

Twenty-first Century **English for Law**

21世纪法律英语

(下册) 第三版

董世忠 赵建 主编 ● 赵建 刘海虹 修订



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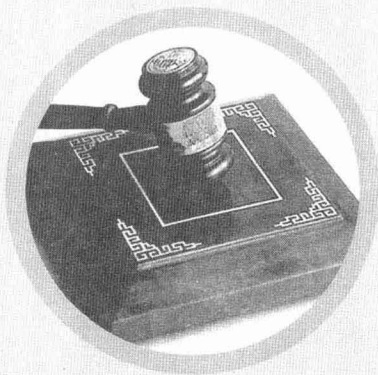
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内 容 提 要

《21 世纪法律英语》(下册)系法律专业英语教材之一,供具有大学英语三级以上水平的法律系学生及法律工作者使用。编写这套教材的宗旨是使其既具有法律内容上的系统性,又在语言上由浅入深,循序渐进,具有外语教材所必备的可操作性。

全书包含的三个单元,简明而完整地介绍了美国法律的三个部分:财产、侵权、公司。每单元有若干篇课文,并配有大量口笔头练习,帮助学生熟练掌握课文内容。此外,每单元还配有较多的案例阅读材料,以助学生深化对课文的理解。使用本教材可达到一举两得的效果:取得对美国的司法制度及主要的民事商事法律的初步了解,并掌握基本的法律英语词汇和概念的英语表述。因此,对于有志于日后从事涉外业务的法律专业的学生和法律工作者,它将是一本不可多得理想教材。

第三版前言

《法律英语》前二版是在 20 世纪 90 年代为上海紧缺人才培训工程编写的一本教材,可供具有大学三级以上英语水平的法学学生和涉外法律工作者使用。它自 1997 年初问世以来,受到了广大师生及其他使用者的欢迎。近 10 年来,随着我国改革开放的步步深入,社会对法律工作者的英语要求不断提高,大学生的总体英语水平也今非昔比。考虑到使用者要求的提高,也考虑到近年来美国法律的一些变化,亦应广大读者的要求,编者对本教材进行了比较大的修改,使其进一步完善,以期更好地满足读者的需要。

本书编者多年来从事法律英语的教学,同时兼职法律事务的翻译,既了解英语教学的普遍规律,又了解法律英语的特殊要求。第二版修订中,编者结合自己长期教学的体会和工作中积累的丰富经验,对原书进行了比较全面的修改和充实。再版的《法律英语》保持了原版的整体格局,一方面它涵盖的法律内容较为完整和系统;另一方面语言地道、难度适中,既有供课堂讲练的课文和练习,也有丰富的案例可供学生自学和阅读,如果使用得当,教师和学生密切配合,定可在较短的时间内获得法律英语的长足进步。

第二版《法律英语》中,第一单元突出介绍了美国的法律和司法制度;商业票据单元全部刷新,反映了美国商法变化的新动态;侵权法单元增加了产品责任;其他单元的课文也均有一定程度的扩展和充实,同时对各单元的先后次序安排也有适当的调整。作为泛读阅读材料的案例,内容几乎全部更新,覆盖面更广,增添的案例多为本世纪的判例,更好地反映了当前美国法律的情况和发展趋向。考虑到所选的案例在文字和内容上有一定难度,除了增加文字注释外,还在每个案例后加了点评,以画龙点睛的方式简述案件的要点,有助于学生理解法官的分析思路和判案原则。

修订工作主要由赵建执笔,刘海虹参加修订了第六和第七单元。全书由赵建最后审定。

最新版《21 世纪法律英语》对《法律英语》第二版的个别章节进行了充实和完善,并根据一些使用者的要求,将原书分为上、下两册,以方便学生携带和使用。

在本书的修订中,计美娟编辑不辞辛劳,做了大量工作,特此表示感谢。

编者

2010 年 3 月



序

谢丽娟

由上海市人民政府教育卫生办公室、市成人教育委员会、中共上海市委组织部、市人事局联合组织编写的“90年代上海紧缺人才培训工程教学系列丛书”将陆续出版。编写、出版这套丛书是实施上海紧缺人才培训工程的基础工作之一,对推动培养和造就适应上海经济建设和社会发展急需的专业技术人才必将起到积极的作用。

90年代是振兴上海、开发浦东关键的十年。上海要成为国际经济、金融、贸易中心之一,成为长江流域经济发展的“龙头”,很大程度上取决于上海能否有效地提高上海人的整体素质,能否培养和造就出一大批坚持为上海经济建设和社会发展建设,既懂经济、懂法律、懂外语,又善于经济管理,擅长国际竞争,适应社会主义市场经济新秩序的多层次专业人才。这已越来越成为广大上海人民的共同认识。

目前上海人才的状况与经济建设、社会发展的需求矛盾日趋显著。它集中表现在:社会主义市场经济的逐步确立,外向型经济的迅速发展,新兴产业的不断崛起,产业产品结构的适时调整,城市建设和管理任务的日益繁重,使原来习惯于在计划经济体制下工作的各类专业技术人才进入了一个颇感生疏的境地,使原来以面向国内市场为主的各类专业技术人才进入一个同时面向国内外市场并参与国际竞争的新天地,金融、旅游、房地产、城市建设和管理等以及许多高新技术产业又急切地呼唤一大批新的专业技术人才。这就加剧了本市专业人才总量不足、结构不合理的矛盾。此外,本市的从业人员和市民的外语水平与计算机的应用能力普遍不高,这种情况如不迅速改变,必将影响上海的经济走向世界,必将影响上海在国际经济、金融、贸易中的地位和在长江流域乃至全国经济发展中的作用。紧缺人才培训问题已引起市委、市政府的高度重视。

“机不可失,时不再来。”我们要大力加强紧缺人才的培训工作和外语、计算机的推广普及工作。鉴于此,及时编写、出版本丛书,是当前形势之急需,其



意义是现实的和深远的。诚然,要全面组织实施 90 年代上海紧缺人才培训工程,还有待于各有关方面的共同努力。

在“90 年代紧缺人才培训工程教学系列丛书”开始出版之际,感触颇多,简述代序。

1997 年 1 月



编 者 的 话

《21 世纪法律英语》(上、下册)是一套法律专业英语教材,供具有大学英语三级以上的法律专业学生以及法律工作者学习专业英语使用。

本教材有以下特点:

一、内容上的完整性:本教材的八个单元介绍了美国法律的八个重要部分:导论、民事诉讼、宪法、合同、票据、财产、侵权、公司。每个单元的课文力求用最简练的语言,勾画出一门法律的全貌。因此,每学一个单元,就会对美国的一门法律有一个总体概念,并掌握这一门法律所常用的术语和基本概念的表述。

二、使用上的可操作性:本教材的课文文字由浅入深,词汇重复率高,符合外语学习循序渐进的要求。每课配有大量口头与笔头练习,旨在帮助学生理解课文、操练基本法律词汇和用语。书后附有答案,无论对教师还是自学者都十分方便。

三、使用对象的兼容性:由于课文内容浅显,注释充分,具有一般水平的学生通过自学完全能够理解。如果能做完练习的 I、II、III 部分,则达到了巩固的效果。练习的 IV、V 部分有一定难度,供水平较高的学生使用。每单元配有的案例阅读材料,是课文中涉及的法律原则在实际中的体现,可作为泛读材料,用以加深、拓宽对课文的理解,也可作为教师的参考资料,用以解释课文。

参加本教材编写的,除主编外,还有刘海虹同志。她担任编写了财产法和侵权法两个单元。本教材在编写过程中,得到了上海市司法局教育处戴鸿儒处长、黄立群干事和复旦大学出版社张永彬同志的大力支持,特在此表示感谢。

我们热诚欢迎使用本教材的教师和学生对其中的问题加以指正。

编者

2010 年 3 月

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UNIT SIX

Property Law

Lesson One

Basic Categories of Property

Text

Each society has its own conception of the rights of the individual and the rights of the group. A nation's property law usually reflects its basic attitude to individual and group rights. The law of the United States recognizes private ownership of property.

Property has at least two meanings. First, it is a thing of value which can be owned and used in exchange. In the legal sense, however, it means a bundle of rights in something of value.

Property rights are the rights over things enforceable against all persons. By contrast, contractual rights are rights enforceable against particular persons. Property rights, however, may arise from a contract, so there is an overlap between the two systems of rights. Property rights are also distinguished from personal rights, which are the rights that a person has over his or her own body and personality.

Several classes of property are recognized by the property law. These classes generally determine which particular body of law will govern the ownership, transfer, taxation and financing of the property¹. The major categories of property are real property, personal property, and intellectual



property.

Real property (or realty) is land and things immovably attached to the land. The basic test for identifying real property is whether a tangible thing is movable in a practical sense. A house can be moved, but because it requires a great effort to do so, the law views it as immobile. Similarly, something permanently attached to a house, such as an under-the-counter dishwasher, is viewed as immobile, and is therefore real property.

Personal property, or personalty, on the other hand, is something that is both tangible and mobile. Cars, ships, shoes, suits, and watches are tangible and mobile. Thus they are personal property.

Many items change legal status with differing uses. For example, wood is realty while still part of a tree in the ground, personalty when cut into studs, and realty when nailed into the fence of a house under construction. Since tangible property can change status, the law has evolved other tests besides mobility to distinguish real and personal property in close cases. They are tests of annexation, adaptation and intention².

The annexation test is a refinement of the basic test of mobility. If something tangible is permanently attached to realty, it is considered a part of the realty. If it is not permanently attached to the realty, then it is mobile and usually considered personalty. Structures or buildings are part of the real property only if they are permanently attached to the land. Thus, a house trailer sitting on its wheels is usually considered personal property. If the removal of a thing from a structure damages the structure, the thing is probably realty. A freestanding store is personalty, but a built-in store is realty under the test of annexation.

The importance of a thing to the functioning of a structure may cause it to be treated as real property³. Thus if a thing is essential to the operation of a building, it may be real property even though it is not permanently attached. This is the test of adaptation. For example, keys to the house are considered realty under the test of adaptation.

The intention of the person attaching something to a structure may determine whether the thing is real or personal. If a landlord and a tenant agree that a built-in dishwasher installed by the tenant can be removed at the end of the lease, then, with respect to the two parties, it will be treated as personalty. Without



such an agreement, the built-in dishwasher would be treated as realty.

If a thing, like a built-in stove, that was once personal becomes real property, we call it a fixture. The fixtures attached by business tenants are called trade fixtures. They are treated not as realty, but as personalty, because the courts presume the parties intend that they are not permanently attached⁴.

Intellectual property is intangible and is often created and defined by law. Patents, trade secrets, copyrights and trademarks all fall in this category. A patent protects invention. Trade secrets are items of information such as customer lists, formulae, and even recipes, that are useful to a business and kept secret by the business. A copyright protects original works, such as books, advertisements, musical works and radio or television shows. A trademark is a name used to distinguish some goods from others.

Words & Expressions

ownership /'əʊnəʃɪp/ <i>n.</i>	所有权
personal right	人身权
distinguish ... from ... /dɪ'stɪŋɡwɪʃ/	区分……与……
taxation /tæk'seɪʃən/ <i>n.</i>	税收
finance /faɪ'næns/ <i>v.</i>	融资
realty /'ri:əltɪ/ <i>n.</i>	不动产
immovably /ɪ'mu:vəblɪ/ <i>adv.</i>	不可移动地, 固定地
tangible /'tæŋdʒəbl/ <i>adj.</i>	有形的
movable /'mu:vəbl/ <i>adj.</i>	可移动的
immobile /ɪ'məʊbaɪl/ <i>adj.</i>	不可移动的, 固定的
permanently /'pɜ:mənəntlɪ/ <i>adv.</i>	永久地
personalty /'pɜ:sənəltɪ/ <i>n.</i>	动产
legal status /'li:gəl 'stetəs/	法律地位
stud /stʌd/ <i>n.</i>	木钉子
evolve /ɪ'vɒlv/ <i>v.</i>	演变, 发展, 进化
annexation /,ænek'seɪʃən/ <i>n.</i>	(财产的)附加, 合并
adaptation /,ædæp'teɪʃən/ <i>n.</i>	适用性
refinement /rɪ'faɪnmənt/ <i>n.</i>	精细, 精细的改进



structure /'strʌktʃə/ <i>n.</i>	建筑物
a house trailer /'treɪlə/	可移动房屋,活动房屋
landlord /'ləndlɔ:d/ <i>n.</i>	房东,出租人
tenant /'tenənt/ <i>n.</i>	房客,承租人,(广义)不动产保有 权人
with respect to ...	关于……,涉及……
install /ɪn'stɔ:ɪl/ <i>vt.</i>	安装,装配
lease /li:s/ <i>n.</i>	租赁,出租,租约
fixture /'fɪkstʃə/ <i>n.</i>	(不动产的固定)附属物
remove ... from /rɪ'mu:v/	从……搬走,撤离,迁移
trade fixture	商业设施
presume /prɪ'zu:m/ <i>vt.</i>	假设,推定
view ... as	将……视为
intellectual property /,ɪntə'lektʃuəl/	知识产权
intangible /ɪn'tændʒəbl/ <i>a.</i>	无形的
patent /'pəʊtənt/ <i>n.</i>	专利,专利权
<i>vt.</i>	授予专利,申请专利
trade secret	商业秘密
trademark <i>n.</i>	商标
fall in ...	归于……类
formula /'fɔ:mjʊlə/ <i>n.</i> (<i>pl.</i> formulae /'fɔ:mjʊli:/, formulas)	配方
recipe /'resɪpi/ <i>n.</i>	食谱,秘诀,处方,烹饪法

Notes

1. These classes generally determine which particular body of law will govern the ownership, transfer, taxation and financing of the property.
财产的不同种类通常决定了由何种法律来管辖财产的所有权、转让、征税以及融资。
2. Since tangible property can change status, the law has evolved other tests besides mobility to distinguish real and personal property in close cases. They are tests of annexation, adaptation and intention.



由于有形财产的法律地位是可以改变的,法律便发展了除“可移动性测试”之外的其他标准,以便在难以确定的情况下将动产与不动产区分开来。它们是“附加性测试”、“适用性测试”和“意图测试”。

3. The importance of a thing to the functioning of a structure may cause it to be treated as real property.

一物对建筑物功能的重要性也可能使之被视为不动产。

4. They are treated not as realty, but as personalty, because the courts presume the parties intend that they are not permanently attached.

商业设施被视为动产而非不动产,因为法院推定双方当事人希望该物不是永久地固定在不动产之上。

Word Study

1. attach *v.* 附加,隶属 attach ... to ... : 把……放在……之上,将……隶属于……

We attached great importance to language study in college.

Things permanently attached to the land may be considered as realty.

2. mobile *a.* 可移动的 immobile *adj.* mobility *n.*

Realty is usually immobile property.

We may distinguish a personalty from a realty by its mobility.

3. lease *v., n.* 出租,租赁,租约

The person who leases his house to another is called a landlord.

The temporary transfer of the right of possession is referred to as a lease of the property.

Exercises

I. Tell whether each of the following statements is true or false:

1. Sometimes property and property rights mean the same thing.
2. All realty is immobile and tangible.
3. A tangible thing can either be a realty or a personalty.
4. Personalty is the property owned by individual persons.
5. Jack rents an apartment in the suburbs. He agreed with the landlord that

