

工商管理外语阅读教程系列丛书

Business Administration Foreign Languages Series

总策划 李桂山



# 国际商法 英语阅读

Selected

Readings

in International Business Law

编著 许致军

主审 朱艳艳



北京航空航天大学出版社

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# 前 言

《工商管理外语阅读教程系列丛书》是天津理工大学国际工商学院的教师们在经过中外合作办学的教学实践和经验总结后编写出的一套外语阅读教材。

本套丛书所选的国外原版阅读文章,涵盖了工商管理专业核心课程的重要领域,反映了当前许多国外工商管理学科最前沿的知识信息。专业语言的语料具有原汁原味的真实性,它能使专业英语技能在将来的工作中具有实用性。借助本套丛书,读者们能够跟踪了解工商管理科学发展的最新动态。

本套丛书中的每一本都给出了该专业学生应掌握的核心理论知识。为使学生们所学的专业领域中的语言知识得到应用、巩固、扩展和提高,课文后均配有大量的练习。

《工商管理外语阅读教程系列丛书》包括:1) 市场营销英语阅读;2) 财务会计英语阅读;3) 国际商务文化英语选读;4) 管理信息系统英语阅读;5) 战略管理英语阅读;6) 国际商法英语阅读;7) 人力资源管理英语阅读;8) 组织行为学英语阅读;9) 物流管理日语阅读。

本套丛书可作为工商管理专业学生的专业英语阅读教材。对于那些接受短期培训的企业管理者、MBA 学员和教师来说,这套丛书将会更有参考价值。我们希望这套丛书的出版,能进一步促进工商管理专业教学的推广和普及。

我们在此要感谢许多人,他们在本套丛书的编写过程中给予了我们极大的鼓舞和帮助。

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我们还要感谢工商管理学科的同仁们给予我们的热情指导和帮助,他们是李健教授、张忠明教授、魏津瑜博士等。

天津理工大学国际工商学院

2004 年 2 月

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# **PART I**

## **THE LEGAL ENVIRONMENT OF BUSINESS**





# Chapter 1

## Nature and Sources of Law



### **Soldano v. O'Daniels**

California Court of Appeal, 190 Cal. Rptr. 310 (1983)

On August 9, 1977, Villanueva pulled a gun and threatened the life of Soldano at Happy Jack's Saloon. A patron<sup>1</sup> of Happy Jack's ran across the street to the Circle Inn and informed the bartender<sup>2</sup> of the threat, asking the bartender either to call the police or allow him to use the phone to call the police. The bartender refused both requests. Soon thereafter, Villanueva shot Soldano to death. The plaintiff in this wrongful death action is Soldano's child. Defendants are the bartender and his employer. The trial judge dismissed the claim upon defendants' motion for summary judgment. Plaintiff appealed.

**Decision:** "Does a business establishment<sup>3</sup> incur liability for wrongful death if it denies use of its telephone to a good samaritan<sup>4</sup> who explains an emergency situation occurring without and wishes to call the police?" The court of appeals answered "yes" to this narrowly-framed question and therefore reversed the trial court's grant of summary judgment to the defendants.

Although it has been criticized, the general rule is that citizens have no legal duty to help their fellow man. However, for public policy reasons the courts have created various exceptions to the general rule. For example, where special relationships exist (*e.g.*, parent-child, psychiatrist-patient, common carrier-passenger), some courts have created a "duty to rescue". Although the traditional exceptions do not apply here, public policy interests in crime prevention support creation of a new, limited exception to the "no duty" rule.

## Chapter 1 Nature and Sources of Law

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The court stressed that it was not creating a duty to aid another, but merely a duty not to interfere with another's attempt to render<sup>5</sup> aid in these narrow circumstances.



### NOTES

1. **patron**: a person who uses a particular shop, hotel, etc, esp. regularly 顾客  
e. g. a special offer for our regular patrons 为我们老主顾而做的特别贡献
2. **bartender**: barman, a man who serves drinks in a bar 酒吧间男服务员, 男招待员
3. **establishment**: (a group of people that form) a business organization 商业组织, 商社, 公司  
e. g. These two hotels are both excellent establishments. 这两家旅馆都是出色的商业机构。
4. **good samaritan**: (from a story told by Jesus) a person who gives kind and unselfish help to someone in need 乐善好施的人(出自耶稣所述的一则故事)
5. **render**: to give or perform 给予  
e. g. render payment 付工资



### LAW CONCEPTS

**Plaintiff**: *n.* the person who starts a lawsuit by serving or filing a complaint. 原告

**Defendant**: *n.*

1. the person against whom a lawsuit is brought. 被告
2. 刑事被告

**Trial**: *n.* the procedure by which evidence is presented in court under the supervision of a judge and the ultimate factual issues in a case are decided. 审判

**Trial judge**: 承审法官, 初审法官

**Claim**: *n.*

1. an assertion that one is entitled to something. 请求权, 诉讼请求
2. an apparent or actual right to receive something by way of a lawsuit. 通过

诉讼取得利益的权利,索赔

e. g. The person injured in the automobile accident has a claim against the negligent driver. 在车祸中受伤的那个人向那位疏忽大意的司机索赔。

### 3. 债权

**Dismiss; v.** (of a judge) to stop (a court case). 驳回,拒绝受理

e. g. The judge dismissed all the charges (against Smith), saying, "Case dismissed". 法官驳回(对史密斯的)种种指控,说道:"本案不予受理!"

dismiss a motion 驳回诉讼请求

**Motion; n.** an application to a court for an order, made while a case is pending.

Motions may be made orally or in writing depending upon the circumstances.  
申请

**Summary judgment;** judgment entered without a full trial because the evidence (or lack of evidence) brought out in pretrial discovery makes it clear which side must prevail as a matter of law. 独任审判,即席审判

### Appeal:

**n.** the process by which one obtains review of a judicial decision by a higher authority within the administrative agency. 上诉

e. g. The case is on appeal. 这个案子在进行上诉。

**v.** to seek or pursue review by a higher authority. 上诉

e. g. If we lose, we will appeal. 如果我们败诉的话,我们就会上诉。

**Incur liability;** 负担债务

**Liability; n.**

1. legal responsibility for a crime (criminal liability) or, more commonly, for a tort or breach of contract (civil liability). 责任

2. the sum that one might be or has been ordered to pay in damages or fines because of such responsibility. 赔偿责任

**Obligation; n.** a legal requirement that one performs or refrains from performing some act, or the act that one is required to perform. 法律上的义务,责任,债

**United States Court of Appeals;** 美国联邦上诉法院

**Reverse; v.** (of an appellate court) to nullify the judgment of a lower court in a case on appeal because of some ERROR in the court below. Sometimes a

## Chapter 1 Nature and Sources of Law

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reversal disposes of the entire case; in other situation it requires further proceedings on REMAND. 上诉法院撤销(判决)或驳回下级法院的(裁定)

**Trial court:** 初审法院

**Grant:**

- v. 1. broadly, to transfer or bestow property or a right of any kind. 让与; 转移; 授给  
e. g. The Fifth Amendment grants to all property owners the right of just compensation if the government takes their property. 如果政府剥夺了产权人的财产, 第五修正案给予了他们获得公正赔偿的权力。
- 2. specially, to convey an interest in real property. 转移不动产
- n. 1. the act of granting something. 转移; 让与; 同意  
2. the thing granted. 让与物; 赠款

**Duty: n.**

- 1. a legal obligation, whether imposed by operation of law (e. g. the duty to pay one's taxes or to exercise due care so as to avoid unnecessary injury to others) or assumed voluntarily (e. g. the duty to perform a contract or repay a debt). 责任, 义务
- 2. a tax on imports or exports. 关税

**Legal duty:** 法定义务; 法律义务; 法律责任



## QUESTIONS AND PROBLEMS

- 1. If X and Y make a contract and X later refuses to go through with the deal, having no reason to do so, we say that X's conduct is a wrong but it is not a crime. Why is it not a crime?
- 2. Briefly summarize the main factors that require a nation's legal rules to be flexible and somewhat changing.
- 3. Law is defined in a variety of ways. Give three definitions of law and contrast law with justice.
- 4. Compare and contrast the following:

- a. public law and private law
- b. civil law and criminal law
- c. tort and crime
- d. felony and misdemeanor
- e. substance and procedure
- f. personal property and real property
- g. title to property and possession of property



## LEARNING THROUGH INTERNET

Try to learn more about *United States Court of Appeals* by browsing the following websites.

<http://www.fedcir.gov/>

<http://www.law.emory.edu/caselaw/>

<http://www.uscourts.gov/courtsofappeals.html>

# Chapter 2

## Court Systems, Jurisdiction, and Functions



### **Helicopteros Nacionales de Colombia v. Hall**

United States Supreme Court, 466 U.S. 408 (1984)

Petitioner<sup>1</sup> “Helicol”, a Colombian<sup>2</sup> corporation, entered into a contract to provide helicopter<sup>3</sup> transportation for Consorcio/WSH, a Peruvian<sup>4</sup> consortium<sup>5</sup> and the alter ego<sup>6</sup> of a joint venture<sup>7</sup> headquartered in Houston, Texas, during the consortium’s construction of a pipeline<sup>8</sup> in Peru. One of the helicopters crashed in Peru, killing four United States citizens. Respondents, survivors and representatives of the four decedents, filed this suit in Texas state court in Houston. At the request of Consorcio/WSH, Helicol’s chief executive officer had flown to Houston to negotiate the contract; the agreement was signed in Peru. During the years 1970—1977, Helicol also purchased helicopters, spare parts, and accessories for more than \$ 4,000,000 from a Fort Worth company. Helicol had sent prospective<sup>9</sup> pilots to Fort Worth for training and to ferry<sup>10</sup> the helicopters back to South America, and sent some management and maintenance personnel<sup>11</sup> there for technical consultation also. Helicol received into its New York and Florida bank accounts<sup>12</sup> over \$ 5,000,000 in payments from Consorcio/WSH drawn<sup>13</sup> on a Houston bank.

On the other hand, Helicol has never been authorized<sup>14</sup> to do business in Texas, and never had an agent for service of process there. Nor has it ever performed helicopter operations, sold products, solicited<sup>16</sup> business, signed contracts, based employees, recruited employees, owned property, maintained an office or records, or had shareholders<sup>17</sup> in Texas.

Helicol filed a special appearance in the trial court and moved to dismiss for lack of personal jurisdiction. The trial court denied the motion and, after a jury trial, entered a \$1,141,200 judgment against Helicol. The Texas Court of Civil Appeals reversed for lack of personal jurisdiction, but the Texas Supreme Court later reinstated<sup>18</sup> the verdict. Helicol then appealed to the U. S. Supreme Court.

**Decision:** The Supreme Court reversed, holding that Texas could not constitutionally exercise personal jurisdiction over the defendant. The Due Process Clause of the Fourteenth Amendment prohibits a state from exercising personal jurisdiction over a nonresident corporate defendant unless that defendant has “certain minimum contacts with the forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice.” Fewer contacts may be required where the lawsuit arises directly out of defendant’s contacts with the forum. But where, as here, the suit arises out of actions that occurred outside the forum (*i. e.*, a crash in Peru), personal jurisdiction can be exercised only if defendant had “continuous and systematic general business contacts” with the forum.

The Court held that purchasing helicopters in Texas and related activities did not constitute “continuous and systematic general business contacts.” Defendant had no place of business in Texas and no employees permanently located there.



### NOTES

1. **petitioner**: 请愿人; 申请人
2. **Columbian**: *adj.* 哥伦比亚人的, 哥伦比亚的
3. **helicopter**: 直升机
4. **Peruvian**: *adj.* 秘鲁人的, 秘鲁的
5. **consortium**: *n.* a combination of a number of companies, banks, business, etc, for a common purpose (公司、银行、企业等结合而成的) 财团
6. **alter ego**: *Latin (lit.)* a very close and trusted friend (拉丁; 文语) 密友; 挚友



## Chapter 2 Court Systems, Jurisdiction, and Functions

7. **joint venture**: (又称: joint adventure) (合资企业; 合资经营; 联合企业)
8. **pipeline**: *n.* (输送液体或气体的) 管道
9. **prospective**: *adj.*
1. not yet in effect; coming into operation at some future time 未来的
  2. expected; probable; intended 预期的
- e. g. The prospective Member of Parliament for our town will be introduced to the local party tonight. 本镇的国会议员候选人将于今晚被介绍给地方团体。
10. **ferry**: *v.* to carry on or as if on a ferryboat 运送
11. **personnel**: *n.* all the people employed by a company, in the armed forces, etc 全体人员
12. **account**: *n.*
1. 账目, 账户
  2. (又称 bank account) a deposit of money in a bank 银行账户
13. **draw**: to withdraw money from a fund or account 提款
14. **Authorize**: *v.*
1. to give power to 授权
- e. g. I authorized the man to act for me while I was away. 我授权那个人在我离开时代理我的职务。
2. to give permission for 批准; 允许
- e. g. I authorized the payment of this bill. 我批准支付这张账单。
15. **authorized**: 授权的; 委托的; 委任的; 核准的; 许可的; 公认的; 法定的
16. **solicit**: *v.* to ask for (money, help, a favor, etc) from 请求; 恳求; 乞求
17. **shareholder**: *n.* stockholder, an owner of shares of stock 股票持有者, 股东
18. **reinstate**: *v.* to put back (into a position formerly held) 恢复
- e. g. He was dismissed, but was later reinstated in his former job. 他被解雇了, 但后来恢复了职位。



## LAW CONCEPTS

Petition: