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法学英语高级教程

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前 言

《法学英语高级教程》是根据国家教育委员会颁布的《大学英语教学大纲》中规定的“专业英语阅读课是基础英语课的继续”的精神而编写的一本法律专业英语教材。本书从提高学生阅读、理解专业英语文献能力出发，旨在用英语学习法律专业知识，帮助学生掌握运用国际通用的法学基本概念、基础理论和具体实务的英语标准表达方式。

本书涵盖宪法、民法、民事诉讼法、刑法、合同法、公司法、企业法、金融法、税法、票据法、投资法、贸易法、海商法和工业产权等诸方面内容，分13个单元，共计39课，120多篇文章。内容详实，覆盖面广，具有较强的专业性和可读性；语言由浅入深，循序渐进，难度相当于大学英语五、六级水平；课后练习难易程度适当，形式多样，具有较强的实战性和趣味性。通过每课的学习，使学生既能接触、掌握法律词汇，又能巩固、扩充语法知识，从而全面提高英语水平，可谓一举两得。

该书由美国杜克大学法学博士生导师大卫·沃伦（David Warren）教授提供大量资料，芝加哥大学英语语言文学教授谢威廉（William Shiepper）教授审定，在编辑和排版过程中得到王凤林、高原、曹萍、龙国华和霍红等同志的大力协助，在此一并表示深深的感谢。

该书由姚天冲主编，齐德富、姚丽强、姚丹姝副主编。姚丹姝、齐德富、姚丽强分别完成5万字，其余部分和参考译文由姚天冲完成。

由于时间仓促，水平有限，错误之处在所难免，恳请专家和同行及时指正，以利于本书的修订。

作 者

1999年4月3日

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UNIT 1 CONCEPTS OF LAW AND CONSTITUTION

LESSON ONE

SOME BASIC LEGAL CONCEPTS

LAW. Laws are the rules people need to agree upon if they are to live in peace together. From the earliest times, and in the most savage tribes, laws have been made to say what men may do and what they may not. People cannot obey the law, however, unless they know what it is. So one of the first marks of a civilized people is to have its laws clearly written down and known by everyone.

Nearly four thousand years ago, King Hammurabi gave a code of laws to the BABYLONIANS. Another important set of laws was the Ten Commandments, given by Moses to the Israelites. The ANCIENT ROMANS had a fine legal system, on which much of modern law is based. Today, not all countries have the same laws.

COURTS OF LAW. Courts are where cases are tried. A case may be about a criminal offence, such as stealing. Or it may be a civil offence, like a dispute between two business firms.

A court has a high seat for the judge, or magistrate, tables and seats for lawyers, and newspapermen, and seats for the public. If there is a prisoner, he stands inside a little enclosure called the dock. People who are connected with the case may be called to give evidence. They have to swear to tell the truth, and can be punished for not doing so.

CRIME. Crime usually means breaking the law in a serious way, murder (killing someone), assault (injuring someone), and stealing are crimes. A person who has committed a number of crimes is called a criminal. Parking a car in the wrong place is not a crime. It is an offence; however, the motorist can be punished for it.

When a crime has been committed, the POLICE are mainly responsible for catching the criminal. They must catch the right person. It would be wrong to punish an innocent man who has done nothing. So the police must take the man they catch to COURT and a magistrate—or a JUDGE and JURY—must decide whether he is innocent or guilty.

If he is guilty, a criminal can be sent to PRISON for a serious crime. If the crime is not serious, he can be fined (made to pay a sum of money). A criminal can also be

put on probation. He will not be punished unless he commits another crime. A probation officer is put in charge of him.

JUDGE. A judge is a lawyer who has worked for most of his life in the COURTS and knows the law thoroughly. He needs a very keen brain and must be fair to both sides.

In some countries, such as Britain and the United States, there is a JURY to help him, and he does not have to decide whether the prisoner is guilty or not. The jury settles guilt or innocence, but the judge helps them by explaining the law. He also sees that the trial is properly run, and sums up the main points before the jury decide. The judge fixes any punishment or sentence.

In civil cases (disputes that are not crimes) judges often decide the matter themselves without a jury.

JURY. A jury is a group of men and women usually twelve, who listen to a law case. They take a solemn oath to give an honest verdict or decision about what they think is the truth. They do not need to be experts in the law. The JUDGE helps them on legal points they only have to decide what happened.

The first juries in England were in Norman times. Many countries have copied this system. In Britain, until recently, all twelve jurors had to agree before a verdict was reached, but now only ten have to agree. In the United States, all twelve have to reach the same decision. Otherwise, there has to be a new trial, with different jurors.

In Australia, in civil cases, there are sometimes only four people in a jury. In Scotland, there may be as many as 5.

LAWYER. People who wish to become lawyers have to study the law for several years. Lawyers earn their living by advising people and speaking for them in the Courts. The law is too complicated for most people to understand without help. In Britain, there are two kinds of lawyers: a solicitor works mainly in his office and may speak only in the Magistrate's Court; a barrister's job is to speak in all kinds of courts. At present, only a barrister may become a judge.

In the United States, the words are attorney and counsellor, but the same lawyer may do the work of both barrister and solicitor.

JUSTICE OF THE PEACE. A justice of the Peace is also known in Britain as a magistrate. Magistrates are men and women who give up part of their time, without pay, to try cases in the local Courts and to carry out certain other duties. Usually there are two present in the court. They may deal only with smaller crimes. More serious cases must go before judge. Magistrates are not usually lawyers, but

they have one (the clerk) to help them. They also take short training courses in their duties. A few magistrates are full-time, paid lawyers.

In the United States, Justices of the Peace are local officials. In some states, they are appointed by the governor. In other states, they are elected. Their powers are similar to those of a British magistrate. In large cities the same job is done by POLICE magistrates.

POLICE. The first duty of a police force is to see that people obey the law. But the police are not only concerned with catching criminals.

They have to do such jobs as direct traffic, control crowds, find lost children, rescue people in danger, and give first aid in accidents. In many countries people often go to a policeman for help when they are in trouble.

Most policemen and policewomen wear uniforms. Those doing detective work often wear “plain” clothes, so that, criminals will not know what they are. If a policeman sees a person actually committing a crime, he can arrest him on the spot. To make an arrest at other times he must get a court order called a warrant.

The police cannot try to punish people themselves—they must take them to the courts. But in some countries, especially those ruled by a dictator, there are secret police who arrest people who protest against the government.

PRISONS. When a person has been tried, and is found guilty of a crime he may be sent to prison for a certain time. He may, however, be let out early if he behaves well. Sometimes people are put in prison while they are waiting for their trial.

Prisons used to be very harsh places where people were cruelly treated. In some countries they still are. But most civilized countries are trying to make prison a better place, where criminals can learn how to fit into an ordinary working life and live honestly when they come out. Today, there are many “open” prisons, where certain prisoners are not kept locked up in cells, but have some freedom.

Comprehension Questions:

1. According to the passage, much of the modern law is based on _____.
 - a. the laws of the Babylonians
 - b. the laws of the Israelites
 - c. the laws of the ancient Romans
 - d. none of the above
2. The person who gives the evidence in the court is called _____.
 - a. judge
 - b. lawyer
 - c. prisoner
 - d. witness

3. According to the passage, which of the following is not a crime?
 - a. Burglary.
 - b. Theft.
 - c. Swindling.
 - d. Driving over the speed limits.
4. According to the passage, in which of the following countries is there no jury system?
 - a. Britain.
 - b. China.
 - c. Canada.
 - d. The United States.
5. In which of the following countries must there be 12 jurors in a trial?
 - a. England.
 - b. The United States.
 - c. Both a and b.
 - d. Australia.
6. Who has the right to decide whether the suspect is guilty or not?
 - a. Jurors.
 - b. Judge.
 - c. Lawyer.
 - d. Both a and b.
7. According to the passage, which of the following is not true?
 - a. In Britain, only a barrister may become a judge.
 - b. In Britain, a solicitor may speak in all kinds of courts.
 - c. In Britain, a barrister may speak in all kinds of courts.
 - d. Both a and b.
8. Which of the following statements is true of the duties of the justice of the peace?
 - a. They may deal with both smaller and more serious crimes.
 - b. Apart from trying cases, they don't have any other duties.
 - c. They may deal with only smaller crimes.
 - d. They do the jobs that lawyers do.
9. Apart from catching criminals, what else shall the police do?
 - a. Direct traffic.
 - b. Punishing the criminals.
 - c. Helping people.
 - d. Both a and c.
10. In the last paragraph, the word "open" means _____.
 - a. prisoners can go out freely
 - b. the gates of the prison are not guarded
 - c. all the prisoners have some freedom
 - d. only some of the prisoners have some freedom

Supplementary Reading 1

LAW

What is law? Though we use the word “law” in everyday conversation, we use it in so many ways that there is no simple answer to the question.

The definition of law depends on how we look at its purposes or functions.

A basic purpose of law in our society is to maintain order and to resolve disputes. In this connection we must bear in mind that law is not simply a set of rules of conduct. It is also the means to impose responsibility and to enforce social justice.

Law has also been defined as a command from a superior to an inferior. The tax law fits in well with this concept of law.

Law is also a method of social control. The law brings about changes in our society and society brings about changes in the law. In this sense law is both an instrument of change and a result of changes.

Laws can be classified in many ways too. Laws are sometimes referred to as substantive or procedural. Substantive law defines rights, and procedural law establishes the procedures by which rights are protected and enforced.

Law is also frequently classified into areas of public and private law. Public law includes laws that affect the public generally. It can be further divided into constitutional law, administrative law and criminal law. Private law deals with the relationships between individuals in an organized society. It covers contract, torts and property, each of which can be subdivided into several subjects.

The phrase sources of law are used here to describe methods and procedures by which law is created and developed. American law comes from four basic sources: constitutions, legislation, judicial decisions, and administrative rules and regulations.

Judicial decisions, as part of law is a unique characteristic of American law. This concept of decided cases as a source of law is often referred to as the common law system, which must be contrasted with the civil law system developed in continental Europe. The civil law countries have codified their law so that the main source of law in those countries is to be found in the statutes rather than in the cases. Under the common law system, statutes as well as cases are sources of law.

Decide which of the following statement is true or false:

1. There are many ways to define law, but no single definition is completely satisfactory.

2. All people agree that the purpose of law is to achieve social justice.
3. Law brings about changes in society, so it is an instrument of change.
4. Tax law can be seen as a command from the ruling class to the ruled.
5. Judicial decisions are also an important source of law in France and Germany.
6. Private laws are mostly statutes.
7. Law can be classified according to their sources.
8. Common law countries have only case law.
9. Judicial decisions are an important part in the body of American law.
10. Constitutions are public law.

Supplementary Reading 2

LAWYERS

Lawyers may be divided into several types. Trial lawyer is one type. Office-practice lawyer is another. Office practice is concerned with matters such as preparing documents, advising business, or settling estates. Many office-practice lawyers never participate in a lawsuit, but leave litigation to trial lawyers. General practitioners, especially in small communities, may handle every matter that is brought to their offices. House counsels are another large group of attorneys. They are employed by business to assist in the internal operations of the business by preventing and solving legal problems.

Lawyers play important roles in society. First of all, they are advisors. A lawyer's product is advice—advice on an infinite variety of subjects. Much of the advice is not on legal matters, but may involve business decisions or family affairs. Second, lawyers are advocates for their clients. Office lawyers negotiating a contract are advocates just as trial lawyers are; their advocacy is directed at other attorneys and their clients, rather than to judges and juries. Third, Lawyers are negotiators of compromise. They seek to avoid the difficulties and expenses of litigation by finding a mutually satisfactory alternative.

To be a good advisor, advocate and negotiator, lawyers must be cultured. They must be able to appreciate the historical relevance of our fundamental freedoms and the role of law in our society. They must be keenly aware of the world in which they live, what is right about it and what is wrong, so that they can fulfil their role as instrument of change. They must be compassionate and sensitive to human problems and weaknesses, because the practice of law is a very personal matter.

Lawyers must be courageous and willing to represent unpopular causes, because the right to counsel exists as a necessity. They must be willing not only to defend such causes, but also to defend the system that requires such representation.

Decide which of the following statement is true or false:

1. House counsels usually do not participate in litigation.
2. General practitioners can also be trial lawyers.
3. Lawyers participate in litigation while attorneys only give advice.
4. Lawyers' advice is limited to legal matters.
5. Lawyers should encourage litigation because other alternatives are rarely satisfactory.
6. Defense lawyers in a criminal case defend the legal system as well as accused.
7. Lawyers must hold fast to the belief that he is defending a perfect legal system.
8. Lawyers are first of all legal scholars. Knowledge about the actual world and about human nature is of little importance.
9. Lawyers must be cultured. This means that they must have higher education.
10. As an instrument of change, lawyers mustn't think that the world in which they live is perfect.

Supplementary Reading 3

JUDGES AND JUSTICES

Since courts and litigation are the ultimate method of resolving legal disputes, the judge owes very high duties not only to the litigants but also to the state and its people. A judge should be temperate, attentive, impartial, hard working, and prompt in ascertaining the facts and applying the law. He should be courteous, civil and considerate of jurors, witnesses, and others in attendance upon the court, but should criticize and correct unprofessional conduct of attorneys.

A judge should not act in a controversy in which he or a near relative has an interest. He should not be swayed by public clamor or consideration of personal popularity, or be apprehensive of unjust criticism.

The trial judge conducts the trial. He decides questions of procedure and instructs the jury on the applicable law. If a case is tried without a jury, the judge also finds the facts.

The trial judge renders his decisions at the people's level. It is in the trial courts

that the law is made alive and its words are given meaning. Since he represents the only contact that most people have with the law, the effective function of the law must depend largely upon the character and training of the trial judge.

Judges who decide cases on appeal are called justices. Unlike the trial judges, they rarely have any contact with litigants.

The duties of a justice bring him into the area of legal scholarship. He is required to be articulate in presenting his ideas in writing and to use the written word as the primary source of his decision. Whereas the trial judge gains knowledge for his decision from direct contact with the litigants, the justice spends hours—studying briefs, the record of proceedings, and the law, before preparing and handing down his decisions.

Justices must do much more than simply decide a case—they are required to give the reasons for their decision in written form. Each decision will become precedent to some degree and will become a part of the body of law. In this sense, the justice is a lawmaker and, in deciding the case before him, must consider not only the result between the parties involved but also the total effect of his decision on society.

Decide which of the following statement is true or false:

1. Justices often question litigants and witnesses when reviewing a case.
2. Judges and justice owe a high duty not only to the parties but also to the state and its people.
3. Litigation is the best and the ultimate method to resolve legal controversies.
4. Trial judges play a role far more important than justices do.
5. Practical knowledge about people is as important to trial judges as to justices.
6. Justices should be good writers.
7. Judges should not be involved in a case in which he has a personal interest.
8. In making a decision, a judge should consider how the public would take it.
9. People have more knowledge about the trial court than they have about the reviewing courts.
10. Justices rely on the briefs, the records and the law books for making decisions.

LESSON TWO

GENERAL PRINCIPLES OF CHINESE CONSTITUTION (I)

The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants.

The socialist system is the basic system of the People's Republic of China. Sabotage of the socialist system by any organization or individual is prohibited.

All power in the People's Republic of China belongs to the people.

The organs through which the people exercise state power are the National People's Congress and the local people's congresses at different levels.

The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.

The state organs of the People's Republic of China apply the principle of democratic centralism.

The National People's Congress and the local people's congresses at different levels are instituted through democratic election. They are responsible to the people and subject to their supervision.

All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and under whose supervision they operate.

The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities, upholds and develops the relationship of equality, unity, and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

The state helps the areas inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities.

Regional autonomy is practiced in areas where people of minority nationalities