英美法案例精选系列丛书 英文版

美国合同法

American Contract Law

王军 张梅 薛源 编著

对外经济贸易大学出版社

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总　序

自1984年设立国际法专业以来，对外经济贸易大学法学院（原国际经济法系）已经走过了20个年头。在20年的时间里，经过几代人的努力，在培养懂法律、懂经贸和熟练运用外语（英语）的综合型人才、满足国内市场和国际市场的人才需求的道路上，对外经济贸易大学法学院已成为国内外经贸法律教育中一个具有自己特色和风格的人才培养基地和输送站。

对外经济贸易大学法学院的教学特色体系是从“国际商法”开始的，为了适应国际经贸全球化的发展潮流，我们希望，从对外经济贸易大学法学院走出的人才能够从国际化的视角理解和把握我国的法律，并且客观地认识不同国家的法律、国际法律之间的相互作用和影响。为此目的，我院几代教师编辑的教材，包括案例教材，都在强调具有国际化视角的教学和比较研究的重要性。

对外经济贸易大学法学院以独特的教学方法——案例教学和双语教学为代表，旨在通过引导学生对“原汁原味”的英文案例的阅读和研讨，既学习不同国家在国际商贸领域的法律原理和规则，也通过对经典案例事实和纠纷场景的分析，帮助学生认识现实生活中经贸活动的规律和特点。

我们多年的教学实践已经证明：案例教学对于培养学生发现和归纳问题、分析和处理问题的综合能力，对于培养学生在错综复杂的事实和现象中分清真伪和主次、结合事实和法律推理的能力有直接的促进作用。

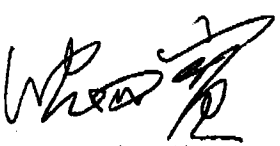
除了国际商法以外，对外经济贸易大学法学院国际法专业的

另一个教学和研究方向是以 WTO 法律为主的国际经济法（公法）。本套英文案例选编丛书包含了这样两个方面的内容。

我院鼓励教师在教学、科研和法律实践中全面拓展才能和发掘潜力，同时，我们强调：教师的工作应以教学为中心，科研和法律实践应为提升教师的专业素质、提高教学水平而服务。参与本套丛书编写的同志都是我院具有多年教学经验的中青年教师，本套丛书是他们在对自己的教学心得的积累和总结的基础上精心编辑而成的，是他们对多年摸索的教学方法的总结；本套丛书也是我院几代人的教学成果的延续，更是我院“211 工程”建设成果的组成部分。

20 年来，我们欣慰地看到：对外经济贸易大学法学院的教学风格和特色也得到国家和社会的认可：早在 20 世纪七、八十年代，我院就经批准设有可招收国际经济法专业方向的硕士点和博士点；我院的“国际商法”教材和案例教材也广为流传；2002 年我院的国际法专业被评为国家重点建设学科，现又增设了博士后流动站；学生和教师的规模日益扩大。我衷心希望：我院有更多的教师和学生加入案例教学和双语教学的尝试和探索中来，保持和发展特色，早日走上国际人才培养和学科全面发展的道路。

对外经济贸易大学
法学院　院长



2004 年 7 月

前　言

随着中国加入 WTO 和中国改革开放的进一步深化，国内越来越多的学生和同仁对学习英美合同法萌发了浓厚的兴趣。1995年，笔者先后编著和出版了《美国合同法》和《美国合同法及判例选评》。自那时以来，有不少读者来信与笔者探讨英美法案例，特别是探讨解读它们的方法。笔者发现，目前仅靠译为中文的英美法的著作和案例，已不能满足读者对英美法的求知欲望；要深刻理解并掌握博大精深的英美合同法的原理，还需从原汁原味的英文案例中去探求、推敲和品味。

恰逢对外经济贸易大学法学院国家重点学科建设项目国际经济法英文案例汇编系列丛书出版之际，笔者得以对这本《英美合同法》（英文版）进行选编和摘译。

本书共选取了 48 个英美合同法中有代表性的案例。这些案例比较系统地反映了英美合同法上的主要制度。编者按照合同法的内在逻辑顺序对其进行排序，即从合同的订立到合同的效力，再到合同的解释，然后再到不履行合同的后果和违约时的救济。为了便于读者能够在较快的时间内获得英美合同法最为基础的知识，编者特意在每一章或每一节的开头部分对该章节所涉及的法律原理用中文进行了表述；此外，又在每个英文案例之后附上思考题，使读者可以带着问题阅读案例，加深对案例阐明的法律原理的理解。编者希望读者能够在阅读这些案例的过程中，不仅弄懂每一个案例的事实、判决结果和法官的推理过程，而且能透过这些案例了解英美国家的法律制度，以及它们所体现的社会价值观念和公共政策。

本书适合于国内大学法律教育在双语教学和案例教学中作为教材使用，也适合从事法律实践工作的律师为了提高专业英语水平而使用。

本书编写的具体分工如下：案例1、2、3、4、5、6、7、8、11、14、15、16、20、23、27、28、33、35、36、37、40、42、43、44、45、46、47、48由王军选编；案例10、21、24、26、29、30、31、32、38、41由张梅选编；案例9、12、13、17、18、19、22、25、34、39由薛源选编。

书中的疏漏和不足之处在所难免，笔者期待读者，特别是法律界的同行们就该书的改进提出宝贵意见，以共同提高专业法律英语的教学。

王 军

2006年5月于北京

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第一节　合同与准合同

准合同（quasi-contract）是衡平法上的概念，原意为“所得不应多于应得”。在准合同的关系下，当事人之间既不存在明示的合意，也不存在事实上的默示合意；双方之间的“合意”只是法律上的虚构。其结果是，受益人必须归还从他人处取得的财产或者利益。在英美法上，准合同又称为不当得利（unjust enrichment），即没有法律所承认的正当理由而获得他人的利益。

在下面案例中，上诉人 Lyle Dews 显然从原告处获得了利益，但是双方并没有订立合同，法院会如何认定他们之间关系的性质呢？

Lyle Dews v. Halliburton Industries, Inc.

Supreme Court of Arkansas

288 Ark. 532, 708 S. W. 2d 67 (1986)

HOLT, CHIEF JUSTICE

At issue in this case is who is to pay eleven different companies approximately half of a million dollars for work performed while

drilling an oil well. The chancellor held the appellant, Lyle Dews and Bruce Massey are responsible for the debt. We agree. It is from that judgment that this appeal is brought. Our jurisdiction is pursuant to Sup. Ct. R. 29 (1) (c) and (d).

Crystal Oil Co. owned certain leases covering lands in the southeast quarter and the north half of the southwest quarter, section 10, township 20S, range 25W, in Lafayette County, Arkansas. Crystal executed a farmout agreement of these leases with Dews on May 4, 1982. The terms of the farmout required Dews, at his expense, to drill a test well by May 15, 1982 and continue drilling to a depth sufficient to test the Cotton Valley Formation. If production was obtained, Crystal was required to assign Dews an interest in the leasehold estate. Crystal reserved an overriding royalty interest. If the first well was drilled, the agreement gave Dews the option to drill additional wells on the remaining acreage. The agreement was extended until July 15, 1982. Dews paid no consideration for this farmout.

Dews then entered into an agreement with Bruce Massey whereby Massey would pay Dews $50,000.00 in exchange for Dews assigning to Massey his right to the leasehold estate under the Crystal-Dews agreement and subject to the terms of the Crystal-Dews agreement. Dews reserved 5% of the leasehold estate as an overriding royalty interest. Massey agreed in return to cause the well to be drilled as required by the Crystal-Dews farmout agreement.

Drilling operations began prior to July 15, 1982 and the well was completed as a producing well on November 14, 1982. All of the claimants in this case were hired by Massey to supply labor or material for drilling the well.

As a result of the drilling and completion of the well, Dews received his assignment of leases from Crystal. Dews never assigned his right to Massey pursuant to their agreement, because Massey never paid Dews the $50,000.00 in a manner satisfactory to Dews.

Some of the various companies responsible for drilling the well filed suit against Massey in an attempt to collect the money owed to them. Dews was brought in as a party defendant and Dews then cross-claimed against all of the companies.

The chancellor found that Massey did not appear and defend and was therefore in default, and that Massey and Dews were jointly and severally liable for the companies' claims. Each company was awarded a money judgment, for a total of $519,397.60 plus interest. In addition, all but one of the companies were allowed statutory liens against the leasehold estate, and all claimants were granted constructive, equitable liens upon all funds held by any purchaser of the oil or gas produced from the well.

Numerous issues are raised on appeal and on a cross-appeal filed by one of the companies. The chancellor based Dews' liability for the money owed on four alternative grounds. We agreed with one of the reasons, therefore, the chancellor is affirmed as to the money judgment.

I. Quasi-contract

In holding Dews liable under a quasi-contract theory, the chancellor found that the claimants provided valuable services and materials to the well, which services and materials were anticipated by the parties and were necessary to the completion of the well. Since Dews claims ownership of the well by virtue of the assignment from Crystal, and has accepted the well and the work performed by the claimants, the court held Dews would be unjustly enriched if he

were not required to pay for the work.

Quasi-contracts, or contracts implied in law, are legal fictions, created by the law to do justice. They do not rest upon the express or implied assent of the parties. Rather, the underlying principle is that one person should not unjustly enrich himself at the expense of another. To find unjust enrichment, a party must have received something of value, to which he was not entitled and which he must restore. There must also be some operative act, intent, or situation to make the enrichment unjust and compensable. The basis for recovery under this theory is the benefit that the party has received and it is restitutionary in nature. Recovery may be had under quasi-contract where services have been performed, whether requested or not, which have benefited a party. Courts, however, will only imply a promise to pay for services where they were rendered in such circumstances as authorized the party performing them to entertain a reasonable expectation of their payment by the party beneficiary. Quasi-contracts rest on the equitable principle that "whatsoever it is certain that a man ought to do, that the law supposes him to have promised to do. Where a party has in good faith rendered a service, not illegal or contrary to public policy, and the other party has accepted and used the service, the former may recover."

That is the situation we are confronted with here. The appellees provided valuable services and materials for the well, without which the well never would have been drilled. Because the well was drilled and is producing, Dews received his assignment. Dews was undoubtedly enriched by appellees' actions.

As to the unjust aspect, the testimony at the trial demonstrated that Dews was aware that the companies were rendering valuable