

上 篇

國際貿易法



PART

I

導 論 Introduction

第一課 Lesson 1

法律的一般性介紹 Law in General

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 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 newspaper men, 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, and 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 settle 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 15.

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 a 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.



New Words

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|-------------------------------|----------------------------|
| 1. savage tribes | 野蠻民族 |
| 2. marks <i>n.</i> | 特徵 |
| 3. code of laws | 法典 |
| 4. King Hammurabi | 漢摩拉比國王（西元前1792年至西元前1750年） |
| 5. Babylonians <i>n.</i> | 巴比倫人 |
| 6. the Ten Comandments | 基督教十誡 |
| 7. Moses <i>n.</i> | 摩西（猶太教、基督教《聖經》故事中猶太人的古代領袖） |
| 8. legal system | 法律制度；法律系統 |
| 9. case <i>n.</i> | 案件；判例 |
| 10. try <i>v.</i> | 審判 |
| 11. civil offence | 民法上的犯法行為；民事過錯 |
| 12. criminal offence | 刑法上的犯法行為；刑事犯罪 |
| 13. business firm | 商行；商號；貿易公司 |
| 14. prisoner <i>n.</i> | 犯人；囚犯 |
| 15. evidence <i>n.</i> | 證據 |
| 16. swear <i>v.</i> | 發誓 |
| 17. murder <i>n. & v.</i> | 殺人罪；謀殺罪；殺人；謀殺 |
| 18. assault <i>n.</i> | 傷害罪 |
| 19. innocent <i>a.</i> | 無罪的 |
| 20. guilty <i>a.</i> | 有罪的 |
| 21. probation officer | 監督緩刑犯的官員 |
| 22. civil cases | 民事案件 |
| 23. criminal cases | 刑事案件 |

24. oath <i>n.</i>	宣誓
25. verdict <i>n.</i>	(陪審團) 正式裁決；判決
26. Norman Times	諾曼時代
27. Justice(s) of the Peace	治安法官 (有時略寫成 JP, 在英國英語中有時也用 magistrate 表示同樣的意思)
28. first aid	急救
29. detective work	偵探工作, 偵查工作
30. plain clothes	便衣
31. plain clothes policemen	便衣員警
32. warrant <i>n.</i>	逮捕令; 逮捕證
33. prison <i>n.</i>	監獄; 牢獄 (類似的詞還有 goal、jail 和 penitentiary)
34. civilized countries	文明國家
35. civilized people	文明民族
36. cell <i>n.</i>	牢房 (尤指小牢房和單人牢房)
37. dock <i>n.</i>	(刑事法庭上的) 被告席



New Phrases and Idiomatic Expressions

1. to agree upon (on)	一致同意
2. to have sth. done	做某事; 使某件事完成
3. to be connected with	與……相聯繫
4. to give evidence	給予或提供證據
5. to be punished for doing or not doing sth.	因做某事或因不做某事而被懲罰
6. in a serious way	嚴重地
7. to commit a crime	犯罪
8. to be responsible for (doing) sth.	負責做某事
9. to be sent to prison for a crime	因犯罪被監禁
10. to be put (or placed) on probation	被處以緩刑
11. to be put in charge of sb. or sth.	被指定負責某人或某事
12. to be fair to sb.	對……人公正
13. to sum up sth.	總結某事
14. to take a solemn oath	莊嚴宣誓
15. to reach a verdict or a decision	(陪審團) 正式裁定或裁決
16. to go before a judge	出庭

17. on the spot	當場
18. to be found guilty of a crime	被判決犯了某一種罪
19. to be let out	使……釋放出獄
20. to be kept locked up in cells	被關入牢房
The jailer locked the convicts up in the cells.	監獄管理員將犯人關入牢房
21. to earn one's living	謀生



Notes

1. Law are the rules people need to agree upon if they are to live in peace together.
法律是人民為在一起平安生活需要一致同意的規則。
If they are to live in peace together.
如果他們想在一起平安地生活。
2. legal system
法律制度或法律系統，包括法的淵源、法院系統和律師界（sources of law, court system and legal profession）。
3. The jury settle guilt or innocence.
陪審團認定有罪或無罪。
4. He also sees that the trial is properly run...
此句中的「to see that」是「to see it that」的簡要表達形式，意思是「注意」，「必須保證」。
5. Lawyers earn their living by advising people and speaking for them in courts.
「律師」一詞在英美語中的表達方法是不同的。lawyer是英國英語，attorney or attorney at law（律師）是美語。



Exercises

I. Answer the following questions in English:

1. What is law?
2. What is court?
3. What is crime?
4. Is there any difference between a crime and an offence?
5. Do the judge and the jury do the same job in court?
6. How do lawyers earn their living in the West?
7. Is justice of the peace the same as magistrate in U.K.?

8. Can a police arrest people as he likes?
9. What are 'open' prisons?
10. When will a person be sent to prison?

II. Translate the following sentences into Chinese:

1. Laws are the rules that define people's rights and responsibilities towards society.
2. 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.
3. Crime usually means breaking the law in a serious way. When a crime has been committed, the police are mainly responsible for catching the criminal.
4. The jury settle guilt or innocence, but the judge helps them by explaining the law.

III. Translate the following Chinese passages into English:

1. 對「法」一詞下一個令人滿意的定義是非常困難的事。一般說來，在西方人們將「法」說成是：人們想要共同平安生活而需一致同意的規則。
2. 法院是審判民事案件和刑事案件的地方。審判民事案件的法院叫民事法院；審判刑事案件的法院叫刑事法院。
3. 一個犯了罪的人稱之為罪犯或犯人。一旦法院裁定他有罪，他有可能被收監。
4. 在審理刑事案中，陪審團的任務是裁定有罪或無罪。法官的主要任務是幫助陪審團解釋有關法律。
5. 西方律師靠向人們提供法律諮詢和在法庭上為人們辯護謀生。
6. 員警只能在犯人正在犯罪時對他逮捕。一般情況下，他必須有法院簽發的逮捕令才能進行逮捕。

IV. Translate the following English passage into Chinese:

Law is the ordering of activity; it spells out the rules of game. In different countries not only are the "rules" for business different, but the ways they are applied vary. Newton Minow, former ECC chairman, commented that in Germany, under law everything is prohibited except that which is permitted. In France, under the law everything is permitted except that which is prohibited. In the Soviet Union, everything is prohibited, including that which is permitted. And in Italy under the law everything is permitted, especially that which is prohibited.



第二課 Lesson 2

世界主要兩大法系 The Two Major Legal Systems in the World

Two major structures have guided the development of legal systems in most countries of the world. Common law is the basis of law in countries that have been at some time under British influence. Common law countries do not attempt to anticipate all areas in the application of a law by writing it to cover every foreseeable situation. Instead, cases in common law countries are decided upon the basis of tradition, common practice, and interpretation of statutes. Civil or code law countries have as their premise the writing of codes of conduct that are inclusive of all foreseeable applications of law. Codes of law are then developed for commercial, civil, and criminal applications. Precedents are important in understanding common law as it is or has been interpreted. The laws themselves are the important factor in understanding the legal environment in civil or code law countries.

Even in common law countries there are often codes of law. The Uniform Commercial Code in the United States is a good example of a code of law governing business activity. However, common law does not differentiate among civil, criminal, and commercial activities, and thus a business may be liable under any of these laws. Code law countries separate the three types of activities, but there are always areas where codes are not sufficiently specific and must be interpreted by courts. Most countries use either common or code law as the basis for their legal system, but they rely on a combination of the two in applying the legal system to actual disputes.

Perhaps the best example of how common and code law differ is in the recognition of industrial property rights. Industrial property rights include trademarks, logos, brand names, production processes, patents, even managerial know-how. In common law countries, ownership of industrial property rights comes from use; in code or civil law countries, ownership comes from registering the name or process. The implications of this difference are obvious: a company may find itself in litigation in a code law country to gain the rights to use its own names or logos, and it may not win!

There are many other ways in which code and common law systems affect the legal environment of those managers who are involved in international economic activities. Some of these are liability of the business firm for product damages, requirements for an effective

contract, defenses for noncompliance with a contract, and liability of business owners. Suffice it to say here that good legal counsel is an essential component of effective international business.



New Words

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|-------------------------------------|--------------|
| 1. civil or code law countries | 大陸法或成文法國家 |
| 2. common law countries | 普通法國家 |
| 3. precedent <i>n.</i> | 先例；判例；慣例 |
| 4. differentiate <i>v.</i> | 區別 |
| 5. industrial property rights | 智慧財產權 |
| 6. logos <i>n.</i> | 商標（智慧財產權的一種） |
| 7. patent <i>n.</i> | 專利 |
| 8. litigation <i>n.</i> | 訴訟 |
| 9. managerial know-how | 管理訣竅 |
| 10. defense (defence) <i>n.</i> | 辯護；答辯；抗辯 |
| an defence attorney | 辯護律師 |
| The accused man made
no defence. | 被告未作答辯 |
| 11. legal counsel | 法律顧問 |
| 12. code <i>n.</i> | 準則 |
| codes of conduct | 行為準則或規範 |



New Phrases and Idiomatic Expressions

- | | |
|--------------------------------------|---------------|
| 1. at some time | 有段時期 |
| 2. to decide upon | 決定 |
| 3. to have sth. as one's premise | 以某事作為某人的根據或前提 |
| 4. to use sth. as the basis for sth. | 將某事作為某事的根據 |
| 5. to be involved in sth. | 捲入某事 |
| 6. Suffice it to say that... | 只要說……就夠了 |



Notes

- Common law countries do not attempt to anticipate all areas in the application of a law by writing it to cover every foreseeable situation.

普通法國家不打算預先考慮法律運用的所有領域，以書面形式將所有可預見的情況包括進去。