

# 国际商法

## International Business Law

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Engl



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国家教育部新世纪网络课程建设工程项目  
商务英语系列课程教材

# 国际商法

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## 内 容 简 介

本书遵循大陆法系国家法学教学和研究的习惯,对国际商法的一些基本知识进行抽象的概括和总结,并侧重英美法中的商事法律的介绍。内容涉及国际商法的渊源、合同法、国际货物销售法、产品责任法、代理法、商事组织法、世界贸易组织和关贸总协定、知识产权法和流通票据法等。

本书的使用面广泛,可供法律、国际贸易、经济管理、财税、英语等专业三、四年级本科生或研究生作为复合型专业英语教材使用,亦可供具有一定英语基础知识,正在从事或准备从事涉外经贸的律师及有关部门人员学习参考。

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# 前 言

迈入新世纪和加入 WTO,我国正逐步地参与国际竞争,同世界接轨。随着全球经济的发展和市场化运作,英语作为国际贸易用语变得越来越重要,社会上也越来越迫切的需要既有专业知识又能熟练运用英语的人才。怎样才能有效地提高学生的实际语言运用能力,培养既有专业知识又能熟练运用英语的人才,使学生所学的知识跟上时代的节奏、符合社会经济生活的实际需求,已成为英语教育工作者的历史责任,也是日益发达的经济和社会发展的需要。

为此,我们根据各高校相关经贸专业英语的课程设置,以国际贸易的知识体系为背景,编写了这套《商务英语系列课程教材》。本系列课程教材不仅注重英语听、说、读、写、译等基本技能的训练,而且注重经贸专业知识的培养。本系列课程教材可供国际贸易、经济管理、国际金融、法律、英语专业商务英语方向的学生作为双语教材使用,亦可供具有一定英语基础的其他专业人员作为培训英语和国际贸易专业知识的教材使用。

《商务英语系列课程教材》是教育部新世纪网络课程建设工程项目成果之一,本系列教材包括《商务英语听说》、《商务英语阅读(精读本)》、《商务英语选读(泛读本)》、《商务英语写作》、《国际商务谈判》、《国际贸易实务》、《国际市场营销》、《国际支付与结算》、《国际商法》共9本。随着国际商务的发展和读者的需要,我们还将不断对这一系列教材进行补充和修改,以期形成读者欢迎的动态系列教材。本系列教材具有以下特色。

1. 内容新,专业性、可操作性强。
2. 强调专业基础,重视语言运用,各书均配有大量练习,注重全面提高学生运用商务知识和英语听、说、读、写、译的能力。
3. 设计有配套的课程软件,便于学生自主学习。操作上可灵活掌握,不仅可供在校课堂学习,还可以面向全国的网络课程的学生和在职人员自学,覆盖面广。
4. 编写者都是从事商务英语教学的一线教师,具有多年丰富的教学经验和极强的事业心和敬业精神。作者根据自身教学经验编写了配套的教师指导书和参考答案,可与同行交流,便于教师授课和辅导学生进行课后实践。如有需要者请与湖南大学商务英语系联系。电子邮件地址: [business@lingchina.org](mailto:business@lingchina.org)。

《国际商法》是《商务英语系列课程教材》之一。全书分9章展开讲解。本书遵循大陆法系国家法学教学和研究的习惯,对国际商法的一些基本知识进行抽象的概括和总结,并侧重英美法律中商事法律的介绍。内容主要涉及国际商法的渊源、合同法、国际货物销售法、产品责任法、代理法、商事组织法、世界贸易组织和关贸总协定、知识产权法和流通票据法等,以达到使读者掌握有关国际商法的基本知识,增加法律观念,为从事涉外经济贸易工作

和处理涉外经济争议打下良好的法律英语和商务英语基础的目的。结合学习本系列教材中的《国际贸易实务》和《国际支付与结算》等教材会取得更佳的效果。本书特点如下：

1. 全书用英语撰写；
2. 注重基本知识、基本理论；
3. 法律术语翻译准确、规范；
4. 配有多种题型的练习；
5. 收录了多个原汁原味的英文判例；
6. 配有高质量的多媒体教学光盘。

在本书写作过程中，向嫣红负责编写第1、2、6、7、8、9章；向辉负责第4、5章；胡志雯负责第3章。全书由向嫣红负责编写大纲、组稿和审稿。由于编著者水平有限，书中不妥之处在所难免，敬请广大读者批评指正，以便修正和提高。

作 者  
于长沙市岳麓山  
2004年9月

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## 学习指导

《国际商法》打破传统的国际商法、国际贸易法的体系，对国际商法的一些基本知识进行抽象的概括和总结，并侧重英美法中的商事法律的介绍。其内容主要涉及国际商法的渊源、合同法、国际货物销售法、产品责任法、代理法、商事组织法、世界贸易组织和关贸总协定、知识产权法和流通票据法等。

本书的使用面广泛，可供法律、国际贸易、经济管理、财税、英语等专业三、四年级本科生或研究生作为复合型专业英语教材使用，亦可供具有一定英语基础知识，正在从事或准备从事涉外经贸的律师及有关部门人员学习参考。为方便读者自主学习，本教材有配套的网络版和单机版课程光盘。而且各章后都附有生词和法律术语翻译、多种题型的练习。本书旨在帮助学习者在了解国际商法知识的同时，扩展他们的语言知识，提高语言应用能力，尤其是涉及法律语言的知识及其运用能力。本教材课时安排为48学时，具体建议如下。

1. 建议先修基础英语（大学英语四级水平）、国际贸易实务、国际支付与结算等课程。
2. 本教材各章内容相互独立，浏览中英文目录或各章导言可了解各章的主要内容，学习者可根据需要和兴趣任选一章开始学习。
3. 建议教师在课堂上进行案例分析教学、分组讨论，各组派代表做口头陈述，以提高学生的语言表达能力。
4. 建议课外学习48小时以上。在学习本教材的同时，请阅读有关国际商法的中英文版书籍，以便更全面地了解和掌握各章的相关知识和内容。

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# **Chapter One**

## **Introduction**

### **导 论**

#### **1.1 Concept of International Business Law**

##### **国际商法的概念**

International business law refers to total norms and customary practices regulating international business transactions and all kinds of relationships between business organizations across national boundaries. It puts emphasis on the business activities conducted between individuals and enterprises from different countries, especially the codes and regulations on trade and investment. International business law is linked to private international law, but different from the latter. Although private international law deals primarily with the rights and duties of individuals and nongovernmental organizations in their international affairs, yet, it does not specify the substantive rights and duties of parties in action. Whereas international business law belongs to substantive law, it specifies the rights and duties of parties in action.

Broadly speaking, the business relationship regulated by international business law is a kind of economic relationship. So it is linked to the international economic law to some extent. Generalized view of international economic law treats the business relationship regulated by international business law as part of its adjusted objects, stating that international economic law contains international business law.

In a narrow sense, international economic law is thought to be in the scope of *public international law*, which mainly deals with the rights and duties of states and intergovernmental organizations as

between themselves and does not regulate the international business relationship between general business entities.

Generally speaking, it is said that international business law not only contains some content of private international law, and also some content of public international law. In particular, it is impossible not to be concerned with public international law when dealing with business transactions.

With the increase of decisions and conventions made by UN, GATT, WTO, other international mechanisms as well as multilateral and bilateral treaties between states, their influence on parties in action of every state has been on the rise. It can be said that the dividing line among private international law, public international law, international economic law and international business law has blurred. Therefore, some jurists think it is improper or illogical to incorporate international business law into only one of the other three fields. In addition, some famous jurists in the west have put forward that international business law contains international trade law and its coverage is larger than that of the latter.

## **1.2 Sources of International Business Law**

### **国际商法的渊源**

International business law mainly has the following four sources:

- ☐ international business treaties and conventions
- ☐ international trade customs
- ☐ international business precedents
- ☐ national business laws

### **1.2.1 International business treaties and conventions**

#### **国际商事条约和公约**

Treaties are legally binding agreements on international business between two or more sovereign states. Conventions are legally binding agreements between states sponsored by international organizations, such as the United Nations.

International treaties and conventions about business and trade can be divided into the following

two categories:

- those unifying the norms of substantive law;
- those unifying the norms of the conflict of laws.

Examples are GATT (1947) and United Nations Convention on Contracts for the International Sale of Goods (CISG) (1980).

## 1.2.2 International trade customs 国际贸易惯例

A custom is a long established tradition or usage that becomes customary law if it is:

- consistently and regularly observed;
- recognized by those states observing it as a practice that they must obligatorily follow.

Examples are Incoterms (1990) and Uniform Customs and Practice for Documentary Credits (UCP 500).

## 1.2.3 International business cases 国际商事判例

International business cases include those made by international court, and business awards by some international business arbitration authorities as well as those leading cases made by some municipal courts when dealing with foreign-related disputes. All this will help and promote the formation of a unified international business law.

## 1.2.4 National business laws 各国商法

National laws of business and trade of every country is an important supplement to international business law. At present, there is no uniform code on international business so national business laws of some countries will be used to regulate international business relationship and deal with some international business disputes.

## 1.3 The Main Content of This Book 本书主要内容

Because the international business law is concerned with a wide scope, it is difficult or impossible to cover all the relevant aspects in limited teaching hours. Based on the requirements of curriculum

of business courses and teaching, this book mainly covers the following nine chapters:

- ☐ Introduction
- ☐ The Law of Contract
- ☐ The Law of International Sales
- ☐ The Law of Products Liability
- ☐ The Law of Agency
- ☐ The Law of Business Organizations
- ☐ WTO and GATT
- ☐ The Law of Intellectual Property
- ☐ The Law of Negotiable Instruments

Please note:

English is a universal language of international business transactions. And this language advantage helped and promoted the mutual intercommunion and sublimation within the Anglo-American Law System. Therefore, the status of this legal system in the field of international business law has become higher and higher as well as more and more influential internationally. That is why the author compiled this course based on the Anglo-American Law System.

## **1.4 Comparison of the Two Major Legal Systems**

### **两大主要法系的比较**

Each of the more than 190 nations in the world today has a different set of laws governing its people and its relations with the rest of the world. Whereas international law governs relations between states, institutions, and individuals across national boundaries, municipal law governs these same persons (including the private or commercial conduct of foreign states) within the boundaries of a particular state. Although it would be impossible to describe the legal system of every nation, it is possible to describe basic systems or “family-groupings”.

Comparative lawyers classify countries into legal families. The two most widely distributed families are the Romano-Germanic Civil Law and the Anglo-American Common Law.

#### **1.4.1 The development of the Civil Law System    民法法系的发展**

The Civil Law System is the oldest and most influential of the legal families. This legal system



term is derived from Roman and Germanic practice and set out in national codes. As distinguished from public law, the body of the law deals with the rights of private citizens. It is also called Romano-Germanic Family or Continental System. Its main sources are listed below, among which, the French Civil Code of 1804 and the German Civil Code of 1896 are now regarded as the very basis of the modern civil law.

### **1. *Corpus Juris Civilis***

The most significant historical event in the development of the civil law, was the compilation and codification of all Roman law done under the direction of Byzantine Emperor Justinian (A. D. 483—565). This code, known as the *Corpus Juris Civilis*, was compiled between A. D. 528 and 534. It was important because it preserved the ancient legal system in written form. The Roman law was displaced to some extent by the rules of the Germanic tribes when they overran the Western Empire. Germanic tribal law, however, recognized the principle of personal (as opposed to territorial) law so the former Roman subjects and their descendants were allowed to follow the Roman law. The medieval Roman Catholic Church also played an important role in preserving the ancient law because its Canon law, the law used in church courts, was based on Roman law.

### **2. *Jus commune***

At the beginning of the Renaissance, active study of the ancient Roman law in Western Europe led to the creation of a new civil law, one based on the Roman law, canon law, and the huge body of writings created by the glossators (who added notes — explaining its meaning) and commentators (who attempted to adapt it to the needs of their time). This was called the *jus commune*, or the law of Europe.

### **3. *Lex mercatoria***

During the same period, Europe was emerging from a long period of economic stagnation. The guilds and merchants' associations began to follow their own practices and set up their own courts. These courts worked out practical and fair rules and procedures based on the merchants' customs. Soon these same rules were being applied both in governmental and church courts, and eventually the *lex mercatoria* (law merchant) became an international body of generally accepted commercial rules that transcended national boundaries. It also proved to be more influential than even the civil law, spreading to England where the Roman law tradition was resisted by the local legal community. Today, many of the concepts contained in the law merchant are incorporated in modern commercial law codes, such as the United Nations Convention on Contracts for the International Sale of Goods.