

含MP3光盘



法律英语 文本教程

FALU YINGYU WENBEN JIAOCHENG



|主编| 童路明

专业 实用 流利



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前言

《法律英语文本教程》共有 16 个单元,每个单元有 5 个部分的练习,旨在通过大量的实践培养学生熟悉、使用和法律有关的英语文本材料,提高学生在法律方面的英语实际应用能力。本教程对象为大学本科生以及对法律英语文本感兴趣的自学者。

第一部分为“阅读理解”。所选课文来自国外法学文本素材。该部分后有 5 项练习,第一项理解题,题型为回答问题或正误辨别;第二项词语配对;第三项词组翻译,用英汉和汉英互译形式;第四项选词填空,选择或填空形式;第五项句子翻译,英汉\汉英句子互译。这些练习旨在培养学生阅读法律方面的英语材料的能力。

第二部分为“法律常用词练习”。选择普通英语和法律英语不同的词义,每部分有一个英语单词或词组进行汉英对照,通过对比了解法律英语和普通英语的差异。此部分旨在培养学生对法律英语常用词的理解和运用能力。

第三部分为“案例讨论”。该部分选编一至两个和课文内容有关的国内外案例摘要,以回答问题的形式,让学生了解案例的内容和争议焦点,通过具体案例加深对具体法条的应用和理解。此部分旨在培养学生分析问题、解决问题的能力。

第四部分为“翻译实践”。培养学生翻译案例摘要的能力,了解法律英语和普通英语在翻译方面的差别。此部分旨在培养学生初步掌握法律英语的翻译规律和技巧。

第五部分为“文书套写”。分别选用上诉状、起诉书、合同书、协议书、委托书、公证书等各种法律文书的基本格式,要求根据汉语原文用英语完成简要法律文书,以培养学生参照范文拟写和翻译各种常用法律文书的能力,并初步掌握常用英语法律文书的基本写法。

本教程还编写了两套测验题,可供教师和学生测试掌握所学内容程度。

本教程主编为童路明,具体参加编写的人员还有王仁元、缪学、贾迎花、尹春晨、游晓琼、纪滢。童路明最后负责统稿、校对。

由于编者水平有限,不足之处在所难免,欢迎同行多赐指教。

2009 年 1 月

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Unit One



Regard for the public welfare is the highest law.

关注公共利益的法律是最高法律。

There is no general rule without some exception.

任何法律都不能面面俱到。

Part I Reading and Understanding

American Legal System (1)

The American legal system is a common law system¹, where cases are settled based on tradition, common practice and interpretation of statutes. As we have already known, as a matter of practice, even in common law countries there are quite a few number of codes of law. But what should be emphasized is that the central feature of the system lies in its reliance on case law or judge-made law. That is, precedents are used as guidance to deal with the same or analogous situations arising today.

The American legal system is originally based on the British legal system² and the United States Constitution³. Article III, Section I of the Constitution States that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. So in the United States of America, a United States Supreme Court is provided by the Constitution and other courts are established by the U.S. Congress in accordance with the Constitution.

1. Legislation

Law in the United States is composed of case law precedent (prior judicial decisions),

just as with the British system, as well as statutory law created by both the federal government and the states.

1.1 The United States Constitution

The United States Constitution was drafted in 1787 and was amended 26 times ever since. The Constitution separates the government into the three coordinate branches. The Constitution provides for powers to each of the three branches, as well as the states. In addition it sets limits on the powers of federal and state government.

1.2 State Constitution

Besides the United States Constitution, each of the 50 states has also adopted a constitution. The state constitution sets out both the form and operation of government in that state and provides for and sets limits on its power.

1.3 Enactment of Legislative Bodies

This includes the Acts of Congress and statutes of state legislatures. The legislatures of each of the 50 states may pass and enforce their own laws without exceeding the principles established by the United States Constitution and the United States Congress. This results in the fact that the state law in the same fields may be different from one to another. For instance, the length of time within which one must commence a civil lawsuit or be time-barred, referred to as the statute of limitations, can vary dramatically from state to state; and various other matters such as how trade secrets or torts are defined also may vary significantly.

1.4 Case Law

In a common law country, case law plays a very important part in determining the law that applies to a particular set of facts. In application of case law, the weight that case law is given by a particular court in the United States depends significantly upon the court in which the precedent occurred. For example, when a case is brought in Federal court, decisions of the Supreme Court are obviously the most binding on a particular issue, followed by decisions of the circuit court to which an appeal from a district court lies and finally, prior decisions of the district court itself. In many instances, a district court will look to the law of the appropriate state while rendering a decision in a case where issues of state law are of priority.

2. Court System

There are 51 separate court systems in the United States of America. In addition to

the federal court system, each state has a separate system under its own constitution and laws. Each of the 50 states in the United States has, within its borders, both a state court system and a federal court system. Federal and state courts exist virtually side-by-side in every state, and review both civil and criminal cases. There are large areas where the jurisdiction of federal and state courts overlaps. The parties may, at their discretion, decide on the court where they initiate a lawsuit. And there is a choice for the disputes between them as to which of the two systems they should be in.

2.1 Jurisdiction⁴ of the Federal Courts

Federal courts are not courts of general jurisdiction but rather more limited jurisdiction as prescribed by the U.S. Congress. The United States Constitution established the Supreme Court and vests certain original and appellate jurisdiction in it. The courts in the federal court system include Supreme Court, courts of appeals, district courts, courts of claims, courts of customs and patent appeals, customs courts, tax courts and courts of military appeals. The Supreme Court is the highest appellate review for either federal courts or state courts. It also has the original jurisdiction in those cases affecting ambassadors, ministers and consuls and those cases to which a state is a party.

2.2 Jurisdiction of the State Courts

Each state has its own court system and each state court system has a trial court level and two levels of appellate review. With reference to the jurisdiction of a court to hear a lawsuit, state courts are courts of general jurisdiction. Hence, as long as the defendant is served notice of the pending lawsuit, a state court may exert personal jurisdiction⁵ (also referred to as “territorial jurisdiction”) over the defendant and hear any civil matter. A state court may exercise territorial jurisdiction in the following cases: (1) a defendant consents to be used in the state where the state court is located; (2) the defendant is physically present in the forum state; or (3) such state has a statute which authorizes the exercise of territorial jurisdiction over persons or properties outside the state’s borders; (4) the forum state is where the defendant is domiciled. In addition to the above state courts with general jurisdiction, state courts are also courts with specialized trial jurisdiction, such as criminal courts, circuit courts, civil courts, juvenile courts and probate courts.

2.3 Administrative Agencies

In addition to the above court systems, some administrative agencies have been established out of the court system to monitor compliance with various federal statutory

schemes and are empowered to commence proceedings or actions for violations of those laws. For example, the United States Department of Justice monitors and investigates compliance with the antitrust laws and is empowered to commence suits on behalf of the United States to remedy or correct violations. The Federal Trade Commission is the governmental agency that monitors compliance with law relating to trade regulations and is empowered to take actions to ensure compliance. The Securities and Exchange Commission monitors compliance with a broad range of laws governing all aspects of securities transactions. Besides, there are other federal administrative agencies with similar functions, such as Nuclear Regulatory Commission, Interstate Commerce Commission, and the Federal Communications Commission, etc.

2.4 Arbitration and Mediation

Arbitration is the most traditional and well-known form used in the dispute resolution out of court. Arbitration is characterized by flexibility and mutual acceptance of means of conflict resolution. But recently, arbitration has been criticized as overly formal, expensive and almost as time-consuming as traditional litigation. Consequently, commercial parties often seek less formal and more efficient means to settle their disputes, such as mediation.

Mediation is a process in which disputing parties are aided by a neutral third party to attempt to settle their dispute. Mediation, unlike arbitration, is not generally binding. The parties may, however, agree to enter into a settlement agreement. Mediation is voluntary and non-binding and its process is under the control of the parties themselves. Settlement will be reached only if it is acceptable to all the parties. If mediation fails, the dispute usually will go on to arbitration or litigation.

(to be continued)

New Words

statute /'stætʃut/

n. 法令, 法规

code /kəʊd/

n. 法规, 法典

reliance /rɪ'laɪəns/

n. 信赖, 依靠

precedent /'presɪdənt/

n. 先例, 前例

guidance /'gaidəns/
 analogous /ə'næləgəs/
 Constitution /ˌkɒnstɪ'tju:ʃən/
 vest /vest/
 ordain /ɔ:'deɪn/
 draft /dra:ft/
 amend /ə'mend/
 coordinate /kəu'ɔ:dɪneɪt/
 enactment /ɪ'næktmənt/
 commence /kə'mens/
 time-barred /taɪm'baɪd/
 tort /tɔ:t/
 binding /'baɪndɪŋ/
 appeal /ə'pi:l/
 render /'rendə/
 priority /praɪ'ɒrɪtɪ/
 virtually /'vɜ:tʃuəli/
 jurisdiction /ˌdʒʊərɪs'dɪkʃən/
 overlap /ˌəʊvə'læp/
 discretion /dɪs'kreʃən/
 initiate /ɪ'nɪʃɪeɪt/
 lawsuit /'lɔ:sju:t/
 appellate /ə'pelət/
 ambassador /æm'bæsədə/
 pending /'pendɪŋ/
 exert /ɪg'zɜ:t/
 consent /kən'sent/
 domiciled /'dɒmɪsaɪld/
 juvenile /'dʒu:vənail/
 probate /'prəʊbeɪt/
 monitor /'mɒnɪtə/
 compliance /kəm'plaɪəns/

n. 引导, 指导
a. 类似的
n. 宪法
v. 授权, 给与
v. 任命, 命令
v. 起草, 征兵
v. 修正, 改善
a. 同等的, 等位的
n. 颁布, 制定
v. 开始
a. 由于时间被禁止的
n. 侵权行为
a. 有约束力的
n. 恳求, 上诉
v. 提供, 致使
n. 优先权
ad. 几乎, 实际上
n. 司法权, 审判权, 管辖权
v. 重叠, 重复
n. 辨别力, 考虑; 冷静, 慎重
v. 开始, 创始
n. 诉讼案件
a. 控诉的, 上诉的
n. 大使
a. 未决定的, 待决的
v. 发挥, 运用, 施以影响
n. 同意, 许可
a. 指定支付地点的
n. 少年, 青少年
n. 遗嘱查验, 遗嘱查讫证
v. 监视, 监督
n. 承诺, 遵从

empower /ɪm'paʊə/

remedy /'remədi/

arbitration /,ɑ:bɪ'treɪʃən/

mediation /,mi:di'eɪʃən/

litigation /,lɪtɪgeɪʃən/

v. 授予权力, 允许

v. 治疗, 矫正

n. 仲裁, 公断

n. 调停, 调解

n. 诉讼, 起诉

Phrases and Expressions

common law

common practice

case law

judge-made law

judicial power

Supreme Court

in accordance with

statutory law /'stætjʊtəri lɔ:/

Acts of Congress

length of time

circuit court /'sɜ:kɪtkɔ:t/

with reference to

forum state

Nuclear Regulatory Commission

Interstate Commerce Commission

Federal Communications Commission

普通法, 习惯法

惯例

案例

法官法

司法权

最高法院

按照, 根据, 与……一致

成文法

国会法

诉讼时效

巡回法院

关于(根据)

审判地所在国家

核管制委员会

州际商业委员会

联邦电讯委员会

Notes

1. common law system

普通法体系。普通法体系是以英国中世纪至资本主义时期的法, 特别是以普通法为基础和传统而发展起来的各国和地区法的总称, 故称为普通法体系、英国法体系, 亦称英美法体系, 由于它以判例法为法的主要表现形式, 所以也称为判例法体系。普通法体系的渊源主要