

法律英语系列教材

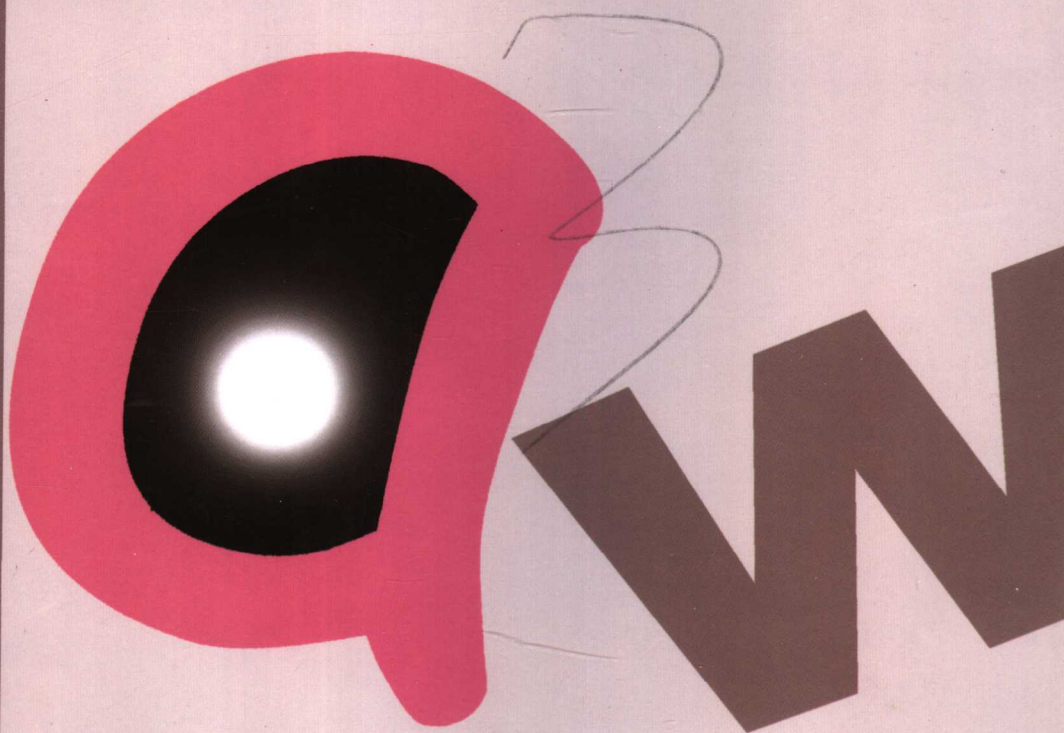
法律英语阅读教程

第三册

Reading Course of English for Law

Book Three

■ 杜金榜 主编 孙 红 麦小梅 副主编
■ 刘诒廷 主审



对外经济贸易大学出版社

法律英语阅读教程

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第二版

Law English Reading Course

主编：王德力
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第三册

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Book Three

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序 言

杜金榜、张新红两教授主编的《法律英语核心教程》即将问世，嘱我为序。我感到十分高兴，竭诚向读者推荐。我国已经加入世界贸易组织，涉外法律人才的需要必将日益增加。对外经济贸易大学出版社必智瑛副总编组稿、策划的这套教材的出现是“及时雨”，必将受到广大读者的欢迎。

在专门用途英语（English for Specific Purposes）中，法律英语是最具特色的一种。从法律用语到法律文件，都有鲜明的特点，要求严格的、规范的、正式的语体。如果说专门用途英语必须经过“专门的”训练才能学到，那么法律英语应该是属于“最专门的”一种；就是以英语为母语的人也未必具有这样的知识。这就是说，为我国读者编写的法律英语的教科书必须从选材、编注、练习体系设计等方面精心安排。这套教材的编写者在法律英语的教学方面积累了许多行之有效的宝贵经验，在编写中从我国学生的特点出发，既注意到读、写、说、译等语言技能的培养，又注意到法学知识的输入。既强调教材体系的连贯性，又强调知识的循序渐进性，覆盖了法学的基础知识、国际经济法、法律专题讨论等领域。这就保证了学生既学到英语，又学到法律知识。从本书的编写说明中可以看出，目前这套教材仅是法律英语系列教材的一本，还会继续有《法律英语听说教程》、《法律英语阅读教程》、《法律英语写作教程》、《法律英汉翻译教程》等问世。这套系列教材的出版将会大大地有利于法律英语专业学生的培养，我们翘首以待。

法律语言学（forensic linguistics）是在各民族和国家之间的关系日益紧密的基础上发展起来的一门新兴的语言学科，具有很强的生命力。语言在商贸谈判和法律诉讼中往往具有举足轻重的地位。我们经常说“在法律面前人人平等”，但是语言不沟通，平等就难以维持。我热切地希望编写者们能够把法律语言学的一些新进展消化和融合到这套教材里面，千锤百炼，使之成为一套更实用的、更先进的、更科学的教程。

是为序。

桂诗春

编写说明

体例说明

《法律英语阅读教程》是《法律英语核心教程》的配套教材，共三册，每册 20 单元，每单元由两篇课文和系统的语言、法律技能练习组成，练习的种类丰富，涵盖面广。本套教材保持了《核心教程》的系统性和循序渐进性，第一册主要是关于英国法律的知识，第二册介绍的是美国法律的知识，第三册是关于美国商法的内容。

本册为第三册，分 20 个单元，每单元含两篇法律英语课文。两篇课文围绕一个专题从不同层面系统介绍了美国商法各主要领域的基础知识，内容涉及商业法律环境介绍、合同法、侵权法、财产法、保险法、商业票据、商事组织形式等；课文前面的 **Before You Read** 部分，有两个简单的问题，让学生在阅读课文之前回答，以引起他们思考。接着是 **First Reading Exercises** 部分，要求学生较快地读完一遍之后完成，以训练学生的阅读速度。每篇课文正文部分的每个自然段都标注了序号，方便学习者快速查找和阅读；正文后附有课文的字数说明，以便学习者掌握自己的阅读速度。课文后附有理解课文所需的法律、社会、文化等背景知识的注释。之后是词汇表，列出了课文中较难的词汇和短语，给出了音标、词性和中文意思。最后是 **After-reading Exercises** 部分，包括多种练习题，其中有主观题，也有客观题，加强学生对课文内容的理解和对关键词汇的掌握。其中的 **Oral Practice**，可以让学生在了解法律知识的基础上，发表自己的看法，达到提高口语表达能力的目的。

使用说明

本套教程一共三册，建议第二学年开始使用，第二学年上学期用第一册（每周二至四学时），第二学年下学期用第二册（每周二至四学时），第三学年用第三册（每周二学时）。

使用本教程的教师也可视课时量和学习者的具体情况制定不同的授课进度并采取不同的授课方法。如果每周课时为 4 节，则每册可供一学期之用。另外，由于第一、二册的体例相同，涉及的法律专题相同，还可以两册同时使用，对英国和美国的法律作对比性的学习。

在使用过程中，建议学习者课前认真预习，查阅生词和相关的法律知识，课上认真听讲并积极参与课堂讨论，课后及时复习并阅读中文版和英文版法学原著作为补充。

为方便本教程的编写者与使用者进行直接交流，我们还建立了专门的网站

<http://www.beschool.net/corecourse/index.html>，欢迎使用该教程的教师、学生和广大法律英语自学者参加讨论并索取本教材的有关参考资料。

我们感谢对外经济贸易大学出版社对本套教材的出版所作的一切工作。

编 者

2005 年 1 月于广州白云山脚下

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UNIT 1

Legal Environment of Business

Text I Law in Business and Society

Before You Read

1. Perhaps you would readily agree that business requires appropriate legal environment. Can you use an anecdote that happened around you to illustrate this view?
2. How much do you think a business manager should know the law? Take one of the managers you are familiar with as an example to support your view.

First Reading Exercises

1. From what aspects should one consider the legal environment of business?
2. Who are to evaluate the legal rules and determine their influence on business problems at hand? Managers or lawyers? Why?
3. Do you agree that many desirable goals cannot be achieved through law? State the reasons.
4. What important characteristics of the law does the author focus on in the text?
5. What cases and examples are used in the text to support the author's explanation?

1 The study of law is the study of a people, a civilization, as it has existed and as it currently exists. As a discipline, the law embodies the

history, values, and culture of a society. It is a series of concepts and rules that shifts to meet social changes. The productive activity of a society — its business practice — is one of the major facets of the study of law. The legal environment of business, therefore, involves the legal system, its principal actors, and the major substantive rules of law that influence economic activity.

2 Legal rules and institutions exist and have evolved throughout American history. Thus, one can find numerous references to historical developments that led to today's legal rules, and explore trends in the legal environment — that is, how today's social issues and culture interact to reshape the configuration of current legal doctrine. Tomorrow's business executive must be aware of the changeable nature of the legal environment and the forces that lead to that change.

3 But law is neither magical nor mysterious. It is merely rules of conduct and relationships that are formally recognized by a government. These rules, however, are not necessarily just, nor are they necessarily designed for the good of the people. Law existed in ancient Greece, in Elizabethan England, and in Nazi Germany. In each of those societies there was a body of rules called law that regulated conduct and relationships among people. The existence of law does not ensure that a just society will also exist. As Grant Gilmore, the prominent legal scholar, wrote, "The better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb. The values of an unjust society will reflect themselves in an unjust law."¹

4 Law and business are inextricably intertwined. Business is the organization of capital and labor to produce a product or service with every aspect of that organization regulated by law. Buying and selling, employment practices, and even the nature of the business organization itself are examples of business activity controlled by law. Therefore, any business decision has a legal component, and the prudent business manager should take care to consider it.

5 However, it is folly to presume that the business manager will be an authority on law, able to evaluate the legal rules and determine their influence on the problem at hand. Such a task is best left to lawyers.

Business managers instead must understand law in the general sense. They must appreciate the nature of the legal environment in which their businesses operate. The law, as distinguished from legal rules, needs to be understood as managers understand other people — what motivates them, angers them, pleases them — without becoming authorities in anthropology, sociology, or psychology.

6 A law cannot make a person just, sober, or ethical. It cannot make people love their neighbors, nor can it make a business prosper. Many desirable goals cannot be achieved through law. Other social institutions — the family, church, and community — have major roles to play in the makeup of society.

7 Law provides minimum rules of conduct that society will sanction. Those rules must possess several general characteristics to be effective: predictability, flexibility, and reasonable application and coverage. If any of the characteristics is missing, then often the rule will have an inconsequential effect without excessive law-enforcement efforts. In a free society, such an occurrence is intolerable.

Predictability

8 One must be able to predict with some accuracy the legal effect of future conduct. Otherwise no activity would ever be legally safe. However, predictability does not necessarily mean certainty. That snow will fall in Vermont during December and that the Chicago Cubs² will not win the pennant are predictions of future events that are reasonably assured to occur. However, warm New England Decembers have happened.

9 Similarly, when a corporation sells its redesigned personal computer, hires new employees, or raises additional capital, legal issues arise. These common business activities would be impossible to complete if executives could not rely on a body of law for predictable resolutions, even though absolute certainty is impossible. Imagine an economic system in which the law provided no means to reasonably assure the enforceability of bargains between buyers and sellers. Such a system would have no effective contract law, since any predictability about an agreement's enforcement would have to be based on extra-legal means such as threats, violence, or social

condemnation. Thus, it is clear that an effective law must be such that those governed by it are able to anticipate its application.

Flexibility

10 Most law was developed by people who are no longer alive. Those lawmakers had few of the experiences common in modern society. Many never saw an automobile or an airplane. Many never watched television or used computers. Yet the rules of law are applicable and relevant to new situations that have occurred in modern life. They can grow and develop to reflect changes in society around them.

11 One issue involving this characteristic is the application of copyright law to computer-created works. A copyright provides protection for original works of authorship. (Note the copyright statement on the page following the title page of a book.) The holder of the copyright owns the work. In order to be copyrightable, the work must show some intellectual creativity and must not have been plagiarized. Books and musical compositions are common subjects of copyright protection.

12 Today, some computer programs are testing the flexibility of the copyright law. One type of program can create a work of fiction or a poem by applying grammatical rules to words chosen at random. In order to produce a poem the “poet” would simply need to run the program. Who, then, should have the right to seek copyright protection for that poem? The work was “created” by the computer. All the user did was to select the time to run the program. The programmer created the system that would write the poem, but the poem that was written was not envisioned by the programmer.

13 At present, the answer is unclear and the issue remains unresolved. However, the key with this example is to note how the law is pliable enough to be applied to new problems. So, while an effective law in our system must have a predictable outcome in its application, it must also be flexible enough to meet changing conditions.

Reasonable Application and Coverage

14 Law must be reasonable both in its application and in its subject. In

order for the law to have reasonable application, those affected by it must have the opportunity to know its requirements. This concept is contained in the due process guarantee in the Constitution and is meant to prevent secret laws from being applied. However, it does not mean that a person who does not know what the law is at a given time need not be concerned with its application. The old maxim "Ignorance of the law is no excuse"³ does have applicability. No one, lawyer or non-lawyer, knows all the law. What the requirement means is that all people will have access to the laws and to legal advisors to assist them in conforming their conduct to existing standards.

15 An example of a legal system without the protection of reasonable application was described in *The Trial* by Franz Kafka.⁴ In the novel, K awoke one morning to find that he was placed under arrest for a crime that he did not know he had committed. In fact, he never knew what law he had allegedly violated. He was to be tried in a court that had no known procedures, and he had no known way of defending himself. The novel offers a frightening example of a system of laws that is not reasonable in its application.

16 The subject of the law's regulations must also be reasonable. Our system presumes that people will voluntarily obey the laws because laws that reflect the norms of society will be considered reasonable. However, laws that a large number of people find to be unreasonable will soon become unenforceable. The best example of this phenomenon in the United States was Prohibition in the 1920s⁵. The temperance movement⁶ was not strong enough to convince Americans to stop drinking. So its leaders, through lobbying and political pressure, had the law forbid people to drink liquor. The result was over a decade of growth of organized crime as criminals eagerly supplied illegal liquor. People's respect for the rule of law was seriously harmed, and corruption was common. Ironically, people did not drink less. Unless we are willing to change our form of government, unreasonable or unpopular laws will not be effective in our society.

(1,460 words)

Notes

1. Grant Gilmore, *The Ages of American Law* (New Haven: Yale University Press, 1977), pp. 110 – 111.
2. Chicago Cubs is one of the popular baseball teams in USA.
3. “Ignorance of the law is no excuse.” stresses the fact that everyone is held accountable for their actions and there are consequences mandated by the law.
4. In 1914 Kafka began his second novel, *DER PROZESS* (The Trial). The Trial depicted the hopeless attempts of Josef K. to survive nightmarish events that start at his breakfast table. “Someone must have been spreading lies about Josef K. , for without having done anything wrong he was arrested one morning.” Josef K. encounters the effects of law but no identifiable lawgiver, a theme Kafka further developed in the unfinished novel *DAS SCHLOSS* (1926, The Castle). Josef K. 's fruitless attempts at understanding the legal process in which he stands trapped, is similar to the situation of K. , the rotagonist in The Castle.
5. Prohibition refers to legally attempting to prevent the production and consumption of alcohol beverages.
6. The Temperance Movement refers to the prohibition of the use of alcohol because of its sociologically destructive impact in both Britain and the United States.

Vocabulary

configuration	[kən'figju'reiʃən]	n.	配置, 结构, 构造
inextricably	[in'ekstr'ikəbli]	adv.	无法解决地, 无法摆脱地
intertwine	[intə'twain]	v.	缠绕, 纠缠
sober	['səubə]	adj.	清醒的, 冷静的
inconsequential	[in'kɒnsi'kwɛnʃəl]	adj.	无关紧要的
pennant	['penənt]	n.	三角锦旗
condemnation	[kəndem'neiʃən]	n.	非难, 谴责, 指责
copyrightable	['kɒpraɪtəbl]	adj.	可申请取得版权的
plagiarize	['pleɪdʒiəraɪz]	v.	剽窃, 抄袭
envision	[in'viʒən]	v.	想象, 预想, 预见
pliable	['plaɪəbl]	adj.	能适应的, 可塑的
maxim	['mæksɪm]	n.	格言, 座右铭

After-reading Exercises

I . Multiple Choice

1. Which of the following is the author's opinion? _____.
 - A. Legal environment of business is changing
 - B. Legal environment of business involves today's social issues but not culture
 - C. Legal environment of business is not a major facet of the study of law but the study of business
 - D. Historical development did have influence on today's legal rules but not so much on today's legal environment of business
2. According to the author's opinion, _____.
 - A. law and business are not mysterious
 - B. law and business are sometimes interrelated
 - C. law is necessarily designed for the good of the people
 - D. any business decision is related to law
3. The author thinks the business manager _____.
 - A. should become an authority on law
 - B. should not study law
 - C. should understand the nature of the legal environment
 - D. is only able to understand law in the general sense
4. Predictability of law _____.
 - A. necessarily means certainty
 - B. can ensure that new business activities are completed
 - C. enables people to guard against any violence or social condemnation
 - D. helps people to enforce effective laws
5. The old maxim "Ignorance of the law is no excuse". tells that _____.
 - A. laws cannot be applied blindly
 - B. the law ignores something important but the legal profession should make up for it
 - C. lawyers cannot excuse themselves for their ignorance of the law
 - D. one cannot be exempted from punishment one deserves even though one does not know the law