

法律英语系列教材

法律英语核心教程

第三册

Core Course of English for Law

Book Three

■ 杜金榜 张新红 主编
■ 刘诒廷 主审



对外经济贸易大学出版社

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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 3 册/杜金榜, 张新红主编. 北京: 对外经济贸易大学出版社, 2003

(法律系列教材)

ISBN 7-81078-240-1

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 (2003) 第 025826 号

2003 年 对外经济贸易大学出版社出版发行

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法 律 英 语 核 心 教 程

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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)

北京山华苑印刷有限责任公司印装 新华书店北京发行所发行
开本: 787×1092 1/16 23.5 印张 486 千字
2003 年 6 月第 1 版 2003 年 6 月第 1 次印刷

ISBN 7-81078-240-1/H·039
印数: 0001-5000 册 定价: 38.00 元

广东省天伦律师集团推荐律师培训教材

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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宓智瑛副总编组稿、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。这套教材的编写者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。我热切地希望编写者们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的、更先进的、更科学的教程。

是为序。

桂诗春

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程。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。与其他法律英语教材相比,本系列教材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。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,每单元由两到三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),本教程除了在练习中注重读、写、说、译等英语技能的培养,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,第三册侧重法律专题讨论类材料的输入,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。本套教程前两册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。

本册为第三册,分16个单元,侧重国际经济法,各单元所涉及内容与第二册各单元大致对应,包括: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、国际争端解决等等方面的内容。每单元含一篇法律英语课文,内容为较典型的案例。

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,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阅读理解问题和用于巩固词汇

知识的词语辨析，词语辨析部分的词语主要从课文中选取，大部分为法律词汇。下一部分是综合练习，分汉译英、改错、阅读和写作。阅读部分提供一个案例，然后是针对主要内容和具体内容的问答题，以检查学习者的理解。写作部分提供一个案例的案情要点和其他信息，要求学生根据案情摹写法官意见。

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，每学期一册（每周4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。

本套教程还配有一本辅导用书，内容包括补充知识、难点解释和练习答案等。另外，编者还建立了一个网站，与使用该教程的教师进行交流，免费提供力所能及的帮助。

如上所述，本套教程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。

另外，我们为教材使用者建立的网站已更新为 (<http://www.beschool.net/corecourse/index.html>)。

编者

2002年12月 于广州白云山脚下

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UNIT 1

Applicable Law

Text

[HOUSE OF LORDS]

COMPAGNIE D'ARMEMENT MARITIME S.A. . APPELLANTS

AND

COMPAGNIE TUNISIENNE DE NAVIGATION S.A.. RESPONDENTS

[on appeal from COMPAGNIE TUNISIENNE DE NAVIGATION S.A.v.

COMPAGNIE D'ARMEMENT MARITIME S.A.]

1970 April 30; May 4, 5, 6; Lord Reid, Lord Morris of Borth-y-Gest,

July 14 Viscount Dilhorne, Lord Wilberforce and Lord Diplock

Background and Facts

In 1967 a Tunisian company called Compagnie Tunisienne de Navigation, S.A., wanted to transport crude oil from La Skhirra to Bizerta, which are two ports in Tunisia. They agreed with a French company of ship owners — Compagnie d'Armement Maritime, S.A. — to transport these quantities of oil. The agreement was negotiated by brokers in Paris called Paris-Maritime, S.A. The brokers had an English director, Mr. Reed. He produced for signature a printed form. It was a form for a tanker voyage charterparty printed in the English language with all the English terms in it. It was unfortunately the wrong form to choose. There was a choice of law clause, Clause 13, which provided: "This Contract shall be governed by the laws of the Flag of the Vessel carrying the goods. . ." Moreover, there was an arbitration clause, Clause 18, which provided: "Any dispute arising during execution of this Charter Party shall be settled in London, Owners and Charterers each appointing an

Arbitrator-Merchant or Broker-and the two thus chosen, if they cannot agree, shall nominate an Umpire-Merchant or Broker-whose decision shall be final. Should one of the parties neglect or refuse to appoint an Arbitrator within twenty-one days after receipt of request from the other party, the single Arbitrator appointed shall have the right to decide alone, and his decision shall be binding on both parties. For the purpose of enforcing awards this agreement shall be made a Rule of Court." Much of the clauses was inapplicable to this contract. Disputes arose after six shipments and Compagnie Tunisienne de Navigation, S.A. claimed damages.

Arbitrators were duly appointed and the first question which arose was as to the proper law of the contract. On this London Court of Arbitration made an interim award in favor of COMPAGNIE D'ARMEMENT MARITIME, S.A., adjudging that the proper law of the contract was French law. COMPAGNIE TUNISIENNE DE NAVIGATION, S.A. then appealed to the High Court. The Queen's Bench Division of the High Court affirmed the arbitration award. COMPAGNIE TUNISIENNE DE NAVIGATION, S.A. again appealed to the Court of Appeal. Lord Denning, M. R., overruled the decision of the High Court and held that the proper law of the contract was English law. In 1970, COMPAGNIE D'ARMEMENT MARITIME, S.A. appealed against the judgment of the Court of Appeal to the House of Lords, where final decision was given. The following is the opinion of Lord Reid in the House of Lords.

Lord Reid

One of the printed clauses in the form deals with the proper law. Clause 13 reads: "This contract shall be governed by the laws of the flag of the vessel carrying the goods, except in the cases of average or general average, when same to be settled according to the York-Antwerp Rules, 1950." This clause remains unaltered in the signed contract. The printed form, being for a charterparty, had blanks at the beginning for the insertion of the name of the ship owner's tanker and its flag. These were left blank. Clause 28 provides: "Shipments to be effected in tonnage

owned, controlled or chartered by the Compagnie d'Armement Maritime S.A. of 16 000/25 000 tons 10 per cent, more or less at owners' option."

The first question is whether it is possible to give any meaning to clause 13. The printed form, including clause 13, obviously contemplates that there is to be one vessel and one flag and that the law of that flag shall be the proper law. But under clause 28 there could be a variety of vessels with a variety of flags. Which is to be selected as determining the proper law? Even if one could hold that with regard to a dispute concerning a particular voyage the law of the flag of the vessel making that voyage should prevail, that would not provide for the dispute in this case which does not relate to any particular voyage.

We do not know and cannot inquire as to why clause 13 was left unaltered. We have to construe it as we find it. Normally where a clause was drafted by the parties or their agents we can assume that they must have intended it to mean something. But we cannot make that assumption here. The broker, relying on the form having proved useful in the past, may never even have read clause 13 and the strong probability is that the parties, being faced with a form in a foreign language which they assumed, or were assured by the broker, embodied their previous agreement, would not scrutinize the printed matter. Indeed one can say with some confidence that if any of them had scrutinized clause 13 he would have seen that it required adaptation. But whether they read clause 13 or not, the parties are bound by what they signed.

Even if it were relevant, it would be useless to ask in this case what the parties in fact intended as to the proper law, because it is found as a fact in the interim award that there was no discussion at any time of the law by which the transaction was to be governed. But clause 13, like any other provision in a contract, must be construed in light of the facts known to both parties at the time when it was agreed. They knew that the appellants owned a number of tankers flying the French flag and it is found in the interim award that it was contemplated by both parties that vessels owned by the appellants would be used "at least primarily" to perform the contract.

If the parties had contemplated that the appellants' vessels would always be used, except in some unforeseen circumstances, I would have held that clause 13 could be held to mean that the contract was to be governed by the law of the flag of those vessels, that is, the law of France. But, in my opinion, this finding is too indefinite to justify such a gloss. "Primarily" might mean "in the first instance" or it might mean "in the majority of cases." The parties must have known that many other tanker not owned by the appellants would be available on this route, and that, as the dates of shipment were to be determined by the respondents, vessels other than those belonging to the appellants might well have to be used. In my judgment, clause 13 must in the circumstances be regarded as having failed in its purpose to determine the proper law of the contract.

If that is so, then we are no longer concerned with the parties' intention. In the absence of any positive indication of intention in the contract the law will determine the proper law by deciding with what country or system of law the contract has the closest connection. Here three countries are involved. The contract was negotiated and signed in France and the freight was payable in Paris in French francs. The contract was to be performed in Tunisia. The only connection with England was that any dispute was to be settled by arbitration in London. The contract is in the English language and in English form, but it was not argued, in my view rightly, that any great importance should be given to this.

Until this case reached this House it appears to have been assumed that France and Tunisia could be treated as one country or as having the same system of law. It is stated in the interim award that: "The civil law of Tunisia (which until 1956 was a French colony) is based on the Code Napoleon" and that "neither side contended for any other system of law" than French or English law. On that basis when one comes to weigh the various factors which tell in favour of French or of English law being regarded as the proper law, the fact that Tunisia was to be the place of performance of the contract would be put in the scale for French law. Then it is clear that the balance comes down heavily in favour of French law. On the one hand, there are the place where the contract was

negotiated and signed, the place of performance, the place where and currency in which the freight was to be paid, and the place where the parties resided and carried on business: on the other hand, there is only the place where disputes were to be settled by arbitration. But I wish to reserve my opinion as to how far in a case of this kind it is proper to disregard the fact that two countries are separate and independent countries, each with its own system of law, on the ground that those countries are or have recently been closely associated, or that their systems of law are very similar but both very different from English law.

The respondents do not deny that, if we are free to apply the general rule that the proper law is the law of the place with which the contract is most closely associated, then the proper law would be French law. Their case is that that general rule does not apply when there is an arbitration clause requiring disputes to be settled by arbitration in England. They admit that such a clause does not prevent the parties from agreeing that some other law shall be the proper law, but they maintain that if such an agreement cannot be deduced from the terms of the contract, then the arbitration clause is decisive as to the proper law and requires an English court to hold that the proper law is the law of England.

Of course the fact that the parties have agreed that arbitration shall take place in England is an important factor and in many cases it may be the decisive factor. But it would, in my view, be highly anomalous if our law required the mere fact that arbitration is to take place in England to be decisive as to the proper law of the contract. For the reasons given by others of your Lordships I agree that this is not the law of England.

I would therefore allow this appeal.

Decision

Appeal allowed, and the decision of the Court of Appeal is reversed. The proper law of this contract is the law of France with which the contract is most closely associated.

I . Comprehension Questions

1. What was the main dispute between the two parties?

2. What led to the dispute?
3. Who claimed damages in this case?
4. Why were Clause 13 and Clause 28 contradictory to each other?
5. Why should clause 13, according to Lord Reid, be regarded as having failed to determine the proper law of the contract?
6. Under what circumstance will the law determine the proper law by deciding with what country or system of law the contract has the closest connection?
7. On what basis did Lord Reid hold that French law could govern the contract?
8. Why did Lord Reid overrule the decision of the Court of Appeal?
9. Who won the case in the end?
10. Based on the background and facts, what would your decision be if you were a judge in the House of Lords? Why?

II . Word Study

Part A Meanings, explanations and differences

1. award, ruling, judgment

These three words are synonyms, but there exist distinctions. **Award** can be the form of a judgment a judge or jury gives the successful party in a lawsuit, or the written determination of the court or an arbitrator or arbitrators on a matter submitted to him or them; **ruling** may be related to a judge, an arbitrator, or an authority; **judgment** is connected with the court.

award: decision which settles a dispute

*e. g. The arbitrator's **award** was set aside on appeal.*

ruling: decision which is made by a judge or magistrate or arbitrator or some other authority, etc.

*e. g. The MPs disputed the Speaker's **ruling**.*

*Any decision made by a judge during the course of litigation is called a **ruling**.*

judgment: legal decision or official decision of a court

*e. g. default **judgment**; interlocutory **judgment**; to enter **judgment** for or against the plaintiff*

2. overrule, reverse

overrule: to annul, to make void. This word is frequently used to signify that a case has been decided directly opposite to a former case; when this takes place, the first decided case is said to be **overruled** as a precedent and cannot any longer be considered as of binding authority. The term **overrule** also signifies that a majority of the judges have decided against the opinion of the minority, in which case the

latter are said to be **overruled**.

reverse: (an appellate court) to set aside the decision of a lower court because of an error

*e. g. The Appeal Court **reversed** the decision of the High Court.*

3. relief, remedy

relief: remedy sought by a plaintiff in a legal action

remedy: the legal means to recover a right or to prevent or obtain redress for a wrong

*e. g. What is the legal **remedy** for injuries caused by defective products?*

4. bind, bind over

Both of them can be used in legal context, but they are of different meanings.

bind: to tie or to attach (someone) so that he has to do something

*e. g. The company is **bound** by its articles of association.*

bind over: a) to make someone promise to behave well and not commit another offence or to return to court at a later date to face charges

*e. g. A person accused may be bound over to appear at a court having jurisdiction of the offence charged to answer; or he may be **bound over** to be of good behaviour or to keep the peace.*

b) to order a defendant to be kept in custody while a criminal case is being prepared

5. finding, find (n.)

finding: a) thing that is discovered as the result of an (official) inquiry

*e. g. The report's main **finding** is that pensions are inadequate.*

b) decision or verdict of a court or jury

*e. g. the **findings** of a commission of enquiry*

find: a) thing or person that is found, esp. sth/sb valuable or pleasing

*e. g. Our new gardener was a marvelous **find**.*

b) act of finding sth/sb

*e. g. I made a great **find** in that second-hand bookshop yesterday.*

6. examination, interrogation

Examination differs from **interrogation** in that **examination** can focus on anyone that may know the facts of a case while **interrogation** mainly deals with the suspect, the accused, etc.

examination: asking someone questions to find out facts, such as the questioning of a prisoner or a witness

*e. g. Cross-**examination** is the questioning of an opposing party's witness about matters brought up during direct **examination**.*

interrogation: severe questioning

*e. g. The suspect confessed to the crime during his **interrogation**.*

7. void, voidable

void: not legally valid or not having any legal effect

*e. g. **Void** marriage is invalid from its beginning and is one of two types of marriages that can be annulled.*

voidable: which can be made void

*e. g. **Voidable** marriage is valid marriage that can be annulled if challenged, but that otherwise remains legitimate.*

8. maintenance, alimony, palimony

Alimony is also called **maintenance** or spousal support. In a divorce or separation, the money paid by one spouse to the other in order to fulfill the financial obligation that comes with marriage. Historically, the word **alimony** refers to monies paid to while spouses are separated. Where they are divorced, the monies payable are technically referred to as **maintenance**.

The support which either father or mother is bound to give to his or her children is more usually referred to as **maintenance**.

Palimony is money which a court orders a man to pay regularly to a woman with whom he has been living and from whom he has separated.

9. intern, hold, apprehend

intern: to put (someone) in prison or in camp without trial (usually for political reasons)

hold: to keep (someone) in custody

*e. g. She was **held** for six days without being able to see her lawyer.*

apprehend: to arrest

*e. g. The burglar was **apprehended** at the scene of the crime.*

10. prevail on sb to do sth, prevail against/ over sb/ sth

prevail on sb to do sth: persuade sb to do sth

*e. g. At last he allowed himself to be **prevailed upon**.*

prevail against/ over sb/ sth: fight successfully (against sb/ sth); defeat

*e. g. In case of contradiction between such agreement supplemented by the specific legal disclaimer and these provisions, the relevant agreement and the specific legal disclaimer shall **prevail**.*

11. adjudge, adjudicate

When used as a transitive verb meaning 'to declare officially or decide by law', the two words are of the same use.

*e. g. He was **adjudged/ adjudicated** to be bankrupt.*