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West Nutshell Series

货物买卖与租赁

(第三版)

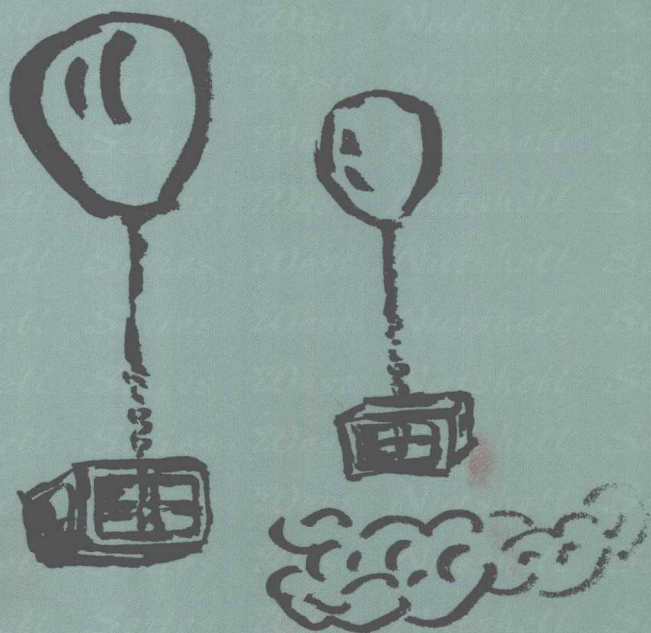


[美]

John M. Stockton
Frederick H. Miller

著

汤树梅 注校



 中国人民大学出版社



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SALES AND LEASES

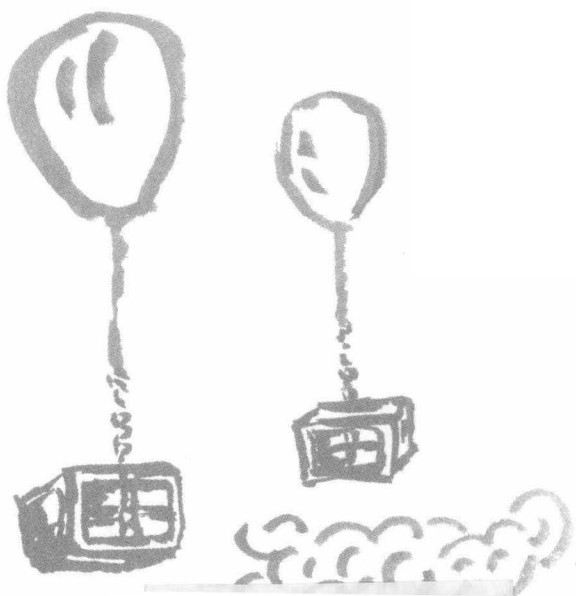
OF GOODS

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SALES AND LEASES OF GOODS IN A NUTSHELL

THIRD EDITION

By

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WEST GROUP

Bancroft-Whitney • Clark Boardman Callaghan
Lawyers Cooperative Publishing • WESTLAW® • West Publishing

1992

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**610 Opperman Drive
P.O. Box 84526
St. Paul, MN 55164-0526**

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Stockton, John M.

**Sales and leases of goods in a nutshell / by John M. Stockton
and Frederick M. Miller.— 3rd ed.**

p. cm. — (Nutshell series)

Includes index.

ISBN 0-314-00660-5

**1. Sales—United States. 2. Leases—United States. I. Miller,
Frederick H., 1937— II. Title. III. Series.**

KF915.Z9S7 1992

346.73'072—dc20

[347.30672]

**92-5654
CIP**

ISBN 0-314-00660-5

**(S. & M.) Sales, 3rd Ed. NS
2nd Reprint-1998**



图书在版编目 (CIP) 数据

货物买卖与租赁 (第三版) / [美] John M. Stockton, Frederick H. Miller 著; 汤树梅注校
北京: 中国人民大学出版社, 2003
(民商法精要系列·影印注释本)

ISBN 7-300-04861-7/D·860

I. 货…

II. ①S…②M…③汤…

III. ①交易-商法-研究-美国-英文

②租赁-商法-研究-美国-英文

IV. D971.239.9

中国版本图书馆 CIP 数据核字 (2003) 第 065151 号

民商法精要系列·影印注释本

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出版发行	中国人民大学出版社		
社 址	北京中关村大街 31 号	邮政编码	100080
电 话	010-62511242 (总编室)	010-62511239 (出版部)	
	010-62515351 (邮购部)	010-62514148 (门市部)	
网 址	http://www.crup.com.cn http://www.ttrnet.com (人大教研网)		
经 销	新华书店		
印 刷	北京东方圣雅印刷有限公司		
开 本	787×965 毫米 1/16	版 次	2003 年 8 月第 1 版
印 张	33 插页 1	印 次	2003 年 8 月第 1 次印刷
字 数	488 000	定 价	39.00 元

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导 读

由美国的 John M. Stockton 和 Frederick H. Miller 教授所著的《货物买卖与租赁》一书是 1981 年《货物买卖》一书的第三版，本版不仅对货物买卖的内容进行了修订，而且还增加了货物租赁的内容，从而将货物买卖与租赁有机地结合起来。本书涉及美国《统一商法典》第 2 篇及第 2 篇 A 款关于货物买卖与租赁的主要内容，并给读者留下了充分的讨论和分析空间。本书还根据需要研究了与货物买卖或租赁有关的美国《统一商法典》的其他内容（如第 5 篇和第 7 篇的内容）和《反欺诈条例》的内容。

货物买卖与租赁法律制度不仅是市场经济社会重要的法律制度，也是进行公正、公平货物买卖与租赁交易的重要保证。本书作者以通俗流畅的语言向人们展示了一幅幅货物买卖与租赁的生动画面，以逻辑性极强的结构安排向人们揭示了货物买卖与租赁法律制度的深刻内涵。

本书共分十二章，按逻辑顺序可分为以下五个部分：

第一部分也就是第一章的内容，主要说明货物买卖与租赁合同标的物及各个有关的定义。此部分是货物买卖和租赁制度的基础，内容涉及美国《统一商法典》第 2 篇及第 2 篇 A 款的适用范围、《统一商法典》与其他相关法律之间的关系以及下述概念的特征分析：货物买卖合同与买卖，租赁协议与租赁，货物、特定化的货物、未来货物、现存货物和可替代货物，商人，消费者租赁和融资租赁等。

第二部分是货物买卖与租赁合同成立及效力方面的法律制度，包括第二章、第三章和第四章的内容。一般来讲，货物买卖与租赁合同的成立与其他类型的合同的成立具有共性，包含要约和承诺两个主要阶段，因此关于合同成立的基本法律原则同样规制货物买卖与租赁合同。第二章在论述合同成立过程中要约与承诺的基本原理的基础上，着重探讨了《统一商法典》所规定的适用于货物买卖与租赁合同成立的特殊规则。第三章则主要论述了《反欺诈条例》适用于货物买卖与租赁合同的条件和范围。第四章详细说明了货物买卖与租赁合同的条款以及各条款对合同效力的主要作用。合同自由是一项法律原则，意味着在很大程度上当事人可以通过协议自行确定合同的条款。通常双方当事人都会在合同中明确约定许

多条款，如价格条款、质量条款、货物条款以及交货条款等。但在许多情况下，合同条款并不明确，此时就需要根据法律规定以及当事人的履约习惯、交易习惯以及贸易惯例来确定当事人协议的内容。合同自由原则还意味着当事人必须善意履行合同，但在合同条款显失公平的情况下，法院有权拒绝执行整个合同或其中显失公平的部分。

第三部分也就是第五章的内容，对各种所有权凭证如提单、仓单及信用证的特点和作用等进行了阐述。鉴于所有权凭证和信用证在货物买卖交易中的重要性，本章探讨了《统一商法典》第7篇和第5篇规定的内容。各种所有权凭证实际上代表着货物的所有权，对于在特定情况下不占有货物的货物所有人来说，能够掌握所有权凭证是至关重要的。同时信用证作为一种支付方式，其特点是以银行信用代替商业信用，在实践中具有极为重要的意义。

第四部分是合同双方当事人的权利义务以及与履行义务有关的问题，包括第六、七、八、九章的内容。第六章是关于货物买卖与租赁合同的履行。合同的履行实际上是双方当事人履行合同所确定的义务，就一般义务而言，在货物买卖合同中，卖方的义务是交付货物并转移货物的所有权，买方的义务是接受货物并支付价款；在货物租赁合同中，出租人的义务是在租赁期内转移租赁物的占有权，承租人的义务则是支付约定的租金。但双方当事人履行义务的情况因合同的差异而有不同，因此，本章重点探讨了合同双方当事人履行义务的特殊性问题。第七章是关于所有权及第三人的权利，对确定货物所有权的方式、货物所有权转移的法定规则、转移的时间以及第三人权利等问题进行了深入的分析。第八章是损失风险，通过区分违约和没有违约两种情况对货物损失风险责任的承担问题进行了探讨。第九章是保证义务，在货物买卖或租赁交易中，卖方或出租人就货物的性质以及效用对于买方或承租人负有保证责任。根据《统一商法典》的规定，保证分为三类：明示保证、默示保证以及所有权保证（实际上也属于默示保证）。本章主要对各种保证所涉及的内容、保证责任的免除以及相关的法律规则作了介绍。

第五部分论述了货物买卖与租赁合同的违约与救济问题，包括第十、十一、十二章的内容。第十章对买卖或租赁双方的各种违约形式以及免责问题进行了论述。第十一章和第十二章分别论述了卖方或出租人以及买方或承租人的救济问题，从救济方式上讲主要包括金钱救济和非金钱救济两种。

传统上，中国属大陆法系国家，人们在理解法律的时候习惯于把注意力集中在成文法的具体规定上，这种惯性思维不仅体现在学校的教学方式以及学生的学习方法上，而且也体现在教材的写作以及学术著作的写作风格上。而美国属英美

法系国家，与中国不同的是，人们在理解法律的时候习惯于把注意力集中在具有拘束力的判例上。这种思维方式较好地体现在本书的写作风格上，即几乎每一个法律概念、法律原则及基本理论的阐述都辅以真实的案例或举例来说明，从而使静态的法律制度具有了动态的特点。

本书注释本出版的意义在于：从学术的角度，帮助读者通过阅读英文原文了解英美法律文化的内涵，培养理论联系实际以及从实践中抽象出原则的思维方式。从实务的角度，在我国成为 WTO 的正式成员后，我国经济必将以前所未有的速度融入到世界经济中去，掌握包括货物买卖与租赁法律制度在内的英美法律基本原理无疑对于从事经济工作的读者会有极大的帮助。从立法的角度，随着经济全球化，大陆法系和英美法系相互影响、相互渗透的趋势日益明显，了解英美货物买卖与租赁法律制度的发展动态，对我国的立法工作者无疑具有一定的借鉴和参考价值。

由于注释者水平有限，错误之处在所难免，敬请读者不吝指正。

TO THE MEMORY OF POLLY

John M. Stockton

TO MY WIFE, MARCIA

Fred H. Miller

PREFACE

This is a revised and enlarged edition of the *Sales Nutshell*, which was published in 1981. This edition also covers leases under Article 2A of the Uniform Commercial Code (UCC). It is intended as a primer on the law of sales and leases under Articles 2 and 2A of the UCC, with some focus on related subjects governed by Articles 5 and 7 of the UCC (letters of credit and documents of title).

As in the earlier edition, most of the provisions of Articles 2 and 2A that are discussed are set forth in full in the body of the text. This was done with some hesitation because of space limitations. However, inclusion of the actual Code text allows the reader to evaluate the discussion and analysis without the need to have a copy of the UCC constantly at hand.

Some provisions discussed include a modest amount of historical background. While this is done at the sacrifice of a more complete coverage of other sections, in some cases historical background is desirable to a thorough understanding of the concepts and rules discussed.

Much aid in the preparation of this edition was derived from the large number of Article 2 cases and some lease cases decided in the last

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thirty or so years. The many excellent law review articles, particularly the annual surveys published in *The Business Lawyer* during those years, have also been of great assistance. So too were various treatises and the monumental study of Article 2 completed by the Study Group under the Permanent Editorial Board. That study has led to a project to revise Article 2 that should be completed circa 1994-1995.

Debts to others are numerous. The others include research assistants, support persons who prepared the manuscript, the American Law Institute for permission to quote a part of Comment i, Section 402A, *The Restatement of the Law, Second, Torts* * and the American Law Institute and the National Conference of Commissioners on Uniform State Laws to quote from the official comments and the Code. **

Professor Miller specifically acknowledges the assistance of Mike McBride, his research assistant, and Jacquie Wilkins, his secretary.

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Ultimately, any errors are those of the authors alone.

FRED H. MILLER
JOHN M. STOCKTON

April, 1992

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