

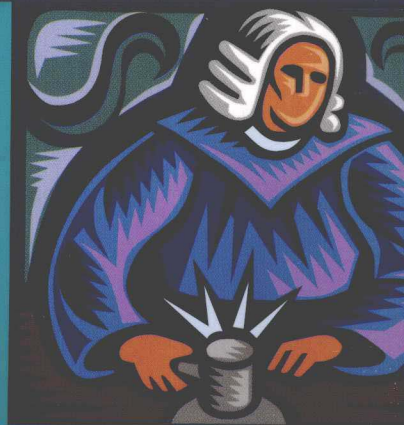
教育部推荐教材

大学专业英语系列教材

法学专业 英语教程

(第二版·下)

主编 赵建 夏国佐



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第二版前言

《法学专业英语教程》是1999年根据当时《大学英语教学大纲》的要求，为应用提高阶段专业英语教学编写的。自出版以来，得到很多大学的法学院采用，其教学成效显著，深得广大师生的喜爱。实践证明它是一套适应中国法律学生需要、有特色、富有生命力的教材。本着对使用者认真负责、精益求精的态度，编者根据教育部高等教育司2004年颁布的《大学英语课程教学要求》（试行）又作了全面仔细的修订。修订后，全书共分上、下两册。上册包括三个单元：美国法律制度导论、美国宪法和合同法；下册包括五个单元：票据、财产、侵权、企业组织和公司。本教程供大学本科学生第五、六学期使用，同时也可作为同等程度的法律学习者使用，对于准备到美国、英国等地深造的法律学习者也有很好的参考价值，对有志于提高法律英语水平的自学者来说也是一套易学、易练且趣味性较强的教材。读者只需具备一定的英语基础，循序渐进，持之以恒，便可在较短的时间内，使自己的法律知识和英语水平得到较大的提高。

本教程的编写宗旨是将学习英语与了解英美法律紧密结合，即在学习英语的同时，使学生系统地了解英美法律制度的概貌及民法、商法、民事程序和刑事程序等基本内容，在了解英美法律的同时，学习和操练英美法律涉及的常用词汇和表达方式，在巩固一般语言知识和运用能力的基础上，进一步扩展学生的语言知识，提高学生的语言应用能力，特别是涉及法律的语言知识和运用能力，力求在学完全书之后，学生能借助字典和工具书较为顺利地阅读英美法律条文及案例，并能对一般难度的法律文件进行英汉互译。根据这些原则，我们修正了原版中少数不妥和不够完善的地方，同时又根据美国法律近年来的一些变化，更新了部分课文的有关内容，尤其是增加了一些21世纪的最新案例，以反映在信息技术突飞猛进、社会经济发展日新月异、人们的法律意识日益增强的大背景下，法院面临的新挑战和作出的新判决；另外，在练习方面也增加了一些趣味性较强的内容。

本教程在介绍英美法律时，力求以简洁明了的文字，系统完整地介绍英美



法律若干方面的内容。每个单元后都附有若干经过精选的案例，进一步加深和拓宽课文的内容，帮助学生领会课文中介绍的法律原则及其在实践中的运用。为方便教学，每个案例前面均有“导读”，简明扼要地指出案件涉及的法律争议和背景，对案例的理解起到画龙点睛的作用。案例后面的问题旨在启发学生的思考，引导学生分析具体争议的法律实质。

在语言知识及文字难易度方面，本教程与大学英语四级紧密衔接，学生在学完大学英语四级之后，可以自然顺利地过渡使用本教程。每课课文之后，均附有较详尽的注释和重点词研究，并在附录中提供了参考译文及练习参考答案。课文练习的编写，同样兼顾学习法律和学习文字并重的原则，在引导学生进一步理解课文涉及的法律内容的同时，帮助学生全面提高读、听、说、写、译等各项语言能力。使用本教程时，可以根据不同水平学生的不同要求有不同的侧重。对英语基础较好的学生，可以在掌握课文的基础上侧重案例教学。对于水平一般的学生则应以课文为中心，力求掌握基本法律词语的理解和使用。学生回答有关案例的问题，可用汉语，以避免不求甚解照抄原文的情况。

由于本教程涉及法律内容较多，一些没有法律背景的英语教师有可能望而生畏。其实只要具备扎实的英语基础，即便是没有法律背景的英语教师，也完全可以一面教，一面学，在教与学的互动中求得教学相长。可以肯定，经过一轮教学的实践，教师就可以基本了解相关的法律内容与所涉及的法律词汇和表达，为以后的双语教学打下良好的基础，同时也为自己增加一门新的专长。已经使用该套教材的英语教师的实践已经证明，这是完全可能和可行的。

我们相信，经过修订的《法学专业英语教程》，将更加适应新形势下对大学专业英语教学的要求，并以其更加完善的体系、更加丰富的内容和精确的文字表达，为我国大学英语教学改革和法律英语教学的进一步深入，做出应有的贡献。

编者

2007年4月



第一版前言

《大学专业英语系列教材》是根据教育部最新颁布的《大学英语教学大纲》(以下简称《大纲》)的基本要求,为大学英语学习四年不断线而编写的一套教材。该套教材的编写得到教育部高等教育司的大力支持。

本套教材分法学专业英语、经济类专业英语、管理类专业英语、人文科学专业英语四个系列,每一系列包含三个分册,每一分册供一个学期使用。全套教材由复旦大学、中国人民大学、南京大学、对外经济贸易大学联合编写,南京大学杨治中教授担任总主编。法学专业英语教程由赵建、夏国佐教授主编;管理类专业英语教程由邱东林、华宏鸣教授主编;经济类专业英语教程由翟象俊教授主编,参加编写的有张勇先、王学文教授等;人文科学专业英语教程由湛馨荪教授主编,参加编写的有郭庆民、章安祺教授。全书由专业英语教师和公共英语教师共同编写。

本系列教材具有如下特点:

一、考虑到我国大学生学完两年后的实际水平,课文的选材、注解和练习以《大学英语教学大纲》所要求的四级为基础。

二、教材在内容和语言上贯彻循序渐进的原则。在内容上,第一册主要涉及本专业的原理和基础知识,第二、三册主要涉及本专业的历史及专家论点;其要旨在于帮助学生完成从基础英语到专业英语的过渡;在语言上,选材从难度、可读性等方面出发,贯穿了由浅入深的原则。

三、考虑到《大纲》对专业英语学时和阅读量的要求,我们采用了“主、副”课文制,对主课文从注解和练习两方面进行了重点处理,用作教师课内重点讲解的内容,副课文主要供学生课后自学,以便对主课文从语言和知识两方面起到巩固作用。

四、本教材强调整理解的准确性和学生的应用能力,因此,练习针对这两方面进行了重点编写,配有理解、语言应用(包括词汇应用、语篇应用)练习,理解题强调准确理解、思考、分析、评价、讨论,每课练习中所采用的例句从知识和语言上均与主课文或已学过的课文有关。



五、为方便自学，书后提供了主课文的参考译文和练习答案。

六、全套四种教材在遵循总的编写原则的同时，又根据各自课程的知识特点自成体系。

由于本书编写仓促，不足之处在所难免，敬请读者指正是幸。

编者

1999年6月



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Unit Four

Negotiable Instruments and Secured Transactions

Lesson One

Commercial Paper and the Concept of Holder in Due Course

Lesson Two

Check Collection and Allocation of Liability

Lesson Three

The Bank and Its Customer: Rights, Duties and Liabilities

Lesson Four

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Lesson One

Commercial Paper and the Concept of Holder in Due Course





Text



The term commercial paper describes certain types of negotiable instruments that fall under Article 3 of the UCC. These instruments can move freely in trade and commerce as a substitute for money. They developed because of the commercial need for something that would be easily transferable and readily acceptable in lieu of money.

To understand the law of commercial paper, a grasp of the following concepts is essential:

Types of Negotiable Instruments Basically, there are two types of negotiable instruments, namely, the promissory note and the draft. A note is a two-party instrument. It is the maker's promise to pay to the order of the named payee¹ or to bearer at some time in the future. A certificate of deposit (CD) is a note made by a bank, because it is the bank's promise to repay a deposit of funds with interest on a certain date. A draft is a three-party instrument. It is an order of the drawer to a third party (drawee-payor) for him to pay to the order of payee, or to bearer, on demand or at a fixed or determinable future time. A draft presupposes a debtor-creditor relationship between the drawer and the drawee.² It is an order of the creditor (drawer) to the debtor (drawee) for the latter to pay to the payee or to his order. The check is the most common type of commercial paper. It is a demand draft drawn on the bank by which the drawer orders his bank to pay to the payee. A check drawn by a bank upon itself is a cashier's check.³

Order Papers and Bearer Papers Negotiable instruments are also known as either order papers or bearer papers. If an instrument is made payable to the order of a person identified with reasonable certainty, it is an order paper. If an instrument is payable to bearer, it is a bearer paper. A bearer paper is payable to whoever who bears it.

Holder A holder of a negotiable instrument is one in possession of a bearer paper, or one in possession of an order paper which is drawn, issued, or indorsed to him or to his order.

Negotiability For an instrument to be negotiable the following statutory requirements for negotiability must be met: 1) It must be in writing and signed by the maker or drawer; 2) It must contain a promise or order; 3) The promise or order must be unconditional, i. e., it should not be controlled by the terms of some other agreement; 4) It must be a promise or order to pay in money; 5) Sum should be certain, that is, the val-



ue of the instrument at any time during the term of the paper can be definitely determined; 6) It must be payable on demand or at a definite time; 7) It must be payable to order or bearer. The words “order” and “bearer” are the magic words of negotiability.⁴ They express the maker or drawer’s intention to make the instrument negotiable. If an instrument does not contain either of these words, it may be a valid and enforceable contract, but it is non-negotiable and does not fall under Article 3 of the UCC.

Negotiation Even if an instrument satisfies all the requirements of negotiability above, it has to be properly negotiated to retain its negotiability after a transfer. Negotiation means transfer of an instrument by a person other than the issuer in such a way that the transferee becomes a holder.⁵ While bearer papers can be negotiated by delivery alone, negotiation of order papers, on the other hand, requires both indorsement and delivery.

Indorsement Indorsement is the act of transferring title to a negotiable instrument by having the temporary owner write his name on the back of the document. Indorsement may also refer to the signature of the temporary owner written on the back of an instrument with or without additional words or statements. When the indorsement consists only of the indorser’s name signed on the instrument, it is called a blank indorsement. Order papers that are indorsed in blank become bearer papers payable to bearer. When the indorser wants to specify the indorsee, he includes the words “pay to the order of (the specified indorsee)” in the indorsement and such an indorsement is called a special indorsement. If a paper is indorsed specially after a blank indorsement, it reverts to its status as an order paper, and an indorsement is required for further negotiation. When the indorser wants to impose some restriction on the use of the instrument, he may include the restriction or condition in the indorsement and such an indorsement is called a restrictive indorsement.

To facilitate the flow of commerce and to achieve the goal of negotiability, substantial protection and assurance of payment must be given to any person to whom the paper might be negotiated. Thus, Article 3 of the Code provides that if a holder of a negotiable instrument is a holder in due course, he takes the instrument free from all the claims and personal defenses to the instrument⁶.

To qualify as a holder in due course, the transferee must meet the following requirements. 1) He took the instrument from a holder, i. e., from one who was in actual possession of a paper properly drawn, issued or indorsed to him or to his order, or to bearer. 2) He took the instrument for value⁷, which means that he had rendered performance for the transfer of the instrument. A mere promise for performance is consideration but



does not constitute value. 3) He took the instrument in good faith. If a person takes an instrument under circumstances that clearly indicate a defense to the instrument, he does not take it in good faith. 4) He took the instrument without notice of its defect, namely, without knowledge of any claim or defense to the instrument, that it was overdue or had been dishonored.

If a person meets all these requirements, he is a holder in due course. This means that though he is still subject to the real defenses on the instrument, he is protected against the claims and personal defenses relating to the parties with whom he has not dealt⁸. Personal defenses usually relate to the transaction resulting in the transfer of the instrument and include failure of consideration, breach of warranty and unconscionability. Real defenses involve more serious matters that go to the very existence of the instrument. They include forged signature of the maker or drawer, material alterations, illegality and lack of capacity.

The concept of negotiability can be further explained by noting the difference between the assignment of a contract and the negotiation of a negotiable instrument. Assume that a dealer owes a manufacturer \$ 1,000. The dealer signed an IOU but later found the product he received from the manufacturer defective. If a third party such as a bank purchased the IOU from the manufacturer, it would be subject to the dealer's defense of failure of consideration. The bank, as assignee, would secure no better right against the dealer than the original right held by the manufacturer, the assignor. The bank therefore could not collect \$ 1,000 from the dealer, at least not in full.

In this example, assume that the evidence of the debt is not a simple IOU but a promissory note given by the dealer to the manufacturer and thereafter properly negotiated to the bank. If the bank is a holder in due course, it is in a position superior to that which it would occupy as an assignee⁹. It has better rights because it is free of the personal defenses that are available against the manufacturer. The dealer, therefore, cannot use the defense of failure of consideration and the bank can collect the \$ 1,000.

New Words

negotiation /ni'gəʊʃi'eɪʃn/ *n.* 流通, 符合商法的票据转让, 议付

negotiability /ni'gəʊʃiə'biliti/ *n.* 流通性

instrument /'ɪnstrumənt/ *n.* 票据

lieu /lju:/ *n.* (古) 位置, 替代

transferable /træns'fɜ:rəbl/ *a.* 可转让的