

LEGAL ENGLISH FOR BUSINESS

© 杜惠筠 主编

By Du, Huijun

商务法律英语



中国财政经济出版社

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Preface

We live in an era when science and technology brings many new developments and huge changes to our lives. The entry to WTO has created great incentive for our uniformity with the rest of the world in business transactions. As a result, laws governing business transactions in our country are changing to reflect the needs and concerns of the people who are governed by those laws. Through governing bodies such as People's Congress and state legislatures, we as a society reexamine and reinterpret our existing laws and pass new laws that reflect social and economic changes. The new contract law, effective from October 1, 1999, and the new Implementation Regulations on Copyright Law of the People's Republic of China [2002-9-15] are but two examples to reflect those changes.

Law can be defined as an enforceable set of rules established by a government to regulate the conduct of individuals and groups in a society. Just as there are rules for playing a game, so there are rules for living with other people in society-whether that society is a neighborhood, a town, a city, a nation, or the entire world. The rules that make up law are actually legal duties that are imposed on people and that require people to act in a certain way. When people do not follow these rules, they violate the law. Through courts, individuals injured by those who violate the law are provided with legal remedies, such as requiring the wrongdoer to either pay money damages or go to prison, or in some cases both.

Business law is a required subject for students of finance, economics, accounting, and business administration in western universities. The basic objective of this textbook is to familiarize the students with legal English concepts pertaining to business and prepare them for further reading and understanding of the original legal texts. Legal texts can be difficult to read. The author has given special attention to improving the readability of the text by using such techniques as shortened sentences and list format rather than long paragraph form. Even if there appear long and difficult sentences, notes will be given at the end of the text, along with some examples to help students understand and articulate the legal languages.

There are fifteen units, each of which begins with learning objectives that outline what the students will accomplish after reading the unit.

The case problems for discussion and the exercises following the text should provide for the students the following benefits and skills:

1. Basic knowledge of legal English terms, concepts, principles, and rules that apply to business transactions.
2. Ability to recognize the potential legal problems that may arise in a doubtful or complicated situation.

3. Development of analytical skills and reasoning power.
4. Ability to articulate legal languages between Chinese and English.

The dialogue is British English oriented, presented in the form of consultation by a client with an attorney on the terms and concepts mentioned in the text and serves as reinforcement of what is discussed in the text.

This book can be used by any students with college English level four background and interests in business law.

I would like to express my deepest appreciation to Professor Zhang, Shengcui from the Law School of Shanghai University of Finance and Economics, Ms. Cui Hailing from the Foreign Languages for Business, Shanghai University of Finance and Economics, and Paul F. Polena JD, American Attorney at law, American educator Mona Bachelier, editor Cail Lilan and Director Jia Jie for their support and assistance in the course of my writing this book. I am most appreciative of Ms. Wang, Yuxia for her contribution to the translation of the text.

My truly heartfelt and special thanks go to Professor Tang, Zhenbang for his invaluable advice from the very beginning that could trace back to 1998 when I was collecting information for class handouts, and for his patience and scrupulousness in proofreading every detail of the draft. Without his encouragement and help, I couldn't have finished this book.

Any comments and critique on the book are most welcome.

Du, Huijun

序 言

我们生活在一个由科学技术给我们带来诸多新发展和巨大变化的时代。加入世贸组织极大地刺激了我国的商务交易与世界其他国家商务交易的一致性。因而，我国管理商务交易的法律正在发生变化，以反映受法律制约的人们的需要和顾虑。通过人大和国家立法机关这样的管理机构，我们的社会对现有的法律进行重新审查和重新解释，然后通过一些能反映社会和经济变化的新法律。1999年10月1日生效的新合同法以及2002年9月15日实施的中华人民共和国版权法实施条例，便是反映其中变化的两个例子。

法律可以被界定为由政府制定的一套强制规则，以规范社会中个人和团体的社会行为。正如游戏有游戏规则，与他人生活在这个社会中也有社会规则——无论这个社会是居民区、小镇、城市、国家乃至整个世界，由规则组成的法律实际上是用以强制人们的法律责任。人们不遵守这些规则时，即触犯了法律。通过法院，受违法分子伤害的个人得以合法补偿，例如，受害者可以要求违法者经济赔偿或者坐牢，或两者皆有。

商务法律在西方大学是财经、会计、商务管理类学生必修之课。本教科书的根本目的在于使学生熟悉有关商务的法律英语概念，为学生能独立阅读法律原著做准备。法律原著会很难读懂。有鉴于此，作者在本书中尽量避免用长句、大段落形式，而是运用短句、列举形式使课文更具可读性。即便有长句或难句出现，也会在课文后加以注解，并配以例句帮助学生掌握法律语言的运用。

本书共有15单元，每单元的开始都列有学习目的，简要概述学生学完该单元后应学到的内容。

课文后的案例讨论和练习题为学生提供以下帮助和技能：

1. 基本了解适用于商务活动中的法律英语术语、概念、原理和规则；
2. 意识到在一个可疑或复杂的情况下可能出现的潜在法律问题的能力；
3. 培养分析能力和推理能力；
4. 运用中、英文法律语言的能力。

对话以英式英语为主，围绕课文的术语及概念，以当事人咨询、律师解答的形式，主要用来巩固课文所学内容。

本书可供任何具有大学四级英语背景、对商务法律感兴趣的师生选用。

本书在编写过程中，得到了上海财经大学法学院张圣翠教授、上海财经大学经贸外语系崔海玲讲师、美国律师法学博士 Paul F. Polena、美国教育家 Mona Bachelier、中国财政经济出版社贾杰社长、蔡丽兰编辑的大力支持和帮助，特在此表示诚挚的谢意。另外还要感谢上海财经大学法学研究生王裕霞女士对课文部分所作的翻译工作。

尤其要衷心感谢的是上师大唐振邦教授，早在1998年我收集材料编写课堂讲义时，他就给予我许多宝贵的忠告，直至最后他对初稿、再稿、终稿一丝不苟的校稿态度。没有他的鼓励和帮助，本书很难完成。

限于编者水平，书中定有不到和疏漏之处，恳请广大读者及同行给予批评与指正。

编 者
2002年9月

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Unit One

Business Torts

● Learning Objectives

After learning this unit, you should be able to use English to:

1. *Define the nature of torts.*
2. *Distinguish between the tortious civil wrong and contractual civil wrong.*
3. *Define intentional tort, negligence and strict liability in torts.*
4. *List and explain the elements necessary to prove negligence.*
5. *List and describe defenses to tort liability.*

Tort law is concerned with the situation that while businesspersons may face legal problems resulting from alleged crimes, they are also fair game for civil lawsuits. Customers may sue for injuries received if they slip or fall on the premises, or they may sue for injuries resulting from defective products.¹ Competitors may sue for alleged slander or libel. This list could go on and on. We live in a litigious society, and to survive we must know our rights and duties regarding potential lawsuits. This unit discusses the various types of torts, and the defenses that may be raised against tort claims.

● Definition of Tort

A *tort* (Latin word *tortus*, which means twisted) is a civil wrong committed when one individual breaches a legal duty not to invade the legal rights of another, causing damage to the person, property, or reputation of that other individual. The person whose rights have been invaded and who has suffered damage may then bring action in a civil court to recover monetary damages suffered because of the invasion of rights. Business torts are wrongful

interference with another's business rights.

● Tort versus Contract

A tortious civil wrong must be distinguished from a contractual civil wrong, where the rights and duties between the parties arise out of their own specific contractual agreement. In a tort the rights and duties are imposed by general laws which apply to all persons under similar circumstances, such as traffic laws and general laws of negligence.²

● Classification of Torts

Intentional Torts

An intentional tort is an intentional breach of one's legal duty to another person, which causes physical or mental damage to that person or damage to that person's reputation or property. To discourage such intentional wrongful conduct, courts frequently award large amounts as *punitive damages*. The winning plaintiff receives these extra dollars in addition to all actual damages proved.

Intentional torts can be categorized as:

1. **Torts against persons**, which include:

- a) Assault (a threatening act by one person that leads another person to believe that he or she is about to suffer bodily harm);
- b) Battery-(the intentional and wrongful physical contact with a person without consent)*;
- c) Defamation (communications which injure another's reputation, such as libel-written false statements that injure a person's reputation, and slander-oral false statements that injure a person's reputation;
- d) False imprisonment;
- e) Intentional infliction of emotional distress;
- f) Invasion of privacy (such as public disclosure of private facts,

* The difference between battery and assault can be illustrated by the following example: Linda, a waitress in a bar, got angry with a customer and threatened to throw a glass of whisky in the customer's face unless he left the bar. The customer refused to leave, so the waitress carried out her threat and threw whisky in his face. Linda committed both assault (the customer saw the whisky coming at him) and battery (the customer got the whisky in his face).

unauthorized use of other person's name, picture or likeness for commercial advantage).

2. **Torts against property**, which include:
 - a. Trespass (illegally entering or remaining on the property of another);
 - b. Conversion (wrongfully exercising control or ownership over another's personal property).
3. **Torts against competition and employment relations**, which cover:
 - a. Interference with economic relations (intentionally interfering with another's contract);
 - b. Appropriation of trade secrets, such as a formula, a pattern, and a device, or compilation of information;³
 - c. Wrongful discharge (improper discharge from employment).

Negligence (unintentional tort)

Negligence involves the failure to exercise reasonable care in a specific situation.

To establish negligence, the plaintiff must prove:

1. The defendant owed a duty of care to the plaintiff.
2. The defendant breached that duty (failure to exercise care or to act as a reasonable person would act).
3. The plaintiff suffered a legally recognizable injury.
4. The defendant's negligent act caused the plaintiff's injury.

Strict Liability

Strict liability is liability without fault. In a strict liability case the defendant will be liable for injuries caused by his or her actions, even though the defendant was not negligent in any way and the defendant did not intentionally injure the plaintiff.⁴

There are three areas involving strict liability:

1. Possession of wild animals. The owner is held strictly liable for any damages done by animals to other persons.
2. Engagement in abnormally dangerous activities, such as demolition of buildings and operation of explosives.
3. Product liability.

● Defenses to intentional tort

Consent

If a plaintiff invites conduct, it constitutes consent. Consent (express or implied) negates intentional torts. For example, football players obviously batter each other throughout the course of a game. Therefore, even though the tort of battery may have been committed, it is not actionable, because the law views each player as having consented to the touching. However, if a player intentionally exceeds the implied consent, he may be liable for the tort.

Privilege

Beyond the permission that can be received either expressly or implicitly, there is a nonvoluntary defense that the law recognizes. For example, in order to stimulate debate and encourage independence of thought and action, judges and legislators have the privilege of saying things that might be slander under other circumstances.

Necessity

Whenever a person commits what would otherwise be a land trespass for self-protection, the law recognizes that necessity would disallow the landowner nominal damages. For example, if you were in a boat on a lake and a storm suddenly developed, you could enter a private cove, tie up to a private dock, and find shelter on the land in order to protect yourself. There would be no trespass.

● Defenses to Negligence

Contributory negligence

Contributory negligence occurs when the plaintiff's own negligence is a contributing cause of his or her injury. If contributory negligence can be proved, the injured party may be denied damages, even if the negligence was slight.

Comparative negligence

Because of the unjust rule by the contributory negligence, some states

have adopted comparative approach. In the comparative negligence, the legal system weighs the negligence of the two parties. As long as the defendant was more negligent than the plaintiff, the plaintiff is entitled to recover. The amount of this recovery would be reduced by the amount attributable to the extent that he was negligent.

Assumption of risk

If a plaintiff is aware of a danger, but subjects himself/herself to the risk, the law recognizes that the plaintiff assumed, or took on, the risk involved.⁵ Thus, the defendant can raise the defense of assumption of the risk against the plaintiff. For example, you walk into a store and you see a sign stating, "Danger! This floor is slippery". Then as you walk through the wet area, you slip, fall and break your arm. The danger was created by the store, but you voluntarily assumed the risk after being informed of the danger. You could not recover in negligence because of the defense of assumption of the risk.

While the court weighs both sides' responsibility in cases of comparative negligence, its response is markedly different in cases involving strict liability.

One of the interesting aspects of the strict liability is that the court doesn't recognize defenses if an injury occurs. The concept of strict liability is: if somebody gets harmed, you'll have to pay for the harm done.

New Words & Phrases

premises	n.	场所
libel	n.	文字诽谤, 书面造谣
litigious	a.	诉讼上的
impose	v.	把……强加于
assault	n.	人身侵犯
battery	n.	袭击
defamation	n.	诽谤
infliction	n.	施加
trespass	v.	擅自进入
conversion	n.	转换
appropriation	n.	侵占、盗用
negligence	n.	过失、疏忽
proximate cause		近因

negate	v.	使无效
contributory negligence		互有过失
comparative negligence		比较过失
assumption of risk		承担风险
privilege	n.	特免权

Notes

1. Customers may sue for injuries received if they slip or fall on the *premises*, or they may sue for injuries resulting from defective products. 顾客可能会因为在商家的经营场所滑倒或跌倒受到伤害而提起诉讼,也有可能因为受到有瑕疵商品的伤害而提起诉讼。

“Premises” 经营场所、物业

- Foods are to be consumed on the premises. 只供堂吃
- management of premises 物业管理

2. In a tort the rights and duties are *imposed* by general laws which apply to all persons under similar circumstances, such as traffic laws and general laws of negligence. 在侵权行为中,行为人的权利和义务是由在相同情况下适用于所有人的法律强加给他们的,例如,交通法和一般过失法。

“impose”把……强加于、加(负担)于

- If this law does not deem it a crime or *imposes* a lesser punishment, this law is to be applicable. 如果本法不认为是犯罪或者处刑较轻的,适用本法。
- Where there are no illegal earnings, a fine of up to ¥10 000 shall be *imposed*. 没有违法所得的处以一万元以下的罚款。

3. *Appropriation* of trade secrets, such as a formula, a pattern, and a device, or compilation of information. 盗用商业秘密,比如配方、图案、设计或信息编译程序。

“Appropriation” 盗用、侵占

- Appropriation or damaging natural resources by any organization or individual by whatever means is prohibited. 禁止任何组织或个人用任何手段侵占或者破坏自然资源

4. In a strict liability case the defendant will *be liable* for injuries caused by

his or her actions, even though the defendant was not negligent in any way and the defendant did not intentionally injure the plaintiff. 在适用严格责任的案例中,即使被告没有任何过失,且被告也非故意伤害原告,被告仍需对其行为所造成的损失承担责任。

“be/be held liable for” 承担责任

- If an agent and a third party in collusion harm the principal's interests, the agent and the third party shall be held jointly liable. 代理人和第三人串通,损害被代理人的利益的,由代理人和第三人负连带责任。

5. If a plaintiff is aware of a danger, but *subjects* himself/herself to the risk, the law recognizes that the plaintiff assumed, or took on, the risk involved. 如果原告知道风险的存在,但仍把自己置身于此风险中,法律视原告为承担了或接受了相关的风险。

“subject” v. 使遭遇,与“to”连用

- The location of the island in the middle of the ocean subjects it to frequent hurricane. 该岛地处海洋中心,因而常受飓风的袭击。
- Those fabricating stories to frame others or in an attempt to subject others to criminal investigation, if the case is serious, are to be sentenced to three years or fewer in prison, or put under criminal detention or surveillance. 捏造事实诬告陷害他人,意图使他人受刑事追究,情节严重的,处三年以下有期徒刑、拘役或者管制。

Questions and Case Problems for Discussion:

1. What are the defenses available in a suit based on negligence?
2. Professor Enride signed a contract with a prestigious publishing company to write a book on the basic principle of management. When the book was finally published, a section of his materials, specifically two drawings illustrating management principles (which were prepared by one of his assistants), was challenged for copyright violation by another author. Is there a basis for tort liability against Professor Enride? Assume that by publishing Prof. Enride's manual script, the publisher is held liable for infringing on the original author's copyrighted materials. Would Prof. Enride be liable in tort to his own publisher? If so, what defenses could Prof. Enride claim?
3. Jenny Park is napping on a beach, enjoying the sunshine and cool breeze. Along comes Robert, who sees her, walks up and kisses her lightly on the