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Legal English

法律英语

（第五版）

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第一版编写说明

随着我国改革开放的进一步深入，特别是我国加入世界贸易组织之后，对既懂外语又熟知法律知识的高素质复合型人才的需求不断增加。为了适应这一形势要求，有着丰富英语教学经验，并具有法律教育背景的老师们共同编写了《法律英语》一书，希望通过本书能够对国家人才培养作出微薄的贡献。

本书的编写遵循语言学习和法律英语的特点，力求使之具有实用性和针对性。在选材上，以介绍法律制度和部门法为主，每个单元尽可能体现某一个部门法的主要内容，并覆盖相关法律术语。在练习编排上，以培养学生运用听说读写译等技能为基点，以法律知识为内容，全面提高学生及其他法律英语学习者的法律英语水平。练习版块包括：阅读理解、术语练习、完形填空、短文翻译、听写、补充阅读、词义辨析和讨论。

本书供法律专业研究生学生及水平相当的学习者使用。

全书共 20 个单元。编写人员分工如下：

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由于时间仓促，编者水平有限，书中若有疏漏之处，请读者指正。

编　者

2005 年 6 月

第二版修订说明

随着我国改革开放的进一步深入,特别是我国加入 WTO 之后,国家对既懂法律又懂外语的高素质复合型人才的需求不断增加。为了适应这一形势的要求,我们编写了《法律英语》一书。本书作者都具有国内外法学教育经历,多年从事本科生和研究生法律英语教学,我们希望通过《法律英语》这本书,以自己丰富的外语教学经验和法学知识为国家的人才培养作出微薄的贡献。本教材经过几年的使用受到社会的好评,于 2006 年被评为“北京市精品教材”。为更好地发挥本书的作用,更好地满足教学的需要,作者对本书进行了修订。此次修订基本保持原书特点,对部分内容进行了调整,增加了附录和答案部分,使之更加科学、实用和具有针对性。

本书的编写遵循语言学习规律,体现法律英语的特点。在选材上,以介绍世界主要法律制度和部门法为主,每一个单元尽可能体现某一个部门法的主要内容,并覆盖相关法律术语。在练习的编排上,培养学习者以运用听、说、读、写、译等基本语言技能为基点,以法律知识为内容,全面提高学习者的法律英语水平。练习部分包括:阅读理解、法律术语练习、完型填空、短文翻译、听写、补充阅读、词义辨析和讨论。

本书供法律专业硕士研究生一年级学生及水平相当的学习者使用。

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编　者

2008 年 6 月

第三版修订说明

《法律英语》一书通过经典原著介绍了英美法律体系，涵盖了法律英语的必备知识和词汇，主要供法律专业研究生和涉外法律从业人员及水平相当的学习者使用。

在全球化时代的今天，各国间的联系和往来愈加频繁，因此对既懂法律又懂外语的高素质复合型人才的需求与日俱增。法学院学生和法律专业人士学习法律英语的热情越来越高，人数越来越多，对教材的需求量不断增加，对教材的质量要求也在不断提高。为了适应这一形势的要求，我们修订出版了《法律英语》一书。

本书作者均具有国内外法学教育经历，多年从事本科生和研究生法律英语教学，我们希望通过本书，以自己丰富的外语教学经验和法学知识为国家的人才培养作出微薄的贡献。本书经过几年的广泛使用受到社会的好评，于2006年被评为“北京市精品教材”。为更好地发挥本书的作用，最大地满足教学的需要，作者再次对本书进行了修订。此次修订基本保持原书特点，对部分文字内容进行了修改、调整，使之更加完善。

本书的编写既遵循语言学习规律，又体现了法律英语的特点。在课文选材上，以介绍法律制度和部门法为主，并辅以相关法律必备知识和术语。本书练习比较丰富，包括阅读理解、法律术语练习、完型填空、短文翻译、听写、补充阅读、词义辨析和讨论等。练习的编排既注重培养学习者听、说、读、写、译等基本语言技能，又注重帮助学习者掌握相关的法律知识，从而全面提高学习者的法律英语水平。

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编　者

2010年8月

第四版修订说明

本书自2005年出版以来，作为研究生法律英语教材受到社会的广泛好评，于2006年被评为“北京市精品教材”。本书分别在2008年和2010年进行了修订，为了更好地发挥本书的作用，更好地满足教学需要，结合法律英语教学实践经验，作者决定对本书进行第三次修订（第四版）。此次修订的原则是优化内容、突出重点、强调创新思维训练。在原书特点和风格不变的基础上，重新审视课文的难易度以及练习与课文的契合度，对课文、补充阅读等材料以及部分术语练习题进行了调整、更换或补充。为了培养学生的创新思维能力，增加了以课文内容为核心的案例讨论。

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徐新燕：Unit 12，Unit 17。

由于编者水平有限，疏漏之处在所难免，敬请读者批评指正。

编　者

2015年8月

第五版修订说明

多年来,本书一直是多所高等院校的法律英语教学用书。本书的编写注重法律知识和法律英语技能两个层面的内容。本书以英美法系主要部门法为基础内容,针对其中的法律术语、习惯表达、特殊句型等进行训练,旨在培养学生具有涉外法律业务所应有的职业交际能力。为了使本书更加符合当前涉外法律人才培养的新形势和新要求,本书第五版增加了“国际仲裁”方面的内容。因篇幅所限,替换了第四版中的第十七单元“国际法”。此外,本次修订重在深入细致地查找和更正所存在的问题,对部分课文和练习进行微调和完善。

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编　者

2018 年 7 月

Contents

Unit 1 Legal Systems

Because the United States is federation, Americans are usually well aware that the law may vary from jurisdiction to jurisdiction. Politically, it is certainly true to say that each independent jurisdiction has its own independent legal system. However, in terms of legal traditions and legal methods, most of the world's legal systems belong to one of a few legal traditions. In the Western World, and in parts of the world that have been colonized or strongly influenced by the West, there are two main legal traditions or legal families—the civil law and the common law. The U.S. legal system belongs to the common law tradition (Louisiana excepted).

This note will introduce you to the origins and development of the common law and the civil law and to the main distinctions between these two systems, especially in terms of legal methods.

1. Origins of the two legal traditions and their diffusion around the world

The Common Law

The common law tradition originated in England. A new legal order was established as early as 1066 by the Norman conquest, but the common law did not exist in 1066. William the Conqueror did not abolish the local customs and the local courts. Local courts continued to apply local customs. There was no law common to the whole kingdom. The King did however establish some royal courts at Westminster. Their jurisdiction was at first very limited but eventually expanded to the point where the local courts fell into disuse. The decisions of the royal courts became the law common to the whole kingdom, the common law.

The common law has its source in previous court decisions. The main traditional source of the common law is therefore not legislation but cases. This is so true that when the common law evolved into an unfair set of rigid and formal procedural rules, the King, rather than legislate to amend the law, created a new court. When a subject thought that a common law decision led to an unfair result he (and at the time usually not she) would petition the King. There were so many petitions that the King created the court of Chancery which could grant a discretionary relief "in equity" to correct the common law. The decisions of this court gave birth to a body of law called equity which is also based on previous judicial decisions. Both law and

equity are part of what is called the common law tradition.

The British Empire brought the common law to all continents. The common law was "received" in many countries, but its reception has been most successful in countries where the European settlers became a majority and imposed their law over indigenous populations. This is the case in Australia, English Canada, New Zealand and the United States (except Louisiana where the civil law was in place before the United States gained jurisdiction.) The common law was also imposed on many other colonies but usually with some adaption to take into account the local customs. In some cases, the United States imposed parts of the common law on newly entrusted territories (e. g., the Philippines). Still today in Africa and Asia, former British colonies continue to apply the common law. Today, India is the most populous common law country.

Following the Second World War, the economic hegemony of the United States also contributed to the expansion of the common law. Contracts were drafted in common law terms and international arbitrators often applied common law principles.

A note about the common law in the United States. Because of the early independence of the United States, the common law here has evolved separately from the common law of England and of other Commonwealth countries. Commonwealth nations became independent only fairly recently, and even long after they were independent, some nations continued to allow appeals to the Judicial Committee of the Privy Council in London (some countries still allow such appeals). This has had a unifying effect on the law of these countries and still today the courts of one country will consider the decisions of the courts of another Commonwealth country as very persuasive. By contrast, only rarely, if ever, does a United States court determining a matter of domestic law invoke a decision of a foreign country's courts. It is therefore even more striking that notwithstanding years of "legal separation" the law of this country still has so much in common with the law of other common law countries.

The Civil Law

The origins of the civil law go further back. They can be traced to the Twelve Tables of the Republic of Rome (probably in the fifth century B. C.). In its origin, it is the law of the city of Rome, the law applied to a citizen (in Latin, *civis*) of Rome as opposed to the law applied to a non-citizen. The expression "civil law", in Latin *jus civilis*, literally means the law of the citizens of Rome.

After the fall of the Western Roman Empire (476 A.D.), the so-called barbarians brought their law to Rome, and although Roman law continued to apply to the Romans,

the Germanic influence grew quickly and the law became more and more a mixture of Germanic and Roman law. This would later be known as the vulgarized Roman law. This law had very little in common with the classic Roman law. Canon law, the law of the Catholic Church, was the only Western legal system that kept intact many elements of the Roman law. However, in 529-534, the Eastern Roman Emperor Justinian published the *Corpus Juris Civilis*, an articulation and reformulation of Roman law. The Justinian Code and accompanying compendia remained in force in Byzantium until and even after the fifteenth-century conquest by the Ottoman Turks.

At the end of the eleventh century, the University of Bologna started teaching Roman law, more specifically the *Corpus Juris Civilis*. This was at first a purely intellectual endeavor since Roman law was no longer the law anywhere in Western Europe. This marked the beginning of what would later be known as the resources of Roman law. Soon other Western European universities followed the Bologna's lead and after a few centuries and for reasons too complex to be considered here, the Roman law was received almost everywhere in continental Europe. It became the *jus commune* (the "common law") of continental Europe.

The Roman law actually "received" was in fact limited to what we call "private law" (property, torts, contracts, etc.). That is why civilian jurists refer to what we call private law simply as "the civil law" (persons, property and obligations).

Although most civil law countries now have a civil code, codification is in fact a fairly recent phenomenon. The first French Civil Code dates back only to 1804 and the first German Civil Code, to 1896 (in force in 1900).

The French and German Codes are the two main civil law models. Napoleon brought his Code wherever he and his armies traveled. The French model has been influential in Latin countries both in Europe and inAmerica (Central and South America, Louisiana and Quebec). It has also influenced former European countries before the Soviet occupation. German law has also been received by Japan.

2. Legal Methods—A Comparison

You must understand that a civil-law legal method course would be completely different from the course you are now taking. It is important at the beginning of your legal career that you realize that law can take different forms and play different roles in different societies and cultures. What you will be studying is not the law as it necessarily has to be but the law as it is in the United States. Here are a few

differences between the civil law and common law.

First and foremost, in common law countries, cases are usually considered to be the primary source of law. Your legal method class starts with the study of cases. In civil law countries, cases are simply not a source of law—at least in theory. The reality might well be that legislation has become extremely relevant in common law countries and that cases are becoming more and more relevant in civil law countries, but the attitudes of civilians and common lawyers toward legislation and cases differ greatly.

Civil law jurists will consider the civil code as an all encompassing document. They will interpret it generously in order to allow it to reach its goal of regulating the whole private law. The code lends itself to this kind of interpretation since its articles are usually drafted in very general and abstract terms.

On the contrary, in common law jurisdictions legislation tends to be considered as an exception to the case law. The courts therefore have a tendency to interpret legislation more restrictively. In consequence both the courts and the legislators tend to enunciate legal rules in very specific terms meant to resolve very specific problems. Generally, cases and legislation will not tend to use abstract terms or to enunciate general principles.

Civil law students will read "law doctrine" more than cases. The "doctrine" is the cumulated writings of law professors on what the law is or should be. In civil law the "doctrine" is considered to be a source of law and a highly respected one. You have to remember that the University, not the courts, reintroduced the civil law in Continental Europe. It is therefore not surprising that law professors still have an important role in defining the law. Common law professors generally do not enjoy a similar prestige within their own jurisdiction. Here the judges get most of the prestige.

Legal education differs a lot from country to country, but it is fair to say that American legal education is very original and in many respects unique. The case method or Socratic method is peculiar to this country. It must be clear to you by now that the "case" method could not have been thought of in a civil law country. In those countries (as in the case in England) law is an undergraduate degree. Legal education tends to be longer than in the United States. The teaching style is magisterial—the professor exposes the law to his or her students, who take notes and do not intervene in class.

Legal Terms

federation n. 联邦
jurisdiction n. 管辖权,管辖区
civil law n. 罗马法;民法
common law n. 普通法;习惯法;判例法
local customs n. 地方习惯
royal courts n. 王室法院
legislation n. 立法
petition v. 诉请;向……提出请求; ***n.*** 申诉;申请;[美]起诉状
equity n. 衡平法
Chancery n. [英]文秘署;衡平法院;大法官法庭
judicial a. 法院的;司法的
appeal n. & v. 上诉
Privy Council n. [英]枢密院
canon law n. 教会法
Corpus Juris Civilis n. 《国法大全》,《民法大全》
Justinian Code n. 查士丁尼法典(= ***Corpus Juris Civilis***)

Notes

1. This text is adopted from *Legal Methods* by Jane Ginsgurg.

2. William the Conqueror did not abolish the local customs and the local courts. William wanted to be seen as the successor of the previous king and not as a conqueror.

3. Equity is the name given to the set of legal principles, in jurisdictions following the English common law tradition, which supplement strict rules of law where their application would operate harshly, so as to achieve what is sometimes referred to as "natural justice." It is often confusingly contrasted with "law", which in this context refers to "statutory law" (the laws enacted by a legislature, such as the United States Congress), and "common law" (the principles established by judges when they decide cases). In modern practice, perhaps the most important distinction between law and equity is the set of remedies each offers. The most common civil remedy a court of law can award is money damages. Equity, however, enters injunctions or decrees directing someone either to act or to forbear from acting. Often this form of relief is in practical terms more valuable to a litigant.

Today, in almost all common law countries, the same court exercises both the common law and the equity jurisdictions.

4. The common law was "received" in many countries but its reception has been most successful in countries where the European settlers became a majority and imposed their law over indigenous populations.

"Reception" refers to the process by which one political entity adopts the law of another.

5. Twelve Tables.

The earliest statute or code of Roman law, framed by a commission of ten men, B. C. 450, upon the return of a commission of three who had been sent abroad to study foreign laws and institutions. The Twelve Tables consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. They formed the whole later development of Roman jurisprudence. They exist now only in fragmentary form. These laws were substantially codification, and not merely an incorporation, of the customary law of the people. There were Greek elements in them, but still they were essentially Roman.

6. In its origins, it is the law of the city of Rome, the law applied to a citizen of Rome as opposed to the law applied to a non-citizen.

In the New Testament, St. Paul, because he was a citizen of Rome, was entitled to be tried according to Roman law. In fact, according to the New Testament, Paul was even entitled to be tried in Rome in front of an imperial court.

7. Although most civil law countries now have a civil code, codification is in fact a fairly recent phenomenon.

Scotland—in many respects a civil law jurisdiction—does not have a civil code.

Exercises

I. Answer the following questions.

1. How was common law established? How was it expanded around the world?

2. What does the common law tradition include, according to the text? What are the main characteristics of case law?

3. How different is the legal system of Louisiana from the rest of the United States?

4. What does "civil law" mean? How was it established and spread in the world?

5. What is the main difference between the civil law system and the common law system?

6. What are the main source of law of the common law countries and civil law countries?

7. What different attitudes do the civil law system and the common law system hold toward legislation and case law?

8. Why do civil law students read "law doctrine" more than cases? Why is "law doctrine" considered a source of law in civil law countries and a highly respected one?

9. Who play an important role in defining the law in civil law system, the law professors or the judges? What about the common law system?

10. Can you compare the legal method employed in American legal education and the legal method used in other countries? How do you comment on the "case method" and "Socratic method"?

Ⅱ. Fill in the blanks with the legal terms given below and change the form if necessary.

jurisdiction legislation equity common law civil law

judicial petition arbitration private law canon law

1. In 1848 the state of New York enacted a code of civil procedure (drafted by David Dudley Field) that merged law and equity into one _____.

2. The concept of "inalienable rights" reflects the influence of _____ on the Declaration of Independence.

3. Veto power is one of the most important and most specific powers of the President, the power to veto _____.

4. The term "_____" is sometimes used to refer to all judicial decisions in a system where those decisions have precedential effect.

5. _____ independence was thought necessary to assure immunity from pressure from the political branches to decide cases a particular way.

6. _____ is the body of laws and regulations made by or adopted by ecclesiastical authority, for the government of the Christian organization and its members.

7. _____ is a method of dispute resolution involving one or more neutral third

parties who are chosen by or agreed to by the disputing parties, and whose decision is binding.

8. The right of the people to _____ for redress of grievances is guaranteed by the First Amendment, United States Constitution.

9. The term "_____" means all that part of the law which is administered between citizen and citizen, or which is concerned with the definition, regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person upon whom the obligation is incident are private individuals.

10. In _____ system, the idea of legislative supremacy was really one of legislative *exclusivity*—that legislation was the sole legitimate source of law. Judicial lawmaking was formally denied.

Ⅲ. Choose the proper words or expressions from the list below and fill in the blanks.

precedents research published case law previous
judge-made resolve attorney-influenced U.S. Supreme Court appointed
relevant precedent on-line interaction cases

One considerable difference that exists between common law and civil law countries is the amount of ____ 1 ____ an attorney must do. American attorneys will search to find the ____ 2 ____ relating to a statute before they can say they have thoroughly researched the problem. Without locating and reading the cases that explain the application of the statute or constitutional provision, they have not even begun their research. Modern ____ 3 ____ services have made it faster and more efficient to find cases that might be relevant, but it is still hard work.

Once ____ 4 ____ pertaining to the issue have been found, they have to be analyzed to see if they are ____ 5 ____. Or, if the attorney thinks that his or her case is different from ____ 6 ____ cases, he or she must explain why those cases and their decisions are not applicable.

In this way, case law is not only ____ 7 ____ but also "____ 8 ____" law. We can say that the common law is the law that is created daily through the ____ 9 ____ of judges and attorneys in the courtroom across the United States at all levels, from local courts to the ____ 10 ____.

All types of judges, whether ____ 11 ____ or elected, have the legal right to make

certain types of decisions. Once a judge makes a decision, that decision becomes a ____ 12 ____. Of course, that judge's decision itself was based on the ____ 13 ____ taken from previous decisions of earlier judges. In that way, every decision can serve two purposes: to ____ 14 ____ the case that the judge is currently hearing and, if the decision is ____ 15 ____, to provide other judges precedent to follow.

Ⅳ. Translate the following paragraphs into Chinese.

Calling the United States a "common law" country is misleading to the extent that it suggests that the most prevalent form of law is common law. While this might have been true at one point, it is emphatically not true today. Since the turn of the 20th century and particularly since the 1930s, there has been an "orgy of statute-making" ushering in what has been called the "Age of Statute". The "center of gravity" of the state law has also been shifted to statutes. Indeed, it is probably fair to say that the average state law in the United States has as many statutes as the average civil law country in Europe. If one multiplies that amount of statutory law by 50 states, one can see just how prevalent statutory law is in the United States.

Some statutes have replaced common law, but many more have created entirely new areas of law. On the federal level, volumes of federal taxation, social security, environmental, financial securities and banking law fill the United States Code. On the state level, numerous statutes regulating businesses, consumer rights, commercial transactions, and family relations have been enacted. Common law has not disappeared. Many areas of private law in the states—contracts, torts and property law—are governed primarily by common law with some statutory modifications. In most areas of law, however, statutes are the rule rather than the exception.

Ⅴ. Spot dictation

Common law decisions and rules are based on _____1 _____. However, all cases differ somewhat from _____2 _____. Consequently, a judge deciding a case must, to a greater or lesser degree, rely on _____3 _____ beyond what is set out in prior cases. Moreover, when a court is faced with making the *first* decision in a given area of the law—the "_____4 _____"—there is often little precedent on which to rely. This gives rise to the question: what is the ultimate source of common law rules and the nature of the judicial process in common law _____5 _____? This question has been answered differently at different times.

Today, we know that the creative component of the common law comes from judges. _____6 _____. If there is law from prior _____7 _____ to be applied, it should be applied. But whether in applying prior case law or striking out in a completely