

法律英语系列教材

法律英语核心教程

Core Course of English for Law

第二册

Book Two

■ 杜金榜 张新红 主编
■ 刘诒廷 主审



对外经济贸易大学出版社

法律英语核心教程

第二册

Core Course of English for Law
Book Two

顾问：桂诗春

主审：刘诒廷

主编：杜金榜 张新红

编写者名单

蔡 芸	陈文玲	杜碧玉	冯建东	高兴刚
郭万群	海 云	何德生	麦小梅	孙 红
唐桂民	王岫庐	谢 静	杨 丽	张 舟
张新红	杜金榜			

对外经济贸易大学出版社

(京)新登字 182 号

图书在版编目 (CIP) 数据

法律英语核心教程. 第 2 册/杜金榜, 张新红主编. 北京: 对外经济贸易大学出版社, 2002

法律系列教材

ISBN 7-81078-205-3

I. 法… II. ①杜…②张… III. 法律-英语-高等学校-教材 IV. H31
中国版本图书馆 CIP 数据核字 (2002) 第 083369 号

© 2002 年 对外经济贸易大学出版社出版发行

版权所有 翻印必究

法 律 英 语 核 心 教 程

杜金榜 张新红 主编

责任编辑: 宋海玲

对外经济贸易大学出版社
北京市朝阳区惠新东街 12 号 邮政编码: 100029
网址: [http://www. uibep. com](http://www.uibep.com)

北京顺义振华印刷厂印装 新华书店北京发行所发行
开本: 787 × 1092 1/16 22 印张 445 千字
2002 年 11 月第 1 版 2002 年 11 月第 1 次印刷

ISBN 7-81078-205-3/H·038
印数: 0001—5550 册 定价: 36.00 元

法律英语系列教材编写委员会

主 编：杜金榜 张新红

顾问：桂诗春

主 审：刘诒廷

编委会成员：杜金榜 张新红 刘诒廷 唐桂民
蔡 芸 郭万群 杜碧玉 陈文玲

序 言

杜金榜、张新红两教授主编的《法律英语核心教程》即将问世，嘱我为序。我感到十分高兴，竭诚向读者推荐。我国已经加入世界贸易组织，涉外法律人才的需要必将日益增加。对外经济贸易大学出版社苾智瑛副总编组稿、策划的这套教材的出现是“及时雨”，必将受到广大读者的欢迎。

在专门用途英语（English for Specific Purposes）中，法律英语是最具特色的一种。从法律用语到法律文件，都有鲜明的特点，要求严格的、规范的、正式的语体。如果说专门用途英语必须经过“专门的”训练才能学到，那么法律英语应该是属于“最专门的”一种；就是以英语为母语的人也未必具有这样的知识。这就是说，为我国读者编写的法律英语的教科书必须从选材、编注、练习体系设计等方面精心安排。这套教材的编者们在法律英语的教学方面积累了许多行之有效的宝贵经验，在编写中从我国学生的特点出发，既注意到读、写、说、译等语言技能的培养，又注意到法学知识的输入。既强调教材体系的连贯性，又强调知识的循序渐进性，覆盖了法学的基础知识、国际经济法、法律专题讨论等领域。这就保证了学生既学到英语，又学到法律知识。从本书的编写说明中可以看出，目前这套教材仅是法律英语系列教材的一本，还会继续有《法律英语听说教程》、《法律英语阅读教程》、《法律英语写作教程》、《法律英汉翻译教程》等问世。这套系列教材的出版将会大大地有利于法律英语专业学生的培养，我们翘首以待。

法律语言学（forensic linguistics）是在各民族和国家之间的关系日益紧密的基础上发展起来的一门新兴的语言学科，具有很大的生命力。语言在商贸谈判和法律诉讼中往往具有举足轻重的地位。我们经常说“法律面前人人平等”，但是语言不沟通，平等就难以维持。我热切地希望编者们的能够把法律语言学的一些新进展消化和融合到这套教材里面，千锤百炼，使之成为一套更实用、更先进、更科学的教程。

是为序。

桂铸春

编写说明

编写宗旨

随着对外开放步伐的加快,尤其是新近加入世界贸易组织,中国对于涉外法律人才的需求急剧增加,为了适应这一需求,尽快培养高素质的法律英语复合型人才,必须编写合用的专门教材。在此背景下,我们将陆续推出《法律英语系列教材》,包括《法律英语核心教程》、《法律英语听说教程》、《法律英语阅读教程》、《法律英语写作教程》以及《法律英汉翻译教程》。与其他通用英语教材相比,《法律英语系列教材》不仅注重英语能力的培养,也强调法律专业知识的传授和技能的训练。与普通的法学英语教材相比,本教程对英语能力的培养和训练更为丰富全面,更为系统化,因此是培养兼具法律专业技能和英语能力双高人才的合适教材。

《法律英语系列教材》除了适合‘英语+法律’、‘法律+英语’的涉外型、复合型本科学生使用外,也可供法律、外交、国际贸易、国际金融和国际政治等专业的本科生学习法律和英语之用;可供辅修法律或英语的商务、经济、管理、金融、文化交流等专业的在读生和毕业生学习之用。此外,本系列教材还可作为立法、司法等部门的公务员提高专业和英语水平的教材。

体例说明

《法律英语核心教程》共三册,每册16单元,每单元由2~3篇课文和系统的语言、法律技能练习组成,练习的种类丰富,涵盖面广。作为培养‘法律+英语’和‘英语+法律’的复合型人才的综合基础教材(或称精读教材),本套教材除了在练习中注重读、写、说、译等英语技能的培养外,还格外注重法学知识的输入,各单元课文具有连贯系统性和知识的循序渐进性。第一册课文主要是有关法学的基础知识,第二册侧重国际经济法,第三册注重法学原理应用及案例分析,以深入探讨的形式来培养学生的法律技能和分析能力,同时注重培养学生使用英语材料进行法律实践与研究的能力,使学生能够充分发挥和利用自己的英语优势。本套教材每单元还配有针对该单元法律主题的案例,使学习者通过法律实例掌握该单元的法律知识和技能。

本册为第二册,分16个单元,侧重国际经济法,内容涉及国际商务的法律环境、国际贸易惯例、合同法、WTO的法律框架、国际技术转让、国际投资、国际金融法、国际税法、国际争端解决,等等。每单元含两篇法律英语课文,第一篇课文为整个单元的学习重点,第二篇是对第一篇内容的深化与补充,旨在帮助学习者领会和应用本单元的法律知识。由于篇幅所限,本册各单元后未提供案例。

第一篇课文的正文部分每个自然段都标注了序号,方便学习者快速查找和阅读;正文后附有课文的字数说明,以便学习者掌握自己的阅读速度。课文后附有理解课文所需的法律、社会、文化等背景知识的注释以及课文中所涉及的部分语言要点;之后是为加强课文理解、巩固所学知识而编写的紧扣课文的练习题,包括阅读理解问题和讨论题。下一部分是综合练习,分词汇、典型句型、完型填空、英汉语互译和写作等。练习题有多种类型,既有主观题,也有客观题。有些题目结合课文编写,另外一些则不局限于课文。典型法律句型和写作部分按照法律文书的类型安排和编写,具有较强的指导性。其中写作部分主要介绍一些重要法律文本的基本结构,配有相应的写作练习题。第二篇为泛读课文,课文后提供了部分难词、生词的基本意义或汉语译文,然后是针对该篇文章内容的问答题,以检查学习者的理解程度。每单元后还给学习者提供了补充法律词汇,以帮助学习者扩充法律英语词汇量。

本教程未包括英语听力的训练,也较少涉及英语口语训练,这些内容将集中放在《法律英语听说教程》中。

使用说明

本套教程一共三册,建议第二学年开始使用,每学年一册(每周2学时)。

使用本教程的教师也可以视课时量和学习者的具体情况制定不同的授课进度、采取不同的授课方法。如果每周课时为4节,则每册可供一学期之用。

如上所述,本套教材是法律英语核心教程,属于法律英语综合基础教材,涉及大量法律基础知识和英语词汇、语法和语篇知识,以及读、写、说、译等基本技能。因此建议学习者在学习每一单元之前认真预习,查阅生词和相关的法律知识,上课除认真听讲外应积极参与课堂讨论,课后及时复习并阅读中文版和英文版法学原著作为补充。

本套教程还配有一本教师参考书,内容包括补充知识、难点解释和练习答案等。另外,为方便本教程的编写者与使用者进行直接交流,我们还建立了专门的网站 <http://www.beschool.net/corecourse/index.html>,欢迎使用该教程的教师、学生和广大法律英语自学者参加讨论并索取本教材的有关参考资料。

我们感谢对外经济贸易大学出版社对本套教材的出版所作的一切工作,感谢宓智瑛副总编的鼓励、支持、督促、高瞻远瞩和忘我的劳动,感谢广东外语外贸大学国际商务英语学院的积极首肯、精神鼓励和物质支持。感谢我们所引用的一些原材料的作者,尽管他们的名字无法在此一一列出,但他们为本教材所作的贡献将铭记在我们心中。

编者

2002年7月于广州白云山脚下

Contents

Unit 1 Legal Environment of International Trade	(1)
Text I General Principles of International Trade	(1)
Exercises	(6)
Text II Government Regulation of International Trade	(14)
Supplementary Legal Vocabulary	(20)
Unit 2 Legal Framework of the WTO	(22)
Text I Principles of the Trading System	(22)
Exercises	(27)
Text II The Agreements	(33)
Supplementary Legal Vocabulary	(38)
Unit 3 The Contract	(41)
Text I Introduction and Origins	(41)
Exercises	(45)
Text II Interpretation of Contracts	(61)
Supplementary Legal Vocabulary	(65)
Unit 4 Convention on Contracts for the International Sale of Goods	(69)
Text I An Introduction to the Convention	(69)
Exercises	(73)
Text II Formation of the Contract	(84)
Supplementary Legal Vocabulary	(88)
Unit 5 International Trade Custom	(91)
Text I Incoterms 2000	(91)
Exercises	(96)
Text II FOB	(102)
Supplementary Legal Vocabulary	(108)
Unit 6 International Carriage of Goods	(111)
Text I International Carriage of Goods by Sea	(111)
Exercises	(116)
Text II The Carrier's Liabilities under a Bill of Lading	(123)
Supplementary Legal Vocabulary	(128)

Unit 7	Cargo Insurance	(131)
Text I	Policies, Coverage and Exclusions	(131)
	Exercises	(134)
Text II	Fundamental Principles of Cargo Insurance	(143)
	Supplementary Legal Vocabulary	(148)
Unit 8	Payments in International Sales	(151)
Text I	Documentary Credits	(151)
	Exercises	(155)
Text II	The Doctrine of Strict Compliance	(163)
	Supplementary Legal Vocabulary	(167)
Unit 9	International Transfer of Technology	(169)
Text I	Transfer of Technology and Some Contractual Issues	(169)
	Exercises	(174)
Text II	Transfer of Technology to Developing Countries	(184)
	Supplementary Legal Vocabulary	(190)
Unit 10	Introduction to Intellectual Property Rights	(192)
Text I	Intellectual Property Protection	(192)
	Exercises	(197)
Text II	Berne Convention for the Protection of Literary and Artistic Works	(206)
	Supplementary Legal Vocabulary	(212)
Unit 11	TRIPS	(214)
Text I	The TRIPS Agreement	(214)
	Exercises	(218)
Text II	TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights	(226)
	Supplementary Legal Vocabulary	(234)
Unit 12	Trade in Services (GATS)	(237)
Text I	GATS and the Services Liberalization	(237)
	Exercises	(241)
Text II	Specific Commitments Under GATS	(249)
	Supplementary Legal Vocabulary	(255)
Unit 13	International Investment	(258)

Text I	International Investments	(258)
	Exercises	(264)
Text II	Why International Rules on Investment	(274)
	Supplementary Legal Vocabulary	(280)
Unit 14	International Finance Law	(283)
Text I	Law of International Finance-Choice of Law	(283)
	Exercises	(288)
Text II	Selected Clauses of Agreement of International Monetary Fund	(296)
	Supplementary Legal Vocabulary	(301)
Unit 15	International Taxation Law	(304)
Text I	Taxation in a Global Environment	(304)
	Exercises	(308)
Text II	Tax Havens and Struggle against Tax Avoidance	(315)
	Supplementary Legal Vocabulary	(319)
Unit 16	Settlement of International Disputes	(322)
Text I	Alternative Dispute Resolution Systems	(322)
	Exercises	(326)
Text II	The WTO's Procedure of Settling Disputes	(333)
	Supplementary Legal Vocabulary	(338)
References	(340)

UNIT 1

Legal Environment of International Trade

Text I General Principles of International Trade

1 Nations enter into treaties and conferences to further international trade. The business world has developed certain forms of organizations for conducting that trade. Thus, the success and failure of firms doing business in foreign countries not only depend on accurate information about laws and customs of their domestic countries and the host countries, but also the related international legal environment.

Legal Background

2 Because of the complexity and ever-changing character of the legal environment of international trade, certain underlying elements will be focused on here.

3 **What Law Applies.** When an international sale is made, it is necessary to determine whether it is the law of the exporter's state or the law of the importer's state that will govern. The parties to an international contract often resolve that question themselves as part of their contract, setting forth which state's law will govern should a dispute arise. Such a provision is called a choice of law clause.

4 A number of treaties have been entered into by the major trading countries of the world. When their citizens deal with each other, and their respective rights are not controlled in their contract, their rights and liabilities are determined by the treaty.

5 The Arbitration Alternative. Traditional litigation may be considered too time consuming, expensive, and divisive to the relationships of the parties to an international venture. The parties may therefore agree to arbitrate any contractual disputes that may arise, according to dispute resolution procedures set forth in the contract. It is common for parties to international ventures to agree to arbitrate their disputes in neutral countries. The decision of the arbitrator is final and binding on the parties, with very limited judicial review possible.

6 Conflicting Ideologies. Law is the result of the desire of the lawmaker to achieve certain goals. These are the social forces that make the law. In the eyes of the lawmaker, the attainment of these goals is proper and therefore ethical. This does not mean that we all can agree on what the international law should be, because different people have different ideas as to what is right. This affects our views as to ownership, trade, and dealings with foreign merchants.

7 Financing International Trade. There is no international currency. This creates problems as to what currency to use and how to make payment in international transactions. Today the parties to an international transaction agree in their sales contract on the currency to be used to pay for the goods. They commonly require that the buyer furnish a letter of credit. By this, an issuer, typically a bank, agrees to pay the amount of drafts drawn against the buyer for the purchase price.

International Trade Organizations, Conferences, and Treaties

8 A large number of organizations exist that affect the multinational markets for goods, services, and investments. A survey of major international organizations, conferences and treaties follows.

9 WTO. The World Trade Organization is an international organization established in 1995 as a result of the final round of the General Agreement on Tariffs and Trade (GATT) negotiations, called the Uruguay Round. The WTO is responsible for monitoring national trading policies, handling trade disputes, and enforcing the GATT agreements, which are designed to reduce tariffs and other barriers to international trade and to eliminate discriminatory treatment in international commerce. The WTO is head-

quartered in Geneva and also holds international ministerial conferences; as of it has 135 members.

10 CISG. The United Nations Convention on Contracts for the International Sale of Goods (CISG) sets forth uniform rules to govern international sales contracts. The CISG became effective on January 1, 1988, between the United States, China and other nations that had approved it. The provisions of the CISG have been strongly influenced by Article 2 of the Uniform Commercial Code.

11 EU. The European Economic Community (EEC) was established in 1958 to remove trade and economic barriers between member countries and to unify their economic policies. It changed its name and became the European Union after the Treaty of Maastricht was ratified on November 1, 1993. The Treaty of Rome contained the governing principles of this regional trading group. The treaty was signed by the original six nations of Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands. Membership expanded with the entry of Denmark, Ireland, Great Britain, Greece, Spain, Portugal, Finland, Austria, and Sweden.

12 IMF-World Bank. The International Monetary Fund (IMF) was created after World War II by a group of nations meeting in Bretton Woods, New Hampshire. The Articles of Agreement of the IMF state that the purpose is "to facilitate the expansion and balanced growth of international trade" and to "shorten the duration and lessen the disequilibrium in the international balance of payments of members." The IMF helps to achieve such purposes administering a complex lending system. A country can borrow money from other IMF members or from the IMF by means of Special Drawing Rights (SDRs)¹ sufficient to permit that country to maintain the stability of its currency's relationship to other world currencies. The Bretton Woods conference also set up the International Bank for Reconstruction and Development (World Bank) to facilitate the lending of money by capital surplus countries to countries needing economic help and wanting foreign investment after World War II.

13 OPEC. The Organization of Petroleum Exporting Countries (OPEC)² is a producer cartel³ or combination. One of its main goals was to raise the taxes and royalties earned from crude oil production. Another major goal was to take con-

trol from the major oil companies over production and exploration.

Forms of Business Organizations

14 The decision to participate in international business transactions and the extent of that participation depend on the financial position of the individual firm, production and marketing factors, and tax and legal considerations. There are a number of forms of business organizations for doing business abroad.

15 Export Sales. A direct sale to customers in a foreign country is an export sale. A firm engaged in export selling is not present in the foreign country in such an arrangement. The export is subject to a tariff by the foreign country, but the exporting firm is not subject to local taxation by the importing country.

16 Agency Requirements. A manufacturer may decide to make a limited entry into international business by appointing an agent to represent it in a foreign market. An agent is a person or firm with authority to make contracts on behalf of another—the principal. The agent will receive commission income for sales made on behalf of the principal. The appointment of a foreign agent commonly constitutes “doing business” in that country and subjects the firm to local taxation.

17 Foreign Distributorships. A distributor takes title to goods and bears the financial and commercial risks for the subsequent sale of the goods. To avoid making a major financial investment, a firm may decide to appoint a foreign distributor. A firm may also appoint a foreign distributor to avoid managing a foreign operation, with its complicated local business, legal, and labor conditions.

18 Licensing. Firms may select licensing as a means of doing business in other countries. Licensing involves the transfer of technology rights in a product so that it may be produced by a different business organization in a foreign country in exchange for royalties and other payments as agreed. The technology being licensed may fall within the internationally recognized categories of patents, trademarks, and “know-how”. Franchising, which involves granting permission to use a trademark, trade name, or copyright under specified conditions, is a form of licensing that is now very common

in international business.

19 Wholly Owned Subsidiaries. A firm seeking to maintain control over its own operations, including the protection of its own technological expertise, may choose to do business abroad through a wholly owned subsidiary. Corporations doing business in more than one country pose many taxation problems for the governments in the countries in which the firm does business. Many countries have established tax treaties with other countries. These treaties grant corporations relief from double taxation.

20 Joint Ventures. A manufacturer and a foreign entity may form a joint venture whereby the two firms agree to perform different functions for a common result. The responsibilities and liabilities of such operations are governed by contract.

(1,359 words)

Notes

- ¹ SDRs (特别提款权) are a type of international monetary reserve currency established (1968) by the International Monetary Fund. Created in response to worries concerning the limitations of gold and dollars as the sole means of settling international accounts, SDRs are designed to augment international liquidity by supplementing the standard reserve currencies. SDRs are assigned to the accounts of IMF members in proportion to their contributions to the fund. Each participating country agrees to accept them as exchangeable for reserve currencies in the settlement of international accounts. Deficit countries can use them to purchase stronger currencies, which then can be used to pay off balance-of-payments debts.
- ² OPEC (石油输出国组织) is a multinational organization established in 1960 and formally constituted in 1961 that coordinates petroleum policies and economic aims among oil-producing nations. Its Board of Governors and board chairperson are elected by member nations; OPEC's headquarters is in Vienna, Austria. Members consist of Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Venezuela. Ecuador and Gabon suspended their memberships in 1992 and 1994 respectively. Saudi Arabia has traditionally dominated the organization, owing to its enormous oil reserves. The organization's members produce about 40% of the world's crude oil.
- ³ Cartel (卡特尔) is a national or international organization of manufacturers or traders allied by agreement to fix prices, limit supply, divide markets, or to fix

quotas for sales, manufacture, or division of profits among the member firms. The existence of cartels is in opposition to classic theories of economic competition and the free market, and they are forbidden by law in many nations. Yet cartels in international trade are usually felt to be less harmful than those that tend to create monopolies in the home market for participants because they imply the agreement and supervision of several governments.

I . Comprehension Questions

1. What is a choice of law clause?
2. When do parties to a contract refer to the treaty to determine their rights and liabilities?
3. Why is it common for the parties to resort to arbitration when disputes arise?
4. Can the parties appeal to the court if they are not satisfied with the outcome of the arbitration? Why or why not?
5. Why is it difficult for people in different countries to agree on what the international law should be?
6. How do parties to an international transaction usually pay for the goods?
7. What are the main responsibilities of the WTO?
8. How many member states does the EU have? What are they?
9. What is the difference between a distributor and an agent?
10. What may be transferred to a foreign country if a corporation chooses licensing as a way to do international business?

II . Extended Discussion

1. Discuss the possible obstacles a multinational corporation may encounter in host countries.
2. Discuss from a legal perspective the respective advantages and disadvantages of export sales, subsidiaries, and joint ventures.

EXERCISES

I . Vocabulary

1. Fill in the blanks with the proper forms of the following words.

contract	underlie	ratify	subsequent	provide
tax	enforce	complex	attain	arbitrate

- 1) The federal government obtains revenue through direct _____ and indirect _____.
- 2) According to the _____ of the agreement the interest on the loan must be paid monthly.
- 3) They _____ knew that he had betrayed his country and decided to sentence him to life imprisonment.
- 4) Once you enter into a contract, you should fulfill your _____ obligations. Otherwise, you will breach the contract.
- 5) Their objectives are certainly _____ if they make efforts.
- 6) The _____ of the new tax laws made it difficult to be enforced and resulted in tax evasion.
- 7) What were the _____ reasons for the economic crisis that had dealt a hard blow to these Asian countries?
- 8) This treaty will become operative on the date of its _____.
- 9) You should make sure that all the terms of this contract are _____.
- 10) They could not settle their dispute, so they submitted it to _____.

2. Write a short sentence to explain the different meanings of the italicized words in each set.

1) royalty

- a. One of its main goals was to raise the taxes and *royalties* earned from crude oil production.
- b. The flag is only raised in the presence of *royalty*.
- c. He received a *royalty* of 5% on his new book.

2) surplus

- a. The trade in this country is in *surplus*.
- b. They have a trade *surplus* of \$ 300 million this year after decades of trade deficit.
- c. This product is *surplus* to demand and its price is in decline.

3) principal

- a. The agent has come to Paris to see his *principals*.
- b. The *principal* aim of the policy is to bring peace to this region.
- c. Who is the *principal* in this criminal case?

4) issue

- a. The point at *issue* is the ownership of the property.
- b. Don't make an *issue* of it.
- c. He *issued* writs for libel in connection with allegations made in a newspaper.