

高等学校法学教材

简明中国法

(英文版)

CONCISE CHINESE LAW

朱羿锟/著



法律出版社

高等学校法学教材

Concise Chinese Law 简明中国法

(英文版)

朱羿锳 著

Law Press
法律出版社

图书在版编目(CIP)数据

简明中国法(英文版)/朱羿锳著. —北京:法律出版社,
2003.7

高等学校法学教材
ISBN 7-5036-4379-X

I. 简… II. 朱… III. 法律—中国—高等学校—
教材—英文 IV. D92

中国版本图书馆 CIP 数据核字(2003)第 061467 号

法律出版社·中国

责任编辑/袁方 张惠

装帧设计/王际勇

出版/法律出版社

编辑/法律教育出版中心

总发行/中国法律图书公司

经销/新华书店

印刷/北京北苑印刷有限责任公司

责任印制/张宇东

开本/787×960 毫米 1/16

印张/37.25 字数/600 千

版本/2003 年 7 月第 1 版

印次/2003 年 7 月第 1 次印刷

法律出版社/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

电子邮件/info@lawpress.com.cn

电话/010-63939796

网址/www.lawpress.com.cn

传真/010-63939622

法律教育出版中心/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

电子邮件/jiaoyu@lawpress.com.cn

读者热线/010-63939660

传真/010-63939701

中国法律图书公司/北京市丰台区莲花池西里法律出版社综合业务楼(100073)

传真/010-63939777

销售热线/010-63939792

网址/www.Chinalaw-book.com

010-63939778

书号:ISBN 7-5036-4379-X/D·4097 定价:39.50 元

作者简介

Zhu Yikun, Male, born in Yilong county Sichuan province in August 1967. Prof. of law, PhD in economics, attorney at law, arbitrator, FInstAM, vice dean of the Jinan University Law School. 16 English papers and more than 70 Chinese papers in various academic journals e. g. British Journal of Administrative Management: Manager, Modern Law Sciences, Politics & Law, Copyright, Civil Law Review, Economic Law Review, China Industrial Economy, Finance & Trade and Economics Review. Having completed 5 major research projects as the organizer awarded by the NSFC and ministerial and provincial organs, and another 4 major projects as principal participant awarded by the NSFC and MOE. 8 manuscripts esp. China's Business Contract (Butterworths, 1997), On Corporate Governance (Library of Guangdong Middle and Young Social Scientists, 1999), On Allocating Corporate Control (Press of Economics & Management, 2001), Concise Chinese Law (Law Press, 2003), China's Commercial Law (Law Press, 2003), China's Procedural Law (Law Press, 2003).

朱羿锟,男,生于1967年8月,四川仪陇人,教授、博士、律师、仲裁员、暨南大学法学院副院长、英国行政管理协会资深会员。在《英国行政管理》、《现代法学》、《政治与法律》、《著作权》、《中国工业经济》、《财贸经济》、《经济学动态》、《民商法论丛》和《经济法论丛》等刊物发表英文论文16篇和中文70多篇。主持完成国家自然科学基金和省部级项目5项,参与并完成国家自然科学基金和教育部项目4项。出版专著8本,主要有China's Business Contract (Butterworths, 1997)、《公司治理理论》(广东中青年社会科学家文库,1999)、《公司控制权配置论》(经济管理出版社,2001)、Concise Chinese Law (法律出版社,2003)、China's Commercial Law (法律出版社,2003)、China's Procedural Law (法律出版社,2003)。

出版说明

二十多年前,当中国改革开放开始勃兴,法律和法律教育开始再度崛起之时,法律出版社便以精诚态度和极大力度服务于中国的法律教育。针对不同层次的读者,本社陆续推出了多种系列的法学教材,涉及法律教育的各个层面,迄今已达数百种。高等学校教材、教学辅导书是其中重要的组成部分。长期以来,这些教材陪伴中国法律人共同成长,对中国法律教育,以至对中国法律的发展都起了不小的推助作用。

进入新世纪以来,法律教育在取得长足发展的同时,也积极酝酿和展开改革举措,将培养高素质的现代法律人才进一步列为法律教育的重要目标。为此,本社应时而变,不拘一格,力求从教材的品种上、内容上、形式上实现更大突破,为新一代法律人学取专业知识提供更好读本。

就高等学校教材而言,我们立足两种进路:全面革新旧有教材,或推出全新教材。革新旧有教材,意在选取原有教材中的精品,从内容到形式全面更新、修订,重新整合,使这些在时间流变中积淀下来的法律教育的财富,以崭新面目,继续服务于新的读者。推出全新教材,则为约请优秀作者撰写新作,精阐原理,结合实践,关注前沿,努力创造出新世纪的新经典。优秀作者,或为老一辈与盛年名家,或为新生代才俊。或革新,或全新,这些教材统为一名,名之为“高等学校法学教材”。

我们深信,中国的法律教育事业将在改革和发展中不断壮大;我们承诺,本套“高等学校法学教材”以及本社所有法律教育图书都将在发展中不断更新,不断超越。本着竭诚为法律和法律教育服务,竭诚为读者服务的宗旨,我们愿与广大读者和作者一起,共同创造法律教育出版事业、法律教育事业,以至法治事业的未来。

法律出版社法律教育出版中心

2002年12月

编写说明

面对经济全球化和科技革命的挑战,中国的法律日趋与国际接轨;我国法学教育的国际化自不待言。国家教育部因势利导,于2001年颁发《关于加强高等学校本科教学工作,提高教学质量的若干意见》,即2001年4号文件(以下简称“《意见》”),提出了十二项提升本科教学质量的举措,其中第八项举措就是积极推动国内高等学校使用包括英语在内外国语进行教学,积极创造条件使用英语等外国语进行公共课和专业课教学。对于法律等专业,《意见》则明确要求先行一步,力争在三年内,使用外语教学课程达到所开课程的5%~10%。为此,许多高校相继尝试用英语讲授部分法律专业课,不少高校还专门成立国际学院,所有课程均用英语讲授,其中“法学概论”或“法律基础”为各个专业的公共必修课。法学自有其独特的概念体系,其中不乏艰深晦涩的专业术语,阅读中文已令人生畏,要在英文背景下讲授和学习,又缺乏英文教材,学生更容易就坠入云山雾海之中。因此编写适合全英教学的法学教材,其紧迫性不言而喻。

Concise Chinese Law(《简明中国法》)为全英文教材,采用与国际接轨的读者中心主义(reader friendly)的写作风格。全书紧扣现行部门法的逻辑体系,涵盖宪政法、民法、商法、经济法、刑法、程序法和国际法,简洁地勾勒出中国现行法律体系和基本制度。选材精当,层次分明,主次鲜明,摒弃了细枝末节的问题,读者能够在短时间内对中国法有比较全面系统的把握。为达到简约之目标,本书在体例结构、观点阐述等进行了大胆探索,或曰创新。归结起来,主要有四点:(1)每章篇首均用简短的篇幅,尤其是表格,将浩繁的立法用简洁的命题串连起来,勾勒出该领域涉及的法律法规全貌及其变迁历程,便于读者对该领域的立法先有一个总体的把握和了解,为理解和领域其后的具体制度安排做好铺垫。(2)正文引入125个精选案例,以案说法。如母亲为了抢救孩子,超速驾车,正当医生在夸奖她时,却收到警察罚款通知;国家机关招工限身高引发的平等权之争,酒店限制非驻店客人进

入花园仅用中文提示引发的民族歧视之争,海南凯立状告证监会引发的控权与打击会计造假之争,“二奶”争夺遗产引发的私权自治与权利滥用之争等,不一而足。既生动而简洁地阐释了相关法律制度,又能够启发读者深思,领悟精妙之处,举一反三。(3)设计并使用198个图表(177个表和21个图)。法学概念和法律规则可谓纷繁芜杂,运用表格和图形进行精心梳理,通过一个个简洁的主题之串连,化繁为简,简洁明了,有助于进行横向比较和研究,体味不同制度的微妙差异。(4)大胆使用规范化的缩略语,正文目录之后还配专门的缩略语目录,减少或消除了赘笔,大大节约了篇幅,读者易于阅读。

作为一项全新的事业,本系列教材能够面世,得益于法律出版社尤其是丁小宣先生的鼎力支持和西南财经大学法学院院长、教授、博士生导师高晋康博士的大力举荐。作者本人虽已走出产业经济学领域,暨南大学的云冠平教授、黄德鸿教授、副校长胡军教授和广东金融专科学校校长张丙申教授作为我的导师和恩师,仍然一如既往地给予关心和教诲,这一切我都将永志不忘,感念终生。我与暨南大学徐暄博士、刘颖博士、吕国民博士等诸位同事的讨论,使我受益匪浅。需要特别提及的是,本书接近完成之际,电脑遭受肆虐的病毒袭击,转瞬间所有的书稿全部丢失,我的两位学生张宏鹏和杨少雄同学以及广东理治律师事务所的麦允良和谢子坚先生,昼夜兼程,奋力拼搏,文稿得以挽救。否则,我可能无力承受。自然,书中一切文字责任当由我个人承担。新的事业本来就意味着有不成熟、不完善之处,本书所作上述新尝试,必然伴随着相应的风险和疏漏。如蒙方家指正,当不胜感激。

朱羿锳

2003年6月于广州暨南园

Abbreviations

ACFTU	All-China Federation of Trade Union
ADR	Alternative Dispute Resolution
ADR	Anti-Dumping Regulations
AIC	Administration of Industry and Commerce
ALL	Administrative Litigation Law
ALL Opinions	Opinions on Implementing the ALL (Trial implementation)
APL	Administrative Penalty Law
APPCL	Air Pollution Prevention and Control Law
ARIC	Administrative Rules on Insurance Companies
ARL	Administrative Reconsideration Law
ASL	Administrative Supervision Law
ASR	Anti-Subsidy Regulations
AUCL	Anti-Unfair Competition Law
B/L	Bill of Lading
BOD	Board of Directors
BOS	Board of Supervisors
CAA	Chinese Arbitration Association
CCCPC	Central Committee of Communist Party of China
CCPIT	China Council for the Promotion of International Trade
CEOZ	Coastal Economic Open Zone
CGA	Customs General Administration
CIETAC	China International Economic and Trade Arbitration Commission
Ci/PL	Civil Procedure Law
CiPL Opinions	Opinions on Application of the CiPL
CIRC	China Insurance Regulatory Commission
CJV	Contractual Joint Venture
CLS	Company Limited by Shares

CMAC	China Maritime Arbitration Commission
CMC	Central Military Commission
COFTEC	Commission of Foreign Trade and Economic Cooperation
COSTIND	Commission of Science and Technology Industry of National Defense
C/P	Charter Party
CPC	Communist Party of China
CPIR	Consular Privilege and Immunity Regulations
CPPCC	Chinese People's Political Consultative Conference
CPPL	Cleaner Production Promotion Law
CR IPL	Consumer Rights and Interests Protection Law
Cr/PL	Criminal Procedure Law
CSRC	China Securities Regulatory Commission
DPIR	Diplomatic Privilege and Immunity Regulations
EBL	Enterprise Bankruptcy Law
EBL Measures	Measures on Several Questions in Hearing Enterprise Bankruptcy Cases
EEZCSL	Exclusive Economic Zone and Continental Shelf Law
EFIR	Encouragement of Foreign Investment Regulations
EIA	Environment Impact Assessment
EIAL	Environment Impact Assessment Law
EPL	Environmental Protection Law
EJV	Equity Joint Venture
ELDRR	Enterprise Labor Dispute Resolution Regulations
ENPPCL	Environment Noise Pollution Prevention and Control Law
EPA	Environment Protection Administration
EPL	Environment Protection Law
ETDZ	Economic and Technological Development Zone
FDI	Foreign Direct Investment
FICLS	foreign-invested CLS
FICLS Provisions	Interim Provisions on Several Questions for Establishing FICLS
FICLS Opinions	Several Opinions on Foreign Investment in Listed Company
FIE	Foreign Invested Enterprise
FIEITL	Foreign-Invested Enterprises and Foreign Enterprises Income Tax Law

FTL	Foreign Trade Law
GATT	General Agreement on Tariff and Trade
GIEAR	Goods Import and Export Administration Regulations
GM	General Manager
GPCL	General Principles of Civil Law
GPCL Opinions	SPC Opinions on Questions Concerning the Implementation of the GPCL (for trial use)
ICC	International Chamber of Commerce
IECIL	Import and Export Commodity Inspection Law
IEWPL	Law on Industrial Enterprises Owned by the Whole People
IICH	Individual Industrial and Commercial Household
IITL	Individual Income Tax Law
ILO	International Labor Organization
INCOTERMS	International Chamber of Commerce of Terms
IP	Intellectual Property
IPO	Initial Public Offering
IPO	Intellectual Property Office
IRBT	Interim Regulations on Business Tax
IRCT	Interim Regulations on Consumption Tax
IRLAT	Interim Regulations on Land Appreciation Tax
IREIT	Interim Regulations on Enterprises Income Tax
IRLSI	Interim Regulations for Licensing System for Imports
IRVAT	Interim Regulations on VAT
JV	Joint Venture
KFC	Kentucky Fried Chicken
LAC	Legislative Affairs Commission of the SCNPC
LAL	Land Administration Law
Land Regs.	Interim Regulations on the Grant and Transfer of Land Use Rights to the State-Owned Land in the Urban Areas
L/C	Letter of Credit
LLC	Limited Liability Companies
LSO	Legal System Office of the State Council
MCA	Ministry of Civil Affairs
MEPL	Marine Environment Protection Law
MII	Ministry of Information Industry

MLR	Ministry of Land and Resources
MOA	Ministry of Agriculture
MOC	Ministry of Communication
MOC	Ministry of Commerce
MOC	Ministry of Culture
MOC	Ministry of Construction
MOE	Ministry of Education
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOFERT	Ministry of Foreign Economic Relations and Trade
MOFTEC	Ministry of Foreign Trade and Economic Cooperation
MOH	Ministry of Health
MOJ	Ministry of Justice
MOLSS	Ministry of Labor and social Security
MOND	Ministry of National Defense
MOP	Ministry of Personnel
MOR	Ministry of Railway
MOS	Ministry of Supervision
MOSS	Ministry of State Security
MOST	Ministry of Science and Technology
MPS	Ministry of Public Security
MSL	Mines Safety Law
MWR	Ministry of Water Resources
NAO	National Audit Office
NIL	Negotiable Instrument Law
NPC	National People's Congress
PBOC	People's Bank of China
PGDFI	Provisions for Guiding the Direction of Foreign Investment
FIELM	FIE Liquidation Measures
PLC	Political and Legal Commission
PMC	People's Mediation Committee
PMCOR	Organic Regulations on the People's Mediation Committee
PQL	Product Quality Law
PRC	People's Republic of China
PRCS	Provisional Regulations on Civil Servants

QTSB	Quality and Technology Supervision Bureau
RCOH	Rural Contracting Operation Household
RMB	Ren Min Bi
SAEC	State Administration of Exchange Control
SEPA	State Environmental Protection Administration
SAIC	State Administration of Industry and Commerce
SAR	Special Administrative Region
SAT	State Administration of Tax
SCL	State Compensation Law
SCNPC	Standing Committee of the National People's Congress
SDA	State Drug Administration
SDPC	State Development and Planning Commission
SDR	Special Drawing Rights
SEAC	State Ethnic Affairs Commission
SEPA	State Environment Protection Administration
SETC	State Economic and Trade Commission
SEZ	Special Economic Zone
SFCJV	Sino-Foreign Contractual Joint Venture
SFCJVL	Sino-Foreign Contractual Joint Venture Law
SFCJVL Rules	Detailed Rules for SFCJVL
SFEJV	Sino-Foreign Equity Joint Venture
SFEJVL	Sino-Foreign Equity Joint Venture Law
SFEJVL Regs.	Implementing Regulations for SFEJVL
SFPC	State Family Planning Commission
SIPO	State Intellectual Property Office
SMR	Safeguard Measures Regulations
SOE	State-Owned Enterprise
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
SQTSB	State Quality and Technology Supervision Bureau
STL	Secured Transaction Law
SWPPCL	Solid Waste Pollution Prevention and Control Law
TAL	Taxation Administration Law
TAL Regs.	Regulations for Implementing the TAL
TCIPL	Taiwanese Compatriots Investment Protection Law

TCPL	Treaty Conclusion Procedure Law
TIEAR	Technology Import and Export Administration Regulations
TOMIEOWPR	Regulations on Transformation of Operation Mechanism of Industrial Enterprises Owned by the Whole People
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TSCZL	Territorial Sea and Contiguous Zone Law
TUL	Trade Union Law
TVIIT	Township and Village Individual and Commercial Households Income Tax
UN	United Nations
UNCCISG	United Nations Convention on Contracts for the International Sales of Goods
UNDP	United Nations Development Program
UREAL	Urban Real Estate Administration Law
VAT	Value Added Tax
WFOE	Wholly Foreign Owned Enterprise
WFOEL	Wholly Foreign Owned Enterprise Law
WFOEL Rules	Detailed Rules for WFOEL
WPPCL	Water Pollution Prevention and Control Law
WTO	World Trade Organization

Table of contents

List of Tables	(1)
List of Figures	(1)
List of Illustrations	(1)
Abbreviations	(1)
1 Introduction to Chinese Law	(1)
1 The Unique Chinese Law Family	(1)
2 Terms and Definition of the Law	(4)
3 Classification of the Law	(8)
4 Sources and Validity of the Law	(11)
5 Components of the Law	(14)
6 The Making of the Law	(18)
7 Interpretation of the Law	(25)
2 Constitution	(27)
1 Overview	(27)
2 Nature of the State	(31)
3 Citizen's Basic Rights and Obligations	(34)
4 Form of Government	(43)
5 The State Organs	(46)
3 Administrative law	(57)
1 Overview	(57)
2 Administrative Subject	(60)
3 Civil Servant	(68)
4 Administrative Disposition	(70)
5 Administrative Compensation	(78)
4 General Principles of Civil Law	(86)

1	Overview	(86)
2	Civil Subject	(89)
3	Civil Legal Acts and Agency	(101)
4	Civil Rights	(109)
5	Civil Liability	(115)
6	Limitation of Action	(117)
5	Intellectual Property Rights Law	(120)
1	Overview	(120)
2	Copyright	(121)
3	Patent	(133)
4	Trademark	(139)
6	Contract Law	(144)
1	Concept	(144)
2	Formation	(145)
3	Validity	(149)
4	Terms	(151)
5	Secured Contract	(152)
6	Modification and Assignment	(154)
7	Performance	(157)
8	Discharge	(162)
9	Breach and Remedies for Breach	(163)
7	Family Law	(169)
1	Marriage	(170)
2	Divorce	(175)
3	Family Relations	(179)
4	Adoption	(180)
5	Inheritance	(184)
8	Company Law	(190)
1	Corporate Personality	(190)
2	LLC and CLS	(192)
3	Conditions of Company	(193)
4	Company Formation	(197)

5	Corporate Capital	(200)
6	Corporate Governance	(203)
7	Financial and Accounting Affairs	(214)
8	Corporate Merger and Division	(216)
9	Corporate Dissolution and Liquidation	(216)
9	Securities Law	(220)
1	Sources of Securities Law	(220)
2	Securities Issuance	(221)
3	Securities Listing and Trading	(228)
4	Acquisition of Listed Companies	(240)
5	Disclosure	(242)
10	Competition Law	(245)
1	Sources of Competition Law	(245)
2	Anti-unfair Competition	(246)
3	Anti-monopoly	(259)
4	Competition Authorities	(263)
11	Consumer Protection & Product Quality Law	(266)
1	Sources of Law	(266)
2	Consumer's Rights and Business Operator's Obligations	(268)
3	Supervision over Product Quality	(277)
4	Quality Responsibilities and Obligations of the Producer and Seller	(283)
5	Product Liability	(284)
12	Employment & Social Security Law	(289)
1	Sources of Law	(289)
2	Employment Promotion	(292)
3	Employment Contract and Collective Agreement	(294)
4	Labor Standards	(301)
5	Social Insurance and Welfare	(304)
6	Labor Supervision	(309)
13	Tax Law	(311)
1	Sources of Tax Law	(311)

2	Income Tax	(314)
3	Turnover Tax	(321)
4	Land Appreciation Tax	(329)
5	Legal Responsibilities	(330)
14	Environmental Law	(334)
1	Sources of Environmental Law	(334)
2	EIA	(335)
3	Cleaner Production Promotion	(341)
4	Pollution Prevention and Control	(347)
5	Environmental Supervision	(351)
15	Foreign Investment Law	(354)
1	Sources of Foreign Investment Law	(354)
2	Market Entrance	(356)
3	Foreign Investment Vehicles	(359)
4	Formation of FIEs	(364)
5	FIEs' Financing	(371)
6	Organizational Structure	(373)
7	Liquidation	(375)
16	Foreign Trade Law	(378)
1	Sources of Law	(378)
2	Foreign Trade Operator	(380)
3	Foreign Trade in Goods, Technology and Service	(383)
4	Anti-dumping	(389)
5	Anti-subsidy	(394)
6	Safeguard Measures	(398)
17	Crime	(402)
1	Sources of Criminal Law	(402)
2	Scope of Validity	(405)
3	Types of Crime	(407)
4	Elements of Crime	(410)
5	Acts Excluding Criminality	(415)
6	Forms in the Process of Crime	(418)