

合同法法律英语

LEGAL ENGLISH FOR CONTRACT



主 编 / 张月明 副主编 / 陈卫旗 冯 春

广西教育出版社

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出版说明

《合同法律英语》自 2004 年 11 月获得广西大学重点教材建设项目立项以来,经过各位编者近两年的辛勤工作、艰苦努力、团结协作,终于得以面世。希望这本教材能为区内外各法律院校法律专业英语教学提供更多帮助。

本书由张月明主编,负责全书的立项、规划、组稿与定稿工作,参加编写的人员具体分工如下(按编写课文顺序排名):

张月明:Lessons 1—10, Lesson 15

冯 春:Lessons 11—13

顾 青:Lesson 14

陈卫旗:Lessons 16—20

此外,厦门大学国际经济法博士、广西大学法学院魏艳茹副教授承担了本书的审稿工作,顾青为本书的打印和校对做了大量工作。

此教材也是张月明、陈卫旗获国家留学基金项目资助的学术成果之一。

本书的编辑出版得到了广西大学法学院的鼎力相助,也得到了广西大学及广西教育出版社的大力支持,在此我们表示衷心感谢!

主 编

内 容 提 要

《合同法律英语》是一本法律专业的英语教材,其阅读和使用对象主要是英语水平已过国家公共英语考试三级(PEST-3)以上的法律专业学生及法律工作者。作者编写这本教材的宗旨,是为了给使用者系统地介绍英美(尤其是美国)法系有关合同的法律制度,提供一些有关涉外合同法律英语的基本知识。

本书共有 20 篇课文,包括合同法的概述、合同的订立、要约、承诺、合同的履行、合同的解除、合同的救济等内容。每篇课文之后都配有相关的练习和案例来加强对所学课文的理解。书后附有相关的辅助阅读资料以帮助读者拓宽合同法律的英语知识面。

全书内容编排由浅入深,循序渐进,系统合理,具有外语教材的实践性和可操作性。

阅读和使用这本教材,既可以系统地了解英美合同法,又可以掌握相应的法律词汇和概念的英文表述。因此,对有志于从事涉外法律,尤其是专长于涉外合同法律工作的学生 and 法律工作者来说,它应当是一本相当不错的教材。

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LESSON ONE

Introduction to the Law of Contracts

Text

As we know, contracts are all pervasive in our daily lives. What is a contract? How can we define the contract? The simplest, most accurate definition is: A contract is an agreement that the courts will recognize and enforce. What do the courts require before an agreement will be recognized and enforced? The following lists the representative elements of enforceability for most types of contracts in most jurisdictions:

- 1) A valid offer
- 2) A proper acceptance
- 3) Sufficiency of consideration
- 4) Absence of fraud, force, or legally significant mistake
- 5) Legal capacity of parties
- 6) Consistency with general public policy
- 7) Observance of proper legal form
- 8) Consistency with special rules governing the type of agreement involved

The law that governs the contractual behaviors is the law of contracts. For instance, the law of contracts governs extensive agreements with the companies, renting an apartment, buying books at the bookstore, agreeing to lend the roommate money, buying beer at the local store and so on.

Contract law can be viewed in several ways. Some people see the freedom of individuals and organizations to contract as fundamental to our basic free-enterprise system.¹ Viewed in this manner, the law of supply and demand learned in economics is implemented every day by innumerable contracts between sellers and buyers. Contract law facilitates exchanges between the parties by protecting both seller and buyer against the possible bad-faith conduct of the other.² Without this protection, the parties could breach contracts at will. If the law of contracts did not provide a remedy for the breach of an agreement, sellers would be forced to require deposits, or entire purchase prices, before they would sell and ship goods. This would increase transaction costs

and significantly affect the flow of goods in our economy.

Another view of a contract is that it is a tool by which people often, but not always, assisted by their lawyers establish a private set of rules to govern a particular business or personal relationship.³ From a lawyer's perspective, a contract is a device by which a situation may be defined and controlled. The expectations of the contracting parties are made known and serve as guides for future behavior.⁴ For example, by use of a real estate purchase contract, a seller wants to sell a house to a buyer. In the contract, a number of the parties' expectations are spelled out. Such expectations include: (1) when the buyer may take possession; (2) what kind of document of title the seller is to provide the buyer; (3) what articles the seller may remove from the house and yard; (4) how the taxes owing are to be split among the parties; (5) how the risk of loss is to be allocated among the parties, and so on. By virtue of this contractual agreement, the buyer and seller have created their own set of rules to govern the house-sale transaction.⁵ In a sense, their agreement embodies a private legal system.

Not surprisingly, many of the questions that arise concerning the operation of a governmental legal system also come up in the context of private agreements.⁶ For example, what is to be done if the party in the agreement just described fails to provide for responsibility in case of loss and the house is signed but before the buyer takes possession? Or what happens if one of the parties blatantly disregards one of the clearly established private rules,⁷ for examples, by refusing to provide the required evidence of title?

In the first case (loss of a house struck by a meteor) the basic expectations of at least one of the parties cannot be met. Either the buyer will be required to purchase damaged property or the seller will be required to give up a sale he or she thought was closed and final.⁸ How can this issue be resolved when the parties have not dealt with the problem themselves and insurance does not cover the loss? For commonly occurring situations of this sort, the courts and legislatures have established guidelines. In addition, general legal principles have been promulgated determining how contractual provisions should be interpreted when issues such as this arise.⁹

The second case (refusing to provide required evidence of title) goes to the heart of contract law. From a public-policy perspective, it would not be desirable for the parties to attempt to enforce their contract by private means.¹⁰ Our legal system does not tolerate the use of threats or force to induce faithful observance of the terms of pri-

vate agreements. Instead, it allows the parties to a contract to enforce its terms through civil suits.

A number of questions are immediately posed by the intervention of the legal system when private parties disagree.¹¹ Should all private agreements be enforced, for example, an agreement by two bank robbers to split the proceeds of a holdup 50 percent/ 50 percent? What type of relief should be provided for the party injured as a result of the other's failure to observe the terms of the agreement? Could a university obtain a court order compelling a professor who has just won a millionaire lottery to teach the last academic year of a three-year teaching contract?¹² Should the legal system enforce only "fair" contracts? If so, what constitutes a fair contract? Should unwritten contracts be enforceable? All of these questions will be discussed in the following lessons.

Anyway, several basic points regarding the true nature of contracts must now be made.¹³ First, the parties to their mutual satisfaction voluntarily carry out almost all contracts, so the judicial system never becomes involved. Second, the mere fact that one has a legal right to sue for breach of contract does not mean that it is a sound business decision to do so.¹⁴ Before suit is filed, factors such as likelihood of again doing business with the other party, the relative economic strength of the parties, and alternative private means of resolving the dispute should be considered. Third, although we will be discussing basic rules pertaining to contracts in general, there are many specific categories of contracts that have certain individualized rules of law pertaining to them.¹⁵

Words and Phrases

pervasive	<i>adj.</i> 渗透的
accurate	<i>adj.</i> 正确的, 精确的
representative	<i>adj.</i> 典型的, 有代表性的
sufficiency	<i>n.</i> 充足
consideration	<i>n.</i> 约因, 对价
absence of	缺乏, 没有
legal capacity	<i>n.</i> 法定资格, 法定身份
consistency with	与……有联系, 与……连接, 与……结合
extensive	<i>adj.</i> 广泛的

apartment	<i>n.</i> 公寓住宅, 单元住宅, 房间
implement	<i>vt.</i> 贯彻, 执行
innumerable	<i>adj.</i> 无数的, 数不清的
facilitate	<i>vt.</i> 推动, 促进, 实现
bad-faith	<i>n.</i> 不守信用(信念, 宗教信仰, 保证, 诺言, 约定)
breach contract	违反合同
at will	随意, 任意
remedy	<i>n.</i> 补救, 赔偿, 救济
the breach of an agreement	违反协议, 违反协定
deposit	<i>n.</i> 押金, 保证金
significantly	<i>adv.</i> 值得注意地, 重要地
perspective	<i>n.</i> 观点, 看法, 立场
situation	<i>n.</i> 情形, 境遇
real estate	不动产, 财产
expectation	<i>n.</i> 期待, 预料, 指望
possession	<i>n.</i> 拥有, 占有
article	<i>n.</i> 物品
allocate	<i>vt.</i> 分派, 分配, 分摊
by virtue of	根据……, 依据……
blatantly	<i>adv.</i> 非常明显地
disregard	<i>v.</i> 漠视, 不顾
insurance	<i>n.</i> 保险
guidelines	<i>n.</i> 指导方针
promulgate	<i>vt.</i> 发布, 公布, 颁布
public-policy	公共政策, 公共秩序
tolerate	<i>vt.</i> 忍受, 容忍
induce	<i>vt.</i> 劝诱, 诱使
faithful	<i>adj.</i> 守信的, 忠实的
pose	<i>vt.</i> 形成, 引起, 造成
intervention	<i>n.</i> 干涉, 介入
holdup	<i>n.</i> 抢劫
relief	<i>n.</i> 救济, 补救
as a result of	作为结果
obtain	<i>vt.</i> 获得, 得到

lottery	<i>n.</i> 抽奖, 彩票
academic year	学年
constitute	<i>vt.</i> 制定, 构成
regarding	<i>prep.</i> 关于
mutual	<i>adj.</i> 相互的, 共同的
carry out	完成, 实现, 贯彻, 执行
mere	<i>adj.</i> 仅仅的, 只不过
sound	<i>adj.</i> 可靠的, 合理的
likelihood	<i>n.</i> 可能, 可能性
alternative	<i>adj.</i> 二者择一的, 可供选择的
category	<i>n.</i> 种类
individualize	<i>v.</i> 赋予个性, 个别地加以考虑
pertain (to)	有关, 涉及, 适合于

Notes

1. Some people see the freedom of individuals and organizations to contract as fundamental to our basic free-enterprise system.
有些人把个人和组织订立合同的自由看做是我们基本的自由商业制度的基础。
2. Contract law facilitates exchanges between the parties by protecting both seller and buyer against the possible bad-faith conduct of the other.
合同法通过防止卖方和买方可能出现的违反诚信的行为来实现双方之间的交易。
3. Another view of a contract is that it is a tool by which people often, but not always, assisted by their lawyers establish a private set of rules to govern a particular business or personal relationship.
另一方面, 合同是一种工具。利用这种工具, 人们经常但并不总是在他们的律师帮助下, 建立一套调整商业或私人关系的规则。
4. The expectations of the contracting parties are made known and serve as guides for future behavior.
合同当事人的预期要被了解并且作为将来行为的指导。
5. By virtue of this contractual agreement, the buyer and seller have created their own set of rules to govern the house-sale transaction.
根据合同协议, 买卖双方已经确立了一系列调整房屋买卖交易的规则。

6. Not surprisingly, many of the questions that arise concerning the operation of a governmental legal system also come up in the context of private agreements.

不足为奇,许多在国家法律制度执行过程中出现的问题也会出现在私人协议的履行中。

7. ...Or what happens if one of the parties blatantly disregards one of the clearly established private rules...

……或者如果一方当事人显然不遵守已经明确确立的私人规则时将会发生什么(后果)……

8. Either the buyer will be required to purchase damaged property or the seller will be required to give up a sale he or she thought was closed and final.

要么是买方被要求买下损坏的财产,要么是卖方被要求放弃他或她认为已成交的买卖。

9. In addition, general legal principles have been promulgated determining how contractual provisions should be interpreted when issues such as this arise.

另外,当类似这样的争议发生时,一般的法律规则已经规定应如何解释合同条款。

10. From a public-policy perspective, it would not be desirable for the parties to attempt to enforce their contract by private means.

从公共秩序方面来看,(合同)当事人企图通过私人的手段来保证合同的履行是不可能的。

11. A number of questions are immediately posed by the intervention of the legal system when private parties disagree.

当合同双方意见不一致时,许多问题会因法律制度的介入而随之产生。

12. Could a university obtain a court order compelling a professor who has just won a millionaire lottery to teach the last academic year of a three-year teaching contract?

一所大学是否能够通过法院的裁令,强迫一位刚刚赢得一百万彩票的大学教授继续完成3学年合同的最后一个学年的教学?

13. Anyway, several basic points regarding the true nature of contracts must now be made.

总之,必须弄清有关合同本质的几个基本要点。

14. Second, the mere fact that one has a legal right to sue for breach of contract does not mean that it is a sound business decision to do so.

其次,拥有提出违约之诉的权利并不意味着它是一项势在必行的合理的商业决

定。

15. ... categories of contracts that have certain individualized rules of law pertaining to them.

……还有许多其他种类合同,这些合同都有适合于它们的特定规则。

Exercises

1. Judge whether each of the following statements is true or false.

- (1) Contracts are all pervasive in our daily lives.
- (2) A contract is an agreement.
- (3) Contract law can be viewed in several ways.
- (4) The law of supply and demand learned in economics is implemented every day by innumerable contracts between sellers and buyers.
- (5) The parties could breach contracts at will.
- (6) The law of contracts does not provide a remedy for the breach of an agreement which embodies a private legal system.
- (7) All private agreements must be enforced.
- (8) Only written contracts are enforceable.
- (9) Judicial system never becomes involved in the private agreements.

2. Answer the following questions.

- (1) What is the definition of the contract?
- (2) What are the representative elements of enforceability for most types of contracts?
- (3) What areas does the law of contracts govern in our daily life? Give some examples.
- (4) Does the law of contracts provide a remedy for the breach of an agreement?
- (5) From a lawyer's perspective, what device is a contract?
- (6) What kind of the parties' expectations are spelled out in the real estate purchase contract?
- (7) What is to be done if the party in the agreement described in paragraph 4 fails to provide for responsibility in case of loss and the house is signed but before the buyer takes possession?
- (8) What happens if one of the parties refuses to provide the required evidence of title in a house sale transaction?

(9) What are the basic points regarding the true nature of contracts?

3. Fill in the blanks with proper words.

Contract law can be viewed (1) _____ several ways. Some people see the freedom (2) _____ individuals and organizations to contract (3) _____ fundamental to our basic free-enterprise system. Viewed (4) _____ this manner, the law of supply and demand learned in economics is implemented every day (5) _____ innumerable contracts between sellers (6) _____ buyers. Contract law facilitates exchanges (7) _____ the parties by protecting both seller and buyer (8) _____ the possible bad-faith conduct of the other. Without this protection, the parties could breach contracts (9) _____ will. If the law of contracts did not provide a remedy (10) _____ the breach of an agreement, sellers would be forced to require deposits, or entire purchase prices, before they would sell and ship goods. This would increase transaction costs and significantly affect the flow of goods (11) _____ our economy.

4. Translate the following sentences from English into Chinese.

- (1) Law is also frequently classified into areas of public and private law. Public law includes laws that affect the public generally. It can be further divided into constitutional law, administrative law and criminal law. Private law mainly deals with the relationships between individuals in an organized society. It covers the law of contracts, torts and property.
- (2) In the common-law countries, general contract law has a common law basis. This means that the principles of contract law are to be found in judicial decisions of cases involving contractual disputes. Under the doctrine of precedent, or stare decisis, courts will follow their earlier decisions involving similar situations.

5. Translate the following sentences from Chinese into English.

- (1) 当另一方当事人不遵守合同条款, 受害方可获得什么救济?
- (2) 调整合同行为的法律是合同法。
- (3) 我们的法律制度不容忍使用恐吓或武力方式来促使私人协议的诚信履行。
- (4) 没有合同法的保护, 当事人就会任意违反合同。
- (5) 足够的约因是大多数的合同能够付诸执行的基本因素之一。

6. Case.

Uncle John promised Sally a new car if she passed the bar exam. After she took the exam, she was exultant over how easy it was. She assured her uncle she had passed, so Uncle John gave her the car. A few days later the results of the bar exam

were announced, but Sally's name was not among those who passed. Uncle John demanded a return of the car. Sally claimed there was no contract binding her to return the car. Do you agree? Why?

LESSON TWO

Classification of Contracts

Text

Contracts are often referred to by many names or terms. Unless these terms are understood, the law cannot be understood. For example, the law may state that executory contracts made on Sunday are void. This law cannot be understood unless one clearly understands the words “executory” and “void”.¹ Every contract may be placed in one or more of the following classifications. The following classification of contracts seeks to aid the reader in analyzing problems related to contracts as they are covered in subsequent lessons:

Express, Implied, and Quasi Contracts

Valid, Void, and Voidable Contracts

Executed and Executory Contracts

Bilateral and Unilateral Contracts

1. Express, Implied, and Quasi Contracts

An express contract is one in which the parties express their intentions by words, either orally or in writing, at the time they make agreement. Both their intention to contract and the terms of the agreement are expressly stated.

An implied contract is one in which the duties and obligations which the parties assume are not expressed but derived from their actions. The adage “actions speak louder than words” very appropriately describes this class of contract.² Going to a doctor, describing symptoms, and accepting treatment establishes an implied contract. The test of the establishment of an implied contract is whether a reasonable person would intend to contract by engaging in such actions.

A quasi contract, also known as a contract implied-in-law, differs from express and implied contracts in that the parties do not intend to make a contract. In creating the legal fiction of a quasi contract, the courts are not trying to fathom the intentions of the parties; they are simply trying to be fair.³ Suppose, for example, that a doctor performed expensive and valuable services upon a patient who had suddenly become