21世纪立体化高等院校规划教材·英语系列

# 法律英语读写教程

刘艳萍　张　清　主　编
田力男　副主编

English

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## 内容简介

《法律英语读写教程》主要通过原汁原味的读写材料来介绍英美的法律体系，希望学习者通过学习英美的原文材料，了解英美法律制度体系，掌握纯正、地道的法律英语读与写的技巧。本书包括6个部分：Lead-in，Text A & Text B，Legal Language，Legal Writing，Case Study，Legal Maxims，For Fun。本书编写具有以下特点：在内容上，本书以普通法系的法律制度、部门法及案例等基础课程内容为核心，按每周2—4课时的学习容量来选材。在形式上，本书设计了主题导入、阅读课文、法律语言、法律写作、案例学习、法律格言以及幽默的环节。

本书旨在强化和扩展学习者法律英语读写及交际能力，力图覆盖不同内容，满足不同层次学习者，适合各种不同水平的学习者使用。

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# 前言

随着与世界各国交往日益密切，中国对法律英语人才的需求不断增加。法律英语作为语言学和法学相交融的一门交叉学科，在国际化日益凸显的情形下，显得尤为重要。然而，英语水平高未必能满足目前国际经济、贸易往来对人才的需求，因为法律英语不是法律加英语的简单组合，法律英语对以英语为母语的人来说也是一门新的语言，而对母语为非英语的人来说，学习法律英语难度就更大了。为满足日益增长的法律英语人才的需求，越来越多的高等院校法律专业和英语专业开设了法律英语课程作为专业必修课或选修课。目前法律英语人才无论从数量还是质量上都与社会需求存在一定的差距，特别是对法律读写的能力要求很高。

另外，虽然目前市场上已有一些法律英语教材，但法律英语听说读写方面的系列教材却寥寥无几。在全球化时代的今天，为了满足高端法律英语人才的需要，解决教材方面的不足，我们以中国政法大学外国语学院具有英语和法学双专业背景和多年从事法律英语教学的教学团队为核心，联合其他高校资深法律英语教师，编写了一套法律英语系列教程。目前，该教程的《法律英语听说教程》已在2011年由南京大学出版社出版。这两套教材各单元学习主题相同，内容相当，可配套使用。本套系列教程适合高等院校本科、硕士研究生和博士研究生、实务部门及其他法律英语爱好者学习法律英语、全面提高听说读写能力。

本书结构如下：

**Lead-in**

主题简介，以便读者迅速了解主题的相关内容。

**Part Ⅰ　Text A & Text B**

阅读材料，包括A和B两篇阅读文章，A篇为主要阅读材料，供精读使用；B篇为相关重要案例，是对A篇文章的补充，可做泛读材料。两部分阅读材料后均有相关的Words and Expressions（词语与表达）、Notes（注释）、Practices（练习）。词语与表达主要包括法律语境下常用的词语和表达，强化重点法律术语；注释对课文难点和重点进行了解释，便于学习者理解；练习设计了多样的形式，如：回答问题、判断正误、填空等，旨在加深对阅读材料内容的理解以及法律表达的应用。

**Part Ⅱ　Legal Language**

法律语言介绍，包括法律语言特点、分类及重点法律词汇与表达的使用。该模块设计了3个部分，包括介绍、范例及练习。

**Part Ⅲ Legal Writing**

法律写作:包括法律写作特点、分类及常见法律写作应用。该模块设计了3个部分,包括介绍、范例与练习。

**Part Ⅳ Case Study**

相关主题的案例学习与分析,通过案例分析,掌握主题精华。

**Part Ⅴ Legal Maxims**

法律格言,包括与法律相关的名家名言、民谚等。

**Part Ⅵ For Fun**

幽默,涉及法律及从业中的故事等。

**本书编写人员及分工**(按姓氏笔画):

马静:Unit 10、Unit 11;王立平:Unit 1;田力男:Legal Writing;刘华:Unit 13;刘艳萍 Unit 5、Unit 12;李妍: Unit 7、Unit 16;李昊:Unit 14;张美常:Unit 4;张鲁平:Unit 8;赵琪:Unit 9;胡晋华:Unit 2、Unit 3;徐新燕 Unit 6、Unit 15; 曾娟:Legal Writing;魏蘅:Legal Language。

对于书中的不当和疏漏之处,敬请同仁和读者指正。

编 者

2013年11月

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# Contents

# *Unit 1*

# Legal System

## Lead-in

The legal systems of the world today are generally based on one of three basic systems: civil law, common law and religious law, or combinations of these. However, the legal system of each country is shaped by its unique history and so incorporates individual variations.

## Part Ⅰ Reading

Text A

### Common Law and Civil Law

**Common law** (also known as **case law** or **precedent**) is the law developed by judges through decisions of courts and similar tribunals (as opposed to legislative statutes or executive branch action).

A "common law system" is a legal system that gives great precedential weight to common law, on the principle that it is unfair to treat similar facts differently on different occasions. The body of precedent is called "common law" and it binds future decisions. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as *stare decisis*). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called "a matter of first impression"), judges have the authority and duty to make law by creating precedent. Thereafter, the new decision becomes precedent and will bind future courts.

In 1154, Henry Ⅱ became the first Plantagenet king. Among many achievements, Henry institutionalized common law by creating a unified system of law "common" to the country through incorporating and elevating local custom to the national, ending local control and peculiarities,

eliminating arbitrary remedies and reinstating a jury system—citizens sworn on oath to investigate reliable criminal accusations and civil claims. The jury reached its verdict through evaluating common local knowledge, not necessarily through the presentation of evidence, a distinguishing factor from today's civil and criminal court systems.

Henry Ⅱ developed the practice of sending judges from his own central court to hear the various disputes throughout the country. His judges would resolve disputes on an *ad hoc* basis according to what they interpreted the customs to be. The king's judges would then return to London and often discuss their cases and the decisions they made with the other judges. These decisions would be recorded and filed. In time, a rule, known as *stare decisis* (also commonly known as "precedent") developed, whereby a judge would be bound to follow the decision of an earlier judge; he was required to adopt the earlier judge's interpretation of the law and apply the same principles promulgated by that earlier judge if the two cases had similar facts to one another. Once judges began to regard each other's decisions to be binding precedent, the pre-Norman system of local customs and law varying in each locality was replaced by a system that was (at least in theory, though not always in practice) common throughout the whole country, hence the name "common law."



**Civil law** (or **civilian law**) is, sometimes referred to as neo-Roman law, Romano-Germanic law or Continental law, a legal system originating in Western Europe, intellectualized within the framework of late Roman law, and whose most prevalent feature is that its core principles are codified into a referable system which serves as the primary source of law. This can be contrasted with common law systems whose intellectual framework comes from judge-made decisional law which gives precedential authority to prior court decisions on the principle that it is unfair to treat similar facts differently on different occasions (doctrine of judicial precedent).

Historically, it is the group of legal ideas and systems ultimately derived from the Code of Justinian, but heavily overlaid by Germanic, canon-law, feudal, and local practices, as well as doctrinal strains such as natural law, codification, and legislative positivism.

Conceptually, civil law proceeds from abstractions, formulates general principles, and distinguishes substantive rules from procedural rules. It holds case law to be secondary and subordinate to statutory law, and the court system is usually inquisitorial, unbound by precedent, and composed of specially trained judicial officers with a limited authority to interpret law. Juries separate from the judges are not used, although in some cases, benches may be sat by lay judges alongside legally-trained career judges.

Civil law is primarily contrasted with common law, which is the legal system developed first in England, and later among English-speaking peoples of the world. Despite their differences, the two systems are quite similar from a historical point of view. Both evolved in much the same way, though at different paces. The Roman law underlying civil law developed mainly from customary law that was refined with case law and legislation. Canon law further refined court procedure. Similarly, English law, further refined by case law and legislation, developed from Norman and Anglo-Saxon customary law. The differences of course could be concluded that ① Roman law had

crystallised many of its principles and mechanisms in the form of the Justinian Code, which drew from case law, scholarly commentary, and senatorial statutes; and ② civilian case law has persuasive authority, not binding authority as under common law.

(791 words)

Source: http://en.wikipedia.org/wiki/Common-law; http://en.wikipedia.org/wiki/Civil_law_system

## Words and Expressions

1. common law 普通法
2. precedent *n.* ['presədənt] 先例
3. tribunal *n.* [traɪ'bjʊnl] 法庭;仲裁
4. executive *adj.* [ɪg'zekjətɪv] 行政的
5. legislative *adj.* ['ledʒɪslətɪv] 立法的
6. statute *n.* ['stætʃu:t] 成文法
7. relevant *adj.* ['reləvənt] 相关的
8. dispute *n.* [dɪ'spju:t] 争议;争端
9. *stare decisis* 先例原则
10. eliminate *vt.* [ɪ'lɪmɪneɪt] 排除;忽视
11. arbitrary *adj.* ['ɑ:bɪtrərɪ] 武断的
12. remedy *n.* ['remədɪ] 补偿;赔偿
13. verdict *n.* ['vɜ:dɪkt] (陪审团的)裁决
14. evidence *n.* ['evɪdəns] 证据
15. hear *vt.* [hɪə(r)] (法官)审理
16. *ad hoc adj.* [ˌæd'hɒk] 特别的
17. promulgate *vt.* ['prɒmlgeɪt] 公布;发表
18. framework *n.* ['freɪmwɜ:k] 构造;组织
19. Continental law 大陆法
20. prevalent *adj.* ['prevələnt] 流行的
21. codify *vt.* ['kəʊdɪfaɪ] 将……编成法典
22. source of law 法律渊源
23. overlay *vt.* ['əʊvə'leɪ] 覆盖;压倒
24. feudal *adj.* ['fju:dl] 封建的
25. natural law 自然法
26. codification *n.* [ˌkəʊdɪfɪ'keɪʃn] 法典编纂
27. legislative *adj.* ['ledʒɪslətɪv] 立法的
28. positivism *n.* ['pɑzətɪvɪzəm] 实证论
29. abstraction *n.* [æb'strækʃn] 抽象;空想
30. statutory law 成文法律
31. inquisitorial *adj.* [ɪnˌkwɪzə'tɔ:rɪəl] 究问的;刨根问底的
32. jury *n.* ['dʒʊərɪ] 陪审团
33. bench *n.* [bentʃ] 法官;法官席
34. lay judge 非职业法官
35. customary law 习惯法
36. case law 判例法
37. canon law 教会法
38. procedure *n.* [prə'si:dʒə(r)] 程序
39. principle *n.* ['prɪnsəpl] 原则;信条
40. commentary *n.* ['kɑməntrɪ] 评论
41. senatorial *adj.* [ˌsenə'tɔ:rɪəl] 参议员的

## Notes

[1] Henry Ⅱ: 亨利二世, 萨克森王朝的最后一位国王。在位期间,他进行了司法改革,其一是扩大王室法庭的管辖权,完成了英国的司法统一,普通法由此产生;其二是实行陪审团制度。

[2] Plantagenet:金雀花王朝,12—14 世纪统治英国的封建王朝。据说亨利二世的父亲安茹伯爵经常在帽子上饰以金雀花枝,故王朝的名称由此而来。

[3] Roman law:罗马法,指在罗马帝国时期从罗马城建立(公元前753年)至公元1453年东罗马帝国灭亡这一时期建立的法律体系。

[4] Code of Justinian:查士丁尼法典,指拜占庭皇帝查士丁尼一世主持下于529—565年完成的法律和法律解释的汇编。

[5] natural law:自然法,表示一种对公正或正义秩序的信念。一切自然法学说的出发点是"理性"和"人性"。

[6] canon law:教会法,又称"寺院法"、"宗规法"。在法学著作中通常专指中世纪罗马天主教的法律,是西欧中世纪的一种重要法律。

[7] Norman customary law:指1066年来自法国的诺曼人征服了不列颠之后所施行的习惯法。这是一种"不成文法",类似道德规范、习俗、族规等约定俗成的规矩。

[8] Anglo-Saxon customary law:5世纪初到法国诺曼人之前所施行的习惯法。

[9] *stare decisis*:遵循先例原则。较高级的法院在处理某一类事实确立一项法律原则后,以后该法院或同级、下级法院在处理案件中同类事实时应遵循确立的法律原则。



## Practices

**Task 1 Read the text again and answer the following questions.**

1. What is common law system?
2. What if the court finds that current dispute is fundamentally distinct from all previous cases?
3. Who created the common law system and when?
4. How did the judge decide cases in the age of Henry Ⅱ?
5. How was common law established?
6. What is civil law system?
7. How was civil law system developed?
8. What is the position of common law in civil law system?
9. What are the main differences between common law and civil law system?
10. What does *stare decisis* mean?

**Task 2 Identify whether the following statements are true(T) or false(F). Correct those that are false.**

1. The king's judges traveled the country to check on the local governments, and decide disputes following the local courts' decisions.
2. Common law was known for it was common to the whole country, as opposed to the local law.
3. Common law was established to replace the local customary law in all parts of the country and the royal judges would have a unified law adopted in the entire country, esp. deciding cases of national interest.
4. In cases where the parties disagree on what the law is, a common law court looks to past precedential decisions of relevant courts.

5. The king's judges would then return to London and often discuss their cases and the decisions they made with the other judges.
6. In time, a rule, known as *stare decisis*, developed, whereby a judge would not be bound to follow the decision of an earlier judge.
7. The Roman law underlying civil law developed mainly from customary law that was refined with case law and legislation.
8. In civil law system, the court system is usually inquisitorial, bound by precedent.
9. Despite their differences, the two systems are quite similar from a historical point of view.
10. Roman law had many of its principles and mechanisms in the form of Justinian Code, which drew from case law.

**Task 3 Fill in the blanks with proper forms of the given words and expressions.**

| | | | | |
|---|---|---|---|---|
| precedent | decision | persuasive authority | codify | judge |
| legal system | dispute | common law | statute | civil law |

1. The American _____, like the English, is methodologically mainly a case law system.
2. A _____ is the person who officially decides who is the winner of a competition.
3. Most laws of war are now _____ in international agreements.
4. Stare decisis, the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results, lies at the heart of all _____ systems.
5. Some politicians fear that agreeing to the concession would set a dangerous _____, since it might allow a whole range of changes to be introduced.
6. The _____ on whether he is innocent or guilty rests with the jury.
7. They have been trying to settle the _____ over working conditions for the last three days.
8. _____, as opposed to criminal law, is the branch of law dealing with disputes between individuals or organizations, in which compensation may be awarded to the victim.
9. When a law is on the _____ book, it has been formally approved and written down and can be used in a law court.
10. Decisions in other courts are not binding but may have _____ in that they may show a judge trends in other jurisdictions that he may choose to follow if there is no binding law on that subject in his own court.

**Task 4 Translate the following sentences.**

1. It is important to understand that common law is the older and more traditional source of law, and legislative power is simply a layer applied on top of the older common law foundation.
2. The judge was required to adopt the earlier judge's interpretation of the law and apply the same principles promulgated by that earlier judge if the two cases had similar facts to one another.
3. The decisions of a court are binding only in a particular jurisdiction, and even within a given

jurisdiction, some courts have more power than others.

4. Civil law is primarily contrasted with common law, which is the legal system developed first in England, and later among English-speaking peoples of the world.
5. The civil law takes as its major inspiration classical Roman law and in particular Justinian law, and further expounding and developments in the late Middle Ages under the influence of canon.
6. 普通法源于英格兰,由王室法院依据古老的地方习惯或公共政策等,通过“遵循先例”的司法原则,在不同时期的判例基础上发展起来。
7. 普通法中,法官有权力和义务发展以前的判例以创造新的法律。
8. 在实际工作中,普通法的应用远比所描述的复杂得多。
9. 大陆法作为世界上三大法系之一,源于罗马法,后传播到其他欧洲国家。
10. 大陆法的主要特点就是制定法典,但实际上现在的普通法中也有很多成文法规。



Text B

## Equity Law

In jurisdictions following the English common law tradition, equity is the set of legal principles that supplement strict rules of law where their application would operate harshly. In civil legal systems, broad "general clauses" allow judges to have similar leeway in applying the code.

Equity is commonly said to "mitigate the rigor of common law," allowing courts to use their discretion and apply justice in accordance with natural law. In practice, modern equity is limited by substantive and procedural rules, and English and Australian legal writers tend to focus on technical aspects of equity. There are twelve "vague ethical statements" that guide the application of equity, and an additional five can be added.

As noted below, a historical criticism of equity as it developed was that it had no fixed rules of its own, with the Lord Chancellor occasionally judging in the main according to his own conscience. The rules of equity later lost much of their flexibility, and from the 17th century onwards equity was rapidly consolidated into a system of precedents much like its common law cousin.

**History**

Equity was developed two or three hundred years after common law as a system to resolve disputes where damages are not a suitable remedy and to introduce fairness into the legal system. The distinction between "law" and "equity" is an accident of history. The law courts or "courts of law" were the courts in England that enforced the king's laws in medieval times. Here the king's judges, educated in law rather than theology, administered the universal law of the realm. This body of law evolved on the basis of previously set precedent into what is recognized as the common law of England. However, if changes were not quick enough, or if decisions by the judges were regarded

as unfair, litigants could still appeal directly to the king, who, as the sovereign, was seen as the "fount of justice" and responsible for the just treatment of his subjects. Such filings were usually phrased in terms of throwing oneself upon the king's mercy or conscience. Eventually, the king began to regularly delegate the function of resolving such petitions to the Chancellor, an important member of the king's council. The early Chancellors were often clergymen or nobles, acting as the king's confessor and thereby literally as keeper of the king's conscience. As a result of their theological and clerical training, Chancellors were well versed in the Latin and French languages as well as in classical Roman civil and canon law, which heavily influenced equity. Soon the Chancery, the Crown's secretarial department, began to resemble a judicial body and became known as the "Court of Chancery."

By the 15th century, the judicial power of Chancery was recognized. Equity, as a body of rules, varied from Chancellor to Chancellor, until the end of the 16th century. After the end of the 17th century, only lawyers were appointed to the office of Chancellor.

One area in which the Court of Chancery assumed a vital role was the enforcement of uses, a role which the rigid framework of land law could not accommodate. This role gave rise to the basic distinction between legal and equitable interests.



**Development of equity in England**

It was early provided that, in seeking to remove one who wrongfully entered another's land with force and arms, a person could allege disseisin (dispossession) and demand (pay for) a writ of entry. That writ not only gave him the written right to re-enter his own land, but it also established this right under the protection of the Crown if need be, whence its value. In 1253, to prevent judges from inventing new writs, Parliament provided that the power to issue writs would thereafter be transferred to judges only one writ at a time, in a "writ for right" package known as a form of action. However, because it was limited to enumerated writs for enumerated rights and wrongs, the writ system sometimes produced unjust results. Thus, even though the king's Bench might have jurisdiction over a case and might have the power to issue the perfect writ, the plaintiff might still not have a case if there was not a single form of action combining them. Therefore, lacking a legal remedy, the plaintiff's only option would be petitioning the king.

People started petitioning the king for relief against unfair judgments and as the number of petitioners rapidly grew, the king delegated the task of hearing petitions to the Lord Chancellor. As the early Chancellors had no formal legal training, and were not guided by precedent, their decisions were often widely diverse. However, in 1529, a lawyer, Sir Thomas More, was appointed as Chancellor, marking the beginning of a new era. After this time, all future Chancellors were lawyers, and from around 1557 onwards, records of proceedings in the Courts of Chancery were kept, leading to the development of a number of equitable doctrines. Criticisms continued, the most famous being 17th century jurist John Selden's aphorism: "Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain

measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.'"

As the law of equity developed, it began to rival and conflict with the common law. Litigants would go "jurisdiction shopping" and often would seek an equitable injunction prohibiting the enforcement of a common law court order. The penalty for disobeying an equitable "common injunction" and enforcing a common law judgment was imprisonment.

The Chief Justice of the King's Bench, Sir Edward Coke, began the practice of issuing writs of habeas corpus that required the release of people imprisoned for contempt of chancery orders.

This tension grew to an all-time high in the Earl of Oxford's case (1615), where a judgment of Chief Justice Coke was allegedly obtained by fraud. The Lord Chancellor, Lord Ellesmere, issued a common injunction out of the Chancery prohibiting the enforcement of the common law order. The two courts became locked in a stalemate, and the matter was eventually referred to the Attorney-General, Sir Francis Bacon. Sir Francis, by authority of King James I, upheld the use of the common injunction and concluded that in the event of any conflict between the common law and equity, equity would prevail. Equity's primacy in England was later enshrined in the Judicature Acts of the 1870s, which also served to fuse the courts of equity and the common law (although emphatically not the systems themselves) into one unified court system.



Once equity became a body of law rather than an arbitrary exercise of conscience, there was no reason why it needed its own courts. Consequently, the Judicature Act was established, which is the basis of the court structure in England to this date, to ensure that there would no longer be different procedures for seeking equitable and common law remedies. The Judicature Acts fused only the administration of common law and equity; there is still a body of rules of equity which is quite distinct from that of common law rules, and acts as an addition to it. Although they are implemented by the same courts, the two branches of the law are separate. Where there is conflict, equity still prevails.

(1,260 words)

Source: http://en.wikipedia.org/wiki/Equity_(law)

## Words and Expressions

1. equity *n.* ['ekwətɪ] 衡平法
2. leeway *n.* ['liːweɪ] 灵活性
3. mitigate *vt* &. *vi.* ['mɪtɪgeɪt] 缓和;缓解
4. rigor *n.* ['rɪgə] 严厉;苛刻
5. discretion *n.* [dɪ'skreʃn] 自由裁量权
6. substantive *adj.* [səb'stəntɪv] 实体的
7. procedural *adj.* [prə'siːdʒərəl] 程序的
8. damages *n.* ['dæmɪdʒz] 损害赔偿(金)
9. enforce *vt.* [ɪn'fɔːs] 实施;执行
10. litigant *n.* ['lɪtəgənt] 诉讼当事人