

<<商法>>

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内容概要

在全球化的大背景下，中国的法治建设与时俱进。

在我国法学教育方面也应当推陈出新，与国际接轨。

基于提升我国法学双语教学水准，培养国际化的法律人才，作者集结历年来的研究成果，编著商法（Commercial Law）双语教材，希望能为我国的法学双语教学提供一本高质量的教材。

李栗燕编著的《商法》共由9章内容构成，包括商法概述、合伙企业法、公司法、破产法、票据法、证券法、保险法、银行法、纠纷解决机制。

每章在进入正文之前，都附有简短的内容概括，方便学生总体把握章节内容；每章后都附有重点词汇解释、练习题及相关课外阅读材料，帮助学生进一步理解内容。

在教材附录中附有书本所涉及的所有相关法条，提供给学生查阅。

《商法》可作为法学、金融学、国际贸易等专业的双语教程，并可为国内外商事活动的从业人员提供参考和指南，也适用于对国内外商法感兴趣的爱好者。

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在《江汉论坛》、《科技进步与对策》等刊物上发表论文二十余篇，已主持两项法学课题的研究，参与多项省级课题的研究及教改项目和精品课程建设。

2002年获全市法制知识竞赛专业组第一名，2005年公派赴澳大利亚交流、进修，2006年获南京航空航天大学教学优秀二等奖。

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Company Law of the People' s Republic of China

Insurance Law of the People' s Republic of China

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章节摘录

版权页： 1. The Supremacy Clause Article states in part:"This Constitution and the Laws of the United States which shall be made in pursuance thereof ...shall be the supreme Law of the Land ...," hereby guaranteeing federal supremacy,even though the states created the federal government. 2. The Contract Clause Section 10 of Article I of the United States Constitution provides in part that no state shall pass any law impairing the obligation of contracts. This provision has no application to the federal government,which,in fact,frequently enacts laws and adopts regulations that affect existing contracts.The Department of Agriculture from time to time embargoes grain sales to foreign countries,usually as a result of problems in foreign affairs. The limitation on state action impairing contracts has not been given a literal application.As a result of judicial interpretation,some state laws that affect existing contracts have been approved,especially when the law is passed to deal with a specific emergency situation. On the other hand,this constitutional provision does limit the alternatives available to state government and prevents the enactment of legislation that changes vested contract rights. 3. The Taxing Power The power of taxation is exercised by the legislative branch of the government. The only limitations on its exercise are found in federal and state constitutions. The fact that a tax may destroy a business or the value of property is no basis for a judicial determination that the tax is unconstitutional. The court must find that the tax violates some specific provision of the Constitution before the tax can be held invalid. The decision as to the wisdom or propriety of the tax is left to the legislature. Taxation is a very important form of regulation used to accomplish many goals. Tax policy is a major ingredient in the efforts of government to regulate the economy. Depreciation allowances have been accelerated from time to time to bolster the economy by making additional cash available for business investment. The gasoline tax has been substantially increased in order to raise the price of gasoline and reduce consumption. States were encouraged to adopt unemployment compensation taxes by a federal law that gave a 90 percent credit on the federal tax for taxes paid to states. Few questions are raised today concerning the validity of a federally imposed tax. The Sixteenth Amendment to the Constitution and the broad scope of the federal taxing power,which has been approved by the courts,eliminates most such issues. Of course,there is a considerable amount of litigation involving the interpretation and application of the federal tax laws and regulations. Great deference is given to the position taken by the Commissioner of Internal Revenue in such cases. Courts tend to hold that federal taxing laws are valid unless there is some clear constitutional infirmity. 4. The Commerce Clause The power of the federal government to regulate business activity is found in the so-called Commerce Clause of the Constitution, which states: " Congress shall have power to regulate Commerce with foreign Nations,and among the several States,and with the Indian Tribes. "This grant of three-pronged power has been broadly interpreted to give the federal government considerable power to regulate business,to prescribe the rules by which commerce is conducted. The power to regulate foreign commerce is vested exclusively in the federal government and extends to all aspects of foreign trade. State and local governments may not regulate foreign commerce,although they do sometimes attempt directly or indirectly to regulate imports and exports to some degree. Such attempts are unconstitutional. State or local laws regulating or interfering with federal regulation of commerce with foreign nations are invalid as violations of the Commerce and Supremacy clauses. One city required that all retail goods originating behind the Iron Curtain be so labeled. The law was unconstitutional. The key language of the Commerce Clause is the phrase "among the several States. " This language has been construed to give Congress power to enact laws covering any business activity in interstate commerce and any intrastate business activity that has a substantial effect-negative or positive-on interstate commerce. The effect or any individual business on interstate commerce need not be substantial if the cumulative effect of all similar businesses is substantial. While the power of Congress to regulate an infinite variety of business activities by use of the Commerce Clause is quite broad,it is subject to some limitations. These limitations are found in other provisions of the Constitution,such as the Sixth Amendment' s guarantee of a right to trial by jury and the Fifth Amendment's Due Process Clause.In addition,the power to regulate commerce cannot be used to destroy state and local governments and thus cannot be used,for example,to regulate the wages of government employees. In granting Congress power over commerce,the Constitution did not expressly exclude

the states from exercising authority over commerce. The Supreme Court held that the nature of the commerce power did not by implication prohibit state action and that some state power over commerce is compatible with the federal power. Because of the Commerce clause, nevertheless, state powers over commerce are definitely limited. 5. The Bill of Rights and Business The first ten amendments to the Constitution of the United States, often referred to as the Bill of Rights, have numerous provisions that impact directly on business and economic activity, as well as on all other aspects of our daily lives.

编辑推荐

《普通高等教育"十二五"规划教材:商法(英文)》讲述了在全球化的大背景下,中国的法治建设与时俱进。

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