



新编国际商务英语系列教材

新编国际商法英语教程

New International Business Law

李浚帆 梁 雁 主 编
王如利 副主编



清华大学出版社 · 北京交通大学出版社





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·北京·

内 容 简 介

本书共 10 章, 涵盖国际商法导论、合同法、商事组织法、票据法、产品责任法、代理法、反倾销法与反补贴法、竞争法、知识产权法等内容, 系统阐述了上述各个领域的重要国际条约、两大法系主要国家的重要法律规定, 以及我国的相关法律法规。全书各章 (除“国际商法导论”外) 都附有相关的真实案件和判例, 以帮助读者联系实际, 加深理解。

本书既可以用作国际贸易等专业学生的国际商法教材和相关专业教师进行双语教学的参考书, 还可以为国际商务及涉外法律等行业的人士提供帮助。

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前言

随着当今世界经济全球化的日益加深,对于许多行业,尤其是国际商务领域的从业人员来说,了解并熟悉国际通行的法律及惯例是事业成功的必要前提和重要保障。因此,对于国际商务相关专业的高校学生来说,很有必要熟练掌握相关的专业知识和英语词汇,这样才能够为将来的就业做好充分准备。为了帮助广大学生更好地完成这一任务,特编写这本《新编国际商法英语教程》,作为国际商务相关专业学生的核心专业课教材。

本书参考国际商法经典中文教材编写,内容较为全面,涵盖合同法、商事组织法、票据法等重要内容。本书将专业知识与英语能力紧密地结合起来,旨在帮助读者在熟悉国际商法基础知识的同时提高英语水平。

本书既可以用作国际贸易等专业学生的国际商法教材和相关专业教师进行双语教学的参考书,还可以为国际商务及涉外法律等行业的人士提供帮助。

与其他同类教材相比,本书具有以下特色。

1. 形式丰富新颖

本书每章开篇设有学习目标、开篇案例、热身问答,章末设有小组讨论题和真实案例,并且穿插一些有关重点或热点问题的阅读材料或图表,以帮助读者拓宽视野,加深理解。

2. 注重联系现实

本书力图把握当今的全球化与时代感,就新出现的一些国际商法领域,如反倾销和反补贴法、竞争法、知识产权法、电子商务法等也进行了相应的介绍。全书各章(除“国际商法导论”外)都附有相关的真实案件和判例,以帮助读者更好地将书本理论与法律实践联系起来,并有利于提高学生的兴趣。

3. 国际性与中国特色相结合

本书一方面系统阐述国际商务各个领域的重要国际条约,以及两大法系主要国家的重要法律规定;另一方面,始终注重体现中国特色,每一章都对中国的相关法律法规进行介绍,而这一点恰恰是那些国外的商法英文教材所欠缺的。

本书共10章,具体的编写分工如下:李浚帆和梁雁共同编写第1章,李浚帆编写第2、3、4章,张美丽编写第5章,王如利编写第6、7章,梁雁编写第8、9、10章。全书由主编负责大纲制定及统稿等工作。

本书得以面世,有赖于北京交通大学出版社的热情支持,在此深表谢意。

由于作者水平有限,书中难免存在错误与遗漏之处,敬请广大读者批评指正。

作者
2009年4月

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Chapter

1

An Introduction to International Business Law

国际商法导论

Learning Objectives

- ✓ To learn the definition and sources of international business law
- ✓ To learn the basic points about the Continental Law System and the Common Law System
- ✓ To understand the differences between the two major law systems
- ✓ To know the important international organizations relating to international business law



Opening Vignette

History of International Business Law

Formal documents and other evidences of regularized trade practices were first known in Egypt and Babylonia. The Hammurabi Codes¹, the earliest known comprehensive codes of law in the world, have been regarded as the origin of international business law by many researchers.

In fact, in many parts of the ancient world, foreign merchants, through treaty arrangements or other agreements, were allowed to regulate their affairs and adjudicate their own disputes without interference from local authorities. They tended to settle in special sections of business cities where they might follow their own religions, laws, and customs. Roman law incorporated features of the already developed business law, which, however, was no longer handled separately in special courts but was treated simply as part of the whole legal system.

The barbarian invasions of Europe caused such social disruption that it was not until late in the Middle Ages that long-range commerce again became possible in Europe and merchants were once more able to determine the rules and regulations under which they could safely

operate. In the cities of north Italy and south France, the merchant class frequently dominated the state and could enact the needed rules as legislation. In other parts of Europe, associations of merchants bought protection from powerful lords or kings who granted them safe conduct and permitted them to conduct fairs and to establish rules and methods of enforcement. The merchant class established special courts where summary judgment was granted with little regard for the technicalities of procedure and doctrine in the regular courts, and without the necessity for lawyers.

The term “law merchant²” was applied to the substantive principles that eventually emerged from this quasi-judicial³ activity. The law merchant developed later in England than in continental Europe, and it was not completely established there until the mid-16th century, when English trade with the New World began to assume the most importance. In England the law was administered by special courts having jurisdiction only over those engaged in trade; these were the courts of *piepoudre* (French, means dusty foot, an allusion to the dusty shoes of merchant judges who perhaps had been trudging the roads).

The English royal courts in early days refused to hear merchants' suits, but in the 17th century they reversed this position and obtained exclusive jurisdiction. At first, however, the litigants were required to present proof of the law merchant in each case. In the 18th century lord chief justice⁴ Mansfield made the law merchant a part of the common law⁵ and abolished the requirement of special proof. The United States (after its foundation) adopted the principles prevailing in England in the late 18th century.



Warm-up Questions

1. What do you think international business law is?
2. What is the relation between trade practices and business law?
3. What is the difference between business law and international business law?

1.1 An Overview of International Business Law

国际商法概述

1.1.1 Definition of International Business Law 国际商法的定义

International business law, or international commercial law, refers to the body of rules and norms governing international business transactions and commercial organizations (except those relating to the maritime transportation of goods which is known as maritime law). In particular, it regulates the legal relationships of international business⁶.

Every country has its business or commercial law. However, international business law is to be