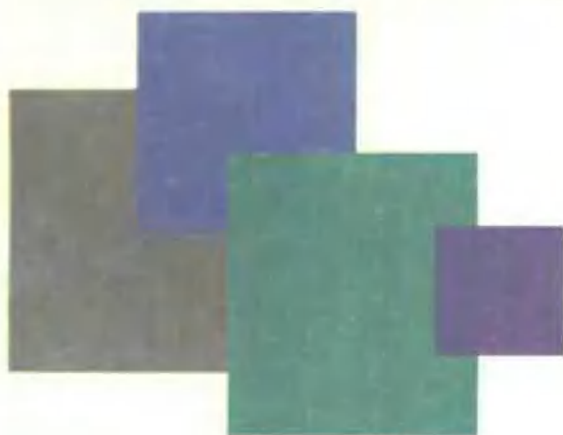


English Readings
For
International Commercial Law

国际商法英语读物

主编 曹祖平 副主编 段志强



中国人民大学出版社

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前 言

近年来学习国际商法的人日趋增多，而这方面的英语读物则颇少。因此，为了适应广大读者的需要，我们编写了这本《国际商法英语读物》。

本书具有以下三个特点：

一、按现行国际商法中文教材的体系和内容编写而成，可帮助读者从英语这一角度来学习国际商法，也便于从中文角度比较对照阅读。

二、全部精选原文，力求大体上涵盖国际商法的主要方面及其内容，可帮助读者提高阅读原文的能力；主要参考书目附于书后，供读者有机会查阅和进一步学习之用。

三、英语难度适中，专业性较强，有关章节后面均有重点词汇表，必要注解以及掌握每一章要点的练习题，可帮助读者加深理解。

总之，本书旨在帮助读者比较系统地掌握国际商法的有关英语词汇和表达法，既可学英语，又可学专业，可谓一举两得。

限于编者水平，也限于编写时间仓促，书中不当和错误之处在所难免，希望读者给予指正。

熊蒲娜和齐孜参加了本书的编写。

最后，对中国人民大学出版社的大力支持，使本书得以早日出版深表谢意！

编 者

1996年6月6日

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Chapter One

A Brief Introduction To Law and Courts

TYPES OF LAW

law is the body of rules that regulates a society. The law of our land is derived from two great bodies of law: *common law* and *statutory law*.

Common law is derived from custom, usage, and court decisions. The common law of the United States has as its source the accumulated court decisions of our mother country, England. The one exception is the state of Louisiana, once a French possession, where the legal system is founded on the laws decreed by Napoleon Bonaparte, the Napoleonic Code. In essence, common law is a court-established law. It is constantly being redefined and reshaped by new court decisions.

Statutory law, on the other hand, is a body of law created by legislators, such as those of the several states or the Congress of the United States. Even statutory law, or *statute*, is subject to interpretation by the courts^①.

Both common law and statutory law are subdivided into *substantive law* and *adjective (administrative) law*.

Substantive law defines the substance of the law—the rights

and duties of the individual.

Adjective (administrative) law deals with the forms and procedures for carrying out the substantive law.

Both substantive and adjective law play roles in the major subdivisions of common and statutory law; *criminal law* and *civil law*.

Criminal law provides governmental protection against acts of individuals harmful to the peace and order of society. Any violation of criminal law is an *offense*.

Civil law determines the rights of individuals to protect their persons and properties against the wrongful acts of others.

Civil law has two subdivisions; *business law* and *law and equity*.

Business law regulates business transactions. It is incorporated in the Uniform Commercial Code, adopted by most states.

Law, as it pertains to civil law, involves violations which can be remedied by the payment of money (damages).

Equity, on the other hand, involves violations for which there is no remedy at law (as it pertains to civil law) — that is to say, equity involves violations which cannot be remedied by money but which require the violator to take some specific action instead which would restore the innocent party (non-violator) to his position prior to the breach or violation^②.

ARENAS OF LEGAL ACTION; JURISDICTION, THE COURTS, AND OTHER TRIBUNALS

The answer to the question "Where can my case be heard?" begins with the concept of *jurisdiction*. Strictly speaking, jurisdiction is a level of government at which authoritative bodies can enact laws and enforce them^③. In this country, there are three levels of government; the federal, the state, and the local. Hence, there are three jurisdictions, each with its own courts.

Since a locality is part of a state and a state is part of the federal union, each level of government can have jurisdiction in the same locality; and each of three jurisdictional courts—federal, state, and local—can coexist there. Which of the courts will hear your case depends on whether federal, state, or local laws are involved.

Within the three major jurisdictions, courts are said to *have jurisdiction*—here meaning the right to hear cases—only on matters of law on which they are empowered to make decisions^④. For example, a criminal court has no jurisdiction over a civil matter, and a tax court has no jurisdiction over a traffic dispute.

Lets's look at the kind of courts in each of three major jurisdictions.

THE FEDERAL COURTS. The federal court system is divided into eleven *circuits*. (The term "circuit" is a holdover from pioneer days when a judge would saddle up and ride a roughly circular route from town to town dispensing justice—that is,

"ride the circuit.")^⑤ Within the circuits are ninety *District Courts*. There is at least one District Court in each state, and in some as many as four.

The District Courts hear civil and criminal cases involving federal laws, except for cases under the jurisdiction of *special federal courts*, such as the U. S. Tax Court and the U. S. Court of Claims (for cases involving claims against the U. S. government). District Courts also have jurisdiction in cases between citizens of different states in which more than \$ 10, 000 is involved. (If less than \$ 10, 000 is involved, the case is tried in the state which has jurisdiction by reason of statute or contractual agreement between the parties involved.)

Appeals of decisions handed down in U. S. District Courts can be made to the U. S. *Court of Appeals*, a branch of which is in each of the eleven circuits. However, appeals from one special federal court, the U. S. Customs Court, can be made only to the U. S. Court of Customs and Patent Appeals; and appeals from another special federal court, the U. S. Court of Claims, can be made directly to the U. S. Supreme Court.

The U. S. *Supreme Court*, the highest court in the land, also hears appeals from the U. S. Court of Appeals, the U. S. Court of Customs and Patent Appeals, and directly from the highest state courts as well (but only in cases involving constitutionality). The nine judges of the U. S. Supreme Court decide on matters involving the *constitutionality* of all laws, federal and state — that is, whether the laws agree with the letter and spirit of the Constitution of the United States^⑥. They also hear cases involving the general welfare in which inferior courts have given conflicting

opinions or rulings concerning the law, the object being to resolve the conflicts and to establish the rules of law^⑦.

THE STATE COURTS. The state court systems, set by state law, are divided into *lower courts*, which are essentially trial courts, and *higher courts*, which are appeals courts (*appellate courts*). There are courts of both types in every county. Among the lower courts, *district courts* hear general civil cases, and criminal courts hear criminal cases. Lower courts, depending on the state, can also include special jurisdictions, such as family courts, juvenile courts, probate courts, and courts of claims (for adjudication of cases involving claims against the state). Appeals from the decisions of lower courts are made to the appellate courts.

THE LOCAL COURTS. These are county, municipal, town, and village courts. They have limited jurisdiction geographically (they are empowered to act only within their own borders), financially (cases involving sums over statutory dollar ceilings^⑧ must be tried in state courts), and criminally (only minor offenses can be tried). Local courts usually include a police court, a traffic court, a small claims court, and a justice of the peace. Appeals, although theoretically possible, are almost never made because of the relatively minor nature of the legal matters involved.

Words and Expressions

1. the body of rules 一大堆规则, 大量规则
2. common law 普通法
3. statutory law 成文法
4. statute 法规

5. the Napoleonic Code 拿破仑法典
6. substantive law 实体法
7. adjective law 程序法
8. criminal law 刑法
9. civil law 民法
10. offense 违法行为
11. wrongful acts 不法行为
12. business law 商业法
13. law and equity (普通)法和衡平法
14. the Uniform Commercial Code 统一商法典
15. jurisdiction 管辖权, 管辖范围
16. tribunal 法庭, 审判庭
17. circuits 巡回审判(区)
18. holdover 遗留物
19. District Courts 地区法院
20. special federal courts 联邦特别法院
21. the U.S. Court of Claims 美国索赔法院
22. the U.S. Court of Appeals 美国上诉法院
23. the U.S. court of Customs and patent Appeals 美国
海关和专利上诉法院
24. constitutionality 合法性, 合宪性
25. trial courts 审判法院
26. juvenile courts 少年法院
27. probate courts 遗嘱检验法院
28. adjudication 裁定, 裁决
29. police court 违警罪法院
30. traffic court 交通法院
31. small claims courts 小额索赔法院

Notes

1. 须经法院解释，以法院解释为准。
2. 这将使无辜一方（非违法者）恢复到破坏法律或者违犯法律以前的状况。
3. 管辖权是其权威机构能够制订并实施法律的某一级政府。
4. 仅限于授权法院作出决定的法律事务。
5. 那时法官总是套上马鞍并骑在马上，逐个村镇大体巡行一番，实行审判，即“骑在马上巡回审判。”
6. 符合美国宪法的文字和精神。
7. 他们也听取涉及公共福利的案件，因为下级法院对这些案件作出了相互冲突的意见或裁决，而这些意见和裁决则关系到要解决冲突和建立法治的法律和目的。
8. 超过法定最高美元限额的数额的案件。

Exercises

A. Explain the following Key Words and expressions:

1. common law
2. statutory law
3. equity
4. substantive law
5. adjective law
6. jurisdiction

B. Answer the following questions;

1. What is the federal court system?
2. What is the main functions of the U.S. Supreme Court?

Chapter Two

The Contract

SOME TYPES OF CONTRACTS

A “unilateral” contract is a promise of commitment made by one party conditioned upon the performance of an act by the other. The contract does not become binding until the act is performed.

- ^①“I promise to pay you a commission, if you will get me a buyer for my car.” When the person to whom the promise is made brings a willing buyer for the car, he has earned his commission.

A “bilateral” contract is created when mutual promises are exchanged by both parties to the transaction. The failure by either party to perform his part of the contract in accordance with his promise may subject him to damages which result from the breach of the contract.^①

- “I promise to pay you 15 ¢ a gallon for 300 gallons of #2

① 注：凡带点 (●) 者均为有关实例。

grade fuel oil, if you will promise to deliver it tomorrow morning." "I'll deliver it."

An "executory" contract is one which is not fully performed. It has been partly performed but something still has to be done by either or both of the contracting parties.

An "executed" contract is one which has been fully performed by both sides. There is nothing further to be done. The transaction is complete.

- The 300 gallons are delivered in the morning as promised and the buyer pays in accordance with his agreement.

A "void" contract is one which is not legally enforceable and is not binding on either of the parties. The expression "null and void," so often used, is redundant. It actually means "nonexistent and not enforceable."

- Contracts which are illegal in scope and in purpose are void and unenforceable.

A "voidable" contract is one which is valid, binding and enforceable. However, there is a right available to one or, in some instances, to both of the parties to avoid responsibility of performance. It may thus be enforceable against one of the parties but not against the other.

- A contract made with a "minor," also known as an "infant," a person legally under age, is enforceable by him against the other, the adult. Under certain circumstances,

the minoir may renege on his contract and demand the return of the money he paid. Of course, if he seeks to enforce the contract against the adult, he cannot then disaffirm.

An "express" contract is one in which all of the terms are agreed upon by the parties and are specifically set forth in detail, as in a writing.

- A lease or insurance policy is a good example of an express contract.

An "implied" contract is one which is created by law, imposed upon the parties because of their actions or their behavior, despite the fact that they had no actual or express agreement.

- Anna sued the estate of her deceased employer Gertrude. She claimed that she was hired by Gertrude, who was aged and infirm. She was told by Gertrude in the presence of other friends that she need not worry about getting paid, she would be well taken care of in the will. She worked as a companion for 11 years without pay, only for board and lodging. The will only provided for \$100 to be paid to Anna. She claimed her rightful compensation. Despite the fact that there was no valid express contract between them, a contract was *implied* by law. Anna was awarded reasonable compensation for the services she rendered to Gertrude through the years.

A contract will be implied because of the particular relationship of the parties. A husband is obligated to support his wife, parents to support and care for their infant children.

A "quasi-contract," "as if there were a contract," will result and will be implied when one party in a transaction is in possession of money or property belonging to another. The law creates this implied contract to prevent that person from being "unjustly enriched."

- The previously described case of the unpaid companion, also applies here.

A person who pays money under a mistake of fact may be given the right to recover it under an implied or quasi-contract.

- Algernon, believing that he owned a certain parcel of real estate, paid taxes on it. When he found that he did not own it, he asked that the money be refunded to him. The city refused and he sued. The court allowed him to recover on the theory of implied contract.

ELEMENTS NECESSARY FOR A VALID CONTRACT

In all express contracts, as distinguished from those implied by law, the words and actions of the parties must reveal an intention to create a contract which the law will recognize. This intention can be determined from the provisions of the contract and