

张耀辉 陆志安 袁 铮 编著

# 商法英语

## BUSINESS LAW ENGLISH

上海交通大学出版社

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## 法语阅读理解·体育卷

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# 序 言

从本质上讲,商法可能是一门抽象的学科。无论是大陆法系还是英美法系的国家都有它们自己的商法。近年来,中国也制定了一系列有关商务的法律。但是,每个国家的商法是建立在它的历史和文化基础上的。不同的国家可能互相借鉴商法的经验,甚至多少还吸收外国的商法。不管怎样,商法是本国社会和经济发展的必然产物。如果是这样的话,本教材中的基本概念和原则只能是概述,或可能具有普遍的适用性。鉴于本教材中的语言性质,我们更倾向于采纳英美法系。

商法的研究在中国还处在起步阶段。面对频繁的商业交易,越来越多的个人和企业开始通过法律来保护他们自己避免商业风险。在市民学习商法的高潮中,商法出版物不断问世。随着中国成为世贸组织的成员,涉外商务交易更趋频繁。因为英语是公认的世界语言,它促使众多的人花功夫用英语来学商法。尽管如此,目前我国英语的商法教材仍然不多。考虑到当前的这种情况,我们编写了这本书用以满足想获得商法知识而具有中等以上水平的英语学习者日益增长的需要。

用英语学商法既有挑战又有报偿。而且,已从事或准备从事任何职业的学习者都能够有效果地利用他们在本教科书获得的大多知识。这本教科书着重法律学习和英语学习的相互作用。全书将被证明所有的课文可以加强法律学习和英语学习的结合。这种结合可以有助于提高学习者的法律意识,同时培养他们的英语能力。它始终是一种提供利用法律活跃英语学习的多方位机会的经济方法。

这本书的编写与其使您成为律师,倒不如说是帮助您认识和理解发生在您周围的涉外商务交易的法律意义。具备商法的基本知识对任何想要在当今商务世界谋求成功职业的人是有益的。这本书将帮助您认识使您终生受益的商法。我们认为要从商法中获得最大的好处,学习者必须首先面对许多基本概念。为了达到这一目的,大量的基本概念已被选入本教材。这些基本概念一出现在课文里时就被明确定义,这样您可以马上理解它们的意思并知道它们怎样被使用。当您阅读时,课文中有许多例子,用

于解释怎样应用这些基本概念。虽然所有章节大多是文本的,但是也包括一些假设的小案例用来说明某些费解的概念和原则。学完本教程后,您一定能够获得使用准确法律语言的知识。

在每一章的后面是您在本章中学到的概念复习。这对您温习所读到的东西是有用的。为了使学习更加有效,课文中的一些生词和词组列出了简明的定义,其中大多数词和词组配有同义词。其后是注释,主要包括某些法律背景知识和配有必要例子的英语语法分析。最后,由三个部分组成的精心设计的练习,不仅可以测试对课文的理解,而且可以给您一个机会运用您已经学到的东西。

这本教科书有幸成为上海市教育委员会的赞助对象。同任何书一样,这本书的问世是各方人士通力合作的结果。我们要衷心感谢海默教授在提供资料和策划编撰方面给予的实在帮助。我们知道这本书远不够完美。如果您发现有什么谬误或不恰当的地方,请来函告诉我们。惟有如此,我们才能使这本“商法英语”日臻完善。

编 者

2003 年 6 月

# Preface

By its nature, business law is perhaps an abstract subject. The countries, either in continental law system or Anglo-American law system, have their own business law. China has also made a series of laws on business of late years. The business law of each country is established on the basis of its history and culture. Different countries may draw on the experience of business law from each other, and even somewhat come into foreign business law. Anyhow, the business law is the inevitable product of social and economic development in its own country. If so, the basic concepts and principles in this textbook must be summary accounts or may have the universal application. Owing to the nature of the language in the textbook, we are more inclined to adopt Anglo-American law system.

Business law study in China is at an initial stage. Facing frequent business transactions, more and more individuals and enterprises have begun to protect themselves from commercial risks under the umbrella of law. In a wave of learning business law among citizens, successive publications on business law come into being. With China becoming a member of the World Trade Organization, foreign business transactions tend to be more frequent.

As English is an international language, it creates a mass of people endeavoring to learn business law in English. In spite of that, there have been few business law English textbooks in China nowadays. In consideration of the current situation, we compiled this book to satisfy the increasing demand of upper-intermediate English learners who want to acquire the knowledge of business law.

Learning business law in English is both challenging and rewarding. Furthermore, learners who are engaged in or prepared for any career can fruitfully use much of knowledge they acquire in the textbook. This textbook puts weight on the interaction between law learning and English

learning. It will be demonstrated throughout this book that all the lessons can reinforce the integration of law learning with English learning. Such integration can encourage enhancing learners' legal consciousness and at the same time cultivating their English competence. It remains an economical means of providing multi-dimensional opportunities to use law to enliven English learning.

This book is designed to help you recognize and understand the legal significance of the foreign business transactions occurring around you rather than to make you a lawyer. A basic knowledge of business law is beneficial to anyone contemplating a successful career in the business world of today. The book will assist you to achieve an understanding of business law that will be useful throughout your life. We are of the opinion that in order to derive the maximum benefit from business law you must be first exposed to some of its basic concepts. To accomplish this objective, quantities of basic concepts have been included in the textbook. The basic concepts are clearly defined as soon as they appear in the text so that you can quickly understand their meanings and how they are employed. Many examples appear in the texts as you read along, illustrating how the basic concepts apply. Although all the chapters are chiefly textual, they contain some hypothetical short cases to expound certain difficult concepts and principles. By the end of the course, you will have obtained the knowledge in using the precise legal language.

At the end of each chapter is a concept review that you have learned from the chapter. This is helpful in your review of what you have read. To make learning more efficient, some difficult words and expressions in the texts are listed with their concise definitions, most of which are accompanied with their synonyms. Following the words and expressions are the notes, which mainly contain some background of law and English grammatical analyses with some necessary examples. Finally, the carefully designed exercise, which is composed of three sections, can not only test your understanding of the texts but also give you an opportunity to apply what you have learned.

Fortunately, this textbook is the subject sponsored by Shanghai Education Committee. As with any book, the book comes out in virtue of the efforts of many individuals. We owe a special debt to Professor Hammer for his substantial assistance in the material and suggestion. We know that this book is far from being perfect. If you find something wrong or inappropriate, write to us. That is how we can make Business Law English an even better book in the future.

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# **Chapter 1**

## **Legal Environment of Business**

When you begin to study business law, it is important to have a passing understanding of the legal environment of business. Without knowing the legal environment of business, you may not know how business law can work in the real world. Because business law is only a part of law, it is thus helpful for anyone involved in business to have an overview of law. In this introductory chapter, we will examine some main aspects of the legal environment of business.

### **Nature and Sources of Law**

As law is looked at for different purposes, we may not agree on what the nature of law is. There are a great number of different definitions of law. Although all the definitions vary in their details, they are based on the general view that law is to keep order and to settle disputes.

There are two major legal systems in the world, the case law system and the statutory law system. Case law is laid down in decisions of courts in earlier cases. It is on the basis of common law. Statutory law refers to written law passed by a legislature. It largely came from Roman law. In a statutory law system, the only source of law is a statute. Courts are required to interpret the statute and apply the rule to cases.

Most countries use either case law or statutory law as the basis for their legal systems. However, in case law countries there are also statutory laws. For example, the American legal system is mainly a case law system, but there are also some statutory laws, such as the Uniform Commercial Code.

### **Classification of Law**

The body of law is huge. To study it, one must break it down by some

means of classification. Law can be classified into substantive law and procedural law. Substantive law creates, defines and regulates rights. Procedural law orders method of carrying out rights.

Law can also be classified into public law and private law. Public law concerns the relations between the people and the state. It consists generally of constitutional, administrative, criminal and international law. Private law refers to the relations between persons. It covers property, contracts and torts.

Law is frequently classified into civil law and criminal law. Civil law is about people's rights. Typically, in a civil law, a party sues another party to make that party comply with a duty or pay for the damage caused by failure to comply with a duty. Business law, which is a part of civil law, regulates business transactions.

Criminal law refers to statutes that define crimes and specify their fines and punishments. Although business law mainly has to do with civil law, criminal law also plays a part in business law. Some types of crimes occur in the business world just as they do elsewhere. Therefore, criminal law joins civil law as an important part in the legal environment of business.

## **Court System**

Everyone will likely sue in a court at some time. Although each court has its own system, there are many general rules that are the same. In this part, we discuss some basic requirements that must be met before a party may bring a lawsuit before a court.

Courts are places where law cases are held. They usually consist of two levels, trial courts and appellate courts. A trial court, in which evidence and testimony are given, is on the bottom level. Decisions from a trial court can be appealed to a higher court, which commonly would be an appellate court. An appellate court is known as reviewing court because it reviews all the records relating to a case to decide whether the trial court's decision was correct. Decisions from the appellate court may be appealed to an even higher court.

A judge is the official who carries on the trial and decides cases in the court. His duty is to see that law is applied well. The judge's decision must be fair to both sides. A justice is the judge who decides cases on appeal. Unlike a judge, a justice is rarely in contact with any party and he works at the written word.

Before any court can hear a case, it must have jurisdiction over the person against whom the suit is brought. Jurisdiction is the legal power by which a court decides cases. Venue is the place where a trial will be held. In order to bring an action, a party must have standing to sue. Standing to sue is the position that a party has to seek justice through the court system.

The party starting a suit to court is regarded as a plaintiff, and the party against whom a suit is brought is a defendant. Lawsuits frequently involve more than one plaintiff and defendant. When a case is appealed from the first court to another court, the party who appeals the case is called an appellant. An appellee is the party against whom the appeal is taken.

Although parties are allowed to deal with legal matters by themselves, most parties to lawsuits turn to lawyers. Lawyers are trained and qualified to advise people or speak for them in the court. Generally there are office-practice lawyers and trial lawyers. A counselor is an office-practice lawyer who advises people in cases. An attorney is a trial lawyer who acts on behalf of his client and convinces the judge and jury that his argument is proper.

## **Court Procedures**

Understanding and meeting procedural requirements are important in court procedures. The parties to a suit must comply with the procedural rules of the court in which the suit is filed. Although the procedures vary from court to court, there are usually three phases: pretrial, trial, and posttrial. Each phase has its special steps.

The pretrial begins with the filing of pleadings. Pleadings are documents filing the claim of the plaintiff. The first of the pleadings is the complaint. After the complaint is filed, a summons is sent out. A summons is a call to turn up before a court. After the defendant receives the

summons, the law allows him to file an answer, a reply to the plaintiff's complaint. Sometimes, the defendant will file a motion. A motion is a request that is prepared and filed with the court.

If the complaint is not dismissed by motion, the defendant files an answer and then the court begins to carry on a trial of the matter. Before a trial takes place, attorneys of both sides are allowed to get facts. This process is called discovery. The purpose of discovery is to learn exactly what facts the other side is arguing against him.

Prior to a trial, a jury is usually formed. A jury is a group of citizens who give a decision about what they think is the truth on the basis of the evidence. Evidence is any fact given to a court or jury and which may include documents or objects. The trial process is decided by rule of evidence. In civil cases, judges often decide the matter without a jury.

At the beginning of a trial, the attorneys of both sides make opening statements. Each witness, who gives evidence in court, then offers the testimony, the oral statement about the facts. He is first questioned by the attorney for one side. This is direct examination. After the witness has answered the questions, he is then questioned by the attorney for the other side. This is cross-examination.

When the examinations are over, the attorneys of both sides make their final arguments. Afterwards the judge or the jury makes a decision. The decision is then written into a document known as a judgment. If the defendant fails to comply with the judgment, the plaintiff will apply for carrying out the judgment by force. Then the personal property of the defendant will be taken away and sold enough to meet the judgment.

After the trial, either the plaintiff or the defendant may make a posttrial motion. If the motion is dismissed, one of the parties may appeal to a higher court. The appellate court reviews the judgment of the trial court and makes its decision on the basis of written copies of the trial court. It usually decides whether the trial court has applied the wrong law. If the trial court's judgment is turned down, the appellate court may order that a new trial be carried on.

## Business Ethics

In preparing for a career in business, you will find that a background in business ethics is just as important as a knowledge of business law. Business ethics focuses on right or wrong behavior in the world of business. Business ethics is not a different kind of ethics. The ethical standards that guide our behavior apply equally well to our activities as businesspersons.

If a company is certain of the legality of an action, that does not mean that the action is ethical. For example, when many consumers are injured by using a product in a way not intended by the manufacturer, it is unethical for the manufacturer to keep sales of the product even if he has no legal duty to do so. It is true that because the law shows a society's ethical values, obeying the law is ethical in itself. However, the law does not and cannot meet all ethical requirements.

In the business world, many actions might be unethical but not illegal. If a company emphasizes profits at the expense of business ethics, it may become the target of media exposure, consumer boycotts, and even suits. To be ethical, a company sometimes must give up some profits. Instead of making quick profits, many companies aim for long-range profits. In the long run, a decision to continue unethical action may be an unprofitable one.

## Concept Review

case law 判例法  
statutory law 成文法  
substantive law 实体法  
procedural law 程序法  
public law 公法  
private law 私法  
civil law 民法  
business law 商法

appellant 上诉人  
appellee 被上诉人  
counselor 咨询律师  
attorney 出庭律师  
pleadings 诉状  
complaint 起诉状  
summons 传票  
answer 答辩状

criminal law 刑法  
trial court 初审法院  
appellate court 上诉法院  
judge 审理法官  
justice 复审法官  
jurisdiction 审判权  
venue 起诉地点  
standing to sue 诉讼资格  
plaintiff 原告  
defendant 被告

motion 申请  
discovery 取证  
jury 陪审团  
evidence 证据  
witness 证人  
testimony 证词  
direct examination 直接质证  
cross-examination 交叉质证  
judgment 判决书  
business ethics 商业道德

## Words and Expressions

legal *a.* ①of the law 法律的 ②allowed by law 合法的   legality *n.*   illegal  
*a.* 非法的

environment *n.* external conditions; surrounding 环境

involve *v.* cause to participate; concern 使卷入; 牵涉

overview *n.* general view; survey 概观

source *n.* place from which sth comes; origin 渊源

vary *v.* become different; differ 不同

dispute *n.* argument for a long time; debate 纠纷

case *n.* ①good reason for an action 判例 ②event needing inquiry 案件 ③  
question to be decided in a court 诉讼

lay down   establish 制定

on the basis of   based on 基于

refer to   concern 涉及

legislature *n.* body to make and change laws 立法机关

statute *n.* written law; rule 成文法   statutory *a.*

require *v.* ①order 命令 ②need 需要   requirement *n.*

interpret *v.* decide on the meaning of sth; explain 解释

apply *v.* ①bring a request; demand 申请 ②put into action; use 应用 ③be  
relevant 适用

such as ①for example 例如 ②like 像…一样  
 break down analyze 分析  
 classify *v.* arrange in classes; categorize 分类 classification *n.*  
 define *v.* ①show the limits of 界定 ②give the meaning of 下定义  
 definition *n.*  
 regulate *v.* adjust by rule; direct 调节  
 carry out do sth as required 执行  
 relations *n.* dealings between persons; connections 交往  
 sue *v.* file a lawsuit; accuse 起诉  
 comply with do as one is required 遵守  
 transaction *n.* act of doing business; deal 交易行为  
 specify *v.* mention exactly; stipulate 明确说明; 规定  
 lawsuit *n.* legal action; suit 诉讼  
 trial *n.* judging a case in a court; hearing 审判  
 appeal *v.* /*n.* bring a decision to a higher court 上诉  
 carry on conduct 处理  
 be in contact with get in touch with 和…接触  
 hear *v.* listen to the arguments in a court; try 审理  
 bring an action bring a suit 起诉  
 turn to sb/sth go to sb/sth for help 寻求帮助  
 client *n.* person who pays a lawyer; customer 当事人  
 convince *v.* lead to believe; assure 使信服  
 procedure *n.* actions necessary for doing sth; process 程序 procedural *a.*  
 file *v.* place on record; send 归档; 提交  
 phase *n.* stage in a process of development; period 阶段  
 document *n.* paper that gives information or proof 文件  
 claim *n.* demand for sth; request 要求  
 turn up arrive 到达  
 dismiss *v.* send away; reject 拒绝  
 turn down refuse 驳回  
 ethics *n.* rightness 道德 (un)ethical *a.* (不)道德的  
 career *n.* job for which one is trained; occupation 职业