

STEP BY STEP  
ENGLISH CASE READING

# 循序渐进

英文案例

阅读



魏 蘅◎编著

STEP BY S

ASE READING

**STEP BY STEP**  
**ENGLISH CASE READING**

# 循序渐进

## 英文案例阅读

魏 蘅◎编著

---

◆ 中国政法大学出版社  
2010·北京

## 图书在版编目 (CIP) 数据

循序渐进英文案例阅读 / 魏蘅编著. — 北京: 中国政法大学出版社, 2010. 10

ISBN 978-7-5620-3739-2

I. 循... II. 魏... III. ①英语-阅读教学-高等学校-教材 ②案例-汇编-世界 IV. H319.4:D

中国版本图书馆CIP数据核字(2010)第174531号

---

- 书 名 循序渐进英文案例阅读 XUNXU JIANJIN YINGWEN ANLI YUEDU  
出版发行 中国政法大学出版社(北京市海淀区西土城路25号)  
北京100088 信箱8034分箱 邮政编码100088 fada.sf@sohu.com  
<http://www.cuplpress.com> (网络实名: 中国政法大学出版社)  
(010) 58908433 考试图书编辑部 58908325 发行 58908334 邮购
- 承 印 固安华明印刷厂
- 规 格 787×960 16开本 14印张 225千字
- 版 本 2010年11月第1版 2010年11月第1次印刷
- 书 号 ISBN 978-7-5620-3739-2/H·3699
- 定 价 24.00元

- 声 明
1. 版权所有, 侵权必究。
  2. 如有缺页、倒装问题, 由本社发行部负责退换。

## 编写说明

《循序渐进英文案例阅读》是为高等院校法律专业的本科生和研究生编写的教材。它既可以作为法学专业学生学习英美法律制度的补充读物，也可作为英语高级阅读的文本。针对目前市场上已出版的各类法律英语教材，本书是必要的补充，因为上述教材皆为法律制度介绍，没有提供案例文本、详情与解说。本书有很强实用性，英文阅读练习功能不言而喻，更重要的是通过阅读案例本身，读者可以体会到普通法法官判案的思路和逻辑，开拓视野。

本书共选取5个部门法、17个案例，包括合同、侵权、民事诉讼法、刑事诉讼法和宪法。每个案例除经过编辑、注释，还附有案例摘要、英文或中文背景说明。本书第一章还介绍了案例阅读的相关知识，如案例摘要的编写、索引的含义等。本书的章节顺序没有依照约定俗成的宪法→刑法→刑诉→民诉→侵权……的安排，而是按照案例的难易、长短，由易至难，由短至长的顺序安排。虽然案例的个数有限，但案例的选择却突出了部门法的特点和焦点，与英美法律制度或法律英语课程具有很好的衔接性。

编者

2010年7月

## 目 录

## Contents

编写说明 (To the Reader) / 1

第一章 关于案例阅读 (Introduction to Case Reading) / 1

第二章 合同 (Contract) / 13

W. O. Lucy and J. C. Lucy v. A. H. Zehmer and Ida S. Zehmer 15

Morris Lefkowitz v. Great Minneapolis Surplus Store, Inc. 24

Otis F. Wood, Appellant v. Lucy, Lady Duff-Gordon, Respondent 30

第三章 侵权 (Torts) / 35

William Robinson, Respondent v. John Lindsay 37

Jonathon Stewart, Appellant v. Martin Motts, Appellee 42

Mechelle Medcalf v. Washington Heights Condominium Association,  
Inc., et al. 50

Benn, Appellant v. Leland R. Thomas, and Heartland Express, Inc., of  
Iowa, Appellees 56

Spur Industries, Inc. v. Del E. Webb Development Co. 62

第四章 民事诉讼 (Civil Procedure) / 75

International Shoe Co. v. Washington 77

Burger King Corp. v. Rudzewicz 89

## 第五章 刑事司法 (**Criminal Justice**) / 107

Kyllo v. United States 109

Maryland, Petitioner v. Joseph Jermaine Pringle 125

Nix v. Williams 134

Illinois v. Perkins 148

## 第六章 宪法 (**Constitution**) / 165

William Marbury v. James Madison, Secretary of State of the United States 167

Brown v. Board of Education 183

Roe v. Wade 192

# 第一章

---

## 关于案例阅读

(Introduction to Case Reading)



英美法学院学生的学习方法被称为“案例教学法”，这还要追溯至1870年的哈佛大学。克里斯托弗·哥伦布·兰德尔 (Christopher Columbus Langdell) 教授为了让学生成为律师之前多加练习案例分析的技巧，改进了法学教学方法，即把讲解、课本阅读和记忆结合在一起。但当时的图书馆不能满足所有学生同时用到同样教材的需要，为此，兰德尔教授不得不自己编写教材，他想让学生接触第一手原汁原味的法学资料，即案例，并把联邦和各州的案例都包括进自己的教材。

案例教学法并不是各州统一的学习方法，案例书中所选判例有时因为地域不同，对法律原则的解释也大相径庭。兰德尔教授没有认为这是案例教学的弊端，相反，他认为这可以促使学生对每一个有歧义的法律原则和相关事实的思考产生兴趣。对法律原则而言，没有相关定义或具体表述，学生必须在比较和对比系列案例之后自己总结法律原则，并锻炼总结归纳的能力。

案例教学法经过一百多年的演变，已和兰德尔教授时期的方法有所不同。兰德尔教授当时只选择对法律原则有影响力的判例作为学习对象，而目前的趋势是选择那些大众关注和学生兴趣所在的判例，即使这些案例对法律原则没有进行新的阐述，或没有历经多年证实其自身的重要性。

对于母语是英语的法学院学生来说，阅读案例是繁重的功课，他们自己也会时常迷失在法律原则对立的判决中；对于母语是非英语的法学院学生而言，就更是如此了。除去繁杂的法律原则、标准，还有语言、文化、思维方式等天然屏障横亘其中。

是否有破解案例教学法的金钥匙呢？对不起，真的没有。但有一些被大家认可的方法可以辅助母语是非英语的学生减轻案例教学的挫败感。

如果知道我们的学习内容，那么学习的过程会相对简单些。因为多数案例教科书并没有介绍通过每个案例我们要学到什么，所以阅读案例之前如果能了解所讨论的是什么法律问题，学习的过程就会非常有目的性。有一些入门教程或总结性的教程都是很好的教辅材料。对中国学生而言，研究英美法的中文出版物也是很好的选择。

阅读别人的案例摘要或自己做案例摘要也是案例学习的必要方法。尤其是自己阅读案例后，根据自己的理解做案例摘要会更加有意义。阅

读英文案例为什么要做案例摘要呢？首先，总结案例摘要的过程就是学习的过程，这种阅读后经过大脑主动加工而形成的案例总结要比简单的阅读和被动地接受别人的观点更能训练分析能力。其次，总结案例摘要是要提炼相关事实、法律问题，总结法官的逻辑分析、采用的法律原则和适用标准的过程，这也是法律从业者的工作方法。最后，案例摘要是复习考试的好帮手，可以帮助记忆。

下面简单介绍案例摘要（Case Brief）的做法。

Briefs should be a one-page summary of the case. Structure the summary according to the elements listed below. The structure adheres to the types of questions the professor asks in class and to the information you'll need for outlining. Not every case can be summed up in one page, but it's a good discipline to attempt to condense the material.

### Citation

Legal research and advocacy relies very heavily on citation. For the purposes of first year law school, citation focuses primarily on cases, although statute, article and book citation are relevant as well. Case citation serves two major functions: first, a complete citation allows the reader to find the decision; second, it should convey valuable information about the case, including the date it was handed down, court level, jurisdiction and case history (if included). Accurate citation provides a road map which directs the reader to where to locate the law. As with an actual road map, users of citations depend on their accuracy. Inaccurate or incomplete citations will result in people taking a detour from their goal and wasting time in their legal research.

#### **How to read a citation?**

Cases are often published in several reporters simultaneously. U. S. Supreme Court cases, for example, are published in *U. S. Reports* (U. S. ), the official publisher of Supreme Court cases, as well as *Supreme Court Reporter* (S. Ct), *U. S. Law Week* (USLW), and *Lawyer's Edition* (L. Ed) and all of these sources might appear in the citation. No matter where you find it, the text of the opinion is always the same although some sources offer extra notes.

Usually, you only need to use the official reporter citation when citing a

case in text or in a bibliography or works cited page. In the example below, it would be sufficient to cite the case as Campbell v. Acuff-Rose, Inc. 510 U. S. 569 (1994) the first time you use it and then as Campbell v. Acuff-Rose or Campbell in subsequent in-text references.

Now that cases are published on the Internet, you might come across recent opinions that don't have a full citation yet. You can use the docket number and decision date instead.

The reporter indicates the court that decided the case, since every court has its own reporter. Federal Court's of Appeals' cases are reported in *Federal Reporter* (F. , F. 2d, F. 3d), Federal District Court opinions are published in *Federal Supplement* (F. Supp. ), Connecticut Supreme Court's opinions are published in *Connecticut Reports* (Conn. ), and so on. State opinions are also published in regional reporters, the equivalent of the commercial Supreme Court reporters. Connecticut decisions are included in the *Atlantic Reporter* and *Connecticut Reporter*. For lists of abbreviations, see the sites listed at the bottom of this page.

The following examples illustrate citations for three cases:

The case Campbell v. Acuff-Rose, Inc. was decided in 1994. The case is published in volume 510 of *U. S. Reports* beginning on page 569.

The case is also published in volume 114 of *Supreme Court Reporter* beginning on page 1164, and in *Lawyer's Edition Second Series* beginning on page 500.

The case Warner Bros. v. ABC was decided in 1983 by the Court of Appeals and is published in volume 720 of the *Federal Reporter Second Series* beginning on page 231.

|                                     |              |      |      |     |       |       |     |         |     |              |
|-------------------------------------|--------------|------|------|-----|-------|-------|-----|---------|-----|--------------|
| <u>Campbell v. Acuff-Rose, Inc.</u> | 510          | U.S. | 569, | 114 | S.Ct. | 1164, | 127 | L.Ed.2d | 500 | (1994)       |
| case name                           | volume       |      | page |     |       |       |     |         |     | year decided |
|                                     | U.S. reports |      |      |     |       |       |     |         |     |              |

Warner Bros. v. ABC, 720 F. 2d 231 (1983)

case name      volume      page      year decided

federal reporter second series

McConnell v. Beverly Enterprises, 209 Conn. 692, 553 A. 2d 596 (1989)

case name      volume      page      year decided

Connecticut reports

The case McConnell v. Beverly was decided in 1989 by the Connecticut Supreme Court and was published in volume 209 of *Connecticut Reports* beginning on page 692. It was also published in volume 553 of *Atlantic Reporter Second Series* beginning on page 596.

How do you know what reporter the abbreviation stands for? The sources below list most of the standard abbreviations for reporters; *Black's Law Dictionary*; *The Blue Book: A Uniform System of Citation*; *Introduction to Basic Legal Citation*, at <http://www.law.cornell.edu/citation/>.

### Procedural History

How did this case get to this particular court? Typically, you will be reading case law from the Appellate court or Supreme Court. That means the case has already been decided at a lower court and the losing party has appealed to a higher court. Typically, the lower courts don't write opinions on their decisions; consequently, you'll almost always be reading appellate decisions.

The judge often starts the case with information on how the court below decided the case and which party is making the appeal. Often the cases will present a detailed history of the arguments presented by both parties in the court below as well.

At minimum, you should be able to answer the following two questions that your professor is likely to ask in class: Who is appealing on what issues? What happened in the lower court?

## Facts of Case

Your goal here is to be able to tell the story of the case without missing any pertinent information but also not including too many extraneous facts either. This section is necessary because legal principles are defined by the situations in which they arise.

Only those facts that are legally relevant can be included in your brief. A fact is legally relevant if it had an impact on the case's outcome. For example, in a personal injury action arising from a car accident, the color of the parties' cars would be seldom relevant to the case's outcome. Similarly, if the plaintiff and defendant presented different versions of the facts, you should describe those differences only if they are relevant to the court's consideration of the case. Because you will not know which facts are legally relevant until you have read and deciphered the entire case, do not try to brief a case while reading it for the first time.

## Legal Issue

The issues or questions of law raised by the facts peculiar to the case are often stated explicitly by the court. Constitutional cases frequently involve multiple issues, some of which only appeal to litigants and lawyers, others of broader and enduring significance to citizens and officials alike. Be sure you have included both.

With rare exceptions, the outcome of an appellate case will turn on the meaning of a provision of the Constitution, a law, or a judicial doctrine. Capture that provision or debated point in your restatement of the issue. Set it off with quotation marks or underline it. This will help you later when you try to reconcile conflicting cases.

A well-written opinion starts out by telling you the legal issue up-front. The language that the court uses might include such phrases as:

“The question before us is whether....” “This case is before us to decide whether...”

When noting issues, it may help to phrase them in terms of questions that can be answered with a precise “yes” or “no”.

For example, the famous case of *Brown v. Board of Education* involved the applicability of a provision of the 14th Amendment to the U. S. Constitution to a school board's practice of excluding black pupils from certain public schools solely due to their race. The precise wording of the Amendment is “no state shall... deny to any person within its jurisdiction the equal protection of the laws”. The careful student would begin by identifying the key phrases from this amendment and deciding which of them were really at issue in this case. Assuming that there was no doubt that the school board was acting as the State, and that Miss Brown was a “person within its jurisdiction”, then the key issue would be “Does the exclusion of students from a public school solely on the basis of race amount to a denial of ‘equal protection of the laws’”?

Of course the implications of this case went far beyond the situation of Miss Brown, the Topeka School Board, or even public education. They cast doubt on the continuing validity of prior decisions in which the Supreme Court had held that restriction of Black Americans to “separate but equal” facilities did not deny them “equal protection of the laws”. Make note of any such implications in your statement of issues at the end of the brief, in which you set out your observations and comments.

It may also help to label the issues, for example, “procedural issues”, “substantive issues”, “legal issue”, and so on. Remember too, that the same case may be used by instructors for different purposes, so part of the challenge of briefing is to identify those issues in the case which are of central importance to the topic under discussion in class.

**Substantive issue:** A substantive statement of the issue consists of two parts—the point of law in dispute and the key facts of the case relating to that point of law in dispute (legally relevant facts). You must include the key facts from the case so that the issue is specific to that case. Typically, the disputed issue involves how the court applied some elements of the pertinent rule

to the facts of the specific case. Resolving the issue will determine the court's disposition of the case.

Procedural issue: What is the appealing party claiming about the lower court (e.g. ruling on evidence, jury instructions, granting of summary judgment, etc.)?

### Holding

The holding is the court's decision on the issue. Who wins? The holding may be narrowly construed to a particular issue or be very broad. Identifying the holding may merely consist of finding the words "We hold that...".

### Legal Rationale

This is how and why the court fits the particular facts and circumstances of this case into the rule. The courts often fashion tests or rely on precedent, which forms part of the reasoning. You should take special note of the reasoning and try to emulate it in your own writing.

Policy—Rules don't stand by themselves without any sort of reason behind them. If there isn't a sound policy behind a rule, then the court should try to fashion a rule that serves the principles of equity or justice. Sometimes a statute that does not further the policies of equity or justice binds the judge. In those circumstances, the judge sometimes upholds the statute but writes the opinion in such a way to bring the injustice to the attention of the legislature in order to encourage them to change the law.

### Concurrence/ Dissents [if applicable]

A concurrence is a separate opinion in which one of the judges agrees with the result but has different reasoning. Like dissents, you will find that concurrences also proliferate in Supreme Court cases. Look at the concurrence to see how the reasoning differs. Make a note of it in the brief.

Typically, a panel of judges tries appellate cases. Not surprisingly, there is not always unanimous agreement. Consequently, a judge who is not in the majority will write a dissent. Dissents are ubiquitous in Supreme Court cases.

Make sure that you pick up the major sticking points in the dissent. What principles does the dissenting judge disagree with the majority on? Dissents are sometimes indicators of a direction the court may eventually move towards.

### Disposition

The disposition is the actual decision reached by the court. The disposition section of a brief will generally be a “one-liner” that simply states the result of the case.

The disposition of the case will be stated differently depending on the nature of the proceedings. Such as “appeal allowed”, “motion dismissed”, “judgment for defendant”, “reverse and remanded for further proceeding”, etc.

### Additional Comments/Personal Impressions:

What are your reactions to and critique of the opinion? Anything you like or dislike? How does this case fall in line with the other cases you have read? Do not accept the court’s opinion blindly. Assess the reasoning in each case. Is it sound? Is it contradictory? What are the political, economic or social impacts of this decision?

案例摘要也可以根据需要做得简洁明了，可以叫做 Speed Brief，例如：

### Case Name

Gale v. People of the State of Kansas, Kansas S. Ct. (1952)

### Procedural

P (plaintiff) won at TC (Trial Court) and on Appeal, Now, D (defendant) Gale is appealing to S. Ct. (Supreme Court) on two issues.

### Facts of the Case

D Gale went to the castle of the victim during the night time and appar-

ently threw a bucket of water on the victim killing her. D was found guilty of depraved heart murder for recklessly killing another person.

### Issue(s)

1. When the judge failed to give the proper jury instructions concerning the use of self-defense, was it an error on his part, so that the D Gale should be given a new trial? Yes for D—Court should have included.

2. Did the D Gale fail to raise an affirmative defense and thereby forfeit her right to raise the defense during trial? Yes for D—She gets a new Trial.

### Analysis

The court considered both issues above and found that the TC had erred by not considering the proper jury instructions. Here, the court should have included any reasonable defense that could have helped the finder of fact conclude that there was a doubt.

The court also found that as a matter of policy, the court should include any jury instructions reasonable considering the facts of the case.

### Ruling, Holdings and Disposition

The court held that the facts did support a reasonable connection between the facts and the possible defense, and that jury instructions should have been included.

The court ruled that a new trial should be granted, and that the well plead complaint rule did not apply in criminal cases, since it was a civil rule. The court erred in not allowing the testimony or evidence.

New Trial for D.