

全国高等院校专业基础知识系列丛书



总主编：董晓波

I Introduction to Law

法律知识导读 (英文版)

董晓波 主编



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Introduction to Law

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Preface

随着经济全球化、科技一体化、文化多元化的发展，全球人才竞争日趋激烈，这对高校人才培养的层次和质量提出了更高的要求。英语与专业交叉融合已经成为高校教学的明显特征与发展趋势，以便培养具有国际视野和创新能力的复合型人才。

《法律知识导读》(英文版)是为适应高校专业课程设置改革，培养既懂法律又懂英语的高素质、复合型人才而编写的。本书用英语介绍法律基础知识，旨在帮助学生训练英语语言运用技能、构建法律专业知识体系，提高开展涉外法律事务能力。

教材编写深入浅出，体系完整，内容翔实。全书共分为三大部分：第一部分是法律基础篇，介绍了法律的定义、法律渊源、法律体系、法律教育和法律职业；第二部分是法律制度篇，介绍了宪法、行政法、刑法、合同法、侵权法、财产法、知识产权法、国际法等部门法；第三部分是法律名著篇，介绍了法学名家罗尔斯、哈特、孟德斯鸠，法学名著《正义论》、《理想国》、《论法的精神》等。本书附录部分摘录了一些常见的法律术语和法律文书，以供读者学习参考。

在编排体例方面，每个单元包括 lead-in, text, supplementary reading, new words and expressions, notes 等部分。Lead-in 用中文言简意赅地介绍了文章的基本内容，便于读者快速阅读和理解文章；text 和 supplementary reading 所选文章都来自第一手英文资料，除原文偏长需要删节以外，一律保持原文的风貌，尽可能给学生提供原汁原味的英语语言素材；New words and expressions 主要汇集了法律专业词汇，以降低阅读难度，增加读者专业词汇量；Notes 力求简单明了，方便读者了解法律知识和相关的背景知识。除 Part III 以外，每个单元后面设置了配套练习，并在书后附有答案，便于读者自学，自测学习效果。

本书适用于高等院校法学和英语专业的本科生、研究生，也可以作为广大法律英语爱好者以及涉外法务工作者的参考用书。

本书由董晓波主编，于银磊、陈钟梅副主编，张超、沈修言、陈莹、陆艺参编。

在整个编写过程中，我们虽然力求完美，精益求精。但鉴于水平所限，可能不乏疏漏和欠妥之处，恳请同仁专家和广大读者不吝赐教，以便充实与完善！

董晓波

2014年4月1日

Contents

Unit 7 Criminal Law	71
Unit 8 Contract Law	81
Unit 9 Tort Law	97
Part I Introduction to Law	
Unit 10 Property Law	102
Unit 1 Definition, Classification and Sources of Law	3
Text Definition, Classification and Sources of Law	3
Supplementary Reading Law of the United States	5
Unit 11 Intellectual Property Law	112
Unit 2 Legal Systems	11
Text Legal Systems of the World	11
Supplementary Reading Law of the People's Republic of China	16
Unit 12 International Law	122
Unit 3 Legal Education	23
Text Legal Education	23
Supplementary Reading Yale Law School	27
Unit 13 Great Law Scholars and Their Works	132
Unit 4 Legal Profession	35
Text Lawyer	35
Supplementary Reading American Bar Association	42
Part II Varieties of Law	
Unit 14 U.S. Law	142
Unit 5 Constitutional Law	51
Text The United States Constitution	51
Supplementary Reading Analysis of the United States Constitution	56
Unit 15 The Republic	152
Unit 6 Administrative Law	63
Text Administrative Law	63
Supplementary Reading Agency Action and Administrative Law	66

Unit 7 Criminal Law	71
Text Criminal Law	71
Supplementary Reading Criminal Law Jurisdictions	75
Unit 8 Contract Law	81
Text Contract Law	81
Supplementary Reading Remedies for Breach of Contract	87
Unit 9 Tort Law	93
Text Tort Law	93
Supplementary Reading Categories of Torts	97
Unit 10 Property Law	105
Text Property Law	105
Supplementary Reading Basic Categories of Property	111
Unit 11 Intellectual Property Law	115
Text Intellectual Property Law	115
Supplementary Reading Copyright	120
Unit 12 International Law	125
Text International Law	125
Supplementary Reading Monism and Dualism in International Law	131
Part III Great Law Scholars and Their Works	
Unit 13 John Rawls	139
Text John Rawls	139
Supplementary Reading A Theory of Justice	145
Unit 14 H. L. A. Hart	151
Text H. L. A. Hart	151
Supplementary Reading Legal Positivism	156
Unit 15 The Republic	163
Text The Republic	163
Supplementary Reading Reception and Interpretation of the Republic	170

Unit 16 The Spirit of the Laws	177
Text The Spirit of the Laws	177
Supplementary Reading Montesquieu	181
Key to the Exercises	187
Appendix I Legal Terms	197
Appendix II Legal Documents	215

Part I

Introduction to Law

Definition, Classification and Sources of Law

Unit 1

Lead-in

法律是一种社会规范，以各种方式影响着我们的日常生活与整个社会。不同的国家对于法律的分类和命名各不相同，最一般的区分为规范国家与人民之间关系的“公法”（包括宪法、行政法和刑法）和规范私人间权利义务关系的“私法”（包括合同法、侵权法和财产法）。法律渊源是法的外在表现形式，通常把它分为正式意义上的和非正式意义上的两种。正式意义上的法律渊源，主要指以规范性法文件形式表现出来的成文法，如立法机关或立法主体制定的宪法、法律、法规等。非正式意义上的法律渊源，主要指具有法的意义的观念和其他有关准则，如权威性的法学著作、道德准则、习惯等。

Text

Definition, Classification and Sources of Law

Definition

What is law? There have been many attempts to produce a universally acceptable definition of law, but there is no simple answer to the question. The definition of law depends on its purposes or functions.

A basic purpose of law in our society is to maintain order and to resolve disputes. In this connection, law is not only a set of rules of conduct, but also the means to impose responsibility and to enforce social justice.

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 changes.

Classification

Laws can be classified in many ways too. A common distinction is between public law

and private law. Public law includes laws that apply to the public of a state or nation. It can be further divided into constitutional law, administrative law and criminal law. Private law deals with the relationships between individuals in an organized society. It covers contracts, torts and property, each of which can be subdivided into several subjects.

Laws are sometimes referred to as substantive or procedural. Substantive law defines rights, and procedural law establishes the procedures by which rights are protected and enforced.

Sources

Sources of law means the origin from which rules of human conduct come into existence and derive legal force or binding characters. It also refers to the sovereign or the state from which the law derives its force or validity.

Several factors of law have contributed to the development of law. These factors are regarded as the sources of law.

☆ Precedents

Precedent is one of the sources of law. The judgements passed by some of the learned jurists became another significant source of law. When there is no legislature on particular point which arises in changing conditions, the judges depend on their own sense of right and wrong and decide the disputes. Such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents. The dictionary of English law defines a judicial precedent as a judgement or decision of a court of law cited as an authority for deciding a similar state of fact in the same manner or on the same principle or by analogy. Precedent is more flexible than legislation and custom. It is always ready to be used.

☆ Customs

A custom is a rule which in a particular family or in a particular district or in a particular section, classes or tribes, has from long usage obtained the force of law. Custom as a source of law got recognition since the emergence of sovereignty on the horizon of jurisprudence. It is an exemption to the ordinary law of the land, and every custom is limited in its application. They are practices that have to be repeated for a period of time.

☆ Legislation

Legislation is that source of law which consists in the declaration of legal rules by a competent authority. Legislature is the direct source of law. Legislature frames new laws, amends the old laws and cancels existing laws in all countries. In modern times this is the most important source of law making. The term legislature means any form of law making. Its scope has now been restricted so a particular form of law making. It not only creates new rules of law it also sweeps away existing inconvenient rules.

☆ Statutory interpretation

Interpretation is a very important function of the court. The process of ascertaining the

meaning of letters and expressions by the court is either interpretation or construction. Interpretation is the process in which the court seeks to ascertain the meaning of a particular legislature. It is through interpretation that the judiciary evolves the law and brings changes to it and thus keeps abreast of law.

☆ **Preparatory work**

In some legal cultures, some of the documents produced in the process leading up to legislation are subsequently used as guidelines on how to interpret and understand an act of legislation.

Words and Expressions

- | | | |
|------------------------------------|-----------------------|-------------------------|
| 1. legal force | | 法律效力 |
| 2. validity | [və'lɪdɪti] | n. (法律上) 有效; 合法性 |
| 3. precedent | ['presɪd(ə)nt] | n. 判例; 先例 |
| 4. jurist | ['dʒʊərɪst] | n. 法官; 律师; 法学家; 法律著作家 |
| 5. legislature | ['ledʒɪslətʃə] | n. 立法机关; 立法机构 |
| legislation | ['ledʒɪs'leɪʃ(ə)n] | n. 立法; 法律 |
| 6. jurisprudence | ['dʒʊərɪs'pru:d(ə)ns] | n. 法律体系; 法学及其分支; 法院审判规程 |
| 7. statutory interpretation | | 法律解释 |
| 8. ascertain | [,æseɪ'teɪn] | v. 确定; 查明 |
| 9. judiciary | ['dʒʊ'dɪʃ(ə)rɪ] | n. 司法部; 法官 |
| 10. keep abreast of | | 及时了解……的最新情况 |

Notes

- Substantive law and procedural law (实体法和程序法):** 实体法是规定和确认权利和义务以及职权和责任为主要内容的法律, 如宪法、行政法、民法、商法、刑法等; 程序法是规定以保证权利和职权得以实现或行使, 义务和责任得以履行的有关程序为主要内容的法律, 如行政诉讼法、行政程序法、民事诉讼法、刑事诉讼法等。

Supplementary Reading

Law of the United States

The law of the United States comprises many levels of codified and uncodified forms of law, of which the most important is the United States Constitution, the foundation of the federal government of the United States. The Constitution sets out the boundaries of federal

law, which consists of acts of Congress, treaties ratified by the Senate, regulations promulgated by the executive branch, and case law originating from the federal judiciary.

In the United States, the law is derived from five sources: constitutional law, statutory law, treaties, administrative regulations and the common law (which includes case law). The most important source of law is the United States Constitution. When Congress enacts a statute that conflicts with the Constitution, the Supreme Court may find that law unconstitutional and declare it invalid.

American common law

The United States and most Commonwealth countries are heirs to the common law legal tradition of English law; for example, U.S. courts have inherited the principle of stare decisis.

The actual substance of English law was formally “received” into the United States in several ways. First, all U.S. states except Louisiana have enacted “reception statutes” which generally state that the common law of England (particularly judge-made law) is the law of the state to the extent that it is not repugnant to domestic law or indigenous conditions. Some reception statutes impose a specific cutoff date for reception, such as the date of a colony’s founding, while others are deliberately vague. Thus, contemporary U.S. courts often cite pre-Revolution cases when discussing the evolution of an ancient judge-made common law principle into its modern form, such as the heightened duty of care traditionally imposed upon common carriers.

Second, a small number of important British statutes in effect at the time of the Revolution have been independently reenacted by U.S. states. Two examples that many lawyers will recognize are the Statute of Frauds and the Statute of 13 Elizabeth (the ancestor of the Uniform Fraudulent Transfers Act). Such English statutes are still regularly cited in contemporary American cases interpreting their modern American descendants.

However, it is important to understand that despite the presence of reception statutes, much of contemporary American common law has diverged significantly from English common law. The reason is that although the courts of the various Commonwealth nations are often influenced by each other’s rulings, American courts rarely follow post-Revolution Commonwealth rulings unless there is no American ruling on point, the facts and law at issue are nearly identical, and the reasoning is strongly persuasive.

Federal law

Federal law originates with the Constitution, which gives Congress the power to enact statutes for certain limited purposes like regulating interstate commerce. Nearly all statutes have been codified in the *United States Code*. Many statutes give executive branch agencies the power to create regulations, which are published in the Federal Register and codified into the Code of Federal Regulations. Regulations generally also carry the force of law under the

Chevron doctrine. Many lawsuits turn on the meaning of a federal statute or regulation, and judicial interpretations of such meaning carry legal force under the principle of stare decisis.

During the 18th and 19th centuries, federal law traditionally focused on areas where there was an express grant of power to the federal government in the federal Constitution, like the military, money, foreign affairs (especially international treaties), tariffs, intellectual property (specifically patents and copyrights), and mail. Since the start of the 20th century, broad interpretations of the Commerce and Spending Clauses of the Constitution have enabled federal law to expand into areas like aviation, telecommunications, railroads, pharmaceuticals, antitrust and trademarks.

State Law

The fifty American states are separate sovereigns with their own state constitutions and state governments and state courts. They retain plenary power to make laws covering anything not preempted by the federal Constitution, federal statutes, or international treaties ratified by the federal Senate.

The law of most of the states is based on the common law of England; the notable exception is Louisiana, whose law is based upon French and Spanish law. The passage of time has led to state courts and legislatures expanding, overruling, or modifying the common law; as a result, the laws of any given state invariably differ from the laws of its sister states. Thus, with regard to the vast majority of areas of the law that are traditionally managed by the states, the United States cannot be regarded as one legal system, but must be regarded as 50 separate systems of tort law, family law, property law, contract law, criminal law, and so on.

Naturally, there is much diversity in the structure of the state codes, reflecting the diversity of the statutory law on which they were built. New York's codes are known as "Laws." California and Texas simply call them "Codes." Other states use terms such as "Revised Statutes" or "Compiled Statutes" for their compilations. California, New York and Texas have separate subject-specific codes, while virtually all other states and the federal government use a single code divided into numbered titles.

In some states, codification is often treated as a mere restatement of the common law, to the extent that the subject matter of the particular statute at issue was covered by some judge-made principle at common law. Judges are free to liberally interpret the codes unless and until their interpretations are specifically overridden by the legislature. In other states, there is a tradition of strict adherence to the plain text of the codes.

Local Law

States have delegated lawmaking powers to thousands of agencies, townships, counties, cities, and special districts. And all the state constitutions, statutes and regulations are subject to judicial interpretation like their federal counterparts.

It is common for residents of major U.S. metropolitan areas to live under six or more layers of special districts as well as a town or city, and a county or township (in addition to the federal and state governments). Thus, at any given time, the average American citizen is subject to the rules and regulations of several dozen different agencies at the federal, state, and local levels, depending upon one's current location and behavior.

Words and Expressions

- | | | | |
|--------------------------------------|-----------------|------|------------------|
| 1. codify | [kəʊdɪfaɪ] | v. | 编纂 (法规); 将……编成法典 |
| codification | [kɒdɪfə'keɪʃən] | n. | 法规汇编, 编纂 |
| 2. federal law | | | 联邦法 |
| 3. ratify | [ræ'tɪfaɪ] | v. | 批准; 认可 |
| 4. promulgate | [prəm(ə)lgeɪt] | v. | 颁布; 公布 |
| 5. case law | | | 案例法; 判例法 |
| 6. constitutional law | | | 宪法 |
| 7. statutory law | | | 成文法; 制定法 |
| 8. administrative regulations | | | 行政法规 |
| 9. common law | | | 普通法; 习惯法; 判例法 |
| 10. enact | [i'nækt] | v. | 制定法律; 颁布 |
| 11. statute | ['stætju:t] | n. | 法令; 法规 |
| statutory | ['stætjʊ(ə)ri] | adj. | 法令的; 法定的 |
| 12. invalid | [ɪn'vælɪd] | adj. | 无效的 |
| 13. Commonwealth countries | | | 英联邦国家 |
| 14. repugnant | [rɪ'pʌgnənt] | adj. | 不一致的 |
| 15. indigenous | [ɪn'dɪdʒɪnəs] | adj. | 本土的; 本地的; 土著的 |
| 16. fraud | [frɔ:d] | n. | 欺骗; 诈欺 |
| fraudulent | ['frɔ:dʒʊlənt] | adj. | 欺诈的; 不正的 |
| 17. judicial interpretations | | | 司法解释 |
| 18. sovereign | ['sɒvrɪn] | n. | 主权 (实体); 独立国; 君主 |

Notes

1. **the United States Constitution (美国宪法):** The United States Constitution is the supreme law of the United States. It provides the framework for the organization of the United States Government. The document defines the three main branches of the government: the legislative branch with a bicameral Congress, an executive branch led by the President, and a judicial branch headed by the Supreme Court. Besides providing for the organization of these branches, the Constitution outlines obligations of each office, as well as provides what

powers each branch may exercise. It is the shortest and oldest written constitution of any major sovereign state.

2. **stare decisis** (遵循先例): Stare decisis (Abbreviation of the Latin: Stare decisis et non quieta movere/English: maintain what has been decided; not alter that which has been established) is the legal principle under which judges are obliged to follow the precedents established in prior decisions.
3. **United States Code** (美国法典): The United States Code (USC) is a compilation and codification of the general and permanent federal law of the United States. It contains 50 titles and is published every six years by the Office of the Law Revision Counsel of the US House of Representatives.
4. **Federal Register** (联邦公报): The Federal Register (since March 14, 1936), abbreviated **FR**, is the official journal of the federal government of the United States that contains most routine publications and public notices of government agencies. The Federal Register is compiled by the Office of the Federal Register (within the National Archives and Records Administration) and is printed by the Government Printing Office.
5. **Code of Federal Regulations** (美国联邦法规总览): The Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations published in the *Federal Register* by the executive departments and agencies of the Federal Government of the United States. The CFR is divided into 50 titles that represent broad areas subject to Federal regulation.
6. **Chevron doctrine** (“切弗伦”案理论): *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), was a case in which the United States Supreme Court set forth the legal test for determining whether to grant deference to a government agency’s interpretation of its own statutory mandate. Chevron is the Court’s clearest articulation of the doctrine of “administrative deference” to the point that the Court itself has used the phrase “Chevron deference” in more recent cases.

Exercises

I. Reading Comprehension

1. What is law?
2. What are the differences between public law and private law?
3. What does the sources of law mean?
4. What is a judicial precedent?
5. What are the sources of law in the United States? Which is the most important?
6. Why has much of contemporary American common law diverged significantly from British Commonwealth common law?
7. When did the federal law expand into areas like aviation, telecommunications, railroads and

so on?
8. How is codification treated in different states of the US?

II. Translate the following legal terms from Chinese into English.

- | | |
|---------|---------|
| 1. 法律渊源 | 2. 法律效力 |
| 3. 司法先例 | 4. 司法解释 |
| 5. 成文法 | 6. 普通法 |
| 7. 实体法 | 8. 程序法 |

III. Fill in the blanks with the words and expressions in the box.

Federal	Legislative	expenditure	Constitution
division	delegated	the Supreme Court	efficient

The American Constitution founded federalism and introduced checks and balances into government for the first time in history. The check and balance system was based on (1)_____ of power. For this purpose, the founders of the Constitution designed the (2)_____ system in which governmental power was divided between the federal and state governments.

The second division of power is among the different branches of the government. It is called the check and balance system. In this system, the power (3)_____ to the Federal government is divided among three separate, but interdependent branches: the (4)_____, the Executive, and the Judicial. Congress is the Legislative branch. It enjoys the power to make laws, levy taxes and appropriate money to cover government (5)_____. The Executive branch, known as the administration, is headed by the President whose duty is to execute the laws passed by Congress. The Judicial branch of the USA is composed of a series of law courts: (6)_____, 11 courts of appeals, and 91 district courts.

These three branches are granted different powers by the (7)_____, but they must work together. No branch is allowed to do what is like without the considering the opinion of the other two. This makes it difficult for persons like Hitler usurp power in America. But the strict division of power tends to make government less (8)_____ and might cause trouble, as during the debate about the slave system.