



MARKET LEADER

a new language course for tomorrow's business leaders

体验[®]商务英语

商法读本

Business Law

Pricia Smith

《体验商务英语》改编组



高等教育出版社
Higher Education Press



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前言

为了迎接入世挑战,满足高等院校和广大学习者学习商务英语的需求,高等教育出版社引进了培生教育出版集团出版的 *Market Leader* 和 *Powerhouse* 系列教材,并将这两套教材改编为《体验商务英语》系列教材。《体验商务英语》系列教材由《综合教程》、《同步练习》、《听说教程》、《视听说》、《教师用书》、《商务英语语法》、扩展阅读系列以及配套的录音带和录像资料组成。该系列教材为学习者提供了全新的学习方式,即在体验中学习商务英语,进而提高运用英语进行商务交际的能力。

《体验商务英语》系列教材具有全球化视野和时代特色,其特点主要表现在以下几个方面:

将国际商务活动的真实内容引入课堂教学,体验真实的商务世界。本系列教材为商务英语教学提供了大量真实、生动的素材,使学生在掌握语言技能的同时,了解现代国际商务的现状,以达到在体验商务中学习语言、提高商务交际能力的目的。这一特色反映在选材上是丰富多彩的国际商务内容,涉及现代市场经济条件下商务活动的各个方面和时代课题,如全球化、国际营销、技术创新、营销策略、企业文化、市场竞争、经营风险、危机管理、电子商务等等。

角色扮演和案例学习将体验式学习引向深入。本系列教材的突出特色是任务式、体验式的教学活动设计。《综合教程》的每个单元都有角色扮演和案例学习等交际任务。每个交际任务都以真实的商务交际情景为参照,交际任务目标明确,鼓励学习者在完成交际任务的过程中复用所学语言知识,提高交际能力,将自己的经历和观点融入交际活动之中。

教学设计严谨,为体验式学习打好基础。《综合教程》的每个单元通过讨论与学习者相关的话题导入教学。然后是相关商务词汇、听力和阅读、语法和商务技能的学习。中间穿插形式多样的任务活动。最后,在充分学习、掌握相关内容和技能的基础上,进行案例学习和商务写作练习。整体编排层层递进,前面的学习为角色扮演、案例学习等实践型交际训练打下了基础。

教学资源丰富,为体验式教学提供有力支持。《综合教程》、《听说教程》和《视听说》主要供课堂教学使用。配套录音和录像(包括短片、著名企业家访谈等)提供了生动的视听素材,可作为课堂教学或补充学习使用。

从学习者的需求和兴趣出发编写,使体验式学习更方便。《综合教程》中的主题全部通过在师生中广泛调研精心挑选,反映了大部分学习者的需要和兴趣,可激发学生进一步学习、探索。

《体验商务英语》扩展阅读系列包括《银行与金融读本》、《商法读本》和《国际管理读本》。《商法读本》涵盖了商法中的基本内容,例如:仲裁、雇佣歧视、不正当竞争、商标、专利和知识产权、土地所有权、保密协议、许可协议、欺诈、合同、民事诉讼、侵权、商务律师和遗产税等;同时也涉及了商法中的热门话题,如电话犯罪、洗钱和网络欺诈等。

本教材课文大部分选编自英国《金融时报》、《泰晤士报》等著名报刊,文章短小精悍,贴近实际,具有很强的时代感和实用价值,便于学习者理论联系实际,提高其学习管理英语和知识的兴趣。

本教材每单元设计了各种练习。在阅读课文之前,为学习者设计了与本单元相关的问题,要求学习者运用已有的知识讨论,借此引起学习者阅读课文的兴趣。接下来是课文阅读理解题,目的是

帮助学习者对课文内容有一个初步的认识或了解，在课文之后，编排了词汇、短语、术语等形式多样的练习，还配有一至两道相关思考题，供学习者回答、讨论、写作或研究。

本教材适合高等院校英语专业、法律专业、法律英语专业一、二年级的本科或专科学习者使用。改编组对有关术语、词汇进行了英语和中文注释，提供了文章中重点句子或难句的译文。相信这些能方便学习者学习，提高学习效果。

《体验商务英语》扩展阅读系列可以与《综合教程》3、4册配套使用，也可以单独使用。

本书改编可能存在的不足之处，欢迎广大读者批评、指正。

改编组
2006年9月

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Arbitration

Before you read

Discuss these questions.

- 1 Have you ever been in dispute with another person over an agreement or a contract?
What was the problem?
- 2 What steps can you take, apart from going to court, to settle a commercial disagreement?

Reading tasks

A Understanding main points

Read the text on the opposite page about how international disputes between companies are resolved and answer these questions.

- 1 Why might you prefer not to go to court in the country of your business partner?
- 2 What are the three main business areas which have traditionally been resolved by arbitration?
- 3 How is a forum made up for a neutral arbitration?
- 4 What is the main difference between arbitration and litigation, according to the text?
- 5 Which are the main arbitration centres?
- 6 In which city would you choose to arbitrate an east-west trading dispute?
- 7 Which specific aspects of a contract are named in the text?
- 8 What do clients look for from an arbitration service?
- 9 What examples of expert witnesses are given in the text?
- 10 Do all the venues share the same arbitration rules?

B Understanding details

Mark these statements T (true) or F (false) according to the information in the text.
Find the part of the text that gives the correct information.

- 1 Disputes only arise in commercial transactions. *F*
- 2 Commodities are things traders buy and sell, usually raw materials, like coffee, wool or copper.
- 3 A neutral forum has a balanced composition to ensure fairness to both parties.
- 4 New York is the only American arbitration venue named in the text.
- 5 Arbitration is a business in itself, for lawyers and their associates.
- 6 *Name recognition* for arbitration is like *brand awareness* for consumer goods.
- 7 International business depends on rapid resolution of contractual disagreements.
- 8 The courts of law in each country are less powerful than arbitration panels.

BUSINESS AND THE LAW DISPUTES

Resolution in a neutral forum

Arbitration settles international commercial cases, says **Jeremy Winter**

A You have been in a conference room in your lawyer's office for the whole day, negotiating a crucial international contract. Term by term, detail by detail, the lawyers have argued it out. Someone says: 'What are we going to put in for dispute resolution?' When you started the negotiations you thought that the deal was a certain money-spinner for both parties, so no disputes could arise. Now you are not so sure. So what do you say? What do your lawyers advise? Ideally, you might want to be able to have recourse to the courts in your own country: the other party would probably like to do the same in its home country. Neither is acceptable to the other, for fear of home-team advantage or even local bias.

The answer is to opt for arbitration. This is not really a difficult decision, and that is why arbitration is the recognised way of resolving international commercial disputes. For at least a century, it has been the dominant force in dispute resolution in areas such as shipping, commodities and construction. You can opt for a neutral forum and have a panel of three arbitrators, one chosen by each party, and the third (the chairman) chosen either by the parties or the two party-appointed arbitrators. In addition, you can keep your disputes away from the public eye, because arbitration takes place in private, unlike litigation in the court.

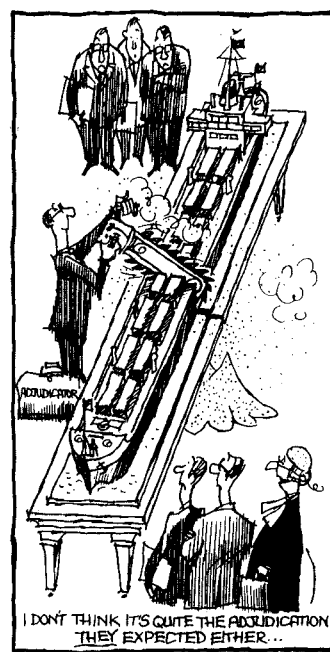
The main centres for interna-

tional arbitration are: Paris, London, Geneva, Stockholm, New York, Hong Kong and Singapore. Which is used depends on the background and businesses of the parties. Stockholm, for example, was always the place for arbitrating east-west trade disputes, London for shipping and commodities. Singapore looks set for a busy time in the coming months and years after the Asian financial crisis. These locations, and the arbitration centres and lawyers working there, compete intensely. Arbitration bodies try hard to get their standard arbitration clause put into people's contracts, so they have a captive market once disputes arise. They do this by publicising their activities and their rules.

What they are looking for is 'name recognition'. In Europe, Paris (home of the International Chamber of Commerce and its rules) probably has the best name recognition, followed by London (home of the London Court of International Arbitration), and Geneva. What people look for in an arbitration is speed, cost effectiveness, confidentiality and reliability of the arbitrators and hence their decisions.

The choice of venue involves a complex balancing of a number of factors:

- the availability of good experienced arbitrators
- the availability of good experienced arbitration lawyers, and expert witnesses such as accountants and engineers



tants and engineers

- the cost of these people
- the support or otherwise that the local legal system gives to arbitration. (For example, if the arbitration gets bogged down as a result of delaying tactics by one party, what powers does the arbitrator, or court, have to speed things up? Will the courts readily interfere or overturn arbitrators' decisions?)

— accessibility — basic things like flight access, good facilities (some of the best are now in the Gulf states), administrative back-up, good telecommunications, IT support and even climate.

National legislation also has to lend its support to such an important economic activity as arbitration. England has taken steps to improve English arbitration law in the form of the Arbitration Act 1996, which came into force at the beginning of 1997.

FINANCIAL TIMES
World business newspaper.

Vocabulary tasks

A Definitions

Match these terms with their definitions.

- | | |
|---|---|
| 1 dispute resolution (line 8) | a) unfair treatment |
| 2 a money-spinner (line 11) | b) accelerate |
| 3 have recourse to the courts (line 16) | c) reverse something already decided |
| 4 home-team advantage (line 21) | d) settling disagreements |
| 5 local bias (line 22) | e) make use of the legal system |
| 6 financial crisis (line 55) | f) benefit from being local or on home ground |
| 7 delaying tactics (line 93) | g) meddle or get involved with |
| 8 speed things up (line 95) | h) something that makes profits for everyone |
| 9 interfere (line 97) | i) ways of making things take a long time |
| 10 overturn decisions (line 97) | j) become operational |
| 11 take steps (line 108) | k) serious money problems |
| 12 come into force (line 111) | l) institute action |

B Terms of disagreement and dispute

Use an appropriate word or phrase from the box to complete each sentence.

resolve	resolution	dispute	settle	arbitrate
arbitration	arbitrator	agree	disagree	delaying tactics

- There is a serious problem we must try to *resolve* ..
- He was a distinguished lawyer who was an expert ..
- The process took far longer than the parties had expected.
- This was due to the employed by one of the companies involved.
- The question is: how are we going to this dilemma?
- When the goods arrived in poor condition, a arose over whose fault this was, and who should bear the cost.
- The best way is not to go to court, which is public and costly, but to an agreement.
- I believe you are wrong on that point — we on the interpretation.
- There is always an answer if you try hard to find it: every difficulty has a ..
- You cannot assume he will to those terms: you must check with him first.

C Parties to an agreement

In law, it is important to distinguish between the parties involved in a transaction or an action. Complete the sentences below, using words from the box. Not all the words will be needed.

signatories	buyer/seller	borrower/lender	supplier/producer
wholesalers/retailers	lawyer/client	teacher/student	plaintiff/defendant
licensee/licensor	franchiser/franchisees	undersigned	parties to the agreement

- 1 Everyone promises to obey the treaty — all major countries are *signatories*... to it.
- 2 In the civil case, the brought an action against the for damaging his car on purpose.
- 3 The price was negotiated between the and the of the house, in a private sale.
- 4 The bank agreed that the should pay 12% on the loan, so the made a fair profit!
- 5 Manufacturers sell their goods to, and in turn, buy from them.
- 6 The relationship between a and is bound by confidentiality.
- 7 The beer can be produced under licence but the must fulfil all the requirements imposed by the
- 8 Some clothes companies sell their products on a franchise basis: each country has a main, with numerous people working as
- 9 A letter was sent to the manager complaining about working conditions. All the members wrote their names. The letter read: 'We, the, strongly protest about conditions at work.'
- 10 Many projects require the cooperation of various partners. If they all agree to work together, they become

D Word families

Complete the chart.

verb	person	thing
arbitrate	1 <i>arbitrator</i>	2
license	3	4
5	6	franchise

Over to you

- 1 Recently there was a case of a mail-order company selling televisions over the Internet where the price of a top-line television was shown as \$3 instead of \$300. The web page was seen in many countries and several customers placed orders for the 'cheap TV', but the company said they had no obligation to supply as the price was a mistake. What do you think? Should the company honour the orders? Was it a contract? If it was, where was it made — in the country of origin or where the customer lives and ordered the goods? Is this a case for arbitration?

Before you read

Discuss these questions.

- 1 Employment discrimination can be based on age, gender and race — are there other categories you can think of?
- 2 Are women and men employed as equals in your country, in terms of pay and conditions?

Reading tasks

A Understanding main points

Read the text on the opposite page about an important case about discrimination against women in the workplace and answer these questions.

- 1 What is the case about?
- 2 Where is the case being heard?
- 3 Who brought the appeal — the ADA or Ms Kolstad?
- 4 What types of discrimination are mentioned in the text?
- 5 Why did Ms Kolstad sue the ADA?
- 6 Was there any dispute about the facts of the discrimination against Ms Kolstad?
- 7 What was the lower Appeals Court's decision?
- 8 Which organisation is mentioned that supports the ADA?
- 9 If the Supreme Court decides in favour of Ms Kolstad, how much may she receive in damages?

B Understanding expressions

Choose the best explanation for each of these words or phrases from the text.

- | | |
|--------------------------------------|-----------------------------|
| 1 knock-on effect (line 16) | 4 upholds (line 47) |
| a) blow to the body | a) reverses |
| b) wider consequences ✓ | b) agrees with and supports |
| c) entry requirement | c) sets a standard |
| 2 malice (line 32) | 5 brief (line 71) |
| a) friendliness | a) short letter |
| b) with bad or cruel intention | b) legal document |
| c) unintentional | c) kind of case |
| 3 reckless indifference (line 32) | 6 caps (line 85) |
| a) driving without care | a) sets an upper limit |
| b) heartless and cruel | b) interferes |
| c) not caring about the consequences | c) is the head |

Court to hear key case on discrimination

By Patti Waldmeir
in Washington

The US Supreme Court today hears a case which could have a big impact on the size of damages paid by US employers in employment discrimination lawsuits. The court agreed to hear the case, Carole Kolstad vs¹ the American Dental Association (ADA), to clarify what kind of employer conduct will give rise to punitive damages — damages awarded to punish and deter an offender — in lawsuits involving sex discrimination. However, law employment experts said that the suit was also likely to have a knock-on effect on race, age and other employment discrimination suits brought under Title VII of the 1991 Civil Rights Act.

The case involves a female lawyer employed as a lobbyist for the ADA, a professional trade association. A jury found that Ms Kolstad was denied promotion because of intentional sex discrimination. The issue before the court is not whether this is so, but whether such discrimination must be 'egregious'² before punitive damages are awarded.

Title VII permits such damages where there was 'malice or ... reckless indifference to the federally protected rights of an individual'.

But in Ms Kolstad's case an Appeals Court found that the ADA's conduct was neither 'egregious' nor 'truly outrageous' enough to merit punitive damages. At the moment there is confusion over the standard of conduct necessary to attract punitive damages, with the various circuit courts applying differing standards to define 'reckless indifference'. If the Supreme Court upholds the Appeals Court's decision in Kolstad — that the conduct did not meet this standard of 'egregious' — this would set a new standard nationwide that could limit the size of both jury awards and pre-trial settlements.

'Our concern is that punitive damages would become the norm'

Conversely, if Ms Kolstad wins, jury awards and settlements could shoot up. Her lawyers argue in their brief that 'egregious' is too high a standard, and that employees need only show that their employers knew or should have known their conduct was probably unlawful in order to have claims

for punitive damages put before a jury.

'If adopted, this standard would subject employers to punitive damages virtually every time an employee engages in intentional discrimination against another,' the US Chamber of Commerce argues in a brief filed to support the ADA. 'Our concern is that punitive damages would become the norm, not the exception, whereas the law clearly intends them to be the exception,' says Stephen Bokart of the National Chamber Litigation Center, which has also backed the ADA.

According to Jury Verdict Research, which tracks jury awards, 40% of verdicts in gender discrimination cases in the last six years have included punitive damages. The law caps damages at \$50,000-\$300,000 per plaintiff, depending on the size of the employer.

A lower court jury awarded Ms Kolstad back pay after a male employee in the same office was, according to her lawyer's brief, 'preselected' for a promotion for which he was less qualified than she was.

FINANCIAL TIMES
World business newspaper.

1 an abbreviation for versus, meaning against

2 very bad indeed, disgraceful (widely used in legal terminology in American English)

Legal brief

Discrimination is unfair treatment or denial of normal privileges to people because of their race, age, sex, nationality or religion. In this case, the US appeal judges were asked to decide if the unfair treatment had been so bad as to warrant an extremely stiff penalty (punitive damages), which should deter others from similar behaviour. Note that each US state administers its own justice system but the system of appeal is from trial court to Appeals Court and then the Supreme Court, which is the highest appeal court in the US.

Vocabulary tasks

A Complete the sentence

Use an appropriate word or phrase from the box to complete each sentence.

limit	punitive damages	egregious	circuit	judge	Act	settlement
jury	lawsuit	brief	cap	appeal	federal rights	

- 1 The amount of money awarded to a victim has a *limit*
- 2 The courts are in session at different times during the year in different places, so that the can work in a variety of places.
- 3 When Parliament votes to pass a Bill it becomes an
- 4 There is no on the liability of owners in a private partnership.
- 5 Many people think there should be a specialist for complex fraud cases.
- 6 American citizens should study their so that they know what laws protect them from abuse.
- 7 Damages set very high in order to deter others are called
- 8 A special term for very bad behaviour in the US is behaviour.
- 9 Every court decision may be sent for if circumstances justify it.
- 10 An out-of-court is desirable if possible.
- 11 Anyone can bring a against someone else if they feel they have suffered a wrong that cannot be settled easily.
- 12 A barrister cannot work in a court without a from a solicitor.

B Opposites

Match the opposites.

- | | |
|------------------------|----------------------------------|
| 1 lawful | a) illegal |
| 2 clarify | b) female |
| 3 legal | c) unlawful |
| 4 malice | d) one-off |
| 5 preselection | e) confession |
| 6 male | f) confuse |
| 7 punitive | g) token |
| 8 knock-on effect | h) kind intentions |
| 9 discriminate against | i) fair job promotion procedures |
| 10 denial | j) act fairly |

C Prepositions

Complete these sentences with a preposition from the box.

up under against on to at

- 1 If she wins this case, awards and settlements could shoot*up*.....
- 2 The suits are brought Title VII of the 1991 Civil Rights Act.
- 3 There may be a knock- effect: other types of discrimination suits will be affected.
- 4 The decision will have a major impact employers nation-wide.
- 5 Some companies may be subject enormous claims.
- 6 The law caps damages a certain sum of money, depending the size of the company.
- 7 According the researchers, juries often award punitive damages in cases where there has been discrimination women in the workplace.
- 8 What kind of conduct could give rise punitive damages?

D Different outcomes

Use an appropriate word or phrase from the box to complete each sentence.

however	on the other hand	if	whereas
should	conversely	might	

- 1 The court could decide to award punitive damages for any justified complaint.*However*....., if that happened, companies would soon go bankrupt.
- 2 On the one hand, the lower court may decide in favour of the plaintiff;, the appeal court may decide differently.
- 3 The verdict may be to limit all types of damages., the verdict may be to award the maximum possible to deter others.
- 4 they had not complained about the award, there would not have been an appeal.
- 5 A successful outcome for the company involved would be a limitation on the damages, a worst-case scenario would be that they have to pay punitive damages.
- 6 the worst come to the worst, the ADA find themselves paying Ms Kolstad punitive damages — and others too, if they file suit!

Over to you

- 1 Check what the law in your country says about employment and equal opportunities. How do these affect disabled people? Write a brief report.
- 2 Research some advertisements on TV or in magazines. Can you find any which use thought-provoking or socially challenging images? List the kinds of discrimination the advertisements try to make the public aware of.