

大学专业英语系列教材


法学专业 英语教程

A COURSE IN
LAW-BASED
ENGLISH

高等学校文科教材

主编 赵建 夏国佐

2

 中国人民大学出版社

高等学校文科教材
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第二册

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前 言

《大学专业英语系列教材》是根据教育部最新颁布的《大学英语教学大纲》的基本要求，为大学英语学习四年不断线而编写的一套教材。该套教材的编写得到教育部高等教育司的大力支持。

本套教材分法学专业英语、经济类专业英语、管理类专业英语、人文科学专业英语四个系列，每一系列包含三个分册，每一分册供一个学期使用。全套教材由复旦大学、中国人民大学、南京大学、对外经济贸易大学联合编写，南京大学杨治中教授担任总主编。法学专业英语教程由赵建、夏国佐教授主编；管理类专业英语教程由邱东林、华宏鸣教授主编；经济类专业英语教程由翟象俊教授主编，参加编写的有张勇先、王学文教授等；人文科学专业英语教程由谌馨荪教授主编，参加编写的有郭庆民、章安祺教授。全书由专业英语教师和公共英语教师共同编写。

本系列教材具有如下特点：

一、考虑到我国大学生学完两年后的实际水平，课文的选材、注解和练习以《大学英语教学大纲》所要求的四级为基础。

二、教材在内容和语言上贯彻循序渐进的原则。在内容上，第一册主要涉及本专业的原理和基础知识，第二、三册主要涉及本专业的历史及专家论点；其要旨在于帮助学生完成从基础英语到专业英语的过渡；在语言上，选材从难度、可读性等方面出发，贯穿了由浅入深的原则。

三、考虑到《大纲》对专业英语学时和阅读量的要求，我们采用了“主、副”课文制，对主课文从注解和练习两方面进行了重点处理，用作教师课内重点讲解的内容，副课文主要供学生课后自学，以便对主课文从语言和知识两方面起到巩固作用。

四、本教材强调理解的准确性和学生的应用能力，因此，练习针对这两方面进行了重点编写，配有理解、语言应用（包括词汇应用、语篇应用）练习，理解题强调准确理解、思考、分析、评价、讨论，每课练习中所采用的例句从知识和语言上均与主课文或已学过的课文有关。

五、为方便自学，书后提供了主课文的参考译文和练习答案。

六、全套四种教材在遵循总的编写原则的同时，又根据各自课程的知识特点自成体系。

由于本书编写仓促，不足之处在所难免，敬请读者指正是幸。

编 者

1999年6月

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Unit Three

Contracts

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Lesson One

Introduction

Text

Some idea of what the word contract means in practice can be gleaned from the cotton cases of 1973. That year saw a spectacular rise in the price of cotton on the American market¹. In the early months of the year, before planting, many cotton farmers made “forward” sales contracts for delivery to the buyer of all cotton to be harvested on their farms at a fixed price per pound, without guarantee of quantity or quality². The price fixed was roughly equal to the price on the market at that time, some 30 cents a pound. By the time the cotton was ready for delivery, however, the market price had risen to about 80 cents a pound. Many farmers refused to perform the contracts that they had made at the lower price, and scores of lawsuits resulted throughout the cotton belt. Not only were the farmers universally unsuccessful, but the decisions evoked little attention. One court put it simply, “The critical issue is whether there was an enforceable promise to buy for each promise to sell. We believe there was.”

The above example shows what a contract is all about: The farmers were bound by “contracts”, that is, by promises to sell cotton that the law would enforce. Though neither party had rendered any performance of its promise³, the courts seemed to say that they would enforce such promise because something—a promise to buy—had been exchanged for each promise to sell.

For an exchange of promises or a contract to be enforceable, however, four

requirements must be met:

1. There must be an agreement between the parties. An agreement is typically reached when one party (the offeror) makes an offer and the other party (the offeree) accepts it. Offer and acceptance are the facts by which the parties come to a “meeting of the minds.” Since nobody can actually know the inner thoughts of another, to determine whether the minds have met modern contract law follows an objective theory based on the manifestation of the parties’ mutual assent. If a promise results from fraud or duress, its validity can be challenged for a lack of meeting of minds.

2. There must be consideration to support a contractual claim. Consideration is defined as a bargained-for exchange. The exchange can be a promise exchanged for a promise, a promise exchanged for an act of performance, or a promise exchanged for a forbearance to act. In essence, this means that the promisor should receive a benefit for the promise he makes and the promisee, while gaining the benefit of the promise, should relinquish something or incur a detriment. If mutuality of consideration is not present, there is no contract.

3. There must be two or more parties who have the legal capacity to contract, which means that the parties must be of legal age and are capable of a full understanding of his rights and the nature, purpose and legal effects of the contract. Minors and insane persons are presumed to lack the requisite capacity to contract.

4. The legal purpose for which the promises are exchanged must be consistent with law and sound public policy. A contract made for an illegal purpose or against public policy is not valid.

Because of the common law tradition, the bulk of American contract law is judge-made case law and is, for the most part, uncodified. The basic rules or principles are found in the written opinions of courts. Specialized areas of contract law such as labor law and insurance law have been partially codified, but even in these areas the primary source of applicable legal principles is decided cases. The Uniform Commercial Code⁴ is an exception. It was drafted by the commissioners on Uniform State Laws for consideration by the legislatures of the various states, with the purpose to collect in one body the law that deals with all phases which may ordinarily arise in the handling of a commercial transaction from start to fin-

ish.” It is now enacted by every state and territory except Louisiana and Puerto Rico and governs contracts concerning the sale of goods.

Contracts may be classified in a variety of ways. If we classify contracts by their forms, they are either bilateral or unilateral. Whereas a bilateral contract is an exchange of promises, a unilateral contract is characterized by a promise exchanged for an act of performance.

If we classify contracts by their expression, contracts may be express, implied-in-fact, or implied-in-law (quasi-contracts). An express contract occurs when the parties state their agreement orally or in writing. When the parties manifest their agreement by conduct rather than by words, it is said to be implied-in-fact. Implied-in-law contracts, referred to as quasi-contracts, are not based on agreement and therefore are not true contracts. Rather, they are legal fictions⁵ that courts use to prevent wrongdoing and the unjust enrichment of one person at the expense of another.

From the point of view of legal effects, contracts may be valid, void, or voidable. A valid contract is one that is in all respects in accordance with the legal requirements for a contract. If a contract fails to satisfy any of the legal requirements, it is said to be void. A void contract is not a contract in the eyes of the law. For example, an illegal contract is void in the sense that there is no legal machinery to protect the bargain of the parties. A voidable contract is one in which one or more parties have the power to end the contract. A contract executed by one who is under legal age is voidable and can be disaffirmed by the minor.

When one party is entitled to relief because of breach, the contract is enforceable. If there is a defense to a contract claim that denies a party any remedy, the contract is said to be unenforceable. For example, the law requires that a contract for the sale of land be in writing; if it is oral, it is unenforceable. Other valid defenses that may render a contract claim unenforceable are mistake, fraud, misrepresentation or duress. Mistake is some unintended act, omission, or error which arises from ignorance, surprise, imposition, or misplaced confidence. A court may grant the relief of contract reformation or contract avoidance only if the mistake is a material one which shows that there is no genuine assent. If one party has been induced and injured by reliance on the other's misrepresentation of a material fact, it may rescind the contract. In the case of intentional or fraudulent

misrepresentation, the victim is given the choice of the additional remedy of a suit for dollar damages⁶. If a contract results from physical compulsion or threat (duress), it is no contract at all because the victim is a mere mechanical instrument whose action is therefore ineffective to manifest assent.

New Words

glean /glin/ <i>vt.</i>	查明, 弄清
forward <i>a.</i>	提前的
universally /ɪjuːniˈvɜːsəli/ <i>ad.</i>	普遍地
evoke /iˈvəʊk/ <i>vt.</i>	引起
offer <i>vt., n.</i>	(提出) 要约
offeror <i>n.</i>	要约人
offeree <i>n.</i>	受要约人
assent /əˈsent/ <i>vi., n.</i>	同意, 赞成
fraud <i>n.</i>	欺骗 (行为)
duress /djuəˈres/ <i>n.</i>	胁迫
consideration <i>n.</i>	对价
contractual /kənˈtræktʃuəl/ <i>a.</i>	合同 (性) 的
forbearance /fɔːˈbeərəns/ <i>n.</i>	克制
promisor <i>n.</i>	承诺人
promisee /ˌprɒmiˈsiː/ <i>n.</i>	受诺人
relinquish /riˈlɪŋkwɪʃ/ <i>vt.</i>	放弃
incur /ɪnˈkʌː/ <i>vt.</i>	遭受
detriment /ˈdetrɪmənt/ <i>n.</i>	损害, 不利
mutuality /ˌmjuːtʃuˈæliːti/ <i>n.</i>	相互性
minor <i>n.</i>	未成年人
insane <i>a.</i>	精神失常的
requisite /ˈrekwɪzɪt/ <i>a.</i>	必要的
uncodified /ˈʌnˈkɔːdɪfaɪd/ <i>a.</i>	未编成法典的
primary /ˈpraɪməri/ <i>a.</i>	基本的
commissioner /kəˈmɪʃənə/ <i>n.</i>	委员
transaction /trænˈzækʃən/ <i>n.</i>	交易
Louisiana /luːɪziˈæniə/	(美国) 路易斯安那州
Puerto Rico /ˈpwɜːtəuˈrɪkəu/	波多黎各岛 (美国的一个自由联邦)
tangible /ˈtændʒəbl/ <i>a.</i>	可触摸的; 有形的
bilateral /baɪˈlætərəl/ <i>a.</i>	双边的, 双务的

unilateral / ˌjuːniˈlætərəl/ <i>a.</i>	单边的, 单务的
express / ɪksˈpres/ <i>a.</i>	明示的
quasi-contract / ˈkwɑːziˈkɒntrækt/	准合同
enrichment / ɪnˈrɪtʃmənt/ <i>n.</i>	致富
voidable / ˈvɔɪdəbl/ <i>a.</i>	可撤销的
disaffirm / ˌdɪsəˈfɜːm/ <i>vt.</i>	拒绝履行(合同), 否认(合同)有效, 撤销
misrepresentation / ˈmɪs,reprɪzenˈteɪʃən/ <i>n.</i>	误述
imposition / ɪmpəˈzɪʃən/ <i>n.</i>	强加, 用欺骗手段强加
misplaced confidence	不当信任
reformation / ˌrefəˈmeɪʃən/ <i>n.</i>	重新订立
avoidance / əˈvɔɪdəns/ <i>n.</i>	撤销, 废止
induce / ɪnˈdjuːs/ <i>vt.</i>	引诱
rescind / rɪˈsɪnd/ <i>vt.</i>	废除, 取消
fraudulent / ˈfrɔːdjələnt/ <i>a.</i>	欺骗的
compulsion / kəmˈpʌlʃən/ <i>n.</i>	(被) 强迫

Phrases & Expressions

meeting of (the) minds	合意
public policy	公共政策, 公序良俗
at the expense of	由……付费; 以……为代价
in all respects	无论从哪一方面, 在各方面
in the eyes of the law	从法律观点看
in the sense that	在……意义上, 因为

Notes

1. That year saw a spectacular rise in the price of cotton on the American market: 那一年美国市场上的棉花价格上涨十分可观。“That year saw...”这一句型中, “see”是“目睹”、“经历”的意思。又如: The 21st century will see great changes in the way people live and work. 21世纪人们的生活和工作方式将会出现巨大变化。
2. without guarantee of quantity or quality: 没有数量和质量担保, 不论数量多少质量如何。
3. Though neither party had rendered any performance of its promise: 虽然双方均未履行各自的承诺。
4. The Uniform Commercial Code: (美国) 统一商法典, 由统一州法委员会 (National Conference of Commissioners on Uniform State Laws) 和美国法律研究所 (American

Law Institute) 草拟后经各州立法机构通过的有关商业交易的成文法。

5. legal fiction: 法律推定, 法院为解决法律争议对事实所作的推定。
6. In the case of intentional or fraudulent misrepresentation, the victim is given the choice of the additional remedy of a suit for dollar damages: 就故意或欺诈性误述而言, 受害者还可选择诉讼以取得金钱赔偿。

Word Study

1. incur *vt.* 遭受, 招致

In performing its obligations under the contract, each party will inevitably incur expenses.

2. in case of 如果发生……, 以防……

In case of fire, all the people can leave the building through the emergency exits.

A wall was built along the river in case of floods.

in the case of 就……而言

In the case of disputes about facts, the question of who will have the burden of proof is crucial.

In the case of highly intelligent animals like the seal, elementary training is easy.

Exercises

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

1. For a contract to be enforceable, one party must have rendered its performance.
2. Whether there is a meeting of the minds is determined subjectively because it is a question concerning the inner thoughts of the parties.
3. For a contract to be valid, its purpose must be consistent with law and sound public policy.
4. The Uniform Commercial Code governs all contracts.
5. An oral agreement is not enforceable.
6. In a bilateral contract, agreement is reached when the offeror makes an offer and the offeree accepts it.
7. A bilateral contract must be expressed in writing.
8. Quasi-contracts are not true contracts based on the agreement of the parties.
9. A contract between a minor and a major is a void contract.
10. An oral contract for the sale of real property is unenforceable.

II. Answer the following questions:

1. What do the cotton cases of 1973 show?

2. Explain "The critical issue is whether there was an enforceable promise to buy for each promise to sell."
3. What is the definition of contracts?
4. For a contract to be enforceable, what requirements must be met?
5. If someone is sued for breach of contract, what are the possible defenses he can use to deny that there is an agreement between him and the plaintiff?
6. Is a promise of a gift a binding promise? Why or why not?
7. Explain the concept of capacity in contract law.
8. What is the scope of application of the Uniform Commercial Code?
9. Explain the difference between voidable and void contracts by using a contract between a major and a minor as an example.
10. What are the differences between void contracts and unenforceable contracts?

III . Fill in each of the following blanks with a proper word :

1. In the cotton cases mentioned in the text, the farmers' promises were binding because an _____ promise to buy was _____ for each promise to sell.
2. In determining whether there is a _____ of minds, modern contract law follows an _____ theory based on the manifestation of the parties' mutual _____.
3. A _____ promise must be supported by _____, which is defined as a _____ exchange.
4. Minors and _____ persons are presumed to lack _____ because they are incapable of a full understanding of their rights and the nature, purpose and legal _____ of the contract.
5. The _____ of American contract law is judge-made case law and is _____.
6. Suppose Dewey had a novel idea for a safety device for elevator chairs manufactured by American. Dewey made a model of his idea and showed it to officials of American. Later, American used the safety device but refused to pay Dewey anything, claiming it had no contract with Dewey. Dewey could use the theory of _____ to recover from American, because American was unjustly _____ by his idea.
7. If Martha hands Walter a beer, and he simultaneously gives her \$ 1, then the contract is _____.
8. If Mary promises to sell her truck to Dan for \$ 2,000 and Dan promises to pay \$ 2,000 for Mary's truck, a _____ contract has been formed. If April says to Bill: I have had enough of your promises. If you paint my house by the end of the month, I promise to pay you \$ 4,000, and Bill paints April's house by the end of the month, the two have entered into a _____ contract.
9. If one comes upon a grocery stand filled with apples under a sign stating "35 cents each", picks one up and takes a bite, an _____ contract is created.

IV. Cloze:

Consideration is defined as a bargained-for _____ (1). The exchange can be a promise exchanged for a _____ (2), a promise exchanged for an _____ (3) of performance, or a promise exchanged for a _____ (4) to act. The doctrine of consideration requires that the promises or _____ (5) of both parties be legally valid. If _____ (6) of consideration is not present, there is no contract.

To have consideration, both _____ (7) parties typically will _____ (8) a legal benefit and incur a legal _____ (9). Legal benefit occurs when a party receives something which he had no _____ (10) legal right to receive. Legal detriment is _____ (11) a promise to perform or an act of performance which one had no prior legal _____ (12) to perform, or a promise _____ (13) to do something that one could _____ (14) do and had no prior legal obligation not to do.

V. Translation:

1. From English to Chinese:

Each of us lives and works in a legal environment. No doubt our greatest participation in this legal environment arises from our freedom to make contracts. Everyday we enter into numerous contracts as we purchase goods, hire the services of others, buy a house or rent an apartment, visit the dentist, register for a college course, and so on.

Among the various meanings of the word contract is its technical definition: a promise or several promises under which the law recognizes a duty to perform and for which, if breached, the law gives the aggrieved party a remedy. Realistically, a contract is a legal device to control the future through promises. By definition, a promise is a present commitment, however expressed, that something will or will not be done. Parties are allowed to create rights and duties between themselves, and the state will enforce them through legal machinery. When people make a contract, by their mutual assent they create the terms of their contract, which sets up the bounds of their liability. It is important, then, to keep two points in mind: (1) a contract contains a present undertaking or commitment concerning future conduct of the parties, and (2) the law sanctions the commitment by putting its legal machinery behind it.

2. From Chinese to English:

- (1) 要建立一个有效的合同，当事人必须有合意，而合意又是通过一方提出要约，另一方接受要约来体现的。
- (2) 有效的合同必须有对价支持各方当事人的要求。对价的定义是经过议价而达成的交换。这就是说，接受承诺的人必须放弃某些东西或承受损害，以换取合同的承诺。
- (3) 合同可以因为多种理由被认为无效，如非法，没有对价，或一方或双方没有缔约能力。有时，出于公序良俗的原因，法院也会判定一个合法的合同无效。

VI. Writing Assignment:

Write a passage discussing on what grounds a contract may be held invalid.

Lesson Two

Performance and Non-Performance

Text

When parties make a bilateral contract, they exchange promises in the expectation of a subsequent exchange of performances. Although the consideration for each party's promise is the other party's return promise, each party enters into the transaction only because of the expectation that the return promise will be performed. The principal goal of the rules applicable to the performance stage of such contracts is to protect that expectation against a possible failure of the other party to perform.

However, during the period of performance, problems may come up in a variety of ways. One of the parties may refuse to perform or may perform in an unsatisfactory manner; he may not render complete performance; he may be unable to perform because of circumstances beyond his control; or he may contend that, because of changed conditions, he should be excused from performing. It would be possible of course to leave a party who has not received the expected performance to pursue a claim for damages. But the injured party bargained for performance rather than for a lawsuit. Therefore courts have developed rules to give the injured party, in addition to any claim for damages, the right to suspend its own performance and ultimately to refuse to perform if the other party fails to perform.

In developing these rules, courts have relied on the concept of a condition, an event that must occur before performance of a contractual duty becomes due. In general, a party whose duty is conditioned on such an event is not required to perform unless the event has occurred. The non-occurrence of a condition of an obligor's duty may have two distinct effects. First, the obligor is entitled to sus-