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序

现在呈献给读者的《法学英语》，是一本为综合大学法律学系四年制本科生编选的教材。中山大学法律系从一九八二年起为三年级学生开设专业英语课，全课分三个学期教学，即第五至第七学期讲授。首先承担本课教学任务的是李斐南同志，她负责选编这一新课的教材，起初确实一空依傍，经过系内同志关心共议，她终于努力编选出初具系统的教材，先用油印试用两年。继之参与承担本课教学任务的是林致平同志，他在教学过程中对这本教材也提出很好的改进意见，并校订了全部注释。陈致中同志也参与校订了有关国际法的各课的课文和注释。这本教材受到一些兄弟院校和有关单位的注意，中山大学教材科从一九八四年起改为铅印，以满足校内外的需求。经过三届学生的使用，两位教师的边教边改，不断充实改进，比起初编已经面貌一新。为了满足校外读者的需要，也为了能更广泛听取批评意见，李斐南同志同意将这本教材公开出版。我个人对这一课程很有兴趣，深感法学英语在今天法学专业教学计划中很有必要，但是关心虽有余，出力却不足，所以我现在乐意为本教材的出版而写几句推荐的话作为序言。

法学的范围很广；因此要学一种法学外语谈何容易，但是万丈高楼从地起，我们只能从最基本的学起。本教材力求题材多样，法律词汇尽量丰富，所选内容包括法学理论、法

制史、宪法、刑法、合同法、侵权行为法、国际法等法学各个部门，课文的编排也力求由浅入深。覆盖面虽然较广，对法学各个部门而言则都止于初涉，因此这本教材只能是法学英语入门。读者要能阅读某一法学部门的专著，还要对那一部门的英语多加学习。但是我相信，本教材将为读者打下相当坚实的基础。

专业外语在教学计划中的地位已如上述，因此可以看出：它是在大学前四个学期学完公共英语后的后继课。现在在少数学生在考进法律系后，在一年级就不愿学习公共英语，认为不能结合本专业，学的词汇没有用。我个人学习外语的经验告诉我，这种看法是错误的。如果不学好基础英语，肯定不可能学好任何专业英语。法学涉及社会生活的各个方面，当然也涉及自然界，因此广泛的生活词汇是学好法学英语所必不可少的，能多学多读些英语文学作品则更好。所以我不能赞成把公共英语和专业英语对立起来的看法，二者是有机地联系着的，先要学好基础英语，然后学专业英语，切不可急于求成，以免落得个欲速则不达。

本教材共有课文四十篇，主要选自英美两国的大百科全书和教科书，因为工具书和教科书的文字比较规范化，适合入门之用，如果选学术论文或专著则文字较为艰深。所以我愿再强调，本教材只是法学英语入门。世界上许多非英语国家的大学法学院也开设法学英语课，这方面我们了解得不多，难以比较借鉴。就我所仅见到的法国出版的大学用《法学英语》而言，其文字深度超过本教材很多，而且多选大段英美法学名著和文献（例如1984年版的F. Costa 编的 *L. anglais juridique. Documents anglais et américains*）。

我相信，随着我国中学和大学英语水平的逐年提高，我们的法学英语也必将不断提高。

我们这本教材也不能包括法律业务应用文，正如同在汉语教学中一样，应用文是自成一体的，但我也相信，学好本教材可为进一步学好应用文打下良好基础。

本教材虽为综合大学法律学系而编，但对各类政法院校，以及有志自学的法律工作者，都是同样有用的。有经验的和有创造性的教师必将使本教材发挥较大的作用，收到更好的效果。自学者将在一定水平基础英语的基础上，通过钻研本教材而在学习英语和法学获得双丰收。

端木正

一九八五年三月

编者说明

本书是在我编注的中山大学法律系专业英语教材《法学英语》（铅印本）的基础上，经修订公开出版的。修订的内容如下：

一、由原来的三个分册合为一册，课文总数仍为四十篇，但更换了三篇较为合用的课文，并改变了排列顺序，原来注重按法律部类排列，现力求按照由浅入深的教学规律和文章难易程度排列。

二、补充修改了一些注释，尽量把在教学实践中发现的难点加以注释。注释包括法律专门名词，常用短语的用法及难句分析。注释的目的是帮助学生在预习时较好地理解原文。

三、每篇课文后加了练习。练习包括翻译、写提要、回答问题、分析案例、选择填空等形式。练习内容以巩固该课所学的知识为主，适当穿插一些以前课文的回顾复习。

四、书末附有两个附录，一是英汉译名对照表，二是部分练习答案。英汉译名对照表就是将注释中已出现过的527个法律专门名词及171个常用短语按字母顺序分别以：1、专门名词表，2、常用短语表列出，以便查找。

我编注这本书时参考了下列各书：

Black's Law Dictionary（第五版，1979年出版）。

英汉法律应用词汇 (Glossary of Applied Legal Terms), 香港中文大学编, 1975年出版。

英汉法律词汇, 何士英等编, 北京大学出版社1982年出版。

Glossary of Legal Terms (From Encyclopedia Americana(1979)Vol.17, by Julius Marke)。

上海社会科学院法学研究所编译的《国外法学知识译丛》各册。

西方国家的司法制度, 龚祥瑞等著, 北京大学出版社1980年出版。

编注这本书是我的新尝试, 在三年的编选和教学实践中, 得到本系同志们热情帮助, 北京大学法律系王以真同志, 华东政法学院陈忠诚同志对注释也提出了宝贵意见。

特别要提出的是本书的编选一直得到端木正教授的关心和指导, 出版前, 端木正教授又在百忙中审阅了本书并撰写了序。

原教材已经我系三届教学使用, 在教学中我们感到它作为衔接公共英语课的专业英语教材是比较适用的, 学生对它也较感兴趣。司法部举办的全国法学英语师资进修班、北京大学法律系、江西大学法律系等十多个兄弟单位曾采用为教材。

由于我水平有限, 肯定会有不少缺点错误, 诚恳地希望读者批评指正。

李 斐 南

一九八五年三月

Contents

(1)	Law.....	1
(2)	Civil Law and Common Law Systems	5
(3)	Court	10
(4)	The Classification of Law	16
(5)	Criminal Law	21
(6)	Legal Classification of Crimes	29
(7)	Penalties	34
(8)	Contracts	42
(9)	Kinds of Contracts	48
(10)	The Law of Evidence.....	57
(11)	Code Napoléon	63
(12)	Grotius	69
(13)	The Material "Sources" of International Law.....	75
(14)	Nationality	84
(15)	Constitution.....	91
(16)	Preamble of Constitution of the People's Republic of China	100
(17)	Jurisdiction	110
(18)	Tort	117
(19)	Property	125

(20)	Commercial Law.....	132
(21)	Domicile and Residence	140
(22)	Approaches to the Understanding of Law.....	146
(23)	Juvenile Delinquency	153
(24)	Contemporary Marriage Law	164
(25)	The Seabed and Ocean Floor of the High Seas.....	174
(26)	Composition of the Court and Election of Judges.....	181
(27)	Criminal Justice in Civil Law Countries.....	188
(28)	The Characteristics of Soviet Law	195
(29)	Judicial Precedent.....	204
(30)	Charter of the United Nations(Extracts)	212
(31)	Differences between the United Nations and the League of Nations	221
(32)	The Third World	228
(33)	Terminology of Treaties	235
(34)	Administrative Law.....	245
(35)	Other Beneficial Contract.....	253
(36)	Definition of Negligence	261
(37)	Peaceful Settlement of Disputes.....	269
(38)	Classification of Diplomatic Envoys	277
(39)	Conflict of Laws	284

(40) Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong	292
附录一 译名对照表	305
1. 专门名词.....	305
2. 常用词组.....	325
附录二 部分练习答案	333

(1)

LAW

Law comprises all the principles, rules, and enactments^① that are applied in the courts and enforced by the power of the state. The word law is often used in contrast with the separate set of rules and precedents known as equity,^② a distinction that is important in England and the United States, and in other jurisdictions that draw their legal systems from the same historical source.^③ In the United States it is customary to identify a legislative enactment as a law, whereas in England the preferred term is act.^④

In the highly developed modern state the citizen is cared for and governed by the law from the cradle to the grave. Indeed the span goes beyond both extremes, for the question of abortion is subject to regulation by law,^⑤ and after death the law will see that a decedent's will is put into effect, ^⑥ if it meets legal requirements.

In early times, legal systems concentrated on a few matters that seemed to be the most urgent;

the maintenance of civil peace,^⑦ the suppression of crimes of violence,^⑧ the protection of property, and the enforcement of contemporary moral standards in family relations.^⑨ Gradually the scope of law was extended, so that it is difficult to find modern examples of human conduct that are not in some way regulated by law.^⑩

By T.F.T.Plucknett

From Encyclopedia Americana(1979)

NOTES TO THE TEXT

- ① the principles, rules and enactments 原则、规则和法规
- ② equity 衡平法, 又称 law of equity
- ③ ... other jurisdictions that draw their legal systems from the same historical source.
其法律制度出自同一历史渊源的其他法域。
draw ... from 由 ... 引出
- ④ law 法律, act 法案、法令
在英美, law和act一般都是指立法机构制定的法, 但在美国, 人们习惯于把立法机构制定的法称为law, 而英国则习惯于称为act。
- ⑤ be subject to regulation by law 受到法律的约束
be subject to 是法学文章中常见的短语。意思是受...的, 须经...的, 常遭...的。如:
be subject to ratification 须经批准
A constitution should not be subject to change.
宪法不应常改变。

- ⑥ put into effect 使生效, 实施。类似的表达法还有 bring to (into) effect, give effect to 等。
- ⑦ the maintenance of civil peace 维持社会治安
- ⑧ the suppression of crimes of violence 镇压暴力罪行
- ⑨ the enforcement of contemporary moral standards in family relations 在家庭关系上励行当时的道德标准
- ⑩ ... so that it is difficult to find wider examples of human conduct that are not in some way regulated by law. 以致很难找出在人类行为中还有哪些方面不受法律的约束。

EXERCISE

Translate the following passage into Chinese:

Laws are rules that define people's rights and responsibilities towards society. They are agreed on by society and made official by governments.

Some people look on laws with fear or hatred. Laws seem to limit a person's freedom to do many things he would like to do. Though laws may prevent us from doing things or wish to do at the moment, laws also stop others from doing things that might harm us. Laws make everyone's life safer and more pleasant. Without laws we could not hold on to our property. We could not go to bed at night expecting to wake up in the morning and find we had not been robbed. 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 money.

Social life would be impossible without laws to control the way people treat each other. But unless laws are enforced, they cannot protect us.

(2)

CIVIL LAW AND COMMON LAW SYSTEMS^①

In general, the national legal orders of the Western world can be divided into two great families: the civil-law countries, in which legal concepts, principles, and procedures have their remote origins in Roman law but are expressed in comprehensive codes like the Code Napoléon; ^② and the common-law countries, which include England, the United States, and most of the members of the Commonwealth of Nations.

The common law originated in the grants of dispute-settling authority made by the kings of England to their justices^③ in the 11th and 12th centuries. After a time, the central idea of precedent took firm hold in English legal thought, and the principle of stare decisis^④ that past decisions should be followed in the adjudication of present controversies—became the working rule of the common-law courts. In short, the English common law was not a legislative creation. Rather, it came into

existence essentially as a by-product of the day-to-day adjudication of disputes.^⑤ The common law was a “customary” law—the custom of the judges—and early Parliaments^⑥ rarely intervened to change the judge-made private law.

The English colonists in America brought with them the principles of the common law and the common-law judicial tradition. The American Revolution severed political ties between England and the United States, but it brought about no break in the continuity of legal tradition.^⑦ The English common law was “received”, as lawyers say, as the basis of the legal order in each of the original states. As years passed, American judges modified the rules of the English common law, so as to make the law more suitable for American conditions. Meanwhile, state legislatures increasingly superseded the common—that is, the judge-made-law^⑧ by the enactment of statutory changes. In modern American law, legislation is at least of equal importance with the judge-made law. In its continuing traditions, however, and in its adherence to the principle of stare decisis, the American legal order, like the English, is still a common-law system.

By T.F.T.Plucknett

From Encyclopedia Americana (1979)