧缺人才的培训工作和外语、计算机的推广普及工作。鉴于此,及时编写、出版本丛书,是当前形势之急需,其



## 编者的话

《21 世纪法律英语》(上、下册)是一套法律专业英语教材,供具有大学英语三级以上的法律专业学生以及法律工作者学习专业英语使用。

本教材有以下特点:

**一、内容上的完整性:**本教材的八个单元介绍了美国法律的八个重要部分:导论、民事诉讼、宪法、合同、票据、财产、侵权、公司。每个单元的课文力求用最简练的语言,勾画出一门法律的全貌。因此,每学一个单元,就会对美国的一门法律有一个总体概念,并掌握这一门法律所常用的术语和基本概念的表述。

**二、使用上的可操作性:**本教材的课文文字由浅入深,词汇重复率高,符合外语学习循序渐进的要求。每课配有大量口头与笔头练习,旨在帮助学生理解课文、操练基本法律词汇和用语。书后附有答案,无论对教师还是自学者都十分方便。

**三、使用对象的兼容性:**由于课文内容浅显,注释充分,具有一般水平的学生通过自学完全能够理解。如果能做完练习的 I、II、III 部分,则达到了巩固的效果。练习的 IV、V 部分有一定难度,供水平较高的学生使用。每单元配有的案例阅读材料,是课文中涉及的法律原则在实际中的体现,可作为泛读材料,用以加深、拓宽对课文的理解,也可作为教师的参考资料,用以解释课文。

参加本教材编写的,除主编外,还有刘海虹同志。她担任编写了财产法和侵权法两个单元。本教材在编写过程中,得到了上海市司法局教育处戴鸿儒处长、黄立群干事和复旦大学出版社张永彬同志的大力支持,特在此表示感谢。

我们热诚欢迎使用本教材的教师和学生对其中的问题加以指正。

编者

2010 年 3 月

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# UNIT ONE

## Introduction to American Law

### Lesson One

#### Law: Definition, Classification and Sources

##### Text

What is law? Though we use the word “law” very often in our daily life, we use it in so many ways that there is no simple answer to this question.

The definition of law depends on how we look at its purposes or functions.

A basic purpose of law in our society is to maintain order and to resolve disputes. For this purpose we make laws to define our rights and duties and prescribe what we should and should not do<sup>1</sup>. However, law is not simply a set of rules. It is also the means to impose responsibility and to enforce social justice. The rules of law must be followed, and breaking any of them will result in a punishment.

Law has also been defined as a command from a superior to an inferior. The tax law fits in well with this concept of law<sup>2</sup>.

Law is also a method of social control. The law brings about changes in our society and society brings about changes in the law. In this sense law is both an instrument of change and a result of change.

Laws can be classified in many ways too. They are sometimes referred to as either substantive or procedural<sup>3</sup>. The rules of law that are used to resolve disputes are known as substantive law. The legal procedures that determine how



a lawsuit is begun, how the trial is conducted, how appeals are taken, and how a judgment is enforced are called procedural law. Substantive law defines rights, and procedural law establishes the procedures by which rights are protected and enforced. For example, A and B have entered into an agreement, and A claims that B has breached the agreement. The rules that provide for bringing B into court and for the conduct of the trial are rather mechanical, and they constitute procedural law. Whether the agreement is enforceable and whether A is entitled to damages are matters of substance and will be determined on the basis of the substantive law of contracts<sup>4</sup>.

Law is also frequently classified into areas of public and private law. Public law deals with the relationship between the state and individuals (private citizens, companies, etc.) and affects the public generally. It can be further divided into constitutional law, administrative law and criminal law. Private law is the part of law that defines the rights and duties between private individuals. It covers the subjects of contracts, torts and property, each of which can be subdivided into several bodies of law. The law of torts is the primary source of litigation in America<sup>5</sup>. It deals with wrongful acts against a person or his property and is based on the theory that in a civilized society, people who injure others or their property must compensate them for their loss<sup>6</sup>.

Classification of law according to subject matter can often be difficult because the law is indeed a seamless web, and overlapping is inevitable if we divide it according to a clear-cut definition<sup>7</sup>. Assume that a person is injured by a product he has purchased. He may sue on the sales contract. But the law of sales, even though a part of the law of contracts, contains several aspects that could best be labeled a branch of the law of torts<sup>8</sup>. Therefore, it is apparent that even the general classification of contract and tort is not accurate in describing the subject matter of various bodies of law.

The phrase “sources of law” is used to describe methods and procedures by which law is created and developed, or the origin from which particular laws derive their authority or coercive force<sup>9</sup>. American law is derived from four basic sources: constitutions, legislation, judicial decisions (case law), and administrative rules and regulations.

Judicial decisions as part of law is a tradition in American law. This concept



of decided cases as a source of law is often referred to as the common law system, which must be contrasted with the civil law system developed in continental Europe<sup>10</sup>. The civil law countries have codified their law so that the main source of law in those countries is to be found in the statutes rather than in the cases. Under the common law system, however, statutes as well as cases are sources of law. This means that when a judge decides a case, not only does this resolve the dispute between the litigating parties, but it also further decides all similar cases that might arise in the future.

### Words and Phrases

definition /,defɪ'nɪʃən/ <i>n.</i>	定义
define /dɪ'faɪn/ <i>vt.</i>	给……下定义,界定
to be defined as	被界定为……,定义是
classification /,klæsɪfɪ'keɪʃən/ <i>n.</i>	分类
classify	把……分类
source /sɔ:s/ <i>n.</i>	来源,渊源
function /'fʌŋkʃən/ <i>n.</i>	功能
resolve /rɪ'zɒlv/ <i>v.</i>	解决
dispute /dɪs'pju:t/ <i>n.</i>	纠纷,争议
prescribe /prɪs'kraɪb/ <i>vt.</i>	规定,开处方
impose /ɪm'pəʊz/ <i>vt.</i>	强加
enforce /ɪn'fɔ:s/ <i>vt.</i>	执行,实施
enforceable /ɪn'fɔ:səbl/ <i>adj.</i>	可执行的
justice /'dʒʌstɪs/ <i>n.</i>	正义,司法
superior /sɜ:ju:'pɪərɪə/ <i>n.</i>	上级
inferior /ɪn'fɪərɪə/ <i>n., adj.</i>	下级(的);低等的
to fit in with	符合
to bring about	造成
instrument /'ɪnstɹəmənt/ <i>n.</i>	工具;票据
refer /rɪ'fɜ:/ <i>vi.</i>	指称
to be referred to as	被称为,被说成是
substance /'sʌbstəns/ <i>n.</i>	实质



substantive /'sʌbstəntɪv/	adj.	实体的
procedure /prə'si:dʒə/	n.	程序
procedural	adj.	程序的
lawsuit /'ləʊsɪt/	n.	讼案
trial /'traɪəl/	n.	庭审
conduct /kən'dʌkt, -dəkt/	vt.	处理, 进行
appeal /ə'pi:l/	vt., vi., n.	上诉
judgment /'dʒʌdʒmənt/	n.	判决
enter into		签订(协议等)
breach /bri:tʃ/	n., v.	违反, 违约
provide for		规定
mechanical /mɪ'kænikəl/	adj.	机械的, 死板的
constitute /'kɒnstɪtju:t/	vt.	组成, 构成
entitle /ɪn'taɪtl/	vt.	给……权利, 使……有权
be entitled to		有权得到
damages /'dæmɪdʒɪz/	n.	赔偿金
public law		公法
private law		私法
divide	vt.	分, 分开
subdivide	vt.	再分
to be divided/subdivided into		被分(再分)成
constitutional /,kɒnstɪ'tju:ʃənəl/	adj.	宪法的
administrative /əd'mɪnɪstrətɪv/	adj.	行政的
criminal /'krɪmɪnl/	adj.	刑事的
contract /'kɒntrækt/	n.	合同
tort /tɔ:t/	n.	侵权
property /'prɒpəti/	n.	财产
primary /'praɪməri/	adj.	首要的, 主要的
litigation /,lɪtɪ'geɪʃən/	n.	诉讼
litigate /'lɪtɪgeɪt/	vi., vt.	诉讼, 就……争讼
compensate /'kɒmpənsɛɪt/	vt.	赔偿, 补偿
subject matter		内容
seamless /'si:mlɪs/	adj.	无缝的



overlap /'əʊvə'læp/	vt.	重叠, 竞合
inevitable /ɪn'evɪtəbl/	adj.	不可避免的, 必然的
sue /sju:, su:/	vt., vi.	起诉, 对……提起诉讼
label /'leɪbl/	vt.	把……称为, 把……列为, 把……归 类为
origin /'ɒrɪdʒɪn/	n.	起源
particular /pə'tɪkjʊlə/	adj.	特定的, 具体的
derive /dɪ'reɪv/	vi., vt.	取得, 得到, 形成
derive from		源自, 起源于
authority /ɔ:'θɒrɪtɪ/	n.	权威, 权威部门
coercive /kəʊ'sɜ:sɪv/	adj.	强制的
legislation /ˌledʒɪs'leɪʃən/	n.	立法
judicial /dʒu:'dɪʃəl/	adj.	司法的
regulation /regjʊ'leɪʃən/	n.	法规, 法则
common law system		普通法(系)
contrast /kən'trɑ:st, kən'træst/	vt., vi.	使成对比, 形成对比
civil /'sɪvl/	adj.	民事的
civil law system		大陆法(系)
continental /ˌkɒntɪ'nentl/	adj.	大陆的
continental Europe		大陆欧洲(不包括英国和爱尔兰)
codify /'kɒdɪfaɪ, 'kəʊ-/	vt.	编纂(法律)
statute /'stætju:t/	n.	(成文的)法规, 成文法
statutory /'stætjʊtəri/	adj.	成文(法)的

## Notes

1. A basic purpose of law in our society is to maintain order and to resolve disputes. For this purpose we make laws to define our rights and duties and prescribe what we should and should not do.

在我们的社会里,法律的一个基本目的是维持秩序、解决争议。为此目的我们制定法律,以界定权利义务,规定我们应做什么不应做什么。

2. The tax law fits in well with this concept of law.

税法很符合法律的这一概念。



3. They are sometimes referred to as either substantive or procedural.

它们有时被称为实体的或程序的,两者非此即彼。

4. Whether the agreement is enforceable and whether A is entitled to damages are matters of substance and will be determined on the basis of the substantive law of contracts.

协议是否可执行、是否 A 有权得到赔偿金则是实质问题,要根据实体的合同法来决定。

5. The law of torts is the primary source of litigation in America.

侵权法是美国诉讼的主要依据。本句的意思是:美国的诉讼大多是侵权诉讼。

6. It deals with wrongful acts against a person or his property and is based on the theory that in a civilized society, people who injure others or their property must compensate them for their loss.

它(侵权法)处理危害人身或财产的过错行为,它的理论依据是:在文明社会里,危害他人或他人财产者必须赔偿损失。

7. Classification of law according to subject matter can often be difficult because the law is indeed a seamless web, and overlapping is inevitable if we divide it according to a clear-cut definition.

根据内容对法律进行分类往往是件难事,因为法律确实是一张无缝的网,按明确的定义将其一刀切开,就必然有竞合。

8. The law of sales, even though a part of the law of contracts, contains several aspects that could best be labeled a branch of the law of torts.

买卖合同是合同法的一部分,但即便是这样,它有好几个方面还是称之为侵权法分支为妥。结合上下文,本句的意思是:某人被所购的商品伤害,他依据买卖合同索赔,而买卖合同的某些方面(如有关产品责任的规定),实际上属于侵权法范畴,这就是法律上所说的“竞合”。

9. The phrase “sources of law” is used to describe methods and procedures by which law is created and developed, or the origin from which particular laws derive their authority or coercive force. “法的渊源”这一术语用以描述法律形成和发展的方法和程序,或特定法律获取权威和强制力的源头。

10. This concept of decided cases as a source of law is often referred to as the common law system, which must be contrasted with the civil law system developed in continental Europe. 把已决判例作为法的一个渊源,这一概



念常被称作普通法系,我们必须将它与大陆欧洲形成的大陆法系相区别。

## Word Study

1. to define *vt.* 给……下定义,界定

The powers of a judge are defined by law.

Modern dance is hard to define. The body is the same that has danced for ages.

2. to impose *vt.* 强加

Courts have the power to impose damages on defendants.

The traffic authority has imposed a speed limit on all motorized vehicles.

3. to fit in with 符合

The new bookshelf you just bought doesn't fit in well with the old furniture.

Being a mother of two teenage boys, she is looking for a job that fits in with her family responsibilities.

4. to bring about 造成

The new law will bring about an increase in labor cost.

Efforts are being made to bring about improvements in our working conditions.

5. to classify 把……分类

If we classify countries according to GDP per capita (人均 GDP), China is still a poor country.

Books in this room are classified according to subject.

6. to refer to ... as 把……称为,把……说成是

Frank was referred to as "the problem child" at school. I was the only one among his classmates he would talk to.

I think what he refers to as "litigation cost" includes attorney's fees (律师费).

7. to provide for/that 规定

This contract does not provide for renewal (续期).

My employment contract with the company provides that I can not use my work product to benefit any third party.

8. to entitle 给……权利, to be entitled to 有权得到





5. What is public law?
6. What is private law?
7. From what sources do American laws derive their authority?
8. What is a common law country?
9. What is a civil law country? Name as many civil law countries as you can.
10. Classify and describe the following laws in as many ways as you can: contract law, tort, property, criminal law, constitutions, criminal procedures, civil procedures, statutes, administrative law, case law

### III. Fill in the blanks with proper words:

1. Law can be \_\_\_\_\_ in different ways according to its different \_\_\_\_\_.
2. Without the means to \_\_\_\_\_ laws, we can not have order.
3. Even if the court \_\_\_\_\_ a fine (罚款) on him, the judgment will not be \_\_\_\_\_ because he is too poor to pay.
4. The tax law is a good example of the concept of law as a \_\_\_\_\_ from the superior to the \_\_\_\_\_.
5. Law is \_\_\_\_\_. This means that breaking any rule of law will \_\_\_\_\_ punishment.
6. Whether someone is \_\_\_\_\_ to damages is a question of \_\_\_\_\_ law.
7. Substantive laws define rights while procedural laws \_\_\_\_\_ procedures by which rights are \_\_\_\_\_ and enforced.
8. Countries in continental Europe are \_\_\_\_\_ to as civil law countries. This means that law in these countries is \_\_\_\_\_ and the main source of law is \_\_\_\_\_ rather than decided cases.
9. Public laws \_\_\_\_\_ the public generally, while \_\_\_\_\_ laws deal with the relationship between \_\_\_\_\_.
10. Classification of law according to \_\_\_\_\_ inevitably results in \_\_\_\_\_.

### IV. Cloze:

Law can be defined \_\_\_\_\_ (1) to its functions. If we see law as a

