

工程教育专业认证之英语选修课系列教程

总主编：尹丕安

# 法律英语 进阶与沟通

## A CONCISE GUIDE TO LEGAL ENGLISH

主 编：李 健

副主编：呼 媛 王春霞 李咏梅



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【内容简介】 本书共分 12 个单元,介绍了中西方法律的异同:法律历史发展、司法体系、宪法、民法、公司法、合同法、劳动法、环境法、知识产权法、行政法、国际法及刑法。每单元由六部分构成,即 Lead-in, Objectives, Words and Expression, Text A, Text B 以及 Further Reading;为强化学习效果,每单元设计了简答题、术语翻译和英汉段落互译等多种形式的练习。

本书适用于通过 CET-4 的高等学校在校大学生及广大社会工作者使用。

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## 总 序

工程教育是中国高等教育的主体,占中国高等教育专业设置、全国毕业生总量的三分之一。《华盛顿协议》是世界上最具影响力的国际本科工程学位互认协议,其宗旨是通过双边或多边认可工程教育资格及工程师执业资格,促进工程师跨国执业。该协议提出的工程专业教育标准和工程师职业能力标准,是国际工程界对工科毕业生和工程师职业能力公认的权威要求。中国加入《华盛顿协议》并得到认可,不仅为工程类学生走向世界打下了基础,也意味着中国高等教育将真正走向世界。加入《华盛顿协议》,将直接有力地推动我国构建与国际实质等效的工程教育认证体系,让学生走出国门,培养面向世界的中国工程师。

在此大背景下,根据《工程教育专业认证》的具体要求,特别是针对工科学生在人文素质和外语方面的要求和指标点,对症下药,我们组织编写了工程教育专业认证之英语选修课系列教程。本系列教程共三册,分别为《学术英语翻译与写作》《中西语言文化导读》《法律英语进阶与沟通》。

本系列教程的特点:第一,专门针对工科专业学生。不同于当前的各种英语教程,本系列教程的首要目标就是立足“工程教育专业认证”对学生外语和人文素质的要求,提升学生的国际视野、人文素质和国际法意识,为以后的工程师跨国执业打下基础。第二,外语与专业相结合。如何利用外语解决工程专业中的写作和翻译问题?这是本系列教程的一个主要关注点。通过外语写作和翻译的理论与工程专业的例证大量的结合,总结出一套适合工程专业学生外语翻译和写作的策略,促进其专业学习和跨文化学术交流能力。第三,拓展工科学生的法律国际视野。未来的工程师在进入职业阶段,在产品设计、制造的过程中,都必须具备法律意识,具有保护环境、造福人类的视野。

鉴于本系列教程是以工程教育专业认证为目标的英语选修课系列教程,尚无可以借鉴的经验,因此不免存在不足,希望相关专家和学者给予指正。

总主编 尹丕安

## 前 言

法律文化是一种同社会生活密切相关的社会要素,是一个国家、地区或民族在一定社会物质条件基础上制定的社会规范。每个国家都有其不同的文化,表现在法律方面也是如此。而不同的法律规范并没有高低优劣之分,只是与其社会各方面是否相适应的问题。

本书以东西方哲学为理论基础,以比较和剖析中西法律差异为轴心,将以中华文化为源头的中国法律与以希腊、罗马文明为源头的西方法律作为比较对象,分别从法律渊源、司法结构以及不同实体法等视角展开分析。全书共有 12 个单元,内容涉及民法、刑法、商业法、经济法、行政法及国际法等广泛的法律主题。同时介绍与法律系统、法律职业相关的一般性术语以及在日常工作生活中包含的大量法律领域常用词汇和功能性语言。

本书设置练习环节,强化学生的学习效果,提高学生运用法律知识的能力和自信心,同时,通过对比学习中西方法律,将促使学生以更宽阔的胸怀和更平等对话的姿态面对中西法律的沟通 and 交流,对于学生未来职业规划及发展意义重大、影响深远。

在编写过程中,参考了大量相关著作、文献资料及网络资料(如维基百科、百度百科等),在此谨致真挚的谢意。

由于水平有限,书中难免有不妥之处,敬请各位专家、同行以及广大读者批评指正。

编 者

2017 年 1 月

## CONTENTS

### Unit One History of Law / 1

Text A History of Law / 2

Text B Legal History of China / 6

### Unit Two Judicial System / 11

Text A American Judicial System / 11

Text B Chinese Judicial System / 15

### Unit Three Constitutional Law / 21

Text A United States Constitution / 22

Text B Constitution of the People's Republic of China / 28

### Unit Four Civil Law / 33

Text A Civil Law in the United States / 34

Text B Civil Law in China / 38

### Unit Five Company Law / 44

Text A United States Corporate Law / 45

Text B Company Law of the People's Republic of China / 49

### Unit Six Contract Law / 55

Text A American Contract Law / 56

Text B Chinese Contract Law / 60

**Unit Seven Labor and Employment Law / 65**

Text A American Labor and Employment Law / 66

Text B Labor Law of the People's Republic of China / 70

**Unit Eight Environmental Protection Law / 75**

Text A American Environmental Law / 76

Text B China's New Environmental Protection Law / 79

**Unit Nine Intellectual Property Law / 85**

Text A American Intellectual Property Law / 86

Text B Chinese Intellectual Property Law / 90

**Unit Ten Administrative Law / 96**

Text A United States Administrative Law / 97

Text B Administrative Law in the People's Republic of China / 101

**Unit Eleven International Law / 108**

Text A International Law / 109

Text B Customary International Law in Municipal Law / 112

**Unit Twelve Criminal Law / 118**

Text A Criminal Law of the United States / 119

Text B Criminal Law of the People's Republic of China / 123

**References / 128**





## History of Law

### Lead-in

法律渊源探讨法律规范从何而来的问题,一般是指法律的效力或约束力的来源,具体而言,是指国家或社会所形成的,能够成为法官裁判依据或人们行事准则,具有一定法律效力和法律意义的规范的表现形式。奴隶制时期的法律渊源主要表现为习惯法,其中部分习惯法后来被制定为成文法。封建时期的法律渊源主要表现为习惯法、法律、帝王诏令、官府公告、判例等。资本主义社会的法律渊源主要表现为宪法、法律、条约、习惯和判例等。大陆法系国家的法律渊源主要表现为成文法,而英美法系国家的法律渊源主要表现为判例法。社会主义国家法律的渊源主要是成文法,其中宪法居于主导地位。

### Objectives

1. Understand the main idea (the history of law of both American and China; the type of law) of the text;
2. Master some related legal terms;
3. Conduct a series of reading, listening, speaking and writing activities related to the theme of the unit.

## Text A History of Law

The history of law is the history of our race, and the embodiment of its experience. It is the most unerring monument of its wisdom and of its frequent want of wisdom. The best thought of a people is to be found in its legislation; its daily life is best mirrored in its usages and customs, which constitute the law of its ordinary transactions. There never has existed, and it is entirely safe to say that there never will exist, on this planet any organization of human society, any tribe or nation however rude, any aggregation of men however savage, that has not been more or less controlled by some recognized form of law. The recognition of the existence of law outside of himself, and yet binding upon him, is inherent in man's nature, and is a necessity of his being.

Legal history is closely connected to the development of civilizations and is set in the wider context of social history. Among certain jurists and historians of legal process, it has been seen as the recording of the evolution of laws and the technical explanation of how these laws have evolved with the view of better understanding the origins of various legal concepts; some consider it a branch of intellectual history. Twentieth century historians have viewed legal history in a more contextualized manner and more in line with the thinking of social historians. They have looked at legal institutions as complex systems of rules, players and symbols and have seen these elements interact with society to change, adapt, resist or promote certain aspects of civil society. Such legal historians have tended to analyze case histories from the parameters of social science inquiry, using statistical methods, analyzing class distinctions among litigants, petitioners and other players in various legal processes. By analyzing case outcomes, transaction costs, number of settled cases they have begun an analysis of legal institutions, practices, procedures and briefs that give us a more complex picture of law and society than the study of jurisprudence, case law and civil codes can achieve.

Ancient Egyptian law, dating as far back as 3000 BC, was based on the concept of Maat, characterized by tradition, rhetorical speech, social equality and impartiality. By the 22nd century BC, Ur-Nammu, an ancient Sumerian ruler, formulated the first law code, consisting of casuistic statements ("if ... then ..."). Around 1760 BC, King Hammurabi further developed Babylonian law, by codifying and inscribing it in stone. Ancient Greek has no word for "law" as an abstract concept, retaining instead the distinction between divine law (thémis), human decree (nomos) and custom (díkē). Yet Ancient Greek law contained major constitutional innovations in the development of democracy. Roman law was heavily

influenced by Greek teachings. It forms the bridge to the modern legal world, over the centuries between the rise and decline of the Roman Empire. Roman law, in the days of the Roman republic and Empire, was heavily procedural and there was no professional legal class. Instead a lay person, iudex, was chosen to adjudicate. Precedents were not reported, so each case was to be decided afresh from the laws of the state, which mirrors the (theoretical) unimportance of judges' decisions for future cases in civil law systems today. In the 11th century, Crusaders, having pillaged the Byzantine Empire, returned with Byzantine legal texts including the Justinian Code, and scholars at the University of Bologna were the first to use them to interpret their own customary laws. Mediaeval European legal scholars began researching the Roman law and using its concepts and prepared the way for the partial resurrection of Roman law as the modern civil law in a large part of the world. There was, however, a great deal of resistance so that civil law rivaled customary law for much of the late Middle Ages. After the Norman conquest of England, which introduced Norman legal concepts into mediaeval England, the English King's powerful judges developed a body of precedent that became the common law. The two main traditions of modern European law are the codified legal systems of most of continental Europe, and the English tradition based on case law. The United States legal system developed primarily out of the English common law system (with the exception of the state of Louisiana, which continued to follow the French civilian system after being admitted to statehood).

## Words and Expressions

英 文	中 文	英 文	中 文
adjudicate	审判、裁决	Babylonian law	巴比伦法
case histories	案例、案例记录	case law	判例法
case outcome	案情及审判结果	casuistic statement	决疑陈述
civil code	民法	civil society	文明社会、公民社会
common law	习惯法	constitutional	宪法的
Crusaders	十字军	decree	法令
divine law	神圣法	embodiment	体现、化身、具体化
Hammurabi	汉穆拉比	intellectual history	思想史
iudex	承审员	jurisprudence	法学、法理学
jurists	法学家	Justinian	查士丁尼

续表

英 文	中 文	英 文	中 文
law code	法典	legal historians	法律史学家
legal institutions	法律制度	legal process	法律程序
litigant	当事人	Maat	玛亚特、真理正义之神、永恒秩序
Mediaeval	中世纪	parameters	范围、界限、因素
petitioner	原告、上诉人	precedent	先例
resurrection	复兴、复活	settled case	结案
social history	社会历史学	Sumerian	苏美尔人
the laws of the state	国家法律	Ur – Nammu	乌尔纳姆王

Notes

1. **Maat**: the ancient Egyptian concept of truth, balance, order, harmony, law, morality, and justice. Maat was also personified as a goddess regulating the stars, seasons, and the actions of both mortals and the deities, who set the order of the universe from chaos at the moment of creation. Her ideological counterpart was Isfet.

2. **Ur-Nammu**: founded the Sumerian 3rd dynasty of Ur, in southern Mesopotamia, following several centuries of Akkadian and Gutian rule. His main achievement was state-building, and Ur-Nammu is chiefly remembered today for his legal code, the Code of Ur – Nammu, the oldest known surviving example in the world.

3. **King Hammurabi**: the sixth king of the First Babylonian Dynasty, reigning from 1792 BC to 1750 BC (according to the Middle Chronology). He was preceded by his father, Sin-Muballit, who abdicated due to failing health. He extended Babylon’s control throughout Mesopotamia through military campaigns. Hammurabi is known for the Code of Hammurabi, one of the earliest surviving codes of law in recorded history.

4. **Babylonian law**: a subset of cuneiform law that has received particular study, owing to the singular extent of the associated archaeological material that has been found for it. So-called “contracts” exist in the thousands, including a great variety of deeds, conveyances, bonds, receipts, accounts, and most important of all, actual legal decisions given by the judges in the law courts. Historical inscriptions, royal charters and rescripts, dispatches, private letters and the general literature afford welcome supplementary information. Even

grammatical and lexicographical texts contain many extracts or short sentences bearing on law and custom. The so-called “Sumerian Family Laws” are preserved in this way.

5. **Thémis**: an ancient Greek Titaness. She is described as “of good counsel”, and is the personification of divine order, law, natural law and custom. Themis means “divine law” rather than human ordinance, literally “that which is put in place”, from the Greek verb *títhēmi* (τίθημι), meaning “to put”. Her Roman name is Justitia.

6. **Byzantine Empire**: the continuation of the Roman Empire in the East during Late Antiquity and the Middle Ages, when its capital city was Constantinople (modern-day Istanbul, originally founded as Byzantium). It survived the fragmentation and fall of the Western Roman Empire in the 5th century AD and continued to exist for an additional thousand years until it fell to the Ottoman Turks in 1453. During most of its existence, the empire was the most powerful economic, cultural, and military force in Europe. Both “Byzantine Empire” and “Eastern Roman Empire” are historiographical terms created after the end of the realm; its citizens continued to refer to their empire as the Roman Empire.

7. **Justinian**: a Byzantine (East Roman) emperor from 527 to 565. During his reign, Justinian sought to revive the empire’s greatness and reconquer the lost western half of the historical Roman Empire. Justinian’s rule constitutes a distinct epoch in the history of the Later Roman empire, and his reign is marked by the ambitious but only partly realized *renovatio imperii*, or “restoration of the Empire”.

8. **Middle Ages**: began with the fall of the Western Roman Empire and merged into the Renaissance and the Age of Discovery. The Middle Ages is the middle period of the three traditional divisions of Western history: classical antiquity, the medieval period, and the modern period. The medieval period is itself subdivided into the Early, High, and Late Middle Ages.

## Exercises

### I. Answer the following questions.

1. What is your definition of law?
2. What are the features of ancient Egyptian law?
3. What are the differences between ancient Greek law and Roman law?
4. What are the main traditions of modern European law?
5. Can you illustrate the differences or similarities between ancient Egyptian law and ancient Chinese Law?



## II. Translate the following terms into English.

1. 国家法律      2. 文明社会      3. 思想史      4. 法律制度      5. 审判结果
6. 多元主义      7. 罗马法      8. 法律程序      9. 法律诉讼      10. 审判监督

## III. Translate the following sentences into Chinese.

1. The best thought of a people is to be found in its legislation; its daily life is best mirrored in its usages and customs, which constitute the law of its ordinary transactions.

2. Legal history is closely connected to the development of civilisations and is set in the wider context of social history.

3. Among certain jurists and historians of legal process, it has been seen as the recording of the evolution of laws and the technical explanation of how these laws have evolved with the view of better understanding the origins of various legal concepts; some consider it a branch of intellectual history.

4. There never has existed, and it is entirely safe to say that there never will exist, on this planet any organization of human society, any tribe or nation however rude, any aggregation of men however savage, that has not been more or less controlled by some recognized form of law.

5. By analyzing case outcomes, transaction costs, number of settled cases they have begun an analysis of legal institutions, practices, procedures and briefs that give us a more complex picture of law and society than the study of jurisprudence, case law and civil codes can achieve.

## Text B Legal History of China

Ancient India and China represent distinct traditions of law, and had historically independent schools of legal theory and practice. The Arthashastra, dating from the 400 BC, and the Manusmriti from 100 BC were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across South East Asia. But this Hindu tradition, along with Islamic law, was supplanted by the common law when India became part of the British Empire. The two major Chinese philosophical schools discussed below, Confucianism and Legalism strongly influenced the idea of law in China. Briefly, under Confucianism, the state should lead the people with virtue and thus create a sense of shame which will prevent bad conduct. Under Legalism, law is to be publicly promulgated standards of conduct backed by state coercion. The tension between these two systems is that Confucianism relies on tradition to make the leader the head of household of all China, while Legalism makes standard law that even the emperor should be bound by. The

common factor is that both endorse to different degrees a paternalistic conception of the state, which knows better than its citizens and makes laws to protect them. This concept persisted throughout the imperial period, into the republican period, and can still be seen acting today.

The word for law in classical Chinese was fǎ (法). The Chinese character for fǎ denotes a meaning of “fair”, “straight” and “just”, derived from its water radical (氵). It also carries the sense of “standard, measurement, and model”. Derk Bodde and Clarence Morris held that the concept of fǎ had an association with yì (义: “social rightness”). Yan Fu, in his Chinese translation of Montesquieu’s *De l’esprit des lois* published in 1913, warned his readers about the difference between the Chinese fǎ and Western law: “The word ‘law’ in Western languages has four different interpretations in Chinese as in lǐ (理: order), “lǐ” (礼: “rites, decorum”), fǎ (法: human laws) and zhì (制: control). A term which preceded fǎ was xíng (刑), which originally probably referred to decapitation. Xíng later evolved to be a general term for laws that related to criminal punishment. The early history Shang Shu recorded the earliest forms of the “five penalties”: tattooing, disfigurement, castration, mutilation, and death. Once written law came into existence, the meaning of xíng was extended to include not only punishments but also any state prohibitions whose violation would result in punishments. In modern times, xíng may be understood in the sense of penal law or criminal law. An example of the classical use of xíng is Xíng Bù (刑部, Department of Punishment) for the legal or justice department in imperial China.

Unlike many other major civilizations where written law was held in honor and often attributed to divine origin, law in early China was viewed in purely secular terms, and its initial appearance was greeted with hostility by Confucian thinkers as indicative of a serious moral decline, a violation of human morality, and even a disturbance of the total cosmic order. Historically, the people’s awareness and acceptance of ethical norms was shaped far more by the pervasive influence of custom and usage of property and by inculcating moral precepts than by any formally enacted system of law. Early emperors however embraced the Legalist ideal as a way of exerting control over their large and growing territory and population. This process was integrated with traditional Chinese beliefs in the cosmic order, holding that correct behavior was behavior consonant with the appropriate responses set by fǎ. Xíng states the potential costs to the individual of exceeding them and imposes penalties for these actions.

The imperial period was characterized mainly by the concept of law as serving the state, a means of exerting control over the citizenry. In the late Qing dynasty there were efforts to reform the law codes mainly by importing German codes with slight modifications. This effort continued and was amplified in the republican period resulting in the Provisional Constitution of 1912 which included the idea of equality under the law, rights for women, and broader rights

for citizens' vis - à - vis the government. After the People's Republic of China was founded, the idea of individual rights reemerged as a significant influence on Chinese law. The current constitution, created in 1982, states in Article V that no organization or individual is above the law and in Article III makes the People's Congresses and state administration responsible to the people, paving the way for later efforts to allow enforcement of individual rights.

## Words and Expressions

英 文	中 文
pluralism	多元主义、多元化

## Notes

1. **Arthashastra**: an ancient Indian treatise on statecraft, economic policy and military strategy, written in Sanskrit. Likely to be the work of several authors over centuries, Kautilya, also identified as Vishnugupta and Chanakya, is traditionally credited as the author of the text. The latter was a scholar at Takshashila, the teacher and guardian of Emperor Chandragupta Maurya.

2. **Manusmriti**: an ancient legal text among the many Dharmaśāstras of Hinduism. It was one of the first Sanskrit texts translated during the British rule of India in 1794, by Sir William Jones, and used to formulate the Hindu law by the colonial government.

## Exercises

### I. Answer the following questions.

1. What is your definition of Chinese law?
2. How many parts are included in ancient Chinese law ?
3. What is the biggest difference between Western law and ancient Chinese law?
4. What is the major improvement in China Law system today when compared with ancient time?
5. Can you illustrate the philosophical differences between Western law and ancient Chinese law?

## II. Translate the following terms into English.

1. 摩奴法典      2. 律法      3. 哲学基础      4. 法律体系      5. 天人合一
6. 多元主义      7. 礼乐崩塌      8. 酷刑      9. 礼记      10. 刑部

## III. Translate the following sentences into Chinese.

1. Ancient India and China represent distinct traditions of law, and had historically independent schools of legal theory and practice.

2. The tension between these two systems is that Confucianism relies on tradition to make the leader the head of household of all China, while Legalism makes standard law that even the emperor should be bound by.

3. Unlike many other major civilizations where written law was held in honor and often attributed to divine origin, law in early China was viewed in purely secular terms, and its initial appearance was greeted with hostility by Confucian thinkers as indicative of a serious moral decline, a violation of human morality, and even a disturbance of the total cosmic order.

4. This process was integrated with traditional Chinese beliefs in the cosmic order, holding that correct behavior was behavior consonant with the appropriate responses set by fǔ. Xíng states the potential costs to the individual of exceeding them and imposes penalties for these actions.

5. After the People's Republic of China was founded, the idea of individual rights reemerged as a significant influence on Chinese law.

## Further Reading

### Traditional Chinese Law

Confucianism and Legalism are two major Classical legal theories or philosophies developed during the Spring and Autumn period and the Warring States period, a time that saw the most impressive proliferation of new ideas and philosophies in Chinese history. While both theories call for governmental hierarchy, they differ drastically in their views of human potential and the preferred means to achieve political order. Nevertheless, both theories have influenced and continue to influence the development of cultural, social, and legal norms in China.

The basic premise of Confucianism is the idea that human beings are fundamentally good. With this optimistic view on human potential, Confucius advocates for ruling through li—traditional customs, mores, and norms—which allow people to have a sense of shame and become humane people with good character, rather than through government regulations and penal law. The idea is that people will internalize the acceptable norms and only take proper