

法律英语轻松学

律师业务范围扩大了，国际贸易、仲裁以及为境外客户提供法律环境综合评价的咨询等涉外业务不断增加，因此对中国律师的英语水平和其他综合素质的要求越来越高。

英美侵权法

ENJOY LEARNING
ENGLISH LAW
TORT LAW

◎马福威 张本基等 编译



机械工业出版社
CHINA MACHINE PRESS



法律英语轻松学

律师业务范围扩大了，国际贸易、仲裁以及为境外客户提供法律环境综合评价的咨询等涉外业务不断增加，因此对中国律师的英语水平和其他综合素质的要求越来越高。

英美侵权法

ENJOY LEARNING
ENGLISH LAW
TORT LAW

◎马福威 张本基等 编译



 机械工业出版社
CHINA MACHINE PRESS

本书避免一般专业英语教材学习量大,面目呆板、枯燥的特点。选文一方面包含了侵权的基本概念、侵权诉讼、故意侵权、过失侵权,严格责任等侵权法的重要问题;另一方面题材不拘一格、短小生动,以便读者积少成多,灵活掌握。

每篇选文,除了侵权法知识、原理之外,另附与法律活动有关的警句、笑话等,形式活泼、有趣,使得对专业英语的学习变得轻松而简单。

图书在版编目(CIP)数据

英美侵权法/马福威,张本基编译. —北京:机械工业出版社,2004.5

(法律英语轻松学)

ISBN 7-111-14387-6

I. 英… II. ①马…②张… III. ①侵权行为—民法—英国—英语②侵权行为—民法—美国—英语
IV. H31

中国版本图书馆CIP数据核字(2004)第037717号

机械工业出版社(北京市百万庄大街22号 邮政编码100037)

责任编辑:魏小奋 版式设计:霍永明 责任校对:徐娜

封面设计:无极书装 责任印制:洪汉军

三河市宏达印刷有限公司印刷·新华书店北京发行所发行

2004年5月第1版第1次印刷

890mm×1240mmA5·8.75印张·2插页·224千字

0 001—4 000册

定价:19.80元

凡购本书,如有缺页、倒页、脱页,由本社发行部调换

本社购书热线电话(010)68993821、88379646

封面无防伪标均为盗版

出版说明

如今的律师业务范围扩大了,国际贸易、仲裁以及为境外客户提供法律环境综合评价的咨询等涉外业务不断增加,对中国律师的英语水平和其他综合素质的要求越来越高。到目前为止,全国各类律师超过十万人,但其中能从事国际性法律服务的加起来还不足五千人。法律英语成了阻碍国内律师接手涉外业务的一道槛。

寻求扩展新兴业务的律师事务所一方面广泛吸纳留学回国的法律人才,一方面鼓励所里的律师好好学习外语,尤其是法律英语。同时,为适应这样的要求,不少的法学院将法律英语开设为法学院本科生及研究生的必修课。

近年来,一些机构开始专门为律师举办法律英语培训班。这些开设的法律英语培训班有些很有针对性,不少律师对此很感兴趣,然而,报名的人却不多,原因就在于律师业务繁忙,很难抽出大块时间来学习。

经调查,市场上已有的法律英语书籍有两类,成套的教材和英文原文法律资料选集。这两类书籍,一是要求读者留出大量学习时间;二则需要教师的帮助下才能顺利学习,或者业已达到相当的法律英语水平。但事实上,法学院低年级学生,还有社会上大多数预备参加司法考试或者法律硕士考试的考生以及大批律师,他们中的不少人从没有接触过法律专业英语。然而,市场上初级法律专业英语类书籍却很缺乏,尤其集专业性、文化性、趣味性于一体的书籍更是寥寥无几。

“法律英语轻松学丛书”定位在法律专业英语,但避免一般专业英语教材学习量大,面目呆板、枯燥的特点。选择题材不拘一格、短小有趣。以便读者在阅读时间上可以零敲细打、灵活掌

握。

整个丛书的基本结构：“单元段”为基本单位。每段的选择，都是该部门法的基本概念，或者是一个有趣的案例、有关的轶事、人物介绍、事件背景、历史争论等。力求题材多样，形式活泼、有趣，内容丰富多彩。

注释部分，这部分是对单元段中重点、难点词汇注释。

一日一句，主要收入法律文化方面的信息，比如，警句、格言等。

译文，对“单元段”的中文翻译，以方便自学。

本书避免一般专业英语教材学习量大，面目呆板、枯燥的特点。既包含了相关法律，如合同法、侵权法、公司法等涉及的重要问题；另一方面选材精炼、有趣，使得读者对于法律英语的学习变得轻松有趣，很适宜业务忙、学习时间有限的法律从业人员使用。



出版说明

第一部分 概述

- | | |
|--------------------------------------|----|
| 1. What is a tort | 1 |
| 2. Torts vs. Crimes | 7 |
| 3. Tort Law and It's Goals | 12 |
| 4. The Scope and Sources of Tort Law | 17 |

第二部分 侵权诉讼

- | | |
|--|----|
| 5. The Procedural Structure of a Tort Action | 21 |
| 6. Doctrinal Structure of a Tort Action | 26 |
| 7. Tort Claim | 30 |

第三部分 故意和同意

- | | |
|---|----|
| 8. Intent | 34 |
| 9. Some Issues about Intent | 38 |
| 10. Consent | 43 |
| 11. The Three Types of Consent | 46 |
| 12. The Scope of Consent | 51 |
| 13. Evolving Liability for Intentional Injury | 55 |
| 14. Intentional Torts; Defenses | 59 |
| 15. Defense of Property | 64 |
| 16. Miscellaneous | 69 |

第四部分 侵犯人身权

17. Intentional Torts: Prima Facie Case	73
18. General Structure	77
19. Intent	82
20. The Elements and Points of Battery	85
21. The Understanding of Battery	90
22. The Elements of Assault	93
23. The Understanding of Assault	97
24. False Imprisonment	101
25. Intentional Infliction of Emotional Distress	105
26. Invasion of Privacy	110
27. Improper Use of Legal Procedure	115

第五部分 侵犯财产权

28. Trespass to Land	119
29. Nuisance	124
30. Trespass to Chattels	127
31. Conversion	131
32. Common-Law Tort Theory Applied	136
33. Interference with Business Relations	139
34. Interference with Business Relations —Details	144



35. Disparagement of Business Reputation or Property	148
36. Title&Quality	153
37. Misrepresentation	157
38. Misrepresentation——Categories	161
39. Trademark Infringement	165
40. Trade Name Infringement & Patent Infringement	169
41. Copyright Infringement	174
42. ProtecTion&fair Use	178
43. Misappropriation & Violation of Trade Secrets	182

第六部分 过失侵权

44. What is Negligence?	187
45. Elements	191
46. The Reasonable Person	195
47. Duty	199
48. Duty——Duty of Care(1)	202
49. Duty——Duty of Care (2)	205
50. Standards of Care——Some Basic Rules	209
51. Standards of Care——Possessor of Land	214
52. Standards of Care——Licensee, Trespasser and Children	219

53. Standards of Care—Other Points	223
54. Breach of Duty	227
55. Causation—The Cause in Fact (Actual Cause)	232
56. Causation—Proximate Cause	236
57. Causation—Intervening Cause	239
58. Defenses to Negligence—Contributory Negligence	243
59. Comparative Negligence and Assumption of the Risk	247
第七部分 严格责任	
60. What is Strict Liability	251
61. Elements	255
62. Liability for Animals	258
63. Liability for Ultra hazardous Activities	262
64. Workers' Compensation	266

第一部分 概述



1



What is a Tort

Torts are an integral part of our lives, believe it or not. The name itself lends nothing to understanding what they are about, but they do mean a lot to everything that happens in our lives.

Examples of a tort would be assault, battery, false imprisonment, negligence, and so on.

Jean is driving near Kelly's work site today and offers Kelly a ride. Frustrated with the pace of traffic, Jean speeds up at a traffic light but just doesn't quite squeeze through in time. A truck crashes into the side of the car breaking Kelly's arm



and leg on that side. Jean and Kelly don't have a contract. Yet Jean has caused Kelly damage. In law this is called a "tort", sometimes also referred to as "personal injury".

There are lots of cases concerning tort in our lives, which may be an action or inaction that causes an injury and thus forms the basis of a civil lawsuit. Tort cases are intended to provide compensation to the injured party and to discourage the continuation or repetition of the injury-causing behavior. A court may grant an injunction to stop the problem from continuing, and it may award the victim financial compensation for lost wages, pain and suffering, and medical costs.

Torts and personal injury claims may be brought on three different grounds:

Negligence - This occurs when a person or company fails to prevent an injury by allowing for unsafe conditions or engaging in unsafe behavior.

Intentional Wrong - This applies when the injury is the result of reckless, dangerous, or harmful behavior that the defendant recognized as such but continued anyway, resulting in injury to another.

Strict Liability - This category applies to manufacturers whose products must meet certain standards of safety.

Now, we briefly list the elements of a tort case. Since a tort is a private or civil wrong or injury (other than breach of contract) for which a court of law may provide a remedy through a lawsuit for damages (compensation). When a person violates his/her duty to others created under general (or statutory) law, a tort has been committed.

The four elements present in a typical tort lawsuit are:

(1) The existence of a legal duty owed by a person to



others —The defendant had a legal obligation to behave (or refrain from behaving) in a certain way.

(2) The breach of the duty by one person (negligence) —The defendant failed to fulfill this obligation by acting inappropriately.

(3) The breach of the duty being the “proximate cause” of damages suffered by a person —The plaintiff's injury was caused because of the defendant's legal breach of conduct.

(4) Damages incurred by a person.

Each of the four elements of a tort typically must be present to be compensated.



注释

tort n. 侵权;侵权行为

integral a. 完整的,整体的,构成整体所需要的

n. [数学]积分,完整,部分

assault n. 攻击,袭击 v. 袭击

battery n. 电池,殴打

false imprisonment 非法拘禁

negligence n. 疏忽,过失

personal injury 人身伤害

squeeze through 挤过,勉强通过

crash n. 碰撞,坠落,坠毁,撞击声,爆裂声

v. 碰撞,坠落,坠毁,(公司、政府等)破产,垮台

action or inaction 行为或不行为,作为或不作为

civil lawsuit 民事诉讼

injury n. 伤害,侮辱

compensation n. 补偿,赔偿



injunction n. 命令, 指令, [法律] 禁令(法院强制被告从事或不得从事某项行为的正式命令)

award n. 奖, 奖品 vt. 授予, 判给

strict liability 严格赔偿责任

statutory a. 法令的, 法定的

defendant n. 被告, 辩护的 a. 为自己辩护的

obligation n. 义务, 职责, 债务

proximate cause 近因

plaintiff n. 起诉人, 原告



译文

什么是侵权行为

无论你相信与否, 侵权行为确是我们生活其中的一个重要组成部分。侵权这一名称本身对理解其具体内容并无多大益处, 然而它又确实对我们生活之中的每一件事意义非凡。

侵权行为可以是对人攻击(亦译“威吓”)、殴打、非法拘禁、过失等行为。

吉恩驾车行驶于凯利的工地附近, 并让凯利搭乘。吉恩急于前行, 于是加速驶向红绿灯, 但是并未能够及时通过。这时一辆卡车撞到了吉恩的车的一侧, 撞坏了凯利位于这一侧的胳膊和腿。由此可以看出, 吉恩与凯利之间并没有什么合同关系, 然而吉恩却对凯利造成了损害。在法律上, 这种情形即被称为“侵权”, 有时也指“人身伤害”。

在我们的生活当中存在着许多种有关侵权的案例, 它们可以是以作为的或者不作为的形式造成损害, 从而成为一起民事诉讼的原由。侵权案件的处理, 即要对受害方提供补偿, 并阻止类似侵害行为的持续或再次发生。法院可以发布一项禁令以阻



止这类问题再次发生,也可判给受害方财产赔偿,以挽回其经济损失,减轻其身心痛苦,以及弥补其医疗费用。

对侵权及人身伤害事件的权利主张可以基于如下三个不同的根据:

过失——这一根据发生于一个人或某一团体在进行某种不安全状态或从事某项不安全行为时,未能阻止损害发生的情形;

故意——这一类型适用于损害是由于不计后果的、危险的、有害的行为造成,被告对此本来就已认识到,却无论如何继续这种行为,对另一方造成了损害的情形;

严格责任——这一类型适用于生产商的产品必须达到某种安全标准的情形。

下面,我们简要地列出一个侵权案件的几个要素。侵权是一种私人或民事过错或伤害行为(而不是违反合同),法院又通过诉讼以损害赔偿(补偿)的形式为其提供救济。当某一人违反了他(或她)的由普通法(或成文法)创制的对于他人的义务时,一侵权案件就产生了。

在一项典型的侵权诉讼中,共有四个要素:

- (1)存在一方对另一方的法律义务——被告有以某种形式的为(或不为)的法律义务;
- (2)一方违反了该项义务(过失)——被告由于不当行为未能履行其义务;
- (3)这种义务的违反与一方所遭受的损害是一种“近因”关系——原告的伤害是由被告的违法行为所致;
- (4)损害由一方引起。

一项典型侵权所包含的这四要素必须全部具备,才能够得以补偿。



一日一句

There can be no justice so long as rules are absolute.

——Patrick Stewart

只要有专制的规章就没有公平可言。

——帕特里克·斯图尔特



轻松一下

怕痒的脖子

一个罪犯被押上了绞架，他哀求把绞索套在腰上，千万不要系在脖子上。他说：“我脖子那儿特别怕痒，要是把绞索套在脖子上，我自己会笑死的。”



Torts vs. Crimes

Simply stated, a tort is a wrong. It is a private wrong (civil as opposed to criminal) resulting from a breach of a legal duty derived from society's expectations regarding proper and improper interpersonal conduct.

A tort is any socially unreasonable conduct, which is not contractual, for which a court will grant monetary damages or an equitable remedy to compensate an individual for his/her injury. The rights and duties involved in a tort case may arise from either statute or common law.

While, a crime is an offense against the public, and criminal law does not seek to compensate the victim. Tort includes both deliberate wrongs (intentional torts) and inadvertent or accidental wrongs (negligent torts), as well as wrongs for which the offender is held liable regardless of motivation or ability to prevent the injury (strict liability). Torts that are spe-



cifically related to business are grouped separately. Tort law is perhaps the broadest and most volatile area of civil law.

Conduct that is a tort may also be a crime. Conduct that unreasonably interferes with someone else's interest is frequently both a tort and a crime.

1. Most crimes involve socially unacceptable conduct that unreasonably interferes with another's interests, e. g. , arson, burglary, manslaughter, murder, rape, and robbery.

2. The burden of proof in a tort action (a "preponderance of the evidence") is much lighter than the state's burden in a criminal action ("beyond a reasonable doubt").

3. Because the burden of proof is much lighter in a tort action, it is possible to prevail in a tort case while the state does not succeed in its related criminal prosecution.

4. Thus, differentiating between a tort and a crime is essential.

a. A tort is any socially unreasonable conduct, which is not contractual.

b. A crime is an offense against the public and has little, if anything, to do with compensating the victim of the crime.

c. In a tort action, an injured party sues to obtain compensation for the damages that (s) he sustained as a result of the defendant's wrongful conduct.

The fundamental purpose of tort law is to compensate the injured party, not necessarily to punish the wrongdoer as in criminal law. However, punitive damages (compensation in excess of actual damages) may be awarded if the defendant's conduct was willful, malicious, or particularly repugnant.