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УЧРЕЖДЕНИЕ ВЫСШЕГО ОБРАЗОВАНИЯ
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ПРИ ПРАВИТЕЛЬСТВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ»

Департамент языковой подготовки

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LAW STORIES

ЮРИДИЧЕСКИЕ ТЕКСТЫ

**УЧЕБНОЕ ПОСОБИЕ
ДЛЯ СТУДЕНТОВ
ЮРИДИЧЕСКОГО ФАКУЛЬТЕТА**

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Учебное пособие предназначено для студентов юридического факультета, а также всех заинтересованных в изучении английского языка в юридической сфере. Пособие построено на использовании современных аутентичных иностранных юридических текстов. Юридическая лексика вводится тематически, по разделам и закрепляется в различных видах упражнений, находящих свое применение в таких речевых видах работы, как монолог, диалог, дискуссия. Авторами выбраны темы, которые представляются как наиболее полезные и интересные для достижения цели освоения студентами юридической лексики.

Учебное пособие ставит своей целью не только сформировать основные компетенции, необходимые для овладения английским языком, но и позволяет закрепить и углубить знания по темам, которые студенты изучают на родном языке.

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"FINANCIAL UNIVERSITY UNDER THE GOVERNMENT
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Department of Foreign Languages

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LAW STORIES

MANUAL FOR LAW STUDENTS

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The manual is designed for law students and all interested in studying Legal English. This manual is based on modern authentic foreign legal texts. Legal vocabulary is introduced thematically, in sections, and is provided with various types of exercises, which train such types of speech as monologue, dialogue, discussion. The authors have chosen topics that might be useful and interesting to achieve the goal of mastering legal vocabulary. The textbook aims not only to build the core competencies necessary to master the English language, but also allows students to deepen knowledge on the topics that students study in their native language.

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ВВЕДЕНИЕ

Настоящее учебное пособие ставит своей задачей познакомить студентов юридических специальностей с современной юридической практикой в некоторых отраслях права, развить у них комплексные коммуникативные навыки применительно к данной тематике.

Основная цель настоящего учебного пособия – обучение чтению и переводу юридической литературы на основе развития необходимых компетенций, а также расширение активного и пассивного словарного запаса в области юридической терминологии.

Пособие позволяет овладеть специальной лексикой, на оригинальном и аутентичном материале, изучить основные понятия юриспруденции, употребляемые в узкоспециализированных областях англо-американского права, узнать о нюансах подготовки договоров, их структуре, англоязычных и латинских терминах, применяемых в тексте договора. Ознакомление с художественными текстами профессиональной направленности и со специализированными текстами позволяет развить столь необходимые для профессионала навыки анализа текста и ведения дискуссии.

Пособие состоит из двенадцати разделов, каждый их которых начинается с вводных упражнений, направленных на развитие навыков говорения на английском языке по теме раздела. Практические задания нацелены на развитие навыков двустороннего перевода юридических текстов и ведения профессионально-ориентированной беседы или дискуссии. Представленные тексты содержат материал из юридической практики, конкретные случаи из судебной практики.

Издание предназначено для студентов и широкого круга специалистов, изучающих английский язык в сфере профессиональной деятельности. Авторы полагают, что материалы пособия будут полезны не только на занятиях английского языка, но и при самостоятельном изучении особенностей юридической правовой системы.

UNIT 1

WHAT IS CROSS – EXAMINATION?

Lead-in

1) How do you understand what cross-examination is?
2) Who usually holds cross-examination?
3) What types of questions are usually asked?
4) What makes cross-examination successful?

Hollywood dramas portray cross-examinations as exercises in pyrotechnics: the lawyer asks hostile and sarcastic questions, mixed with clever asides to the jury, and the witness gives evasive answers. Cross-examination causes Captain Queeg to reveal his mental instability in The Caine Mutiny; it wrings a confession from the defendant's wife in Witness for the Prosecution that she has been lying to frame her husband. Perry Mason used cross-examination as an investigative tool to search for the real murderer. This may make good theater – the struggle between good and evil – but it hardly paints an accurate portrait of cross-examination. Rarely in a lawyer's career will he or she ever have to battle a scheming, dishonest witness, knowing that the witness's testimony must be broken in order to save an innocent client.

If cross-examination is not usually a battle of wits between a scheming witness and a clever attorney, how should it be understood? Like direct examination, it is primarily a method of proving your case by eliciting testimony from a witness. That witness has given information on direct examination that favors your opponent, and now you must pick over what remains to find the few nuggets that favor your own theory of the case. Its success depends not on your ability to ask clever questions, but on your ability to control the flow of information so that the witness's testimony is limited to the selected items you want to bring out. Some witnesses will be hostile, some suspicious, and some defensive. None will

react with gratitude when you attack their credibility. If you fail to control the cross-examination, the chances are that the witness will end up repeating the harmful direct examination and explaining away the weaknesses in it that you wanted to emphasize.

On direct examination, witnesses are controlled through preparation and rehearsal. On cross-examination, however, it is usually impossible to rehearse, so you will have to rely on meticulous preparation. Cross-examination should be carefully planned, tightly controlled, and thoroughly disciplined.

Most trial lawyers have at one time or another studied Professor Irving Younger's "Ten Rules of Cross-Examination", and those rules are certainly timeless and bear repeating. They are:

- Be brief.
- Use plain words.
- Use only leading questions.
- Be prepared.
- Listen.
- Do not quarrel.
- Avoid repetition.
- Do not allow the witness to explain.
- Limit questioning.
- Save for summation.

Larry Pozner and Roger Dodd *(Cross-Examination: Science and Techniques, 2nd Ed*., by Larry Pozner and Roger Dodd (Matthew Bender, 2004) have distilled Younger's rules even further and recommend following the "Three Rules of Cross-Examination:"

- Ask leading questions only.
- One new fact per question.
- Break cross-examination into a series of logical progressions to each specific goal.

Below is the extract from the book **The Brass Verdict by Michael Connelly** giving the idea of what cross-examination is.

1. Read the extract and do the exercises after the text.

1) I was in the fourth day of trial in Department 109 in the downtown Criminal Courts Building when I got the lie that became the blade that ripped the case open. My client, Barnett Woodson, was riding two murder charges all the way to the steel-gray room in San Quentin where they serve you Jesus juice direct through the arm.
2) Woodson, a twenty-seven-year-old drug dealer from Compton, was accused of robbing and killing two college students from Westwood. They had wanted to buy cocaine from him. He decided instead to take their money and kill them both with a sawed-off shotgun. Or so the prosecution said. It was a black-on white crime and that made things bad enough for Woodson – especially coming just four months after the riots that had torn the city apart. But what made his situation even worse was that the killer had attempted to hide the crime by weighing down the two bodies and dropping them into the Hollywood Reservoir. They stayed down for four days before popping to the surface like apples in a barrel. Rotten apples. The idea of dead bodies moldering in the reservoir that was a primary source of the city's drinking water caused a collective twist in the community's guts. When Woodson was linked by phone records to the dead men and arrested, the public outrage directed toward him was almost palpable. The District Attorney's Office promptly announced it would seek the death penalty.
3) The case against Woodson, however, wasn't all that palpable. It was constructed largely of circumstantial evidence – the phone records – and the testimony of witnesses who were criminals themselves. And state's witness Ronald Torrance sat front and center in this group. He claimed that Woodson confessed the killings to him.
4) Torrance had been housed on the same floor of the Men's Central Jail as Woodson. Both men were kept in a high-power module that contained sixteen single-prisoner cells on two tiers that opened onto a dayroom. At the time, all sixteen prisoners in the module were black, following the routine but questionable jail procedure of "segregating for safety", which entailed dividing

prisoners according to race and gang affiliation to avoid confrontations and violence. Torrance was awaiting trial on robbery and aggravated assault charges stemming from his involvement in looting during the riots. High-power detainees had six a.m. to six p.m. access to the dayroom, where they ate and played cards at tables and otherwise interacted under the watchful eyes of guards in an overhead glass booth. According to Torrance, it was at one of these tables that my client had confessed to killing the two Westside boys.

The prosecution went out of its way to make Torrance presentable and believable to the jury, which had only three black members. He was given a shave, his hair was taken out of cornrows and trimmed short and he was dressed in a pale blue suit with no tie when he arrived in court on the fourth day of Woodson's trial. In direct testimony elicited by Jerry Vincent, the prosecutor, Torrance described the conversation he allegedly had with Woodson one morning at one of the picnic tables. Woodson not only confessed to the killings, he said, but furnished Torrance with many of the telling details of the murders. The point made clear to the jury was that these were details that only the true killer would know.

5) During the testimony, Vincent kept Torrance on a tight leash with long questions designed to elicit short answers. The questions were overloaded to the point of being leading but I didn't bother objecting, even when Judge Companioni looked at me with raised eyebrows, practically begging me to jump in. But I didn't object, because I wanted the counterpoint. I wanted the jury to see what the prosecution was doing.
6) When it was my turn, I was going to let Torrance run with his answers while I hung back and waited for the blade.

   Vincent finished his direct at eleven a.m. and the judge asked me if I wanted to take an early lunch before

   I began my cross. I told him no, I didn't need or want a break. I said it like I was disgusted and couldn't wait another hour to get at the man on the stand. I stood up and took a big, thick file and a legal pad with me to the lectern.

7) “Mr. Torrance, my name is Michael Haller. I work for the Public Defenders Office and represent Barnett Woodson. Have we met before?”
“No, sir”.
“I didn’t think so. But you and the defendant, Mr. Woodson, you two go back a long way, correct?”.
8) Torrance gave an “aw, shucks” smile. But I had done the due diligence on him and I knew exactly who I was dealing with. He was thirty-two years old and had spent a third of his life in jails and prisons. His schooling had ended in the fourth grade when he stopped going to school and no parent seemed to notice or care.
9) Under the state’s three-strike law, he was facing the lifetime achievement award if convicted of charges he robbed and pistol-whipped the female manager of a coin laundry. The crime had been committed during three days of rioting and looting that ripped through the city after the not-guilty verdicts were announced in the trial of four police officers accused of the excessive beating of Rodney King, a black motorist pulled over for driving erratically. In short, Torrance had good reason to help the state take down Barnett Woodson.
10) “Well, we go back a few months is all,” Torrance said. “To high-power”.
“Did you say ‘higher power’?” I asked, playing dumb. “Are you talking about a church or some sort of religious connection?”
“No, high-power module. In county”
“So you’re talking about jail, correct?”
“That’s right”.
“So you’re telling me that you didn’t know Barnett Woodson before that?”
I asked the question with surprise in my voice.
“No, sir. We met for the first time in the jail.”
I made a note on the legal pad as if this were an important concession.
“So then, let’s do the math, Mr. Torrance. Barnett Woodson was transferred into the high-power module where you were already residing on the fifth of September earlier this year. Do you remember that?”
“Yeah, I remember him coming in, yeah.”
“And why were you there in high-power?”

11) Vincent stood and objected, saying I was covering ground he had already trod in direct testimony. I argued that I was looking for a fuller explanation of Torrance's incarceration, and Judge Companioni allowed me the leeway. He told Torrance to answer the question.
"Like I said, I got a count of assault and one of robbery".
"And these alleged crimes took place during the riots, is that correct?"

12) With the anti-police climate permeating the city's minority communities since even before the riots, I had fought during jury selection to get as many blacks and browns on the panel as I could. But here was a chance to work on the five white jurors the prosecution had been able to get by me. I wanted them to know that the man the prosecution was hanging so much of its case on was one of those responsible for the images they saw on their television sets back in May.
"Yeah, I was out there like everybody else", Torrance answered. "Cops get away with too much in this town, you ask me".
I nodded like I agreed.

13) "And your response to the injustice of the verdicts in the Rodney King beating case was to go out and rob a sixty-two-year-old woman and knock her unconscious with a steel trash can? Is that correct, sir?"
Torrance looked over at the prosecution table and then past Vincent to his own lawyer, sitting in the first row of the gallery. Whether or not they had earlier rehearsed a response to this question, his legal team couldn't help Torrance now. He was on his own.

14) "I didn't do that," he finally said.
"You're innocent of the crime you are charged with?"
"That's right."
"What about looting? You committed no crimes during the riots?"
After a pause and another glance at his attorney, Torrance said, "I take the fifth on that".

15) As expected. I then took Torrance through a series of questions designed so that he had no choice but to incriminate himself or refuse to answer under the protections of the Fifth Amendment. Finally, after he took the nickel six times, the judge grew weary of the point being made over and over and prodded me back to the case at hand. I reluctantly complied.

16) “All right, enough about you, Mr. Torrance”, I said. “Let’s get back to you and Mr. Woodson. You knew the details of this double-murder case before you even met Mr. Woodson in lockup?”
“No, sir”.
“Are you sure? It got a lot of attention”.
“I been in jail, man”.
“They don’t have television or newspapers in jail?”
“I don’t read no papers and the module’s TV been broke since I got there. We made a fuss and they said they’d fix it but they ain’t fixed shit”.
The judge admonished Torrance to check his language and the witness apologized. I moved on.

17) “According to the jail’s records, Mr. Woodson arrived in the high-power module on the fifth of September and, according to the state’s discovery material, you contacted the prosecution on October second to report his alleged confession. Does that sound right to you?”
“Yeah, that sounds right”.
“Well, not to me, Mr. Torrance. You are telling this jury that a man accused of a double murder and facing the possible death penalty confessed to a man he had known for less than four weeks?”

18) Torrance shrugged before answering.
“That’s what happened.”
“So you say. What will you get from the prosecution if Mr. Woodson is convicted of these crimes?”
“I don’t know. Nobody has promised me nothing.”
“With your prior record and the charges you currently face, you are looking at more than fifteen years in prison if you’re convicted, correct?”
“I don’t know about any of that”.
“You don’t?”
“No, sir. I let my lawyer handle all that”.
“He hasn’t told you that if you don’t do something about this, you might go to prison for a long, long time?”
“He hasn’t told me none of that”.

"I see. What have you asked the prosecutor for in exchange for your testimony?"

"Nothing. I don't want nothing."

"So then, you are testifying here because you believe it is your duty as a citizen, is that correct?"

The sarcasm in my voice was unmistakable.

"That's right", Torrance responded indignantly.

I held the thick file up over the lectern so he could see it.

"Do you recognize this file, Mr. Torrance?"

"No. Not that I recall, I don't."

"You sure you don't remember seeing it in Mr. Woodson's cell?"

"Never been in his cell."

"Are you sure that you didn't sneak in there and look through his discovery file while Mr. Woodson was in the dayroom or in the shower or maybe in court sometime?"

"No, I did not."

"My client had many of the investigative documents relating to his prosecution in his cell. These contained several of the details you testified to this morning. You don't think that is suspicious?"

19) Torrance shook his head.

"No. All I know is that he sat there at the table and told me what he'd done. He was feeling poorly about it and opened up to me. It ain't my fault people open up to me."

I nodded as if sympathetic to the burden Torrance carried as a man others confided in – especially when it came to double murders.

"Of course not, Mr. Torrance. Now, can you tell the jury exactly what he said to you? And don't use the shorthand you used when Mr. Vincent was asking the questions. I want to hear exactly what my client told you. Give us his words, please."

20) Torrance paused as if to probe his memory and compose his thoughts.

"Well," he finally said, "we were sittin' there, the both of us by ourselves, and he just started talkin' about feelin' bad about what he'd done. I asked him, 'What'd you do?' and he told me about that night he killed the two fellas and how he felt pretty rough about it."

The truth is short. Lies are long. I wanted to get Torrance talking in long form, something Vincent had successfully avoided. Jailhouse snitches have something in common with all con men and professional liars. They seek to hide the con in misdirection and banter. They wrap cotton around their lies. But in all of that fluff you often find the key to revealing the big lie.

21) Vincent objected again, saying the witness had already answered the questions I was asking and I was simply badgering him at this point.
"Your Honor," I responded, "this witness is putting a confession in my client's mouth. As far as the defense is concerned, this is the case right here. The court would be remiss if it did not allow me to fully explore the content and context of such damaging testimony."

22) Judge Companioni was nodding in agreement before I finished the last sentence. He overruled Vincent's objection and told me to proceed. I turned my attention back to the witness and spoke with impatience in my voice.
"Mr. Torrance, you are still summarizing. You claim Mr. Woodson confessed to the murders. So then, tell the jury what he said to you. What were the exact words he said to you when he confessed to this crime?"
Torrance nodded as if he were just then realizing what I was asking for.
"The first thing he said to me was 'Man, I feel bad.' And I said, 'For what, my brother?' He said he kept thinking about those two guys. I didn't know what he was talking about 'cause, like I said, I hadn't heard nothin' about the case, you know? So I said, 'What two guys?' and he said, 'The two niggers I dumped in the reservoir.' I asked what it was all about and he told me about blasting them both with a shorty and wrappin' them up in chicken wire and such. He said, 'I made one bad mistake' and I asked him what it was. He said, 'I shoulda taken a knife and opened up their bellies so they wouldn't end up floatin' to the top the way they did.' And that was what he told me."
In my peripheral vision I had seen Vincent flinch in the middle of Torrance's long answer. And I knew why. I carefully moved in with the blade.
"Did Mr. Woodson use that word? He called the victims 'niggers'?"
"Yeah, he said that."

23) I hesitated as I worked on the phrasing of the next question. I knew Vincent was waiting to object if I gave him the opening. I could not ask Torrance to interpret. I couldn't use the word "why" when it came to Woodson's meaning or motivation. That was objectionable.

"Mr. Torrance, in the black community the word 'nigger' could mean different things, could it not?"

"Spose."

"Is that a yes?"

"Yes."

"The defendant is African-American, correct?"

Torrance laughed.

"Looks like it to me."

"As are you, correct, sir?"

Torrance started to laugh again.

"Since I was born," he said.

The judge tapped his gavel once and looked at me.

"Mr. Haller, is this really necessary?"

"I apologize, Your Honor."

"Please move on."

"Mr. Torrance, when Mr. Woodson used that word, as you say he did, did it shock you?"

Torrance rubbed his chin as he thought about the question. Then he shook his head.

"Not really."

"Why weren't you shocked, Mr. Torrance?"

"I guess it's'cause I hear it all a' time, man."

"From other black men?"

"That's right. I heard it from white folks, too."

"Well, when fellow black men use that word, like you say Mr. Woodson did, who are they talking about?"

24) Vincent objected, saying that Torrance could not speak for what other men were talking about. Companioni sustained the objection and I took a moment to rework the path to the answer I wanted.

"Okay, Mr. Torrance," I finally said. "Let's talk only about you, then, okay? Do you use that word on occasion?"

"I think I have."

"All right, and when you have used it, who were you referring to?"
Torrance shrugged.
"Other fellas."
"Other black men?"
"That's right."
"Have you ever on occasion referred to white men as niggers?"
Torrance shook his head.
"No."
"Okay, so then, what did you take the meaning to be when Barnett Woodson described the two men who were dumped in the reservoir as niggers?"

25) Vincent moved in his seat, going through the body language of making an objection but not verbally following through with it. He must have known it would be useless. I had led Torrance down the path and he was mine.
Torrance answered the question.
"I took it that they were black and he killed 'em both."
Now Vincent's body language changed again. He sank a little bit in his s eat because he knew his gamble in putting a jailhouse snitch on the witness stand had just come up snake eyes.
I looked up at Judge Companioni. He knew what was coming as well.
"Your Honor, may I approach the witness?"
"You may," the judge said.

26) I walked to the witness stand and put the file down in front of Torrance. It was legal size, well-worn and faded orange – a color used by county jailers to denote private legal documents that an inmate is authorized to possess.
"Okay, Mr. Torrance, I have placed before you a file in which Mr. Woodson keeps discovery documents provided to him in jail by his attorneys. I ask you once again if you recognize it."
"I seen a lotta orange files in high-power. It don't mean I seen that one."
"You are saying you never saw Mr. Woodson with his file?"
"I don't rightly remember."
"Mr. Torrance, you were with Mr. Woodson in the same module for thirty-two days. You testified he confided in you and confessed to you. Are you saying you never saw him with that file?"

27) He didn't answer at first. I had backed him into a no-win corner. I waited. If he continued to claim he had never seen the file, then his claim of a confession from Woodson would be suspect in the eyes of the jury.

If he finally conceded that he was familiar with the file, then he opened a big door for me.

"What'm saying is that I seen him with his file but I never looked at what was in it."

Bang. I had him.

"Then, I'll ask you to open the file and inspect it."

28) The witness followed the instruction and looked from side to side at the open file. I went back to the lectern, checking on Vincent on my way. His eyes were downcast and his face was pale.

"What do you see when you open the file, Mr. Torrance?"

"One side's got photos of two bodies on the ground. They're stapled in there – the photos, I mean. And the other side is a bunch of documents and reports and such."

"Could you read from the first document there on the right side? Just read the first line of the summary."

"No, I can't read."

"You can't read at all?"

"Not really. I didn't get the schooling."

"Can you read any of the words that are next to the boxes that are checked at the top of the summary?"

29) Torrance looked down at the file and his eyebrows came together in concentration. I knew that his reading skills had been tested during his last stint in prison and were determined to be at the lowest measurable level – below second-grade skills.

"Not really," he said. "I can't read."

I quickly walked over to the defense table and grabbed another file and a Sharpie pen out of my briefcase.

I went back to the lectern and quickly printed the word CAUCASIAN on the outside of the file in large block letters. I held the file up so that Torrance, as well as the jury, could see it.

"Mr. Torrance, this is one of the words checked on the summary. Can you read this word?"

30) Vincent immediately stood but Torrance was already shaking his head and looking thoroughly humiliated. Vincent objected to the demonstration without proper foundation and Companioni sustained. I expected him to. I was just laying the groundwork for my next move with the jury and I was sure most of them had seen the witness shake his head.
"Okay, Mr. Torrance," I said. "Let's move to the other side of the file. Could you describe the bodies in the photos?"
"Um, two men. It looks like they opened up some chicken wire and some tarps and they're lying there.
A bunch a police is there investigatin' and takin' pictures."
"What race are the men on the tarps?"
"They're black."
"Have you ever seen those photographs before, Mr. Torrance?"

31) Vincent stood to object to my question as having previously been asked and answered. But it was like holding up a hand to stop a bullet. The judge sternly told him he could take his seat. It was his way of telling the prosecutor he was going to have to just sit back and take what was coming. You put the liar on the stand, you take the fall with him.
"You may answer the question, Mr. Torrance," I said after Vincent sat down. "Have you ever seen those photographs before?"
"No, sir, not before right now."
"Would you agree that the pictures portray what you described to us earlier? That being the bodies of two slain black men?"
"That's what it looks like. But I ain't seen the picture before, just what he tell me."
"Are you sure?"
"Something like these I wouldn't forget."

32) "You've told us Mr. Woodson confessed to killing two black men, but he is on trial for killing two white men. Wouldn't you agree that it appears that he didn't confess to you at all?"
"No, he confessed. He told me he killed those two."
I looked up at the judge.
"Your Honor, the defense asks that the file in front of Mr. Torrance be admitted into evidence as defense exhibit one."
Vincent made a lack-of-foundation objection but Companioni overruled.
"It will be admitted and we'll let the jury decide whether Mr. Torrance has or hasn't seen the photographs and contents of the file."

33) I was on a roll and decided to go all in.

"Thank you," I said. "Your Honor, now might also be a good time for the prosecutor to reacquaint his witness with the penalties for perjury."

It was a dramatic move made for the benefit of the jury. I was expecting I would have to continue with Torrance and eviscerate him with the blade of his own lie. But Vincent stood and asked the judge to recess the trial while he conferred with opposing counsel.

This told me I had just saved Barnett Woodson's life.

"The defense has no objection," I told the judge.

(The Brass Verdict by Michael Connelly (chapter 2)

2. Answer the questions according to the content of the extract.

1) What crime was committed by Barnet Woodson?
2) Why did his crime cause public outrage?
3) How does Ronald Torrance, a state's witness, look like?
4) How is Ronald Torrance described as a personality?
5) Did Torrance have any reason to help the state to take down Barnett Wooson?
6) How did Woodson's lawyer want to attract jury's sympathy to his client?
7) How did the lawyer build up his strategy to question the witness of the prosecution?
8) What did Torrance say about their wish to testify against Woodson?

3. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for these words and phrases. Use the context to help you find the proper translation.

To ride a murder charge; to serve somebody Jesus juice; to be accused of (doing); a sawed-off shotgun; black on white crime; to tear apart; to molder; to cause a collective twist in the community guts; palpable; to seek the death penalty; circumstantial evidence; to confess the killings to smb; aggravated assault charges; to loot; high-power detainees; to go out of smb' s way; to take out of cornrows; to furnish smb with smth; counterpoint; lectern; to do due diligence on smb.; three strike law; to whip a pistol; to pull over for driving erratically; to trod in direct testimony; to permeate the city's communities; to grow weary of; to admonish.

4. ***Find the verb for the following nouns: e.g. Prosecution – to prosecute***

Trial; charge; accusation; objection; testimony; conviction; confession; prosecution; penalty; overruling.

5. ***Match the words to make a phrase found in the text:***

1) jail	a) verdict
2) assault	b) file
3) non-guilty	c) murder
4) high-power	d) snitch
5) discovery	e) module
6) double	f) procedure
7) death	g) stand
8) jailhouse	h) charges
9) witness	i) table
10) defense	j) penalty

6. ***Study the text and find the words that go together with the following verbs:***

To do; to grow; to probe; to compose; to tap; to seek; to sustain; to approach; to back smb. into; to eviscerate smb. with; to recess; to blast with.

7. ***The text contains a lot of adjectives, below there are some of them; look in the corresponding paragraph in the text to find the words that go together with the adjectives:***

Primary (par. 2); collective (par. 2); circumstantial (par. 3); questionable (par. 4); watchful (par. 4); presentable (par. 4); believable (par. 4); excessive (par. 9); direct (par. 11); unconscious (par. 13); unmistakable (par. 18); investigative (par. 18); sympathetic (par. 19); damaging (par. 21); objectionable (par. 23); measurable (par. 29); proper (par. 30).

8. Work with the text again, find the prepositions used in the following phrases:

to be accused … robbing and killing (par. 2)
to kill them … a sawed-off shotgun (par. 2)
the public outrage directed … him (par. 2)
awaiting trial … robbery (par. 4)
interacted … watchful eyes of guards (par. 4)
confessed … killing the two Westside boys (par. 4)
arrived … court (par. 4)
furnish Torrance … many details (par. 4)
keep Torrance … tight leash (par. 5)
had done the due diligence … him (par. 8)
grew weary … point being made (par. 15)
confesses … a man that he had known (par. 17)
in exchange … testimony (par. 18)
he opened … to me (par. 19)
have something … common (par. 20)
wrapping them …. in chicken wire (par. 22)
they wouldn't end … floating (par. 22)
you testified he confided … you (par. 26)
backed him … a no-winner corner (par. 27)
holding … a hand to stop a bullet (par. 31)
put a liar …. the stand (par. 31)
be admitted … evidence as defense exhibit on one (par. 32)
I was … a roll (par. 32)
To reacquaint his witness… penalties for perjury (par. 33)
A dramatic move made … the benefit of the jury (par. 33)

9. Find Gerund in the sentences below and explain the rule of its use.

1) Woodson, a twenty-seven-year-old drug dealer from Compton, was accused of robbing and killing two college students from Westwood.
2) But what made his situation even worse was that the killer had attempted to hide the crime by weighing down the two bodies and dropping them into the Hollywood Reservoir.
3) At the time, all sixteen prisoners in the module were black, following the routine but questionable jail procedure of "segregating for safety," which entailed dividing prisoners according to race and gang affiliation to avoid confrontations and violence.

4) The questions were overloaded to the point of being leading but I didn't bother objecting, even when Judge Companioni looked at me with raised eyebrows, practically begging me to jump in.
5) His schooling had ended in the fourth grade when he stopped going to school and no parent seemed to notice or care.
6) The crime had been committed during three days of rioting and looting that ripped through the city after the not-guilty verdicts were announced in the trial of four police officers accused of the excessive beating of Rodney King, a black motorist pulled over for driving erratically.
7) I asked what it was all about and he told me about blasting them both with a shorty and wrappin' them up in chicken wire and such.
8) But it was like holding up a hand to stop a bullet.
9) You've told us Mr. Woodson confessed to killing two black men, but he is on trial for killing two white men.

10. Read the below given extract from the book and give a short summary:

Crime scene

1) In the last decade Archway Pictures had grown from a movie industry fringe dweller to a major force.
   This was because of the one thing that had always ruled Hollywood. Money. As the cost of producing films grew exponentially at the same time the industry focused on the most expensive kinds of films to make, the major studios began increasingly to look for partners to share the cost and risk.
2) This is where Walter Elliot and Archway Pictures came in. Archway was previously an overrun lot. It was on Melrose Avenue just a few blocks from the behemoth that was Paramount Studios. Archway was built to act as the remora fish does with the great white shark. It would hover near the mouth of the bigger fish and take whatever torn scraps somehow missed being sucked into the giant maw. Archway offered production facilities and soundstages for rent when everything was booked at the big studios. It leased office space to would-be and has been producers who weren't up to the standards of or didn't have the same deals as on-lot producers. It nurtured independent films, the movies that were less expensive to make but more risky and supposedly less likely to be hits than their studio-bred counterparts.

3) Walter Elliot and Archway Pictures limped along in this fashion for a decade, until luck and lightning struck twice. In a space of only three years Elliot hit gold with two of the independent films he'd backed by providing soundstages, equipment and production facilities in exchange for a piece of the action. The films went on to defy Hollywood expectations and became huge hits – critically and financially. One even took home the Academy Award as best picture. Walter and his stepchild studio suddenly basked in the glow of huge success. More than one hundred million people heard Walter being personally thanked on the Academy Awards broadcast. And, more important, Archway's worldwide cut from the two films was more than a hundred million dollars apiece.
4) According to the information in the files I had, Walter Elliot and his wife owned seven different homes and two ranches in or around Los Angeles. Never mind how often they used each place. Real estate was a way of keeping score in Hollywood.
5) All those properties and top 100 lists came in handy when Elliot was charged with double murder. The studio boss flexed his political and financial muscles and pulled off something rarely accomplished in a murder case. He got bail. With the prosecution objecting all the way, bail was set at $20 million and Elliot quickly ponied it up in real estate. He'd been out of jail and awaiting trial ever since – his brief flirtation with bail revocation the week before notwithstanding.
6) One of the properties Elliot put up as collateral for bail was the house where the murders took place. It was a waterfront weekender on a secluded cove. On the bail escrow its value was listed at $6 million. It was there the thirty-nine-year-old Mitzi Elliot was murdered along with her lover in a twelve-hundred square-foot bedroom with a glass wall that looked out on the big blue Pacific. The discovery file was replete with forensic reports and color copies of the crime scene photographs. The death room was completely white – walls, carpet, furniture and bedding. Two naked bodies were sprawled on the bed and floor. Mitzi Elliot and Johan Rilz. The scene was red on white. Two large bullet holes in the man's chest. Two in the woman's chest and one in her forehead. He by the bedroom door.

She on the bed. Red on white. It was not a clean scene. The wounds were large. Though the murder weapon was missing, an accompanying report said that slugs had been identified through ballistic markings as coming from a Smith & Wesson model 29, a .44 magnum revolver. Fired at close quarters, it was overkill. Walter Elliot had been suspicious about his wife. She had announced her intentions to divorce him and he believed there was another man involved. He told the sheriff's homicide investigators that he had gone to the Malibu beach house because his wife had told him she was going to meet with the interior designer.

7) Elliot thought that was a lie and timed his approach so that he would be able to confront her with a paramour. He loved her and wanted her back. He was willing to fight for her. He had gone to confront, he repeated, not to kill. He didn't own a. 44 magnum, he told them. He didn't own any guns.

   According to the statement he gave investigators, when Elliot got to Malibu he found his wife and her lover naked and already dead. It turned out that the lover was in fact the interior designer, Johan Rilz, a German national Elliot had always thought was gay.

   Elliot left the house and got back in his car. He started to drive away but then thought better of it. He decided to do the right thing. He turned around and pulled back into the driveway. He called 911 and waited out front for the deputies to arrive.

8) The chronology and details of how the investigation proceeded from that point would be important in mounting a defense. According to the reports in the file, Elliot gave investigators an initial account of his discovery of the two bodies. He was then transported by two detectives to the Malibu substation so he would be out of the way while the investigation of the crime scene proceeded. He was not under arrest at this time. He was placed in an unlocked interview room where he waited three long hours for the two lead detectives to finally clear the crime scene and come to the substation. A videotaped interview was then conducted but, according to the transcript I reviewed, quickly crossed the line into interrogation. At this point Elliot was finally advised of his rights and asked if he wanted to continue to answer questions.

Elliot wisely chose to stop talking and to ask for an attorney. It was a decision made better late than never but Elliot would have been better off if he had never said word one to the investigators. He should've just taken the nickel and kept his mouth shut.

9) While investigators had been working the crime scene and Elliot was cooling his heels in the substation interview room, a homicide investigator working in the sheriff's headquarters in Whittier drew up several search warrants that were faxed to a superior court judge and signed. These allowed investigators to search throughout the beach house and Elliot's car and permitted them to conduct a gunshot residue test on Elliot's hands and clothes to determine if there were gas nitrates and microscopic particles of burned gunpowder on them. After Elliot refused further cooperation, his hands were bagged in plastic at the substation and he was transported to Sheriff's Headquarters, where a criminalist conducted the GSR test in the crime lab. This consisted of wiping chemically treated disks on Elliot's hands and clothing. When the disks were processed by a lab technician, those that had been wiped on his hands and sleeves tested positive for high levels of gunshot residue.

10) At that point Elliot was formally arrested on suspicion of murder. With his one phone call he contacted his personal lawyer, who in turn called in Jerry Vincent, whom he had attended law school with. Elliot was eventually transported to the county jail and booked on two counts of murder. The sheriff's investigators then called the department's media office and suggested that a press conference should be set up. They had just bagged a big one.
The Brass Verdict by Michael Connelly (chapter 12).

UNIT 2

CASE BACKGROUND

Lead-in

1) What should be included in the case background?
2) Who is case background written for?
3) Who usually drafts case background?

1. Read the following text to do tsk below.

Walking in a Dead Man's Shoes

Attorney Takes Over for Murdered Colleague First Case; The Trial of the Decade

BY JACK McEVOY, *Times Staff Writer*

1) It wasn't the 31 cases dropped in his lap that were the difficulty. It was the big one with the big client and highest stakes attached to it. Defense Attorney Michael Haller stepped into the shoes of the murdered Jerry Vincent two weeks ago and now finds himself at the center of this year's so-called Trial of the Decade.
2) Today testimony is scheduled to begin in the trial of Walter Elliot, the 54-year-old chairman of Archway Studios, charged with murdering his wife and her alleged lover six months ago in Malibu. Haller stepped into the case after Vincent, 45, was found shot to death in his car in downtown Los Angeles.
   Vincent had made legal provisions that allowed Haller to step into his practice in the event of his death.
3) Haller, who had been at the end of a year-long sabbatical from practicing law, went to sleep one night with zero cases and woke up the next day with 31 new clients to handle.
   "I was excited about coming back to work but I wasn't expecting anything like this," said Haller, the 42- year-old son of the late Michael Haller Sr., one of Los Angeles's storied defense attorneys in the 50's and 60's. "Jerry Vincent was a friend and colleague and, of course, I would gladly go back to having no cases if he could be alive today."

4) The investigation of Vincent's murder is ongoing. There have been no arrests, and detectives say there are no suspects. He was shot twice in the head while sitting in his car in the garage next to the building where he kept his office, in the 200 block of Broadway.
5) Following Vincent's death, the fallen attorney's entire law practice was turned over to Haller. His job was to cooperate with investigators within the bounds of attorney-client protections, inventory the cases and make contact with all active clients. There was an immediate surprise. One of Vincent's clients was due in court the day after the murder.
6) "My staff and I were just beginning to put all the cases together when we saw that Jerry – and now, of course, I – had a sentencing with a client," Haller said. "I had to drop all of that, race over to the Criminal Courts Building, and be there for the client."
7) That was one down and 30 other active cases to go. Every client on that list had to be quickly contacted, informed of Vincent's death, and given the option of hiring a new lawyer or continuing with Haller handling the case. A handful of clients decided to seek other representation but the vast majority of cases remain with Haller. By far the biggest of these is the "Murder in Malibu" case. It has drawn wide public attention.
8) Portions of the trial are scheduled to be broadcast live nationally on Court TV. Dominick Dunne, the premier chronicler of courts and crime for *Vanity Fair,* is among members of the media who have requested seats in the courtroom.

   The case came to Haller with one big condition. Elliot would agree to keep Haller as his attorney only if Haller agreed not to delay the trial.
9) "Walter is innocent and has insisted on his innocence since day one," Haller told the *Times* in his first interview since taking on the case. "There were early delays in the case and he has waited six months for his day in court and the opportunity to clear his name. He wasn't interested in another delay in justice and I agreed with him. If you're innocent, why wait? We've been working almost around the clock to be ready and I think we are."

10) It wasn't easy to be ready. Whoever killed Vincent also stole his briefcase from his car. It contained Vincent's laptop computer and his calendar.
"It was not too difficult to rebuild the calendar but the laptop was a big loss," Haller said. "It was really the central storage point for case information and strategy. The hard files we found in the office were incomplete. We needed the laptop and at first I thought we were dead in the water."
11) But then Haller found something the killer had not taken. Vincent backed his computer up on a digital flash drive attached to his key chain. Wading through the megabytes of data, Haller began to find bits and pieces of strategy for the Elliot trial. Jury selection took place last week and when the testimony begins today, he said he will be fully prepared.
12) "I don't think Mr. Elliot is going to have any drop-off in his defense whatsoever," Haller said. "We're locked and loaded and ready to go."
Elliot did not return calls for comment for this story and has avoided speaking to the media, except for one press conference after his arrest, in which he vehemently denied involvement in the murders and mourned the loss of his wife.
13) Prosecutors and investigators with the Los Angeles County Sheriff's Department said Elliot killed his wife, Mitzi, 39, and Johan Rilz, 35, in a fit of rage after finding them together at a weekend home owned by the Elliots on the beach in Malibu. Elliot called deputies to the scene and was arrested following the crime scene investigation. Though the murder weapon has never been found, forensic tests determined that Elliot had recently fired a weapon. Investigators said he also gave inconsistent statements while initially interviewed at the crime scene and afterwards. Other evidence against the movie mogul is expected to be revealed at trial.
14) Elliot remains free on $20 million bail, the highest amount ever ordered for a suspect in a crime in Los Angeles County history. Legal experts and courthouse observers say it is expected that the defense will attack the handling of evidence in the investigation and the testing procedures that determined that Elliot had fired a gun. Deputy Dist. Atty. Jeffrey Golantz, who is prosecuting the case, declined comment for this story. Golantz has never lost a case as a prosecutor and this will be his eleventh murder case.
(The Brass Verdict by Michael Connelly (chapter 35).

2. *Answer the questions to the text.*

1) Who is Walter Elliot? – an accused/a lawyer/a prosecutor
2) Who is Michael Haller? – a producer/a lawyer/a witness
3) Who is Jeffrey Golantz – a chronicler/a prosecutor/a judge
4) Who is Dominick Dunne? – a defendant/a courtclerk/a chronicler
5) Who is Jerry Vincent? – a murderer/an attorney/a client
6) Who is Jack McEvoy? – a client/a witness/ a journalist
7) What was Mr Elliot charged with?
8) Why did Mr Haller have to take Elliot's case?
9) Was the case of public interest? If yes, how can you prove it?
10) What was the biggest obstacle for Haller to get ready for Elliot's case?

3. *Read through the text again and find the preposition that go together with the following verbs:*

To charge; to step; to go back; to turn over … somebody; to inform; to back … on something; to attach … something; to insist … something.

4. *Find the corresponding definition to the following terms.*

Testimony; trial; case; investigation; suspect; innocence; justice; murder; evidence; defence.

5. *Match the nouns to make a phrase.*

1) crime	a) strategy
2) murder	b) scene
3) movie	c) attorney
4) weekend	d) practice
5) flash	e) case
6) key	f) mogul
7) storage	g) drive
8) law	h) point
9) defense	i) chain
10) case	j) home

6. Read the sentences and find the examples of Passive Voice.

1) Today testimony is scheduled to begin in the trial of Walter Elliot, the 54-year-old chairman of Archway Studios, charged with murdering his wife and her alleged lover six months ago in Malibu.
2) Vincent, 45 was found shot to death in his car in downtown Los Angeles.
3) He was shot twice in the head while sitting in his car in the garage next to the building where he kept his office, in the 200 block of Broadway.
4) The fallen attorney's entire law practice was turned over to Haller.
5) Every client on that list had to be quickly contacted, informed of Vincent's death, and given the option of hiring a new lawyer or continuing with Haller handling the case.
6) He wasn't interested in another delay in justice and I agreed with him.
7) We're locked and loaded and ready to go.
8) Elliot called deputies to the scene and was arrested following the crime scene investigation.
9) Other evidence against the movie mogul is expected to be revealed at trial.
10) Legal experts and courthouse observers say it is expected that the defense will attack the handling of evidence in the investigation and the testing procedures that determined that Elliot had fired a gun.

7. Read the extract and give the summary of it.

In any murder trial, the main witness for the prosecution is always the lead investigator. Because there are no living victims to tell the jury what happened to them, it falls upon the lead to tell the tale of the investigation as well as to speak for the dead. The lead investigator brings the hammer. He puts everything together for the jury, makes it clear and makes it sympathetic. The lead's job is to sell the case to the jury and, like any exchange or transaction, it is often just as much about the salesman as it is about the goods being sold. The best homicide men are the best salesmen. I've seen men as hard as Harry

Bosch on the stand shed a tear when they've described the last moments a murder victim spent on earth.
Golantz called the case's lead investigator to the stand after the afternoon break. It was a stroke of genius and master planning. John Kinder would hold center stage until court was adjourned for the day, and the jurors would go home with his words to consider over dinner and then into the night. And there was nothing I could do about it but watch.
Kinder was a large, affable black man who spoke with a fatherly baritone. He wore reading glasses slipped down to the end of his nose when referring to the thick binder he'd carried with him to the stand.
Between questions he would look over the rims at Golantz or the jury. His eyes seemed comfortable, kind, alert and wise. He was the one witness I didn't have a comeback for.
With Golantz's precise questioning and a series of blow-ups of crime scene photos – which I had been unsuccessful in keeping out on the grounds they were prejudicial – Kinder led the jury on a tour of the murder scene and what the evidence told the investigative team. It was purely clinical and methodical but it was supremely interesting. With his deep, authoritative voice, Kinder came off as something akin to a professor, teaching Homicide 101 to every person in the courtroom.
I objected here and there when I could in an effort to break the Golantz/Kinder rhythm, but there was little I could do but nut it out and wait. At one point I got a text on my phone from the gallery and it didn't help ease my concerns.
Favreau: They love this guy! Isn't there anything you can do?
Without turning to glance back at Favreau I simply shook my head while looking down at the phone's screen under the defense table.
I then glanced at my client and it appeared that he was barely paying attention to Kinder's testimony. He was writing notes on a legal pad but they weren't about the trial or the case. I saw a lot of numbers and the heading FOREIGN DISTRIBUTION underlined on the page. I leaned over and whispered to him.
"This guy's killing us up there," I said. "Just in case you're wondering."
A humorless smile bent his lips and Elliot whispered back.
"I think we're doing fine. You've had a good day."

I shook my head and turned back to watch the testimony. I had a client who wasn't concerned by the reality of his situation. He was well aware of my trial strategy and that I had the magic bullet in my gun.
But nothing is a sure thing when you go to trial. That's why ninety percent of all cases are settled by disposition before trial. Nobody wants to roll the dice. The stakes are too high. And a murder trial is the biggest gamble of them all.
But from day one, Walter Elliot didn't seem to get this. He just went about the business of making movies and working out foreign distribution and seemingly believed that there was no question that he would walk at the end of the trial. I felt my case was bulletproof but not even I had that kind of confidence.
After the basics of the crime scene investigation were thoroughly covered with Kinder, Golantz moved the testimony toward Elliot and the investigator's interaction with him.
"Now, you have testified that the defendant remained in Deputy Murray's patrol car while you initially surveyed the crime scene and sort of got the lay of the land, correct?"
"Yes, that is correct."
"When did you first speak with Walter Elliot?"
Kinder referred to a document in the binder open on the shelf at the front of the witness stand.
"At approximately two thirty, I came out of the house after completing my initial survey of the crime scene and I asked the deputies to take Mr. Elliot out of the car."
"And then what did you do?"
"I told one of deputies to take the handcuffs off him because I didn't think that was necessary any longer.
There were several deputies and investigators on the scene by this point and the premises were very secure."
"Well, was Mr. Elliot under arrest at that point?"
"No, he wasn't and I explained that to him. I told him that the guys – the deputies – had been taking every precaution until they knew what they had. Mr. Elliot said he understood this. I asked if he wanted to continue to cooperate and show the members of my team around inside and he said, yes, he would do it."
"So you took him back inside the house?"

"Yes. We had him put on booties first so as not to contaminate anything and then we went back inside. I had Mr. Elliot retrace the exact steps he said he had taken when he came in and found the bodies."
I made a note about the booties being a bit late, since Elliot had already shown the first deputies around inside. I'd potshot Kinder with that on cross.
"Was there anything unusual about the steps he said he had taken or anything inconsistent in what he told you?"
I objected to the question, saying that it was too vague. The judge agreed. Score one inconsequential point for the defense. Golantz simply rephrased and got more specific.
"Where did Mr. Elliot lead you in the house, Detective Kinder?"
"He walked us in and we went straight up the stairs to the bedroom. He told us this was what he had done when he entered. He said he then found the bodies and called nine-one-one from the phone next to the bed. He said the dispatcher told him to leave the house and go out front to wait and that's what he did. I asked him specifically if he had been anywhere else in the house and he said no."
"Did that seem unusual or inconsistent to you?"
"Well, first of all, I thought it was odd if true that he'd gone inside and directly up to the bedroom without initially looking around the first level of the house. It also didn't jibe with what he told us when we got back outside the house. He pointed at his wife's car, which was parked in the circle out front, and said that was how he knew she had somebody with her in the house. I asked him what he meant and he said that she parked out front so that Johan Rilz, the other victim, could use the one space available in the garage. They had stored a bunch of furniture and stuff in there and that left only one space. He said the German had hidden his Porsche in there and his wife had to park outside."
"And what was the significance of that to you?"
"Well, to me it showed deception. He'd told us that he hadn't been anywhere in the house but the bedroom upstairs. But it was pretty clear to me he had looked in the garage and seen the second victim's Porsche."
Golantz nodded emphatically from the lectern, driving home the point about Elliot being deceptive. I knew I would be able to handle this point on cross but I wouldn't get the chance until the next day, after it had percolated in the brains of the jury for almost twenty-four hours.
"What happened after that?" Golantz asked.

“Well, there was still a lot of work to do inside the house. So I had a couple members of my team take Mr. Elliot to the Malibu substation so he could wait there and be comfortable.”
“Was he arrested at this time?”
“No, once again I explained to him that we needed to talk to him and if he was still willing to be cooperative, we were going to take him to an interview room at the station, and I said that I would get there as soon as possible. Once again he agreed.”
“Who transported him?”
“Investigators Joshua and Toles took him in their car.”
“Why didn’t they go ahead and interview him once they got to the Malibu station?”
“Because I wanted to know more about him and the crime scene before we talked to him. Sometimes you get only one chance, even with a cooperating witness.”
“You used the word ‘witness.’ Wasn’t Mr. Elliot a suspect at this time?”
It was a cat-and-mouse game with the truth. It didn’t matter how Kinder answered, everybody in the courtroom knew that they had drawn a bead on Elliot.
“Well, to some extent anybody and everybody is a suspect,” Kinder answered. “You go into a situation like that and you suspect everybody. But at that point, I didn’t know a lot about the victims, I didn’t know a lot about Mr. Elliot and I didn’t know exactly what we had. So at that time, I was viewing him more as a very important witness. He found the bodies and he knew the victims. He could help us.”
“Okay, so you stashed him at the Malibu station while you went to work at the crime scene. What were you doing?”
“My job was to oversee the documentation of the crime scene and the gathering of any evidence in that house. We were also working the phones and the computers and confirming the identities and backgrounding the parties involved.”
“What did you learn?”
“We learned that neither of the Elliots had a criminal record or had any guns legally registered to them.
We learned that the other victim, Johan Rilz, was a German national and appeared to have no criminal record or own any weapons. We learned that Mr. Elliot was the head of a studio and very successful in the movie business, things like that.”
The Brass Verdict by Michael Connelly (chapter 40).

UNIT 3

NEGOTIABLE INSTRUMENTS

Lead-in

1) How do you understand the phrase “negotiable instruments”?
2) What area of law do negotiable instruments belong to?
3) Do all lawyers deal with negotiable instruments?

1. After reading the information on negotiable instruments, give the English definition to the term.

- оборотный [свободно обращающийся] инструмент (документ, который в силу закона либо торговой практики может передаваться посредством вручения и индоссамента; к обращающимся инструментам относятся облигации, чеки, простые и переводные векселя, различные варранты на предъявителя и т.д.);
- документ, который может свободно переходить из рук в руки при соблюдении определенных условий (облигации, чеки, простые и переводные векселя, различные варранты на предъявителя и др.); безусловный приказ оплатить определенную сумму, который может легко переходить из рук в руки (“приказу” или предъявителю, до востребования или с фиксированной датой, должен быть подписан эмитентом);
- документ права собственности, который может свободно обращаться (см.: negotiability (обращаемость). Такими документами являются чеки (cheques) или векселя/тратты (bills ofexchange), когда указанный в инструменте получатель платежа по нему может передать его, или вписав имя другого получателя платежа, или сделав документ “открытым” путем его подписи (своим именем), обычно на обратной стороне. Держатели переуступаемых документов не могут передавать право собственности большее, чем имеют

сами. Векселя, включая чеки, на которых указано имя получателя платежа или есть ограничительный инодоссамент типа “необращаемый”, являются неуступаемыми/ необращаемыми инструментами (non-negotiable instruments);

– обращаемость (negotiability). Способность документа переходить из рук в руки и таким образом давать его владельцу возможность получать какие-то выгоды. Юридическая собственность на эту выгоду переходит путем формальной передачи, или индоссамента.

Might me interesting:
https://www.youtube.com/watch?v=c67wmIuP_DQ

2. Read the text and summarize the main points.

The law of negotiable instruments (also called commercial paper in the US) is an area of commercial and business law which sets out the general rules that relate to certain documents of payment. A negotiable instrument is a document which promises the payment of a fixed amount of money and may be transferred from person to person. Negotiable instruments have two functions – a payment function and a credit function.

Negotiability allows the transfer of ownership from one party (the transferor) to another (the transferee) by delivery or endorsement. Endorsement is the action of signing an instrument to make it payable to another person or cashable by any person. That means merely signing your name on the back of the document, or adding an instruction such as “pay to the order of Emily Burns”. There are several types of common negotiable instruments including promissory notes, certificates of deposit, cheques (US checks) and bills of exchange.

Let’s look at these instruments in more detail.

A **promissory note** is a document, signed by the person making the document, containing an unconditional promise to pay a fixed sum of money to a named person, to the order of a named person, or to the bearer (the person who is in physical possession) of the document. Loans are typically formalized in promissory notes, and since they often provide for payments over time, they function to provide credit to the borrower who is the maker of the note.

A **debenture** (UK) or **bond or secured debenture** (US) has a similar function to a promissory note; it is a written acknowledgment of debt, secured on the assets of a company. In fact debentures are the most common form of long-term loan used by UK companies.

A **certificate of deposit (CD)** is a document from a bank which indicates that a specific sum of money has been deposited and promises to repay that sum with interest to the order of the depositor, or to some other person's order. A CD, which is also called a time deposit, bears a maturity date (the date when it must be repaid) and a specified interest rate, which is usually higher than on ordinary savings accounts.

A **bill of exchange** is a three-party written order signed by the first party (the drawer), requiring the second party (the drawee) to make a specified payment to a third party (the payee) on demand or at a fixed future date. A cheque is a type of bill of exchange where the drawee is always a bank and is payable on demand. Unlike promissory notes and certificates of deposit bills of exchange and cheques do not pay interest.

A **letter of credit** is a document provided by a bank or other financial institution as a guarantee that a specific sum of money will be paid once stated conditions have been met. Letters of credit are often used in the import and export business to ensure that payment will be received. Because of factors such as distance, different laws in each country and difficulty in knowing each party personally, the use of letters of credit has become a very important aspect of international trade.

Key legal concepts in negotiable instruments law-nemo dat and holder in due course

The nemo dat rule is an important general principle of law that states that only holders of good title (legal owners) can transfer ownership. However, this rule does not apply to negotiable instruments. This is to facilitate the free transferability of negotiable instruments, which aids commerce in general. Because negotiable instruments can be payable to the order or to the bearer of the instrument, they can be held by someone who is not connected with the underlying transaction and does not know of any potential defect in that transaction. If such a holder holds the instrument in good faith and is not aware of any problems with

the instrument, the holder is a bona-fide purchaser for value or holder in due course (HDC). This means that the HDC takes good title to the instrument and can claim payment even if the person from whom he or she received it did not hold title. The HDC acquires greater rights under a negotiable instrument than an ordinary transferee of a contractual right.

Negotiable instruments law in practice

Lawyers who practice negotiable instruments law usually work for banks, commercial law firms, or governmental authorities.

Many lawyers at certain commercial law firms work in the field of capital markets. Capital markets is a term used to describe the pool of investors (including pension funds, hedge funds, financial institutions and retail clients) who have funds to invest in financial products. Such products would, generally, include corporate bonds, financial bonds and structured securities.

Capital markets lawyers will typically advise investment banks when they issue bonds to raise money. A corporate bond has similar characteristics to a loan in that money is borrowed by a company to be repaid at a date in the future with interest paid thereon. The key difference is that because the company is accessing the capital markets (and thereby a pool of investors), each taking a smaller proportion of risk than lenders in a loan agreement, the company may be able to borrow at more favourable rates. The investor receives interest throughout the life of the bond (in a similar way to a loan agreement) and receives back their principal at maturity (the end of the term of the bond). If there is an event of default (e.g. the company that issued the bonds becomes insolvent), the investor becomes a creditor in the company's insolvency. In such an insolvency situation, lawyers may advise a trustee interposed in order to act on behalf of the bondholders.

Commercial lawyers in private law firms also deal with negotiable instruments because they are often used as means of payment in mergers and acquisitions, and other transactions. Lawyers who represent debtors and creditors in bankruptcy cases litigate regarding the validity of the instruments, the rights of the creditors to get paid and the lack of the debtors' ability to pay. They also try to work out new payment plans on promissory notes, to enable debtors to pay.

Banks are often parties to negotiable instruments, for example, as lenders in promissory notes, as borrowers in CDs, and as guarantors in letters of credit. Therefore, bank lawyers are involved in drafting the forms and seeing that all of the legal prerequisites are met. They can also be involved in bringing collection proceedings and other litigation where other parties to the instruments have defaulted on their obligations, usually by failing to make timely payment under the instruments.

Lawyers who work for governmental tax authorities often monitor negotiable instruments to make sure that they are not used for evading taxes. Consumer protection authorities scrutinize instruments, particularly promissory notes, to see whether the terms and conditions of the loan are unreasonable to the consumer-borrower. For instance, they regulate the amount of interest that may be charged.

3. Translate the terms in bold into Russian:

NEGOTIABLE INSTRUMENT – Written contract for the payment of money, by its form intended as substitute for money and intended to pass from hand to hand to give the holder in due course the right to hold the same and collect the sum due

PROMISSORY NOTE – unconditional promise in writing made by one person to another signed by the maker; engaging to pay on demand, or at a fixed or determinable future time a sum certain in money to order or to bearer; where a note is drawn to the maker's own order, it is not complete until indorsed by him

BILL OF EXCHANGE – unconditional order in writing addressed by one person to another signed by the person giving it; requiring the person to whom it's addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer

Check: bill of exchange drawn on a bank payable on demand.

Kinds of checks:

1) personal check
2) manager's/cashier's check – drawn by a bank on itself. Issuance has the effect of acceptance
3) memorandum check – "memo" is written across its face, signifying that drawer will pay holder absolutely without need of presentment

4) crossed check –

BEARER – Person in possession of a bill/note payable to bearer

HOLDER – Payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

THE LIFE OF A NEGOTIABLE INSTRUMENT*:*

1. issue
2. negotiation
3. presentment for acceptance in certain bills
4. acceptance
5. dishonor by on acceptance
6. presentment for payment
7. dishonor by nonpayment
8. notice of dishonor
9. protest in certain cases
10. discharge

UNIT 4

EMPLOYMENT LAW

Lead-in

1) Who is Employment Law for?
2) What ideas are included in the Employment Law?
3) Who usually applies Employment Law?

1. Read the following text.

Employment law is a broad area including all areas of the employer/employee relationship except the negotiation process covered by labor law and collective bargaining. Laws are necessary to establish fair wages, limit the number of hours worked in a week, and prevent children from being exploited are some of the areas covered by employment law. Rules to regulate the cleanliness of the workplace, and precautions to protect employees and prevent dangerous accidents are also components of employment law. Employment law also includes protection against discrimination in the workplace based on race, gender, religion, or disability. Generally, employment law protects employees from any exploitation by their employers.

In the recruiting processes, employers must take into consideration that it is unlawful to discriminate between applicants on the basis of gender, marital or civil partner status, race, colour, nationality, ethnic or national origins, pregnancy, sexual orientation, religion or other belief. It is also unlawful to publish job advertisements which might be construed as discriminatory. Discrimination in hiring and in respect of the terms and conditions of employment is also forbidden. Exceptions to this rule do exist, for example where sex or marital status is a genuine occupational qualification (GOQ).

The law protects disabled persons by making it unlawful to discriminate against such persons in the interviewing and hiring process and regarding the terms of the offer of employment. Employers are required to make reasonable adjustments in the place of work to accommodate disabled persons. However, cost may be taken into account in determining what is reasonable.

Matters relating to termination of employment are governed by the Employment Rights Act 1996. When the decision to terminate employment is in some way related to the activities of a trade union, however, the matter may be governed by the Trade Union and Labour Relations Act 1992. Termination of employment or 'dismissal' occurs where the employer ends the employment relationship, fails to renew an employment contract or forces the employee to retire. Discrimination in dismissal can take the form of unfair dismissal, wrongful dismissal, constructive dismissal or redundancy dismissal.

Unfair dismissal

Unfair dismissal occurs where for example, the employer fails to give a valid reason for the dismissal. Wrongful dismissal occurs where the employer fails to give proper notice of termination or fails to follow the guidelines for termination contained in the employment contract. A dismissal can be both unfair and wrongful. For example, if an employee is fired with immediate effect and without being given a reason for the dismissal, she may choose to bring an action against her employer for both unfair dismissal, i.e. dismissing without reason; and unlawful dismissal, i.e. dismissing with immediate effect instead of giving the 3 months' notice as required by the employment contract.

Redundancy

Redundancy occurs where the employee's job becomes unnecessary or redundant due to, for example, the implementation of a new system or new technology, the closing or moving of the business or a reduction in staffing to cut costs. Employees employed for more than 2 years are entitled under statute to redundancy payments. An employer may seek to avoid these redundancy payments by retaining the employee but changing their duties to such an extent that the employee is no longer able to do the job and resigns. In such a case, the employer's actions have, in effect, forced the employee to resign and the employee in this case may be able to bring an action against his employer for constructive dismissal.

Enforcement of rights

Protection of employee rights is largely enforced through an Employment Tribunal. The Tribunal has the power to make decisions and issue orders in respect of the parties' rights with regards to complaints. It may also order compensation for loss of prospective earnings and injured feelings.

EU employment law

Employment law in Europe is influenced by EU law. The EU issues directives which dictate to European governments the results to be achieved while leaving it up to the governments to decide upon the method to be used to ensure the results are achieved. The use of EU directives allows the upholding of certain EU Standards while giving member states leeway in accommodating national cultures. For example, the European Working Time Directive limits the maximum length of a working week to 48 hours over 7 days and requires a minimum rest period of 11 hours in each 24 hour period. In the UK this directive has been implemented through the Working Time Regulations 1998 which provides for a maximum working week of 48 hours but allows employers to ask employees to opt out of this maximum. Other EU directives have been passed in the areas of equal pay for equal work, sex discrimination, acquired rights and collective redundancies.

Employment law in the US

In the US employment legislation consists of federal and state statutes, administrative regulations and judicial decisions. Employment laws are enforced through the US Federal Department of Labor, the Equal Opportunity Commission, and the National Labor Relations Board. Just as in the UK, US employment legislation is aimed at protecting employee's rights. For example, the Fair Labor Standards Act prescribes minimum wage and overtime pay standards as well as record keeping and child labor standards for most private and public employment, including work conducted at home.

Employment law relates to the areas covered above while labour law refers to the negotiation, collective bargaining and arbitration processes. Labour laws deal primarily with the relationship between employers and trade unions. These laws grant employees the right to unionize and allow employers and employees to engage in certain activities (e.g. strikes, picketing, seeking injunctions, lockouts) so as to have their demands fulfilled.

Employment law in practice

Lawyers working with employment law may work with a range of issues such as writing and reviewing employment contracts, reviewing termination practices and compensation plans, handling dismissal cases, consulting on management education and training and compliance with health and safety regulations. Labour law lawyers advise on collective agreements, collective bargaining, strikes, lock-outs and unfair labour practices.

2. ***Do research and present the key points of Employment Law in Russia.***

3. ***Summarize the key ideas of the below-given text. Discuss with other students the situation in employment sphere in Russia.***

Sick Leave

Absence:

a) If, for any reason other than exceptional circumstances, you are absent from the Company's employ or unable to carry out the full duties of your employment, you must contact the company by 9.30 a.m. on the first day of such absence. Failure to do so may result in your wages been stopped until you return to work. A certificate from a qualified Medical Practitioner must be submitted on the third day of continuous absence and on a weekly basis thereafter. The Company reserves the right to have you examined by its own Medical Practitioner.
b) It is entirely at the company's discretion whether or not to make any payment to you while you are absent through illness. Accordingly, the company may after 3 days of sick leave stop your wages until your return to work and request that you claim your monies from the relevant state scheme.

Pension Scheme

VHI Group Scheme

Retirement Age

Normal retirement age for employees is _____ years.

Lay Off and or Short Time

a) The employer reserves the right to lay you off from work or reduce your working hours, where through circumstances beyond its control it is unable to maintain you in employment.

b) You will receive as much notice as is reasonably possible prior to such lay-off or short time.
c) You will not be paid during the lay-off period.
d) You will be paid only in respect of hours actually worked during the period of short time.

Grievance & Disciplinary Procedure

Absence:

If you have any grievance, which you consider to be genuine in respect of any aspect of your employment, you have a right to a hearing by your immediate superior or the Personnel Manager as the circumstances warrant. If you are unhappy with the outcome of the hearing you may appeal to the Chief Executive. A fellow employee or union representative may accompany you at this appeal hearing.

In the event of the matter not being resolved internally, the matter shall be referred through normal industrial relations procedure.

The procedure referred to above shall include reference to a Rights Commissioner, the Labour Relations Commission, the Labour Court , the employment Appeals Tribunal or Equality Officer, as appropriate.

Disciplinary Procedure

Infringement of a term of this contract or of established Company Rules can lead, depending on the gravity of the breach, to an informal or formal warning, suspension with or without pay, transfers to other duties and loss of privileges. Ultimately, persistent breaches or inadequate work performance can lead, following warnings, to dismissal.

Certain grave breaches can, following considerations of all the circumstances by the company, lead to summary dismissal or suspension pending investigation. In all dismissal cases, full investigation will be carried out, and you will have the right to present your case and be accompanied by another staff member or appropriate representative, and the right to appeal against a decision to a more senior management.

In the event of your dismissal being confirmed, should you then wish to challenge the dismissal in accordance with normal procedures, the matter shall be referred to a Rights Commissioner,

the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal or an Equality
Officer as appropriate.

Notice

In the event that either the company or you wish to terminate the contract before its expiry date, one-month notice must be given by both parties. Nothing in this agreement shall prevent the giving of a lesser period of notice by either party where it is mutually agreed.

Search

The company reserves the right to search your person, vehicle and property while on or while departing from the company premises.

4. Read the texts and explain the difference between tribunal process and court procedures, if there is any.

The tribunal process

Employment tribunal hearings usually take place before a legally qualified chairman and two lay members, one nominated by an employers' organisation and the other from a union or employees' body.

Decisions can be made by majority vote, though most are unanimous.

A) The employment tribunal process is **impartial**, but, in an unfair dismissal claim, it does generally start by assuming that there is a case for the employer to answer. Tribunals try to be guided by what is reasonable.

They will take into account prevailing standards and practices in your industry and recognise that special difficulties can arise in smaller firms.

Awards made by the tribunal are aimed at compensating the employee, not punishing the employer.

B) The starting point for tribunal decisions is **statute law**.

Decisions by one tribunal do not necessarily bind another, though they may influence it. The Acas Code of Practice is the yardstick for unfair dismissal cases.

C) The **process begins** when the applicant submits a form (IT1) to a regional tribunal office. This gives the grounds on which the complaint is made and states whether he or she seeks reinstatement or compensation.

You will be sent a copy and must respond (on form IT3) within 21 days, or risk losing your right to contest the case. What you say in your response is the case

Employment tribunals

You will be putting to the tribunal, so give a considered reply.

If you have a good reason, you can ask for an extension beyond the 21-day period.

D) When you are sent the **date** for the hearing, perhaps as little as 14 days ahead, you must reply within 14 days if you want it changed. If a date is just impossible for you, tell the tribunal, giving good reasons. (If you will be abroad, send a copy of your air ticket.) When you reply, tell the tribunal if you think the case is likely to be complicated.

E) A conciliator from **Acas** will automatically be assigned to the case, as Acas has a statutory duty to offer conciliation. Acas tries impartially – and often successfully – to help parties settle out of court. Well over half of all claims are settled or withdrawn before the hearing.

Before the hearing

When an application is made against you, it is the preparation you do before the hearing that is most likely to determine the outcome.

A) Check first to see whether the application is **technically flawed**. For example, in unfair dismissal cases, the applicant must have been employed for a full year, and must make the claim within three months of the date of termination. If the claim is invalid on technical grounds, write to the tribunal. Ask for a preliminary hearing to get the claim thrown out.

B) **Investigate** the issue again, to make sure of your ground before getting into a fight. The manager responsible may have been misleading you.

C) **Resolve** the claim amicably, or settle, if it arose from a genuine misunderstanding. For example, explain the reasons why an expected promotion was not given. If possible, it is frequently better to end the matter before a full hearing.

D) If you think the claim is almost certain to fail, request a **pre-hearing review**. The tribunal will look at relevant documents (but not hear witnesses). A party with a weak case may be ordered to pay a deposit of up to £500 before continuing with the claim.

E) If you go ahead to a hearing, be clear about the **costs** and **benefits** of fighting the case. Even a fairly straightforward case can drag on for months. The cost in disruption and management time can be considerable.

   A case can also damage the morale and credibility of your business.

   Some cases are worth defending to signal your resolve to other employees.

   For example, if you dismiss someone for fiddling expenses. You could lose – and will, if the balance of evidence is against you.

F) Prepare a realistic **case strategy**, based on your strengths.

   For example, in an unfair dismissal case you may decide to admit it, but put your effort into establishing mitigation (eg that the salesman was losing you customers and, though dismissed without warning, found a new job quickly and suffered little

Preventing disputes

A) A **company handbook**, distributed to everyone, lets employees know where they, and you, stand.

B) **Procedures** can be the key to success, as long as you stick to them (see Discipline and grievance issues, HR 18).

C) Apart from careful recruitment, **training** is the best form of dispute prevention. Many cases are lost because untrained managers depart from the procedures, or because people have been promoted into jobs where they just cannot cope.

D) **Performance appraisals** can help you nip problems in the bud

E) Keep proper **personnel records**, covering absences, lateness, performance problems, and all warnings, spoken or written.

F) To prevent problems, it helps to know what the most **common allegations** are. The most common are unfair dismissal claims, often based on allegations that there was no valid reason for dismissal, that procedures were not followed, or that 'natural justice' was not applied. Cases involving redundancy usually revolve around unfair selection or failure to consult with

employees. Discrimination, on the basis of disability, sex or race, generates growing numbers of claims loss. The tribunal may reprimand you but award little or no compensation.

G) Prepare **evidence** to show the background to the case and to prove what happened. General evidence provides the background contracts of employment, employee handbooks and your HR policy statements. Specific evidence relates to the case itself. For example, if you have dismissed someone for absenteeism, produce clock cards, warnings and details of action taken against other employees in similar circumstances.

H) As part of your preparation for the hearing, you can seek further **particulars** of the claim from the other side. For example, are there any further allegations that will be made against you? If you need more information, ask for it. If it is not handed over, write to the tribunal to make your request, compelling the applicant to give you the information. You must respond reasonably to requests for information from the other side.

   If you are on the receiving end of a request that you think is silly or goes too far, ask the tribunal to vary it.

I) You will usually need to **exchange documents** in advance of the hearing.

   You must prepare witness statements beforehand and agree a 'bundle' of relevant papers with the other side. Witness statements and the bundle (good photocopies, with the pages numbered) will need to be handed over to those present at the tribunal. You will need at least six copies, one each for the three members of the tribunal, both parties and the witness.

The hearing

Employment tribunal hearings are less formal than the courts. The running order is not necessarily fixed and belligerent questioning will be stopped. But the hearing will still be purposeful, with an emphasis on clarity, evidence and the merits of the case.

A) The **hearing** is public and open to the press. The employer generally goes first in an unfair dismissal case and the applicant goes first in a discrimination case. If you do not turn up, the case is likely to go against you. If ill, send a medical certificate and ask for an adjournment.

B) Tribunals have their own **rules**, quite different from those in the courts. For example, hearsay evidence can be admitted. Evidence is assessed on the balance of probabilities. You do not have to prove anything 'beyond reasonable doubt'.

C) When it comes to the main evidence in the hearing, tribunals prefer **witnesses**, who can be questioned under oath, to written statements on their own. The tribunal will itself generally question witnesses, in an informal manner. Do not have too many witnesses. Use your witness statements to establish straightforward facts. These can either be read out or 'taken as read' at the hearing, saving the tribunal's time. Provide witnesses to the main events. If you are cross-examined, remain cool, factual and polite. Bring in a senior company representative to explain your employment policies. Expert witnesses are rare in tribunals. Use one if the case turns on a technical point. For example, if you fire an incompetent mechanic, what standards are relevant? In general, avoid character witnesses. Witness orders can be used by either side to compel witnesses to attend.

Your legal costs

Compared with going to court, the legal costs of going to tribunal are low. Depending on the case and your experience in these matters, you may not even require a solicitor.

A) Each side generally pays its **own legal costs**, regardless of who wins the case. A party that was warned at a prehearing review that the claim had no reasonable prospect of success might have to contribute to the other side's legal costs. If either party (or its representatives) behaves abusively, disruptively or unreasonably during the case, it can be ordered to pay costs of up to £10,000.

B) A straightforward **unfair dismissal** claim might cost £1,500 to £2,000 to defend.

C) A **discrimination case**, which by its nature is complex and uncertain, could cost £15,000. A dismissed employee will often slap witness orders on ex-colleagues to embarrass or inconvenience you.

D) The two sides usually pay their own **costs.** Applicants cannot obtain legal aid, except to help in preparing a claim. If the applicant belongs to a trade union, it may advise and represent him or her.

The decision

A) The **decision** will usually be announced at the end of the case or a few days later. In some complex cases, however, the delay can stretch into weeks or even months.

B) Both sides are sent a **written decision**, with the reasons for it in summary or full form. Ask for full reasons if an appeal is possible.

C) If you do not like the tribunal's decision, you can ask it to **review** the case. This must be done within 14 days of the decision.

D) You may want to **appeal** to an Employment Appeal Tribunal. Appeals must be made within six weeks of the decision, and be based on a point of law. But few are successful.

Awards

A) For **unfair dismissal**, the amount is made up of two elements.
A basic award, calculated on a fixed formula, taking into account age and service. This award is capped at £8,100. A compensatory award based on the loss of past and future earnings and how unfair the dismissal was.
Compensatory awards are capped at £55,000 – although they can be higher in certain cases (e.g. whistleblowing or health and safety claims).
In rare cases, the tribunal may insist that an employee is reinstated.

B) **Breach of contract** awards in tribunals are capped at £25,000. Alternatively, an applicant can make an unlimited claim in the ordinary courts. Typically, this might happen if a director claims substantial compensation under the terms of an employment contract.

C) **Discrimination** case awards are unlimited. As well as loss of earnings, applicants can claim damages for injury to feelings.

Agreed settlements

Reaching a settlement, without waiting for the tribunal, may well be in your best interests. In discrimination cases, where awards can be large and hard to predict, an agreed settlement removes the risk of a shock result.

A) A **settlement** may include a cash sum and other negotiable elements.

The settlement usually involves money and an employer's reference, with agreed wording, if the employee has been dismissed. This reference is a key bargaining counter. No-one can usually oblige you to give a reference that does anything more than confirm the dates of employment, and the employee may need more than that. A confidentiality clause may be a valuable part of the deal – something you cannot get from a tribunal, even by winning. Realistically, though, details of the settlement may still leak out. Bear in mind the impact of this on other employees.

B) There are two main **routes** to reaching a settlement. Conciliation through Acas can frequently lead to a legally binding agreement, known as a COT3 settlement. You can use a'compromise agreement', under which the employee receives independent legal advice and can then waive his or her statutory employment rights, in return for an agreed settlement. These agreements are legally binding and can be drawn up before or after a claim has been brought. The employer usually pays the employee's legal costs, of up to around £300.

Getting help

A) **Acas**, besides conciliating in specific cases, provides publications and training courses.

B) You may need **legal advice**, either from a solicitor or a specialist consultant.

C) Consider using **employment consultants**. They can help you get workable records and procedures set up, and train your managers.

Resourse: http://www.abahe.co.uk/free-courses-f/2010/HR/02Employment-Law/Employment-Tribunals.pdf

5. Answer the following questions.

1) Who is considered to be a victim of unfair dismissal?
2) What is meant by the phrase "unreasonable behaviour of an employer"?
3) Who is not entitled to open an unfair dismissal case?
4) How are dismissals usually classed?
5) Under what circumstances may your award for a successful claim for unfair dismissal be increased?

6. *Decide whether the statements from the text are true or false.*

1) If you take your case to an Employment Tribunal you may hardly be awarded compensation.
2) In order to act reasonably the employer should have followed a fair procedure when dismissing you.
3) Only employers can proceed with a claim for unfair dismissal.
4) There are no such categories of worker to which unfair dismissal claims may not be open.
5) Redundancy covers different reasons for which a company might wish to dismiss an employee.

7. *Match the words to form collocations.*

1) Employment	a) unions
2) statutory	b) procedure
3) unfair	c) breach of contract
4) armed	d) qualifications
5) trade	e) forces
6) unreasonable	f) terms
7) a fundamental	g) Tribunal
8) disciplinary	h) dismissal
9) necessary	i) restriction
10) contract	j) behaviour

8. *Match the terms to their definitions.*

1) respondent	a) the first questioning of a witness during a trial or deposition (testimony out of court), as distinguished from cross-examination by opposing attorneys.
2) proceeding	b) any lawsuit or other resort to the courts to determine a legal question or matter.

3) allegation	c) the party who is required to answer a petition for a court order or writ requiring the respondent to take some action, halt an activity or obey a court's direction
4) Set aside	d) a statement of claimed fact contained in a complaint (a written pleading filed to begin a lawsuit), a criminal charge, or an affirmative defense (part of the written answer to a complaint).
5) suit	e) the means to achieve justice in any matter in which legal rights are involved.
6) Vicarious liability	f) sometimes called "imputed liability", attachment of responsibility to a person for harm or damages caused by another person in either a negligence lawsuit or criminal prosecution.
7) remedy	g) any legal filing, hearing, trial and/or judgment in the ongoing conduct of a lawsuit or criminal prosecution
8) litigation	h) to annul or negate a court order or judgment by another court order.
9) injunction	i) generic term for any filing of a complaint (or petition) asking for legal redress by judicial action
10) Examination in chief	j) a writ (order) issued by a court ordering someone to do something or prohibiting some act after a court hearing.

9. Fill in the gaps with the prepositions.

1) In cases of constructive dismissal, the unreasonable behaviour of the employer must amount … a fundamental breach of contract.
2) This can include changing of the job location … short notice.
3) Only employees can proceed … a claim for unfair dismissal.
4) The unreasonable behaviour of the employer must amount to a fundamental breach … contract.
5) If the dismissed employee has been guilty … a misdemeanour.

10. Translate the sentences into Russian.

1) If you take your case to an Employment Tribunal you may be awarded compensation.
2) In order to act reasonably the employer should have followed a fair procedure when dismissing you.
3) There are a number of criteria that you must meet in order to make a claim for unfair dismissal.
4) It is the responsibility of your employer to demonstrate that there was a potentially fair reason for your dismissal.
5) Dismissal on the grounds of redundancy, which usually is potentially fair, becomes automatically unfair if the employee was chosen for redundancy for a reason which on its own would make the dismissal automatically unfair.

UNIT 5

CONTRACT LAW

Lead-in

1) What is a contract?
2) Why is contract law so important?
3) What are contract clauses in your jurisdiction?
4) What are the steps of contract formation?

1. Complete the definition below using the following words.

offeror, sufficient, common, enforceable, essential, offeree

Contracts under the 1) … law are promises that become 2) … contracts when there is an offer by one party, normally called an 3) … that is accepted by the other party 4) … with the exchange of legally 5) … consideration. The parties must also agree on the 6) … terms of the contract such as price and subject matter.

2. Check your Contract Law vocabulary. There is a word or phrase missing from the following sentences. For each sentence, choose the word which best fits into the space from the options provided.

1) In the English legal system, a precedent is (1 …) upon similar future cases.
2) The case you mention from 1976 is very similar to the current case but I think it is possible to (2 …) between them.
3) The claimant was (3 …) damages of £100,000.
4) The decision of the first judge was (4 …) by the judges in the Court of Appeal.
5) An offer can come to an end due to (5 …) of time. It means that too much time has passed since the offer was made.
6) When a person who makes an offer withdraws it before it can be accepted we can say that the offer has been (6 …).
7) According to English contract law, acceptance must be (7 …) and cannot be by silence.

8) Consideration in contract law requires the parties to gain a benefit or suffer a (8 …).
9) When a lawyer refers to the (9 …) he or she puts upon a contract term it is a more formal way of referring to his or interpretation or understanding of that term.
10) Specific (10 …) is an order from a court that tells a party in breach to carry out his or her obligations under a contract.
11) According to English contract law consideration must be (11 …), which means that both parties must give or receive something and not just one of them.

1)	a. enforceable	b. unavoidable	c. binding	d. obligatory
2)	a. differ	b. distinguish	c. separate	d. discriminate
3)	a. ordered	b. handed	c. awarded	d. granted
4)	a. overruled	b. annulled	c. refused	d. rejected
5)	a. conclusion	b. ending	c. lapse	d. disappearance
6)	a. revoked	b. cancelled	c. negated	d. invalidated
7)	a. said	b. contributed	c. given	d. communicated
8)	a. difficulty	b. detriment	c. injury	d. disadvantage
9)	a. meaning	b. elucidation	c. version	d. construction
10)	a. action	b. execution	c. performance	d. completion
11)	a. reciprocal	b. joint	c. common	d. shared

3. Match the words on the left with the synonym or synonymic expression on the right:

1) contract	a. approval
2) carry out	b. deal
3) acceptance	c. something of value is given for something else of value
4) offer	d. fulfil
5) bargain	e. full age
6) exchange of consideration	f. an agreement between two or more persons to exchange something of value
7) legal majority	g. a person who signs the contract together with another person
8) tough	h. withdraws from an agreement
9) back out of the deal	i. give formal consent
10) ratify	j. difficult
11) cosigner	k. proposal

4. Read and translate the text on contract formation and answer the questions below the text.

The basic parts of a simple contract

A written contract is an agreement between two or more parties to do, or refrain from doing, certain things. Contracts are used by businesses and individuals in our everyday lives. They can cover agreements that involve employment, real estate, auto purchases, credit cards, insurance, services and just about anything for which a legal contract may be made. Let us consider the basic parts of a simple contract.

Step 1

There are basically three main elements of a contract in common law legal systems. Those elements are an offer, acceptance and consideration. The term consideration means that each party must exchange something of value with the other party. It does not always have to be money, but it must be something of real value. In order for the offer and acceptance to be valid there needs to be the same understanding between the parties of what the terms of the contract are – sometimes referred to as a meeting of the minds. Once these elements have been fulfilled**,** you can start drafting your contract. You can use a form contract that you can get online, at the library, from an office supply store; or you can write your own. It is common for contracts, or some parts of them, to be built from earlier contracts – so if you are working as a paralegal then it is worth checking through files for similar cases that might have involved similar contracts.

Step 2

The first section should contain the names of the parties entering into the contract. This should be the parties' own names unless they are entering into the contract as a business that is run as a limited liability partnership (LLP), partnership or company. If any of those business types apply, the name of the party should be the name of the business entity. If you are a sole proprietor, then your name and company goes in this space. There will be a general statement that the parties intend to enter into an agreement.

Step 3

The next section should contain a statement of what the consideration is that each party is offering in exchange for their performance under the contract. That would be the amount of money, goods or labour etc. For example, “In exchange for $1000.00 to be paid up front by Mr X, Mr Y agrees to paint the outside of Mr X’s home, located at xxxxxxxxxx Street, and to have subject painting done by the _____ day of _____, 2 _____ ”.

Step 4

The next section should contain any additional conditions that are important to the satisfactory completion of the contract for both parties. In the case above, that might be the use of certain brands of paint or that the work is to be done during certain hours etc.

Step 5

Next, you should include a statement of what the consequences will be if one or both parties breach the contract. In other words, what happens if they don’t do what they promised. That might be a penalty for finishing the job late, or a delay of the start of work until payment is received. It could also include a statement that either party has the right to pursue any legal remedy available under the law of the jurisdiction of ___. (The jurisdiction where the contract was entered into or chosen jurisdiction for which the law will apply). Note here that if you include a term that is not legal, then the law, not the terms of the contract, applies.

Step 6

Next there should be a statement that the contract contains all the terms and agreements of the parties, and that the agreement is binding on their heirs, executors, administrators, successors and assignees. This protects both parties from the other stating that there was more to the agreement that what was written. It also helps to protect them from not being able to collect what is due under the contract if the other party dies or sells their interest in it. This provision is often known as the merger clause, the parole evidence clause, the integration clause or the entire agreement clause.

Step 7

Finally, both parties must sign and date the contract. It is also useful to have witnesses sign the contract, or to have the signatures notarized in case there is ever a dispute as to who signed the document. If you are signing on behalf of a business entity, you should state your capacity to show you have authority to enter into the agreement. For example, President, CEO, Purchasing Manager etc.

1) What is the purpose of contracts?
2) What agreements do contracts cover?
3) Why is a meeting of minds important?
4) How can an individual begin to draft a contract?
5) What does the first section usually contain?
6) What can be used as consideration?
7) What additional conditions can be stipulated in a contract?
8) What right does either party have if a contract is breached?
9) What can happen if one or both parties don't do what they promised?
10) Why is it necessary to include an entire agreement clause into the contract?
11) What is the right procedure for signing a contract?

5. Study the text and give English equivalents for the following word combination.

Не допускать совершения чего-либо, недвижимость, встречное удовлетворение, составлять контракт, совпадение воли сторон (согласие сторон), не являющийся профессионально юридическим, находить в интернете, заключать контракт, выполнение контракта, предлагать взамен, завершение договора, последствия нарушения договора, отсрочка начала работы, обратиться в суд за получением правовой защиты, наследник, правопреемник, полагаться по контракту, положение (договора), статья об исчерпывающем характере договора, заверить нотариально, подписать от имени, указывать должностное положение.

6. Fill in the blanks with prepositions consulting the text.

1) The term consideration means that each party must exchange something … value … the other party.
2) This section contains a statement … what the consideration is that each party is offering … exchange … their performance … the contract.
3) A written contract is an agreement … two or more parties to do, or refrain … doing, certain things.
4) The agreement is binding … their heirs, executors, administrators, successors and assignees.
5) That might be a penalty … finishing the job late, or a delay of the start … work until payment is received.
6) In order … the offer and acceptance to be valid there needs to be the same understanding …the parties of what the terms … the contract are.
7) It is common …contracts, or some parts of them, to be built … earlier contracts.
8) If you are working … a paralegal then it is worth checking … files … similar cases that might have involved similar contracts.
9) This protects both parties … the other stating that there was more … the agreement that what was written.

7. Answer the following questions on the law of contracts.

1) In the nineteenth century, also known as the classical age of English contract law and the _____ of laissez-faire economic theory, common law rejected the moral theory of Lord Mansfield, which held that promises are a moral obligation.

   a) eloquence b) epitome c) heyday d) highlight

2) Contracts are promises that the law will _____

   a) enact b) enforce c) enhance d) espouse

3) The law provides remedies if a promise is _____ and recognizes the performance of a promise as a duty.

   a) bent b) bestowed c) betrayed d) breached

4) Contracts _____ when a duty does or may come into existence, because of a promise made by one of the parties.

a) activate b) appear c) apply d) arise

5) The Law of Contracts deals with self-_____ duties, that is, agreements voluntarily concluded between parties.

a) delineated b) designated c) implanted d) imposed

6) To be legally _____ as a contract, a promise must be exchanged for adequate consideration.

a) based b) biased c) binding d) bound

7) Adequate consideration is a benefit which a party receives which reasonably and fairly _____ them to make the promise/contract.

a) conduces b) educes c) induces d) seduces

8) Promises that are purely _____ are not considered enforceable because the personal satisfaction the grantor of the promise may receive from the act is normally not considered adequate consideration.

a) gifts b) givens c) gratuities d) gratuitous

9) Certain promises that are not considered contracts may, in limited circumstances, be enforced if one party has relied to his _____ on the assurances of the other party.

a) deference b) detraction c) detriment d) distress

10) The Law of Contracts is usually broadly classified either as part of the Law of Obligations or as part of the system of private law (which _____ contracts, property and torts).

a) circumscribes b) delineates c) encompasses d) subtends

8. Expressions used with the term "contract". Learn the vocabulary in English to talk about contracts. Read and translate the following sentences paying attention to the words in bold.

1) A *'binding contract'* is one which cannot be legally avoided or stopped. We have a legally binding contract and you must supply us with these services.
2) An 'exclusive contract' is one which prevents the person from working with other people. You have an exclusive contract to work with us and you cannot take on work for anybody else.
3) A 'renewable contract' is one which can be continued after it has finished by a new one. The opposite of this is a 'non-renewable contract'.
4) To work on this project, we can offer you a non-renewable contract of one year.
5) A 'temporary contract' is one that is not permanent. We can give you a temporary contract for six months.
6) A 'valid contract' is one that has legal force. This contract is not valid until it is signed by both parties.
7) A 'breach of contract' is when the person does something which breaks the terms of the contract. If you don't agree to move to Paris, you will be in breach of your contract.
8) The 'terms of contract' are the conditions contained within the contract.
9) Under the terms of your contract, you have to work on some Sundays.
10) If you 'draw up' a contract, you prepare it. I'll draw up a contract for you and you can sign it tomorrow.
11) If you 'get out of' a contract, you are no longer bound by it. I'm not happy in my job and need to find a way to get out of my contract.
12) If you 'go through' a contract, you look at it in detail. We need to spend a few minutes going through your contract.

9. Use the expressions in bold from a previous exercise to fill in the blanks.

1) The contract is for one year, … for a second year if we are satisfied with your work.
2) You can't walk out on your … contract just because you have received a better offer elsewhere.
3) You are asking me to do something which is not in the … my contract.
4) I think we should offer her a (n) … contract so that she only works for us.
5) Make sure you … your contract carefully before you sign it.
6) The lawyer will … a new contract including the new terms and conditions.
7) This letter is not a … contract. I want a proper one.
8) You'll start on a … contract and we may then offer you a permanent one.
9) If you refuse to work on Sunday, that is a… and we will dismiss you.
10) I think she's being difficult because she wants … her contract with us.

10. Read the text about the basic elements required in a contract.

An enforceable contract must meet three main criteria: mutual assent, consideration and lack of legitimate defenses.

Offer

To form a contract, there must first be an offer, which communicates intent to be contractually bound. Opinions, letters of intent, invitations to submit a bid, price estimates and advertisements, for example, do not constitute offers. An offer is not valid until it is received. Upon receipt, the offeree may accept or revoke the offer. Some offers include a limited time for acceptance.

Acceptance

A unilateral contract is accepted by performance. For example, suppose you say to a friend, "I will give you one million dollars when you swim across the English Channel". If he swims across the English Channel, you owe him $1 million. If he never swims

across the English Channel, however, no contract is formed. A bilateral contract is accepted by return promise. For example, if you agree to paint a friend's house, and your friend agrees to pay you $1,000 in exchange, you have formed a bilateral contract.

Consideration

Including a recitation of nominal consideration as a formality does not create a legally enforceable contract. Legal consideration requires that each party to the contract incur some legal detriment which has been bargained for. A party incurs legal detriment if she engages in an act she was not previously obligated to perform absent this agreement, or if she agrees not to exercise a legal right. If consideration is absent, the promise is an unenforceable gift.

Writing

The law does not require written contracts in all circumstances. A written contract is required if the agreement cannot be performed within one year or involves a lease of real property or goods for greater than one year. The law also requires a written contract for any agreement to sell land, goods over $500 or other personal property valued at over $5,000.

Modification

After parties form a contract, they may legally modify it. The parties must modify the contract in good faith. Duress, compulsion or extortion will render the modification unenforceable. Modifications do not have to be supported by consideration. Modifications do not have to be in writing unless the original contract was required by law to be in writing, or the terms of the contract require modifications to be in writing.

Breach

A party who subsequently fails to perform the duty promised in the contract breaches that contract. If a breach occurs, the injured party may sue for expectation damages, reliance damages, and restitution. Expectation damages put the injured party where he expected to be, financially, at the formation of the contract. Reliance damages compensate the injured party for any expenses she incurred in reasonable reliance on the breached contract. Restitution compensates an injured party for any performance he or she conferred to the other party prior to the breach.

11. Match the words to form collocations.

1) modify	a) unenforceable
2) constitute	b) bound
3) perform	c) a legal detriment
4) contractually	d) an intent
5) sue for	e) an offer
6) render	f) a bid
7) submit	g) damages
8) incur	h) a duty
9) communicate	i) a contract

12. Study the words in bold in the text above and match these words with the definitions below.

1) The activity of getting smth (money) by threats
2) An illegal threat to use force on someone to make him or her do smth.
3) To cancel an offer
4) Agreement to or approval of smth.
5) To stop being valid or effective
6) The argument used in fighting a case.
7) An assumption of duties, liabilities not previously imposed on the person.

13. Insert the right preposition consulting the text.

1) ... receipt, the offeree may accept or revoke the offer.
2) A bilateral contract is accepted … return promise.
3) Legal consideration requires that each party … the contract incur some legal detriment which has been bargained ….
4) These damages compensate the injured party … any expenses she incurred …. reasonable reliance … the breached contract.
5) Modifications do not have to be supported … consideration.
6) The parties must modify the contract … good faith.
7) Restitution compensates an injured party for any performance she conferred … the other party … the breach.

14. Study the text and practice translating the following expressions.

Юридически обязывающий контракт, mutual assent, защита, возражение по иску, communicate an intent, быть связанными договорными обязательствами, constitute an offer, по получению, revoke an offer, двусторонний контракт, legal detriment, встречное удовлетворение, form a contract, исполнять контракт, lease of real property, вносить изменения в контракт, render a contract unenforceable, принуждение, in good faith, не исполнять обязательства по контракту, breach a contract, подавать иск на возмещение ущерба, restitution, компенсация за понесенные расходы, incur damages, компенсация упущенной выгоды.

15. Study the following terms.

Acceleration – досрочное исполнение обязательств по договору
Assignment – передача, переуступка прав, цессия
Confidentiality – конфиденциальность
Consideration – встречное удовлетворение
Liquidated damages – исключительная договорная неустойка
Payment of costs – оплата судебных издержек
Severability – автономность положений договора
Termination –прекращения договора

16. Match the given clause types to their definitions. There are more definitions than needed.

Consideration, payment of costs, liquidated damages, acceleration, severability, assignment, termination, confidentiality

1) It requires the offeree to pay all or part of a payable amount sooner than as agreed upon the occurrence of some event
2) It prohibits or permits assignment under certain conditions
3) It implies treating the information as private
4) It tries to protect against failures to perform contractual obligations caused by unavoidable events beyond party's control
5) It expresses the cause, motive, price which induces one party to enter into an agreement
6) It refers to an amount previously established by the parties as the total amount of compensation if there is a breach of contract

7) It says that the written terms of an agreement can't be varied by prior or oral agreements
8) It provides that in the event that one or more provisions of the agreement are declared unenforceable, the balance of the agreement remains in force
9) It establishes when and under which circumstances the contract may be terminated
10) It sets out which party is responsible for covering costs related to the preparation of the agreement and ancillary documents.

17. Identify the type of contract clause.

1) The seller's liability for damages shall in no case exceed the purchase price of the particular quantity delivered with respect of which damages are claimed
2) Whenever, within the sole judgment of Seller, the credit standing of Buyer shall become impaired. Seller shall have the right to demand that the remaining portion of the contract be fully performed within 10 days
3) Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control.
4) This Agreement may not be assigned without the prior written consent of the other party, except that the Buyer may assign the Agreement to a subsidiary or related corporation
5) In the event Operator defaults in the performance of any covenant or agreement made hereunder, as to payments of amounts due hereunder or otherwise, and such defaults are nor remedied to the Supplier's satisfaction within 10 days after notice of such defaults, the Supplier may thereupon terminate this agreement
6) This Agreement, including the Schedules and Exhibits attached hereto, constitutes and contains the entire agreement of the parties with respect of the subject matter hereof and collectively supersedes any and all prior negotiations, correspondence, understandings and agreements between the parties respecting the subject matter hereof. No party is relying on or shall be deemed to have made any representations or promises not expressly set forth or referred to in this Agreement.

18. In your own words, explain the following words and expressions in italics from the clauses in the exercise above.

1) liability for damages (clause 1)
2) within the sole judgment of Seller (clause 2)
3) delay or default (clause 3)
4) prior written consent (clause 4)
5) in the event Operator defaults in the performance … (clause 5)
6) Schedules and Exhibits (clause 6)
7) deemed (clause 6).

19. Read the clauses (Exercise 17) and for each of the following words, find the word or expression in the clause that most closely matches the meaning.

1) in the form of; 2) specified in writing; 3) more than; 4) jointly; 5) is owed to; 6) including; 7) as stated above; 8) subtracted form

20. A lawyer has been asked to explain the reasons why it is important to include a termination clause in a commercial contract. Here is his first reason. Read what he says and complete his explanation by filling the gaps with the words in italics below.

agree run enter giving stipulates negotiate

"It is absolutely essential to include a termination clause in a contract. There are several reasons for this.

The first reason is a very simple one. Let's imagine that you … (a) a retail business, such as a shop that sells luxury chocolate, in the center of London. You … (b) into a contract with a supplier of chocolate in Belgium. The contract … (c) that the supplier in Belgium will deliver a certain quantity of goods to you every month. Both parties expect the contract to continue for a certain period of time before it has to be renegotiated and they … (d) upon the term of the contract as 12 months. What will you do if no one buys your chocolate and after three months your business is in trouble? You do not want to be obliged to go on with the contract for another nine months! Therefore, when you … (e) the terms and conditions of the contract it is essential to say that either party can terminate by … (f) notice to the other. A reasonable notice period in a situation such as this is probably four weeks".

21. Study the texts above and practice translating the following terms.

Устанавливать, точно определять, согласованный срок истечения контракта, принять возмещение упущенных возможностей, оговорка (в статье договора), неплатежеспособность, ликвидироваться (о компании), включить пункт о расторжении в контракт, согласно контракту, обсудить контракт заново, договориться о сроках действия контракта в … (месяцев), быть обязанным продолжать соблюдать контракт, оговаривать условия контракта, расторгать контракт путем уведомления другой стороны, срок уведомления, существенно, заблаговременное уведомление.

22. Defences in contractual disputes. Study the following terms and translate the information about the main defences in contractual disputes.

Allege – обвинять
Contract formation – заключение договора, составление договора
Discharge – освобождать от выполнения обязательств
Defence – обстоятельство, освобождающее от ответственности
Dispute – разногласия
Duress – принуждение
Escape obligations – избегать выполнения обязанностей
Illegality – незаконность
Legal capacity – правоспособность
Legal age – совершеннолетие
Mislead – вводить в заблуждение
Specific performance – реальное исполнение договорных обязательств

In a contractual dispute, certain defences to the formation of the contract may allow a party to escape his/her obligations under the contract. For example illegality of the subject matter which can be defined as follows: when either subject matter or the consideration of a contract is illegal. You can also allege fraud in the inducement, that is to say, when one party is intentionally misled about the terms of a contract. Duress is another defence you can use to discharge the specific performance of a contract. The last defence to be applied is the lack of legal capacity, meaning that you don't have the ability to enter into a legal contract because you are not of legal age or you are insane.

23. Match these defences (1–4) with their definitions (a–d).

1) illegality of the subject matter; *2) fraud in the inducement; 3) duress; 4) lack of legal capacity*

a) when one party doesn't have the ability to enter into a legal contract, i.e. is not of legal age, is insane or is a convict or enemy alien
b) when one party induces another not entering into a contract by use or threat of force, violence, economic pressure or other similar means
c) when either the subject matter or the consideration of a contract is illegal
d) when one party is intentionally misled about the terms, quality or other aspects of the contractual relationship that leads the party to enter into the transaction

24. Nowadays most of the economic relationships among parties are secured by contracts. Read and translate the description of contract types.

Among the most important types of contract, we can find:

a) Purchase sale contract: This contract can be oral or written but some of them such as the purchase-sale of real property must be legalized by a deed. These contracts are terminated, among other reasons, by the following: the contract has been performed; by agreement of the parties; by novation: one of the parties can ask for the contract to be modified in order for the dispute to be settled, the affecting party accepts to release the another party from his contractual obligations signing another contract with a new consideration called satisfaction, settlement or discharge, by breach of contract.

b) Lease or leasehold: the owner of a real property, called the lessor or landlord, grants the possession and exclusive use of this real property to a lessee or tenant for a fixed period of time. This type of contract should also be legalized by a deed, in which covenants are included. Among the most important covenants included in this kind of contract, we can find the following: the parties to the contract, the term or length, the description of real estate, rent, insurance and repairs/maintenance. The tenancy can

be for a fixed term or periodic. When the tenancy is for a fixed period of time, the lessee can assign to another person his contract for the remaining period of time whenever there is no covenant against it. The periodic tenancy usually lasts until the lessor or tenant gives notice. When it's the landlord who gives notice, it's called eviction notice. When there is no fixed period of time for the tenancy, it can be said that there is tenancy at will. In this tenancy, the terms of the contract are brought to an end when one of the parties thus determines.

c) Contract of employment: the employees have right to health and safety at work, to paid holidays, to statutory sick pay and to statutory maternity pay. When industrial disputes arise, they can be heard in industrial tribunals. Most of these disputes are related to the termination (extinction) of contracts of employment. Among the reasons of termination, we can find the following: unfair dismissal or redundancy. Among the remedies applied by Industrial Tribunals when somebody is unfairly dismissed are the following: reinstatement, reengagement and compensation. The employer can also make breach of contract when an employee is demoted, cut in his wages or he/she is sexually harassed.

25. Supply the terms from the text for the following definitions.

1) The activity of keeping things going or working
2) 2. An agreement that doesn't specify a definite rental period
3) The act of forcing someone to leave a property
4) A legal document that is signed or delivered especially one regarding the ownership of property or legal rights
5) A transaction in which a new contract is agreed by all parties to replace an existing one
6) Fixed by law or by statute

26. Read the texts again and put down under each heading the terms and word combinations that are necessary to describe the following contracts.

Contract of employment	*Lease or leasehold*
1) unfair dismissal 2) exclusive use of …	1) lessor

27. Practice translating the following terms

Обеспечивать безопасность, обезопасить, договор купли продажи, придавать законную силу, недвижимость, замена стороны договора, переуступка договора, освобождать от контрактных обязательств, договор об аренде, предоставлять, арендодатель, исключительное пользование, отдельная статья договора, условие договора, ремонт и содержание, владение на правах аренды, съёмщик, арендатор, определённый срок, срочная автоматически продлеваемая аренда, уведомление о выселении, бессрочная аренда, трудовой договор, установленный законодательством, больничный, оплаченный декретный отпуск, несправедливое увольнение, сокращение, средство правовой защиты, суд специальной юрисдикции, понижать в должности, восстановление в правах, в прежнем положении.

28. Fill in the blanks with the right words.

Awarded, exemplary, rescind, breaching, compelling, damages, remedies, adequate, specific, seek

When there has been a breach of contract, the non-breaching party will often 1) ... remedies available by law.

Most remedies involve money .... In some cases, a party will be able to obtain punitive or 2) ... damages through the court which are designed to punish 3) ... party for a conduct which is judged to be particularly reprehensible such as fraud.

This type of damages is normally only 4) ... where specifically provided by statute and where a tort in some way accompanies the breach of contract. Where monetary damages wouldn't be an 5) ... remedy, the court may order 6) ... performance which involves an order by the court 7) ... the breaching party to perform the contract. Finally, there are other 8) ... available: for example, if there has been a default by one party, the other party may 9) ... or cancel the contract.

29. Practice translating the following words.

Средство правовой защиты, предоставить средство правовой защиты, добиваться средства правовой защиты, обратиться за получением средств правовой защиты, компенсация за убытки, штрафные убытки, реальное исполнение, судебное решение об исполнении договорных обязательств, аннулировать контракт, предосудительный.

UNIT 6

SALE CONTRACTS

Lead-in

1) What contract types do you know?
2) What do you understand by the term standard form contract?
3) What is the international sale of goods governed by?
4) What is a key difference between the language of contracts and plain English?

1. Read the following text.

The Contract of Sale of Goods

The contract of sale of goods is the best known and most common of all commercial contracts. Millions of them are concluded each day and the overwhelming majority give rise to no problems at all. The modern trend towards standardization of contracts is to be found in the sale of goods as elsewhere. Many trade organisations have produced their standard form of contract of sale and these are widely used in many sections of commerce, and particularly in the export trade.

What Are Goods?

The definition section, section 62, provides that in the Act: "Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which arc agreed to be severed before sale or under the contract of sale.

Classification of goods

Specific and unascertained goods

Many of the rules of the Act depend upon whether the goods which are the subject-matter of the contract of sale are "specific" or "unascertained". Section 62 defines specific goods as "goods defined and agreed upon at the time a contract of sale is made".

Thus the ordinary retail sale, where a buyer goes into a shop, selects an article and agrees to buy it, is a sale of specific goods.
The Act does not define unascertained goods but it clearly covers two distinct transactions. The first is a sale of purely generic goods where the subject-matter of the sale is not a specific chattel, but goods of a particular type. An example is a contract for the sale of "100 boxes of canned fruit" or "a washing machine". The second case where goods are unascertained is where the contract relates to part of a larger quantity of goods, as, for example, a contract for the sale of "50 tons of wheat out of the consignment of 200 tons now on board the ss. "London". The failure of the Act to distinguish these two types of unascertained goods has been criticised.

Ascertained goods

This expression is again not defined in the Act, but it probably means goods identified in accordance with the agreement after the contract is made. If a man on becoming engaged agreed to buy from a jeweler "a diamond ring to be selected by me from your stock" the contract would initially be for unascertained goods but on the selection being made the goods would become ascertained. The expression "ascertained goods" only appears to be important in connection with the court's power to order specific performance.

Future goods

A further classification made by the Act is that of existing and future goods. Section 62 defines future goods as: Goods to be manufactured or acquired by the seller after the making of the contract of sale.

The Contract of Sale of goods. Definition

Section 1 (1) of the Act is the basis of all that is to follow. It provides that: A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for the money consideration, called the price. There may be a contract of sale between one-part owner and another.
Five elements must be considered – seller, buyer, property, goods and price.
Seller is defined as "a person who sells or agrees to sell goods".
Buyer is defined as "a person who buys or agrees to buy goods". It follows from section 1 (1) that there must be both a seller and a

buyer, but a person can validly buy his own goods if, for example, he buys them from a sheriff who has seized them under a writ of fi.fa.

Property is defined as "the general property in the goods and not merely a special property". In other words, it means ownership.

Goods. The meaning of this term has already been considered.

Price. The price is of course the consideration given by the buyer for the property in the goods. It follows that if he fails to get the property, he can recover the price because the consideration for it has wholly failed.

Sale and agreement to sell

Where a vendor of land sells it to a purchaser the disposition takes place in two stages – the contract, conferring rights which to some degree are purely personal, and the conveyance, when the vendor vests in the purchaser the legal title to the property. The Roman Law of sale of goods contains similar provisions. Under the Sale of Goods Act, however, contract and conveyance are sometimes merged into one. Section 1 (3) reads as follows:

Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale, but where the transfer of the property in the goods is to take place at a future lime or subject to some conditions thereafter to be fulfilled the contract is called an agreement to sell.

Further section 1 (4) provides that: An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

In other words, the expression "contract of sale" covers both a sale and an agreement to sell. Under a sale the property passes' immediately to the buyer, whereas under an agreement to sell the buyer acquires merely personal rights. In theory this distinction is fundamental, but its practical results are surprisingly small. The matter will be more fully discussed when the rules governing the passing of property are dealt with. A contract whereby a seller purports to effect a present sale of future goods operates as an agreement to sell them. A contract of sale may be absolute or conditional.

Exchange

It has already been seen that a transfer of one chattel in return for another is a contract of exchange or barter. There is no "money consideration" and consequently the Sale of Goods Act does not apply.

Formation of a Contract

Offer and acceptance

With a solitary exception the Act contains no provisions relating to offer and acceptance and these matters are governed by the general law. Where an article is purchased at a self-service store, no contract is concluded until the customer's offer to buy has been accepted.

Capacity

Section 2 provides that:

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property; provided that where necessaries are sold and delivered to an infant (or minor), or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. Necessaries in this section mean goods suitable to the condition in life of such infant (minor) or other person, and to his actual requirements at the time of the sale and delivery.

Formalities

In general, the contract can be made in any form. Section 3 reads:

Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. Provided that nothing in this section shall affect the law relating to corporations. The opening words of this section are a reference to the notorious section 4 which was finally repealed by the Law Reform (Enforcement of Contracts) Act, 1954, as regards all contracts, whenever made.

Statutes in that behalf

A few statutes require formalities. Thus the Merchant Shipping Act, 1894, requires a transfer of a British ship or any share therein to be made in writing, while section 5 of the Hire-Purchase Act,

1965, provides that certain conditional sale and credit-sale agreements are unenforceable unless they are in writing.

Corporations

The closing words of section 3 are no longer of importance because a corporation can now contract in the same way as a private person.

Price

Section 8 reads: (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties.

2. Study the active vocabulary.

sale of goods – купля-продажа товаров
contract of sale – договор купли-продажи
the modern law of sale of goods – современная отрасль права, регулирующая куплю-продажу
standard form of contract of sale – типовая форма договора
retail trade – розничная торговля
general law of sale – общие нормы права, регулирующие куплю-продажу
to govern – регулировать
section – статья (закона), параграф (текста)
emblements – урожай на корню, однолетние культуры
industrial growing crops – выращиваемые в коммерческих целях культуры
specific goods – индивидуально-определенные товары
ascertained goods – индивидуализированные товары
subject-matter – предмет (договора)
retail sale – розничная продажа
article – изделие, вещь
generic goods (Eng.) (US fungible goods) – вещи, определенные общими родовыми признаками
consignment – партия (товаров), отгрузка
ss. (steamship) – пароход
to identify – опознавать, определять
stock – запас товаров (в магазине, на складе)
court's power – право (компетенция) суда
specific performance – исполнение договора в натуре

existing goods – существующие товары
future goods – будущие товары
to transfer the property in goods – передавать право собственности на товары
part owner – долевой собственник
to seize goods under a writ of fi. fa. (fieri facias) – наложить арест на товары по исполнительному листу (в уплату долга)
to recover the price – взыскать стоимость (товаров)
vendor – продавец
disposition – распоряжение (вещью)
to confer rights (on) – предоставлять права
conveyance – акт (документ за печатью) о передаче права собственности (на недвижимость)
to vest in the purchaser, the legal title to the property – закреплять за покупателем правовой титул на имущество
to merge – объединять
sale – сделка купли-продажи
subject (to) – с учетом, условием чего-либо
conditional contract of sale – условный договор купли-продажи
absolute contract of sale – безусловный договор купли-продажи
barter – товарообмен, бартер
formation of contract – заключение договора, оформление договора
self-service store – универсам, магазин самообслуживания
customer – покупатель, заказчик, клиент
(legal) capacity – право- и дееспособность
necessaries – товары (предметы) первой необходимости
to deliver – поставлять, сдавать, передавать (товары); вручать (документы)
mental incapacity – душевное заболевание, психическое расстройство
to be incompetent to contract – быть недееспособным заключить договор
therefor – за это
the condition in life – положение в обществе
actual requirements – фактические потребности
formalities – формальности (требования к форме договора)
in that behalf – по этому вопросу

by word of mouth – устно
the conduct of the parties – действия (поведение) сторон
provided that – при условии, что
to affect – затрагивать, влиять на что-либо
the law relating to corporations – отрасль права, регулирующая юридические лица
to repeal – отменять (закон)
Law Reform – правовая реформа
enforcement of contracts – исполнение (в судебном порядке) договоров
merchant shipping – торговое мореплавание
share therein – долевое право собственности на (вещь)
hire-purchase (HP) – купля-продажа в рассрочку, найм вещи
credit-sale – продажа в кредит
unenforceable – не имеющий исковой силы (защиты)
private person – физическое лицо
to fix a price – устанавливать цену
in manner thereby agreed – в порядке, определенном в договоре
to determine – определять, устанавливать
the course of dealing between the parties – (установившийся) порядок ведения дел сторонами; торговое обыкновение

3. Study the text and give the English equivalents for these expressions.

Современная отрасль права, регулирующая куплю-продажу; купля-продажа товаров; общие нормы права; индивидуализированные товары; договор купли-продажи, регулирующий, куплю-продажу; типовая форма договора; розничная торговля; партия (товаров); отгрузка; регулировать, статья (закона), параграф (текста); право (компетенция) суда; долевой собственник; изделие, вещь; запас товаров (в магазине, на складе); передавать право собственности на товары; распоряжение (вещью); взыскать стоимость (товар), акт (документ за печатью) о передаче права собственности (на недвижимость); наложить арест на товары по исполнительному листу (в уплату долга); закреплять за покупателем правовой титул на имущество; с учетом, условием чего-либо; безусловный договор купли-продажи; товары (предметы) первой необходимости;

право- и дееспособность; формальности (требования к форме договора); не имеющий исковой силы (защиты); в порядке, определенном в договоре; поставлять, сдавать, передавать (товары); вручать (документы); душевное заболевание, психическое расстройство; (установившийся) порядок ведения дел сторонами; торговое обыкновение, быть недееспособным заключить договор; правовая реформа; исполнение (в судебном порядке) договоров; долевое право собственности на (вещь)

4. Study the text and give Russian equivalents for:

Sale of goods, standard form of contract of sale, retail trade, general law of sale, section (of an Act), specific goods, ascertained goods, generic (fungible) goods, consignment, stock, court's power, specific performance, to transfer the property in goods, part owner, to seize goods under a writ of fi. fa., to recover the price, disposition, to confer rights on a person, to vest in the purchaser the legal title to the property, to merge, subject (to), conditional contract of sale, absolute contract of sale, barter, formation of contract, customers, (legal) capacity, necessaries, to deliver, mental incapacity, to be incompetent to contract, the condition in life, actual requirements, the conduct of the parties, to affect, the law relating to, corporation, to repeal, enforcement of contracts, merchant shipping, hire-purchase (HP), credit-sale, unenforceable, to fix a price, the course of dealing.

5. Replace the Russian expressions with the English ones and translate sentences into Russian.

1) The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be (разделены) before sale or under the contract of sale.
2) Millions of contracts are concluded each day and the (подавляющее большинство) give rise to no problems at all.
3) Many trade organisations have produced their (типовая форма договора) of sale and these are widely used in many sections of commerce, and particularly in the export trade.
4) Many of the rules of the Act depend upon whether the goods which are the subject-matter of the contract of sale are "specific" or (индивидуализированные товары).

5) Thus the ordinary retail sale, where a buyer goes into a shop, selects an (изделие, предмет торговли) and agrees to buy it, is a sale of specific goods.
6) The Act does not define unascertained goods but it clearly (охватывает, заключает в себе) two distinct transactions.
7) This expression is again not defined in the Act, but it probably means goods (определённые в соответствии с) the agreement after the contract is made.
8) The expression "ascertained goods" only appears to be important in connection with the court's power to (вынести решение о фактическом выполнении контракта).
9) A contract of sale of goods is a contract whereby the seller transfers or agrees (передавать право собственности на товары) to the buyer for the money consideration, called the price.
10) It follows from section 1 (1) that there must be both a seller and a buyer, but a person can validly buy his own goods if, for example, he buys them from a sheriff who (наложил арест на товары по исполнительному листу).
11) The price is of course the consideration given by the buyer for the property in the goods. It follows that if he fails to get the property, he can (возвратить стоимость) because the consideration for it has wholly failed.
12) Where a vendor of land sells it to a purchaser the (передача земли) takes place in two stages – the contract, (предоставляющий права) which to some degree are purely personal, (акт о передаче права на собственность), when the vendor vests in the purchaser the legal title to the property.
13) The Roman law of sale of goods contains (похожие положения договора).
14) Where (согласно) a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.
15) An agreement to sell becomes a sale when the time (истекает) or the conditions are fulfilled subject to which the property in the goods is to be transferred.

16) Under a sale the property passes' immediately to the buyer, (между тем как, в то время как) under an agreement to sell the buyer acquires merely personal rights.
17) A contract whereby a seller purports to (совершать продажу) of future goods operates as an agreement to sell them. A contract of sale may be absolute or conditional.
18) It has already been seen that a transfer of one chattel in return for another is a contract of exchange or barter. There is no "money consideration" and consequently the Sale of Goods Act (не применяется).
19) (За единичными исключениями) the Act contains no provisions relating to offer and acceptance and these matters (регулируются) by the general law.
20) (С учётом положений) of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be (подразумеваться) from the conduct of the parties.
21) The opening words of this section are a reference to the (общеизвестный) section 4 which was finally (отменен) by the Law Reform (Enforcement of Contracts) Act, 1954, as regards all contracts, whenever made.
22) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by (порядок ведение дел сторонами).

6. Give your variant of translation of the following sentences.

1) The modern trend towards standardization of contracts is to be found in the sale of goods as elsewhere.
2) The definition section, section 62, provides that in the Act: "Goods" include all chattels personal other than things in action and money.
3) Many of the rules of the Act depend upon whether the goods which are the subject-matter of the contract of sale are "specific" or "unascertained".
4) Section 62 defines specific goods as "goods defined and agreed upon at the time a contract of sale is made".

5) The failure of the Act to distinguish these two types of unascertained goods has been criticised.
6) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for the money consideration, called the price.
7) There may be a contract of sale between one-part owner and another.
8) Buyer is defined as "a person who buys or agrees to buy goods". It follows from section 1(1) that there must be both a seller and a buyer, but a person can validly buy his own goods if, for example, he buys them from a sheriff who has seized them under a writ of fi.fa.
9) Property is defined as "the general property in the goods and not merely a special property". In other words, it means ownership.
10) Under the Sale of Goods Act, however, contract and conveyance are sometimes merged into one.
11) Section 1 (3) reads as follows. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale.
12) But where the transfer of the property in the goods is to take place at a future lime or subject to some conditions thereafter to be fulfilled the contract is called an agreement to sell.
13) In theory this distinction is fundamental, but its practical results are surprisingly small. The matter will be more fully discussed when the rules governing the passing of property are dealt with.
14) Where an article is purchased at a self-service store, no contract is concluded until the customer's offer to buy has been accepted.
15) Provided that where necessaries are sold and delivered to an infant (or minor), or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor.
16) A contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

17) Thus the Merchant Shipping Act, 1894, requires a transfer of a British ship or any share therein to be made in writing; while section 5 of the Hire-Purchase Act, 1965, provides that certain conditional sale and credit-sale agreements are unenforceable unless they are in writing.
18) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties.

7. Match up the following English contract-related terminology with the Russian equivalents.

Upon

Upon + noun/ verb +ing

e.g. Upon receipt of goods – по получении товара

e.g. Upon signing the contract – с момента подписания договора

Upon receipt of notification – по взаимному согласию

Upon the term expiration – с момента расторжения контракта

Upon presenting a power of attorney – по истечении этого срока

Upon authorization of – по получении уведомления

Upon termination of a contract – при предоставлении доверенности

Upon mutual agreement of smb. – с разрешения кого-либо.

Within

Within the law – в рамках (в пределах) чего-либо

Within jurisdiction – в течение 24 часов

Within 24 banking days – в рамках закона

Within the framework – в течение 24 банковских дней

Within 24 hours – в пределах юрисдикции

Subject to

Subject to approval – подлежащий обжалованию

Subject to penalty – подлежащий одобрению

Subject to appeal – подлежащий изменению

Subject to modification – при условии соблюдения

Subject to compliance with – подлежащий штрафу

to notify smb. of sth – уведомить кого-либо о чем-либо
notice – уведомление
to give notice of smth – уведомить о чем-либо
notice is hereby given – уведомив за 10 дней
without further notice – уведомление о поставке
to notify in writing – без дальнейшего уведомления
to give a week's notice – предупреждение за короткий срок
on 10 days' notice – предварительное уведомление
delivery notice – настоящим доводится до сведения /настоящим сообщается
short notice – уведомлять письменно
advance notice – уведомлять за неделю

due
due payment – причитающийся и подлежащий оплате
in due time – своевременно
due date – причитающаяся сумма
become/fall due – своевременное оповещение
due notice – платёж в обусловленный срок, срочный платёж
due and payable – наступать (о платеже)
due amount – дата платежа

to be bound by smth- – быть обязанным делать что-либо
to bind smb. – обязывающий, обязательный

binding – иметь обязательную силу по закону
to be legally bound – быть обязанным по закону
to be binding in law – обязанный по решению суда
bound by court rulings – обязывать (законом), связывать (договором)

Claim
to make a claim – иск о нарушении
to settle a claim – предъявить иск
to claim damages – требование признания права владения
claim for infringement – урегулировать иск
claim for a patent – обоснованный иск
valid claim – притязание на выдачу патента
claim of ownership – требовать возмещения ущерба

8. Translate the following sentences using the above studied models.

1) All documents shall be delivered to the bank immediately (после их составления).
2) 100% of the Contract Total Value shall be paid by the Buyer (с момента подписания настоящего договора).
3) The Power of Attorney may be verified by a company employee in the Client's presence (при предъявлении) an identification document by the Client.
4) The bank shall issue the said plastic card for the five – year term. (по истечении этого срока) the Bank shall automatically reissue the card.
5) All orders (подлежат) approval and acceptance by senior executive.
6) The Seller (обязуется уведомить) the Buyer of the quantity of the goods available at the warehouse.
7) If Distributor becomes aware of any shipment by its purchaser outside the Territory, (он должен немедленно уведомить об этом Компанию в письменной форме) and provide the name and the address of the purchaser involved.
8) The Company may change its prices (уведомив, по крайней мере, за 30 дней) by giving Distributor a new price list.
9) The notification shall be delivered (в течение) 20 working days.

9. Scan the following text and answer the questions below the text.

The International Sale Contract

The International Sale Contract is the most used among those governing trade relations between companies in different countries. This agreement sets out the rights and obligations of the parties (exporter-seller and importer-buyers) and the remedies for breach.

The International Sale Contract This contract is greatly influenced by The United Convention on Contracts for the International Sale of Goods (CISG), widely accepted by lawyers of different traditions and backgrounds. It articulates practical requirements arising from commercial practice with the general rules of CISG. Besides CISG, other sources of uniform contract law used in drafting this contract are the following: Uniform Law on the International Sale of Goods (ULIS), UNIDROIT Principles of

International Commercial Contracts and the Principles of European Contract Law, United Convention on Contracts for the International Sale of Goods, Uniform Law on the International Sale of Goods, UNIDROIT Principles of International Commercial Contracts, Principles of European Contract Law.

What is the CISG? The CISG applies to international contracts for the sale of goods between parties whose businesses are located in countries which have adopted the treaty. Currently, 74 countries have adopted the CISG. It is worth noting, however, that there are a few major trading countries which have not yet adopted the CISG, including Brazil, India, South Africa and the United Kingdom. International chamber of commerce ICC has released its newly updated Model International Sale Contract, with an interactive digital version that allows companies and lawyers to define their own reliable import-export agreements that are in line with Incoterms® 2010 and the latest developments in international trade.

The new model contract sets out clear and concise standard contractual conditions for the most basic international trade agreement. Although it applies mainly to the export of manufactured goods for resale, it can also serve as an example for other transactions. Balancing the interests of sellers and buyers, it can also be used as a 'purchase agreement'.

Multinational companies usually have their own specific international sale contracts as well as General Conditions of Sale and Purchase. On the contrary, small and medium size companies tend to use general forms or model contracts templates and for that reason it is important to negotiate and draft the most important clauses.

Description of goods. This clause is one of the central clauses in a sale contract. As a general rule, the buyer will prefer more precise and detailed descriptions than the seller. If the goods are not described precisely enough, the buyer may have no recourse should the seller deliver goods which technically meet the contract description but are unsatisfactory for the buyer's commercial purposes. On the other hand, exporters would like to define the goods precisely when they are sure of delivering exactly those goods. In other commercial situations, however, it may be practical

to foresee and permit slight deviations from the contract description; for example, in statements of colors or dimensions, are not necessary to precisely identify the goods, and they should not be included in the product's description.

Contract price. The parties shall indicate clearly the contract currency and the price amount in both figures and words. Should the parties fail to agree on a price in the contract, a provision explaining the method for determining the price should be included in the contract.

Delivery Terms. It is advisable to use Incoterms 2010 published by the International Chamber of Commerce as "delivery terms" or "shipping terms". Incoterms rules allocate the following between seller and buyer: International transport and administrative costs. The point of transfer and risk of the goods. Responsibility for customs and payment of import duties. Responsibility for obtaining insurance coverage. When using Incoterms, it is necessary to describe precisely the place and within that place the exact point of delivery. Additional specifications may also be necessary to specify such as the amount of the extent of insurance coverage and any necessary limitations on suitable transport. Further information about the use of Incoterms can be founded in The Practical Guide to Incoterms.

Time of delivery. In the contract, the parties should indicate a specific date for delivery (e.g., October 24, 2013) or a period (e.g., November 2013).

Payment conditions. The contract should permit the use of all international payment modes, including at least: payment in advance, open account, documentary collection and documentary credit (also known as letter of credit). Documents. Exporters are well advised to be meticulous in their management of export documentation, especially when the payment method is letter of credit. The parties should include a clause with a list of documents most commonly required for seller in international sales contracts.

Inspection of goods by the buyer. The parties should indicate whether they agree to inspection "before shipment" (also known as pre-shipment inspection or PSI); the parties may indicate the place of inspection as well as other details such as inspection company.

The inspection requires the seller to notify the buyer of the availability of the goods for inspection.

Retention of title. The retention of title (RoT) clause is a common one in international trade. It provides that the seller retains ownership of the goods until the full purchase price is paid and also that the seller may reclaim the goods if the price is not paid. There are several variations of RoT clause, but major types can be distinguished: (a) the simple RoT clause, under which the seller retains title until price is paid, and (2) the extended clause, under which the seller seeks to extend its title to include: the proceeds from any sale of goods and any other indebtedness owed to the seller by buyer.

Force Majeure. It is common for international trade contracts to be made subject to force majeure or "hardship" clauses that excuse the parties from performance when their failure is due to impediments beyond their control or which were reasonably unforeseeable such as the outbreak of a war, earthquake or hurricane.

Resolution of Disputes. The parties should have the alternative between arbitration and litigation. In the event the parties opt for arbitration should specify the place of arbitration and the language. If the parties opt for litigation as the required mode of dispute resolution, the parties should designate the national or municipal courts in which lawsuits are be filed.

1) What does the International Sale contract set out?
2) What are parties to International Sale Contract?
3) What are sources of uniform contract law?
4) When does CISG apply? Have all countries adopted CISG?
5) Why was the new model contract released?
6) How do small and medium size business use this contract model templates?
7) What are typical clauses of international sale contracts?
8) What does the buyer look for in the description of goods clause?
9) What is the purpose of incoterms?
10) What payment models can be used between the buyer and the seller?
11) Is the inspection of good possible?
12) What does retention of title mean?
13) Why is Force Majeure clause necessary in a contract?
14) What are the options for dispute settlement?

10. Finish the following sentences using the information from the text above.

1) The International Sale Contract This contract is greatly influenced by The United Convention on Contracts for the International Sale of Goods (CISG), widely accepted by lawyers of …
2) The CISG applies to international contracts for the sale of goods between parties whose businesses are located in countries which have …
3) The new model contract sets out clear and …
4) If the goods are not described precisely enough, the buyer may have no …
5) Should the parties fail to agree on a price in the contract, a provision explaining …
6) Additional specifications may also be necessary to specify such as …
7) Exporters are well advised to be meticulous in … .
8) The Retention of Title Clause provides that the seller retains ownership of the goods until the full purchase price is paid and also that the seller may …
9) Force majeure or "hardship" clauses excuse the parties from performance when their failure is due to …
10) In the event the parties opt for arbitration should specify …

UNIT 7

CONTRACT STRUCTURE

Lead-in

1) Is there any definite structure of a contract?
2) What part does any contract contain?
3) What does each part of the contract state?

1. Read the following text.

Standard features of contracts

One category of legal prose which is particularly abject is legal drafting, which is a form of writing used in preparing legal instruments that seek to regulate conduct. These include statutes, regulations, and wills, and contracts.

Words without meaning

The principal problem facing a translator is that many elements of a contract are included not because of the meaning they convey, but because they've always been there and the drafter feels that the contract somehow wouldn't look right without them. Since the drafter incorporates those elements without considering their meaning, it can be awkward for the translator to attribute meaning to them.

Witnesseth

In any contract, the body of the contract – that which the parties are agreeing to – is preceded by the title, the introductory clause (which names the parties), and, more often than not, recitals, which provide background information.

Recitals are often preceded by the centered heading WITNESSETH, with or without underlining, a space between each letter, and other glam embellishments. Such headings may be picturesque, but they're inane. Drafters seem to think that witnesseth is a command in the imperative mood – perhaps something akin to Hear ye! It is actually in the third-person

singular, and is the remnant of a longer phrase, such as This document witnesseth that ... As a heading, it makes no sense.

If you're faced with translating a witnesseth heading, your best option would be to pretend that it means 'background'. (That word is sometimes used instead of witnesseth as a recital heading.)

Recitals of consideration

At the end of the recitals comes the lead-in, which indicates that the parties are agreeing to that which follows. In most contracts, the lead-in refers, in a 'recital of consideration', to the consideration for the promises made by the parties to the contract.

Recitals of consideration can take many forms, but here is a lead-in containing a relatively full-blown example:

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows.

In contract law, consideration means that which motivates a person to do something. A promise by another to do something is one form of consideration; money is another. Consideration, or some substitute, is required in order for an agreement to be enforceable. The ostensible function of a recital of consideration is to render enforceable a contract that would otherwise be held unenforceable due to lack of consideration. In this respect, however, the standard recital of consideration is of no help, since the case law shows that a recital cannot transform into valid consideration something that cannot be consideration, and a false recital of consideration cannot create consideration where there was none.

But the recital of consideration nonetheless survives. When revising a form contract, practitioners gloss over the recital of consideration. They're too busy with the daily demands of their practice to revisit concepts last encountered early on in their contracts course at law school; it's good enough for them that the recital of consideration has long been a standard feature, And they might find it comforting: the incantatory quality reinforces the notion that the law is a murky thing not to be tackled without that

shaman, your lawyer. So the recital of consideration is passed down from contract to contract without a second's thought.

This explains why the recital of consideration has acquired, like barnacles on a hulk, other ludicrous archaisms, notably the hectoring NOW THEREFORE, the entirely obscure in consideration of the premises (meaning therefore), and the verb and noun covenant, which is presumably valued for its Old Testament atmospherics. It also explains the presence of outdated buzzwords of the law relating to consideration, such as references to sufficient or valuable consideration.

Instead of relying on a traditional recital of consideration, a drafter would be advised to simply state in the lead-in that The parties therefore agree as follows. Until such time as that practice catches on, translators will be forced to tackle the recital of consideration. In so doing, they'll be forced to lavish more thought on the recital of consideration than any lawyer does.

Shall

'What distinguishes the categories of contract language is the use of verbs, and lawyers blur the distinctions through rampant overuse of shall.

A less flagrant but more pervasive problem with contract prose concerns the use of verbs.

A clause or sentence in the body of the contract can serve one of a number of purposes. Each purpose requires its own category of language, and each category raises its own issues of usage.

What distinguishes the categories of contract language is the use of verbs, and lawyers blur the distinctions through rampant overuse of shall.

Shall is a modal auxiliary verb. Unlike the other auxiliaries (be, do, have), the modal auxiliaries (shall, will, must, can, may) express modal meaning, such as possibility, volition, and obligation. Shall was originally a full verb (like eat, walk, and play) and used to convey obligation or compulsion, but now it is used only as an auxiliary, as is the modal *will*, which originally carried the sense of volition.

Because obligations and intentions concern future conduct, and because there is no true future tense in English, shall and will also came to be used with future time.

The result is that shall and will have each been used to express modal meanings and to mark future time. A rule arose to distinguish these two uses: to express future time, use shall when in the first person and will when in the second or third person, and do the reverse to convey modal meanings.

This rule and its many exceptions have largely been abandoned; in common usage shall is rarely used to indicate future time and barely survives in its modal form. But in the stylized context of legal drafting, which essentially uses only the third person, shall continue to serve as the principal means of expressing obligations, while will expresses future time.

It is standard practice to indicate that Acme has a duty to perform a given action by stating that *Acme shall perform that action*. This use of *shall* is consistent with the use of *shall* in standard English, and for various reasons it is superior to the alternatives, *must and will*.

The problem lies not with this use of *shall*, but rather with the use of shall in other categories of contract language. It almost seems as if drafters feel that unless a contract provision contains *shall*, it won't be binding. As a result, it is commonplace to find *shall* used inappropriately in the following contexts, among others:

- to convey obligations imposed on someone other than the subject of the sentence *(the Closing shall be held at Acme's offices)*
- to convey the rules underlying the contract, known as 'policies' *(This agreement shall be governed by New York law)*
- in conditional clauses and matrix clauses *(If Jones shall cease to be employed by Acme, Acmo Shallo have an option to purchase the Shares from Jones)*

In such contexts, instead of *shall* a drafter should, depending on the context, use must, will, or the present tense, or restructure the provision (for instance by using the active voice instead of the passive voice).

The significance of this for the translator is that you need to be able to tell when shall is being used to convey an obligation and when it is being used indiscriminately.

Provisos

A traditional component of legal drafting is the proviso, which consists of a clause introduced by provided that and set off from

the preceding clause by a comma or semicolon. In contracts, provisos are usually introduced with a semicolon and provided, however, that, with provided and however underlined for emphasis. In the case of a proviso that immediately follows another proviso, the formula used is provided further, however, that or something similar.

In this context, provided that is a truncation of the 'term of enactment' it is provided that, into the 19th-century, provided that was used to introduce statutory language. But provided is also a conjunction meaning if or on condition that, as in 'I'll let you go to the party, provided you take a taxi home.' It may be that this everyday use of provided dulls modern drafters to the fact that as currently used in contracts, provided that essentially continues to serve its original function: it is used to introduce not only conditions to the main clause, but also limitations and exceptions to the main clause, as well as new provisions that can be considered independently of the main clause.

As a result, using *provided that* is an imprecise way to signal the relationship between two adjoined contract clauses. A more precise alternative is always available, whether it be another conjunction (such as except) or a semicolon, colon, or full stop, and sometimes it is clearer to insert a phrase or other modifier somewhere in the body of the main clause rather than tacking on a proviso.

But I imagine that for the translator, the conservative approach would be to preserve the inadequacies of the original prose by simply using some stock phrase when translating provided that. Preserving the eccentric punctuation and underlining might also help warn the reader that one is dealing with legalese.

Synonym strings

Lawyers have long strung together synonyms, and rare is the contract that does not include strings of two, three, or more synonyms or near – synonyms. Some synonym strings, such as right, title, and interest, have a long history. Others appear to be improvisations, such as the requirement, in a share purchase agreement, that Smith sell, convey, assign, transfer, and deliver the shares to Jones. It is improvisations of this sort that suggest that while the synonym habit may have etymological or rhetorical

origins, it survives because it allows the drafter to finesse the often-awkward task of selecting the best word for a given provision.

Drafters would be better off replacing synonym strings with a single word, unless nuances of meaning indicate that there is some benefit to using more than one of the words, using interest instead of right, title, and interest: using sell instead of sell, convey, assign, transfer, and deliver.

But a string may be necessary to make sure that a provision covers the universe of possibilities. For instance, a securities purchase agreement might include a representation by the seller that the shares are free of any lien, community property interest, equitable interest, option, pledge, security interest, or right of first refusal, or some similar formulation. While this string doubtless includes some redundancy, a drafter would be rash to eliminate every element except, say, lien without being sure that courts had construed lien sufficiently broadly to encompass the other terms and that the parties were aware what lien was intended to cover.

If a translator faced with a synonym string were able to ascertain that the extra synonyms were tacked on not to enhance meaning but instead out of tradition or an excess of caution, the translator could conceivably elect to translate just one of the synonyms. But that would seem to involve more editorial discretion than most translators would be comfortable with; realistically, there would seem to be no alternative to translating each of the synonyms.

But that presents problems of its own. For example, contracts often contain a bloated governing-law provision along the following lines: This agreement shall in all respects be interpreted, construed, and governed by and in accordance with the laws of the State of New York. Depending on the language involved, a translator might be at a loss to find a separate translation for each of the near- synonyms interpreted, construed, and governed by, not to mention by and in accordance with.

The prospects for change

Over the past 30 years or so, law schools and law firms have expended considerable efforts on improving standards of legal writing. Until recently, no comparable efforts have been made toward improving legal drafting. It may be that one reason for this

is that whereas litigators are forced to write for an exacting audience – judges – a contract is generally read only by the lawyers who drafted and negotiated it and, to varying degrees, their clients. That does not represent a critical audience.

As a result, corporate lawyers remain under the sway of that most powerful of illusions, the illusion that one writes – or rather, in this case, drafts – well. They cling to tradition, and many are liable to respond tetchily to suggestions that current usages are inadequate.

Any change will come slowly. Making available to the corporate bar a comprehensive set of guidelines for contract drafting could facilitate change.

2. Answer the following questions.

1) What problem do translators face while working with a contract?
2) Why do drafters often incorporate the elements that don't convey the meaning?
3) What are the recitals in a contract?
4) What are formalities for drafting recitals?
5) What is the origin of witnesseth?
6) What is the best option for translating a witnesseth heading?
7) What comes in the end of recitals?
8) What does consideration mean in the contract law?
9) What is a function of a standard recital of consideration?
10) Why does a standard recital of consideration survive?
11) What explains the presence of outdated words in a contract?
12) Why is the verb shall overused in contracts?
13) What function does the verb shall serve in a contract?
14) What is an inappropriate use of the verb shall?
15) What is the proviso?
16) What alternatives are available for signaling the relationship between two adjoined contract clauses?
17) What is legalese?
18) What is a rare feature of a contract?
19) How can drafters convey the universe of possibilities in a provision?
20) What do translators find difficult translating synonym strings?
21) Why does legal drafting remain complicated?

3. Fill in the blanks in the contract with the suitable terms given below.

Shall within failure undertakes settlement remuneration under terms exclusive agreed provisions laid down ensure liability

1. Work to be undertaken
   The Consultant undertakes, on the conditions, 1) … the limits and in the manner 2) … by common agreement hereafter excluding any accessory verbal agreement:
   - the translation from English into Russian of the present magazine Business English (issues No to be specified in this paragraph in each contract);
   - the reading and correction necessary for the "final corrected proof" version of Business English to be available for the printer.
2. Technical specifications
   The text 3) ... be translated into Russian and delivered on paper.
3. Planning
   The Consultant 4) … to translate the text and submit it to the Company within one month from the date of receipt of the first text. The 5) … timetable must be respected (Attachment 1).
4. Practical points
   The English manuscript must serve as a model; it is important that the presentation be the same in the Russian version: bold type for titles, same paragraphs and page break at the end of the article, etc.
   The checking of the proofs must be done with great care: punctuation, word separations at line ends, capital letters, accents, printer's errors, coherence of rules and typographical choices.
   The Consultant will take the necessary measures to 6) … the above timetable will be followed during any absences.

5. 7) …
   In return for fulfillment by the consultant of all his obligations 8) … this contract the Company undertakes to pay a lump sum of $XXX for each issue. The Company accepts no 9) … in case of a Consultant's sickness or accident under this contract. Where appropriate the Consultant should insure himself against such risks.
   The sum will be transferred in favor of the Consultant to: (title and address of the Consultant) Beneficiary account: Beneficiary bank:

6. Rights
   The Consultant cedes to the Company the 10) … right to publish, or to have reproduced and published, in whatever form and in whatever country, texts translated by him and submitted to the Company under this contract.

7. Breach of contract
   The Company is entitled to regard as breach of contract 11) ... by the Consultant to perform his duties under this contract.

8. Amendments
   The 12) … of this contract may be amended only by written agreement between the parties.

9. Arbitration of disputes
   Any disputes between the Company and the Consultant regarding the 13) … of execution of this contract shall – failing a friendly 14) ... between parties – be submitted to arbitration in accordance with international laws. Done in two copies in English at London this day of 2nd April, 2004.
   On behalf of_____
   Signatures

4. Translate the following tips for drafting contracts into English.

Контракт на продажу/покупку товара составляется более подробно, т.к. целый ряд условий требует специальной оговорки. Структура торгового контракта в большинстве случаев содержит следующие статьи:

- преамбула;
- предмет контракта;
- цена и общая сумма контракта;
- качество товара;
- гарантия качества;
- сроки поставки;
- сдача/приемка товара;
- извещение об отгрузке товара;
- упаковка и маркировка;
- условия платежа;
- экспортная лицензия;
- страхование;
- рекламации;
- непреодолимая сила/форс-мажор;
- арбитраж;
- прочие условия.

5. Translate the following sentences.

1) Продавец берет на себя обязательство поставить Покупателю в счет осуществленного им платежа оборудование в полном соответствии с коммерческим предложением.
2) Покупатель осуществляет платеж в сроки и в форме, указанные ниже.
3) Настоящий Контракт вступает в силу с момента подписания его сторонами.
4) Продавец устраняет дефекты и неисправности путем ремонта оборудования или замены деталей по своему выбору.
5) Продавец не несет ответственность за дефекты и неисправности, возникающие вследствие недостаточного техобслуживания или его отсутствия.
6) Коммерческие счета-фактуры выписываются на французском языке.

7) Отгрузка авиатранспортом осуществляется согласно графику отгрузки, который является неотъемлемой частью настоящего Контракта.
8) Риск потери или повреждения оборудования переходит к Покупателю в момент передачи оборудования перевозчику или экспедитору, назначенному Покупателем.
9) Языком настоящего Контракта является английский язык.
10) В подтверждение вышеизложенного стороны заключили настоящий Контракт в двух экземплярах в день, месяц и год, указанные выше.

6. Complete the following contract with the contract related terms.

hereto conformity governing upon fails guarantees should modifications agree in writing hereby amicably hereinafter due to shall undertakes failure advance binding arising out of

In consideration of the payment to be made by PURCHASER to SELLER as 1) … mentioned, SELLER covenants with PURCHASER to supply the EQUIPMENT in 2) … in all respects with the provisions of his offer dated 27.02.1990.
PURCHASER 3) … covenants to pay SELLER in consideration of the supply of the EQUIPMENT the Contract price at the times and in the manner prescribed hereinafter.
Spare parts as per list attached 4) ... , which shall be deemed to form and read and construe as part of this Contract.
SELLER 5) … that all the EQUIPMENT (including spare parts) supplied under this Contract is free from defects. Such a guarantee is limited to a period (hereinafter called the "THE DEFECT LIABILITY PERIOD") of 18 months as from the date of dispatch from France or 12 months as from the date of commissioning on site, whichever is the earliest.
If any such defect shall appear during the DEFECT LIABILITY PERIOD, the PURCHASER shall forthwith inform the SELLER, stating 6) … the nature of the defect. The SELLER undertakes to make good such defect by repairing or replacing at his own option and cost the defective part(s).

The PARTIES 7) …that the DEFECT LIABILITY PERIOD will not be extended by a period equal to the period during which the EQUIPMENT cannot be used by reason of that defect, nor will the repair and/or replacement of defective parts give rise to an extension of the DEFECT LIABILITY PERIOD for said parts.
The SELLER will not be liable to replacing and/or repairing any defective part(s) of the EQUIPMENT, resulting from causes such as – but not limited to – normal wear and tear, improper use, lack or insufficient maintenance, 8) … or repairs carried out without the consent of the SELLER.
Maintenance documentation in English will be supplied in ten copies.
CONTRACT PRICE
1,400 French Francs per receiver (including spare parts), FCA Paris (Charles de Gaulle) AIRPORT (Incoterms ICC 1990). Total contract price: 1,890,000 FF (One million eight hundred and ninety thousand French Francs).
Commercial invoices to be made out in French Francs. Payments to be effected in French Francs.
DELIVERY
Airshipment to be effected not later than 31st October 1990, as per schedule of deliveries attached hereto, which shall be deemed to form and read and construe as part of this Contract.
PURCHASER 9) … issue appropriate instructions as to the sipping arrangements not later than 16th October 1990.
Documentation shall be prepared in accordance with the requirements of the Letter of Credit (referred to in Clause 5 hereafter) to be opened by PURCHASER in favour of SELLER and limited to AWB, Commercial Invoices, Packing List, Certificate of Origin.
10) … Test Certificates be required, all costs resulting therefrom, shall be borne and paid by the PURCHASER.
M LOSS. DAMAGE AND DELAY
Risk of loss and/or damage of the EQUIPMENT, or any part thereof, shall pass onto PURCHASER 11) … delivery of the EQUIPMENT or part thereof to the carrier or another person (e.g. freight forwarder) named by the PURCHASER or chosen by the SELLER in the case the PURCHASER 12) … to give appropriate

instructions in this respect, as provided in Clause 3 hereabove. Insurance cover will be taken care of by the PURCHASER at his own cost.
The SELLER shall not be liable for 13) … to perform or for delay in performance due to fire, flood, strike, or another labour difficulty, act of the PURCHASER or of any civil or military authority, insurrection, riot, embargo, vehicle and/or aircraft shortage, wreck or delay in transportation, inability to obtain necessary labour or manufacturing facilities from usual sources, late performance by SELLER's suppliers, or14) … any other cause beyond SELLER's reasonable control.
In the event of delay in performance due to any such cause, the date of delivery may be postponed for such length of time as may be reasonable, necessary to compensate for the delay and PURCHASER 15) … to amend accordingly the terms and conditions of the Letter of Credit referred to in Clause 5 hereafter.
(5) PAYMENT
The PURCHASER shall open an irrevocable, transferable, divisible documentary credit in favour of the SELLER. Partial shipments and transshipment allowed.
The Letter of Credit shall be confirmed by a bank in France, preferably BANQUE FRAN£AISE DU COMMERCE EXTERIEUR, Paris, or SOCIETE GENERALE, Paris, and provide for the following terms of payment:
20 percent 16) … payment against submission of a bank guarantee for same amount, to be released upon presentation of the documents called for in the Letter of Credit, 80 percent upon presentation of the documents called for in the Letter of Credit.
All bank charges outside India shall be borne by the SELLER.
LANGUAGE AND 17) ... LAW
The ruling language to which this Contract is to be subject is English.
The rights and obligations of the PARTIES shall be construed, enforced and performed in accordance with the laws of India.
SETTLEMENT OF DISPUTES
All disputes or differences of any kind in connection with or 18) … this Contract (whether before or after its termination, abandonment or breach) which cannot be settled 19) ... shall,

upon any of the PARTIES giving notice in writing to the other PARTY, be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such rules.
The place of arbitration shall be London (UK). All proceeding and published findings shall be in the English language.
The arbitral award shall be 20) … on the PARTIES and become enforceable immediately.

UNIT 8

CONTRACT LAW: CONSIDERATION

Lead-in

1) What area of law is the term "consideration" applied?
2) What do you think the term "consideration" means?
3) Is consideration the significant thing for a contract?
4) What may happen if parties can't reach consideration?

In contract law consideration is concerned with the bargain of the contract. A contract is based on an exchange of promises. Each party to a contract must be both a promisor and a promisee. They must each receive a benefit and each suffer a detriment. This benefit or detriment is referred to as consideration.

Consideration must be something of value in the eyes of the law – *(Thomas v Thomas)* (1842) 2 QB 851. This excludes promises of love and affection, gaming and betting etc. A one sided promise which is not supported by consideration is a gift. The law does not enforce gifts unless they are made by deed.

Whilst the common law strictly adheres to the requirement of consideration (although in some instances the courts seem to go to some lengths to invent consideration e.g. *Ward v. Byham* [1956] 1 WLR 496, *Williams v. Roffey Bros* [1990] 2 WLR 1153) equity will, in some instances, uphold promises which are not supported by consideration through the doctrine of promissory estoppel.

1. Read the text and try to determine the key points of it.

1) All simple contracts whether in writing or made by word of mouth, require consideration to support them. By consideration the law means valuable consideration, which must consist of something capable of being estimated in money. In Currie v. Misa (1875), 10 Ex. 162, valuable consideration was determined as "Some right, interest, profit

or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other".

2) The consideration for one person's promise may be a promise made to him by the other and the consideration is then said to be "executory". On the other hand, where one party promises something in return for the other party doing something then until it is done there is no consideration; but when it is done, the consideration is "executed", and the first party's promise becomes a binding contract.
3) The consideration must be of some value in the sight of the law. This excludes consideration which consists only of natural love and affection, or which rests upon a moral as distinct from a legal obligation. The promisor would be actuated in such instances by some motive which induced him to make a promise, rather than the receipt of some benefit. Some law writers have applied the term "good consideration" to such cases, but it is suggested that this expression is far from satisfactory as tending to lead to confusion with "valuable consideration" which alone would be recognised as supporting a contract.
4) A further illustration of the principle that consideration must have some legal value is afforded by the rule that payment, or a promise of payment, of a lesser sum than one which is already due cannot be consideration for an agreement to treat the whole debt as discharged, if £20 is due, the debtor cannot hold the creditor to a promise to take £10 in full satisfaction, for payment of £10 cannot be consideration for the discharge of a debt of £20. If, however, some variation is made in the terms of payment this may amount to consideration for the discharge: e.g., if a cheque is given for the lesser sum.
5) A person who seeks to enforce a simple contract must show that he or his agent has furnished some consideration to the promisor or to some other person at his request. This is usually expressed by saying that the consideration must move from the promise. The promise must be given in exchange for the consideration and is the price for which the promise of the other is bought. This fundamental principle is analogous to the

general rule that only those between whom there is privity of contract can incur liability or acquire rights under the contract; or it is sometimes said, no one may sue on a contract to which he is not a party.

6) The consideration must be of ascertainable value, and must not be physically or legally impossible. If a party to a contract makes a fresh promise to the other party to do what he is already legally bound to do, he cannot rely on that fresh promise by the other party. But the position is different if a party to a contract makes a promise to a third party to carry out his obligations under the contract. Here it seems that the promise to the third party constitutes consideration sufficient to render enforceable any promise which that third party made, because the third party obtains the right which he did not have before, namely, a right to insist on the performance of a contract to which he is a stranger and to claim damages if it is not carried out.

7) Similar considerations arise when a person who is under a public duty to do a particular thing specifically promises another person, being a member of the public entitled to the performance of that duty, that he will carry it out. The promise does not constitute consideration.

   But if one who is under a public duty promises to do more than that duty requires of him, that promise will constitute consideration to support a contract.

8) Although an agreement not supported by consideration is not enforceable, yet a bare promise is not necessarily entirely devoid of legal effect. It has been established that where a promise given without consideration is intended to create legal relations and to be acted upon by the promise and is in fact acted upon, with the result that the promisee's position is altered, the promisor cannot bring an action against the promisee which involves the repudiation of his promise or is inconsistent with it. The reason for this rule is that it would be contrary to the principles of equity that a person should be allowed to enforce rights which he has promised to relinquish, where the promise has relied on that promise and thereby altered his position.

9) This equitable doctrine is akin to the common law rule of estoppel, where under a party who has allowed another person to rely upon a representation of fact is precluded from seeking to support a claim by afterwards denying that fact. For instance, suppose that a landlord, doing the continuance of a lease agrees without consideration to reduce the rent, and the tenant, in reliance on the promise, refrains from assigning the lease which at its full rent would prove too expensive for him to keep, the landlord would not thereafter be able to claim the rent in full. This doctrine has only recently come into prominence in cases involving the discharge of debts, and it may be that some of the old cases in which it was held that liability to pay a particular sum of money cannot be satisfied by an agreement by the creditor to accept a lesser sum would today be decided in the debtor's favour if he could show that the promise was intended to be acted upon and that he did in fact alter his position in reliance on it, although it must be rare that a debtor could bring himself within the requirement of this principle.

10) It must not be supposed, however, that the doctrine of consideration has gone. The equitable principle which prevents a plaintiff from acting inconsistently with his promise does not extend to allowing a promise to sue on a bare promise. For example, if a landlord, instead of agreeing to reduce a tenant's rent agreed without consideration to pay him back part of the rent which had already been paid, the tenant would be unable to sue for the payment, for an order to succeed he would have to show that consideration has been given for the promise.

11) The consideration must be legal, must not be of an immoral nature, nor contrary to public policy, the maxim being ex turpi causa non oritur action (an action does not arise from a base cause).

A past consideration will not support a subsequent promise unless the two factors are so interlocked that the promise subsequently given consists merely in qualifying the consideration which it had already been agreed, expressly or implicitly, should be given. From this it seems that where a

request is made which is substantially an offer of a promise upon terms to be afterwards determined, and services are given in pursuance of such a request, a promise to pay what the service is worth may be inferred, and services are given in pursuance of such a request, a promise to pay what the service is worth may be inferred, and any subsequent promise amounts to fixing the worth of the service.

12) A person may be held to have revived by a subsequent promise an agreement by which he has benefited, although, for some reason or other, the agreement may be no longer enforceable. An instance of this is the revival of a debt by the Limitation Act, by means of a subsequent promise in writing to pay it. Strictly, this is not, however, an exception to the general doctrine of past consideration, since an action to recover the debt is based on the original contract and not on the subsequent acknowledgement. It is true the acknowledgement enables an action for enforcement (which has lapsed) to be brought, but such acknowledgement is really given without consideration at all. A past consideration is sufficient to support a cheques or other bill of exchange.

2. Answer the following questions according to the content of the text.

1) What does “consideration” mean according to the law?
2) What notions are excluded from the understanding of consideration?
3) What’s the difference between “good consideration” and “valuable consideration”?
4) What must be given in exchange for the consideration?
5) What is the position of a third party as regards to carrying out obligations of a party to a contract?
6) What is “bare promise” mean?
7) When cannot the promisor bring an action against the promisee?
8) What is the essence of the common law rule of estoppel?
9) What does the equitable principle provide?
10) What are the features of the consideration?

3. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

Accrue to (a person); forbear; detriment; be due to a person; hold smb. to a; promise; induce a person to do smth.; privity of contract; render enforceable; stranger to a contract; relinquish rights; estop (preclude, bar, debar) a person from denying smth.; lease; refrain from doing smth.; assignment; maxim; bring (file, maintain) a legal action; cheques (Br.); check (Am.); undertake a responsibility; promisor; promisee; suffer a loss; acquire right under a contract; be of an immoral nature; incur liability; claim damages; render a promise enforceable; equitable doctrine; principles of equity; common law rule of estoppel; representation of fact; in reliance on the promise; rent; tenant; bare promise; hold (decide) public policy; the Limitation Act; bill of exchange.

4. Find the verb for the following nouns:

e.g. Consideration – to consider

Forbearance; payment; agreement; satisfaction; obligation; performance; repudiation; representation; continuance; acknowledgement

5. Match the words to make a phrase found in the text:

1) simple	a) in money
2) valuable	b) sum
3) estimated	c) relations
4) lesser	d) promise
5) public	e) doctrine
6) ascertainable	f) contract
7) fresh	g) value
8) third	h) duty
9) legal	i) party
10) equitable	j) consideration

6. Study the text and find the words that go together with the following verbs:

To promise smth. in ... ; to rest upon a … ; to lead to … ; to be afforded by the … ; to enforce a … ; to furnish some … ; to incur … ; to acquire … ; to carry out smb' s … ; to obtain a … ; to insist on the … ; to claim … ; to bring an … ; to deny that … .

7. The text contains a lot of adjectives; below there are some of them. Examine the corresponding paragraph in the text to find the words that go together with the adjectives:

Valuable (par. 1); binding (par. 2); natural (par. 3); legal (par. 3); further (par. 4); whole (par. 4); lesser (par. 4); fundamental (par. 5); general (par. 5); ascertainable (par. 6); similar (par. 7); public (par. 7); bare (par. 8); equitable (par. 9); common (par. 9); immoral (par. 11); subsequent (par. 11); original (par. 12).

8. Work with the text again, find the prepositions used in the following phrases:

To be made … word … mouth (par. 1); to consist … something capable … being estimated … money (par.1); to promise something … return … (par. 2); to be … some value … the sight … the law (par. 3); to be actuated … such instances … some motive (par. 3); to be far … satisfactory (par. 3); to be recognized … supporting a contract (par. 3); to be made … the terms … payment (par. 4); to move … the promise (par. 5); to rely … the fresh promise … the other party (par. 6); to carry … smb's obligations … the contract (par. 6); to insist on the performance of a contract (par. 6); to be … a public duty (par. 7); to bring an action … smb. (par. 8); to be contrary … the principles … equity (par. 8); to rely … a representation … fact (par. 9); to agree … consideration (par. 9); to refrain … assigning the lease (par 9); to come … prominence … cases (par.9); to bring one's … the requirement … this principle (par. 9); to prevent a plaintiff … acting (par. 10); to pay smb. … part … the rent (par. 10); to be an offer … a promise … terms (par. 11); to be given … pursuance … such a request (par. 12); to be an exception … the general doctrine … past consideration (par. 12)

9. Translate into Russian the following sentences paying attention to complex grammatical constructions (absolute participle construction, complex subject, complex object, gerundial constructions).

1) Valuable consideration must consist of something capable of being estimated in money.
2) The consideration is then said to be “executory”.
3) Where one party promises something in return for the other party doing something then until it is done there is no consideration.
4) Where a promise given without consideration is intended to create legal relations and to be acted upon by the promisee and is in fact acted upon, the promisor cannot bring an action against the promisee.
5) The consideration must be legal, must not be of an immoral nature, nor contrary to the public policy, the maxim being ex turpi non oritur action (an action does not arise from a base cause).
6) A person may be held to have revived by a subsequent promise an agreement by which he has benefited.
7) A guarantor in respect of an overdraft granted to an infant was held not liable to the bank when the infant failed to repay the loan.
8) He will be deemed to have affirmed the contract if he does any act in relation thereto after coming of age.
9) There is nothing illegal in an infant holding shares in a company.
10) To show an action to lie against the infant would result in the aggrieved party to be able to recover damages which were denied to him under the contract.

10. Read the text and give a short summary:

Discharge of the Contract

Contracts may be discharged by agreement, performance, breach, impossibility, or operation of law.

Discharge by Agreement

Discharge by agreement may take place by waiver, by substituted agreement, or by condition subsequent.

1) Waiver

Waiver is an agreement between parties that they shall no longer be bound by the contract. Although an agreement to waive a contract, like any other agreement, should generally be supported by consideration or be under seal in order to be effective, yet a gratuitous waiver, if intended to be acted upon, and if relied on by the other party in altering his position, prevents the party waiving from afterwards requiring performance of the contract.

The waiver of a right of action on a bill of exchange does not require consideration; but the waiver must be in writing, or the bill must be delivered up to the acceptor.

2) Substituted Agreement

A substituted agreement requires no explanations; there must be such an alteration in the terms of the contract as to amount to an express or implied waiver. The most common form of substituted agreement is that of novation, e.g. the substitution of a new debtor for an old one, with the consent of the creditor.

3) Condition Subsequent

A condition subsequent is a provision, express or implied, in the contract that the fulfilment of a condition, or the occurrence of an event, shall discharge the parties form further liabilities. An illustration may be found in the “excepted risks”; the occurrence of such an excepted risk releases the ship owner from the strict performance of the contract and, if it should take place while the contract is wholly executory, the parties are altogether discharged.

1) Actual Performance

Actual performance arises where each party carries out his part of the contract.

2) Payment

A contract may be discharged by payment, where the liability of one party to the other consists in the payment of a sum of money. This payment should, primarily, be made in money, but may, with the consent of the creditor, be made by cheque or other negotiable instrument. In this case the payment is held to be conditional on the instrument being honoured, and, if dishonoured, a double right of action arises, one on the original consideration and one on the dishonoured instrument. If, however, the creditor has been offered cash, and requests a bill or cheque instead, then the payment is absolute, and the right of action on the original contract is lost, the only remedy being to sue the dishonoured instrument.

3) Legal Tender

A debtor is bound to seek out his creditor and pay him, and the payment should be offered in legal currency.

4) Accord and Satisfaction

Accord and satisfaction consists in agreement between the two parties by which, on some new consideration being given by one of the parties, the other agrees to forego his rights under the original contract. There must be both accord, or agreement, and satisfaction, the satisfaction being a fresh consideration. To constitute accord and satisfaction there must be a genuine agreement.

The commonest example of the application of the principle of accord and satisfaction is the allowance of a cash discount. The creditor receives his money at an earlier date than that on which he could otherwise demand payment (having regard to the customary or agreed term of credit): and the risk, however small, of a bad debt is estimated.

Discharge by Breach

Breach of a contract may take place in three ways. A party under a contract may renounce his liabilities under it; he may by hi own act make it impossible to fulfill them; or he may totally or partially fail to perform what he has promised.

1) Renunciation

If one of the parties to a contract expressly or by implication renounces his liabilities before the time for performance has come, the other party is discharged, if so he pleases, and may immediately sue for the breach; but the renunciation must be such as to show an intention to repudiate the whole promise.

Alternatively, the person entitled to performance may refuse to accept the renunciation and treat the contract as still existing, in which case the legal position of the parties is unaffected by such renunciation. The promisee would than hold the other party to the contract and would have to wait until the date for performance had passed before instituting proceedings for breach. If in the meantime circumstances had arisen which provided the defendant with a good defence, he would be able to escape liability by taking advantage of the supervening circumstances.

2) Failure of Performance.

When there has been a breach of contract by failure of performance, the injured party may bring an action for such breach, but whether or not be is himself discharged from further performance of the contract depends on the nature of the contract and the nature of the breach. Where the parties' promises are independent, a breach by one party will discharge the other. Thus, in a contract for the sale of goods, where payment and delivery are to take place at one and the same time, the failure by the vendor to deliver the goods will discharge the buyer from his obligation to pay for them. Where, on the other hand, the contract consists of a number of divisible promises, and there has been a partial failure of performance by one party, the other party will not always be discharged from further performance, but the

question is one of degree. If the breach is so serious that it goes to the root of the whole contract, or if the act or conduct of one of the parties amounts to an intimation of an intention to abandon and altogether refuse performance of the contract, the other party will be discharged if the breach is less serious, the injured party may claim damages, but will not be liberated from performance of his own promises. The question is one of fact, depending on the circumstances of each case. Thus, where goods are to be delivered in certain instalments, a default in the quantity contained in one of the instalments will not discharge the injured party unless the default is so serious as to amount in fact to a repudiation of the whole contract. In this connection the important distinction between conditions and warranties may be observed. A condition is a term of a contract which is deemed to be the essence of the contract, and on its failure the injured party may treat the contract as *discharged* and may claim damages; a warranty is a term which does not go to the root of the contract, and on its failure the injured party may sue for *damages*, but is not discharged from performance of his part of the contract. Both are alike in this, that they are only parts of contract and it is often a question of some nicety whether a particular term is a condition or a warranty. Conditions may be either:

(1) Precedent. (2) Concurrent. (3) Subsequent.

A condition precedent is a condition, express or implied, that the contract shall not bind one or more of the parties unless and until some contemplated event has happened.

A condition concurrent is one under which performance by one party is to be subject to performance by the other party at the same time, e.g., the payment of the price on a cash sale.

A condition subsequent is one under which the contract shall cease to be binding at the option of one or other of the parties or the happening of some future event.

3) Remedies for Breach of Contract

If there is a total breach of contract, or if the breach, though partial, is such that the party injured thereby is entitled to be discharged from further performance in the manner already described, the injured party may have one re more of the following remedies:

(i) He may regard the total breach as a discharge of the contract, and refuse to do anything under it himself; and at the same time he may bring an action for damages for breach of contract.

(ii) He may continue to act upon the contract and may bring an action for damages.

(iii) If he has performed part of his own obligations, he may sue on a quantum meruit.

(iv) He may apply to the court in appropriate cases for a decree of specific performance, or obtain an injunction.

In other cases of breach of contract, the only remedy open to the injured party is an action for damages.

4) Damages

Damages for breach of contract may be nominal or substantial. Whether or not actual loss has been occasioned, a breach of contract is of itself actionable, and the awarding of nominal damages affirms that there has been an infringement of a legal right by the breach; but if actual loss as a result of the breach can be provided, the plaintiff is entitled to substantial damages.

Damages are awarded so as to put the party whose rights have been infringed in the same position, so far as money can do it, as if his rights had been duly observed. Damages are compensatory, and not punitive in character.

Not all loss actually by the plaintiff as a result of the defendant's breach may necessarily be claimed; damages awarded are restricted by the presumed reasonable contemplation of the parties at the time the contract was entered into, as to the consequences of the breach.

**quantum meruit (лат.) – исполненная часть договора.*

11. Match English collocations with Russian ones.

1) by operation of law	a) новация, перевод долга
2) waiver	b) акцептировать; оплатить оборотный документ
3) require performance	c) отказ от права
4) novation	d) обуславливаться чем-либо
5) the occurrence of an event	e) требовать исполнения
6) to be conditional on	f) в силу закона
7) to honour	g) мировое соглашение; соглашение о замене исполнения
8) legal tender	h) право на иск
9) accord and satisfaction	i) наступление события, условия
10) right of action	j) законное платежное средство
11) allowance of a cash discount	k) причинить убытки
12) defence	l) сообщение о намерении
13) intimation of an intention	m) предоставление скидки при уплате наличными
14) warranty	n) исполнение (договора) в натуре
15) condition concurrent	o) возражение по иску
16) to occasion loss	p) взаимное условие
17) specific performance	q) простое условие (нарушение которого дает право на взыскание убытков, но не на расторжение договора)

12. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

A gratuitous waiver; to be effective; excepted risks; to release a person from responsibility (liability, performance, etc.); actual performance; negotiable instrument; dishonoured instrument; absolute payment; to forego one's rights; the customary or agreed term of payment; to institute proceeding against a person for breach of contract; to escape liability by taking advantage of the supervening circumstances; failure of performance; injured party; a contract for the sale of goods; payment and delivery; divisible promises; to obtain an injunction; to award nominal damages; an infringement of a legal right; punitive.

13. Find the corresponding definition to the following terms.

Instalment; default; condition; warranty; provision; contemplation; vendor; vendee; decree; injunction

14. Match the nouns to make a phrase.

1) a right of	a) the creditor
2) a bill of	b) the contract
3) terms of	c) action
4) a form of	d) a condition
5) the consent of	e) an agreement
6) the fulfilment of	f) a cash discount
7) the occurrence of	g) exchange
8) the payment of	h) the principle
9) an offer of	i) a sum of money
10) the application of	j) payment
11) the allowance of	k) the breach
12) the nature of	l) an event

15. Find in the text equivalents to the following Russian words and phrases.

Отказываться от права; иметь силу; безвозмездный, без встречного удовлетворения; условие, оговорка; исключенные риски; оборотный документ; отказаться от чего-либо; отказ (от обязательств); возбуждать судебное дело; неисполнение; взнос, часть; нарушение (обязательств); неисполнение, неуплата; существенное условие (нарушение которого дает право на расторжение договора); нарушение законного права; присуждать; предусматривать, предполагать; запрещать (судом).

16. Render the following text into English. Use the active vocabulary below the text.

A c t i v e v o c a b u l a r y

совершение действий – *commission of acts*
основные условия договора – *conditions*
второстепенные условия договора (гарантии) – *warranties*
прекращение договора – *termination of a contract*
контрагент – *the other party (to a contract)*
отказаться от договора – *to repudiate a contact*
считать стороны виновной в нарушении договора – *hold a party liable for a breach of contract*
освобождение контрагента от исполнения его договорного обязательства – *release of the other party from its obligation under a contract*
взыскание убытков – *recovery of damages*
восполнять волю сторон – *add to the will of the parties*
предусматривать – *to provide for, contemplate, specify*
встречное удовлетворение – *(valuable) consideration*
кредитор (по договору) – *promisee*
должник (по договору) – *promisor*
ничтожный – *void*
оспоримый – *voidable*
заинтересованное лицо – *party interested in*
сохранять силу – *to remain in force*
осуществлять право – *to exercise a right*
подтверждать договор – *to confirm (to adopt) a contract*

несовершеннолетний – *minor, infant*
по достижении совершеннолетия – *on coming of age*
путем конклюдентных действий – *tacitly*
оптовый торговец – *wholesaler*
условия поставки – *terms of delivery*
отгружать – *to ship, to consign*
заказ – *order*
принять предложение – *to accept an offer*
заключение договора – *formation of a contract*

Содержание договора

Содержание договора состоит в совершении определенных действий сторонами. В договоре определяется, какие действия должны быть совершены, а также как они должны быть совершены. Это условия договора.

В англо-американском праве различаются основные условия договоров и второстепенные условия (гарантии).

Основные условия – это такие обстоятельства, которые составляют сущность договора и не наступление которых может служить основанием для прекращения договора. Если совершение каких-либо действий одной из сторон представляет собой основное условие договора, то несовершение этих действий дает основание контрагенту отказаться от договора и считать сторону, не выполнившую его, виновной в нарушении договора.

Если же действие представляло собой не основное, а второстепенное условие, то его неисполнение не дает основание для прекращения договора и для освобождения контрагента от исполнения его договорного обязательства. В этом случае возможно лишь взыскание убытка с лица, не исполнившего обязанности, которое является второстепенным условием.

Суд определяет в каждом конкретном случае, является ли данное обстоятельство основным или второстепенным условием договора.

Англо-американское право различает также подразумеваемые условия договора. Посредством этих условий суд исполняет волю сторон, если последние не предусмотрели в

договоре решение какого-либо вопроса, возникшего в связи с неисполнением договора.

Англо-американское право признает существенным элементом договора наличие встречного удовлетворения. Встречное удовлетворение – это выгода, предоставленная кредитором должнику, либо ущерб, причиненный кредитору. В обоих случаях встречное удовлетворение представляет собой или воздержание от действий, или само действие.

Различаются договоры ничтожные и оспоримые. Ничтожными являются договоры, которые могут быть признаны недействительными не только по требованию контрагента, но и по требованию любого заинтересованного лица. Оспоримые договоры – это договоры, признаваемые недействительными лишь по требованию стороны в договоре. Как правило, оспоримые договоры признаются недействительными с момента решения суда. Оспоримые договоры могут сохранять силу, если сторона в договоре, имеющая право требовать признание договора недействительным, не осуществляет этого права в течение определенного срока, а также в том случае, если эта сторона подтверждает договор. Так, договоры, заключенные несовершеннолетними, могут быть признаны действительными, если они были подтверждены лицом по достижению совершеннолетия.

Договоры могут быть совершены в устной или письменной форме, либо путем конклюдентных действий, т.е. действий, свидетельствующих о том, что стороны заключили договор. Например, оптовый торговец послал на швейную фабрику письмо с просьбой выслать готовое платье, указав количество, ассортимент, срок и все условия поставки. Фабрика, не ответив на письмо, отгружает готовое платье в точном соответствии с заказом. Таким образом, из действий стороны следует, что она приняла сделанное ей предложение и договор между ними можно считать заключенным.

UNIT 9

AGENCY CONTRACT

Lead-in

1) What do you know about the agency?
2) What area of law governs this relationship?
3) Can any person exercise agency?
4) What cases does a manufacturer apply to an agent?

1. Read the text and try to determine the key points of it.

Agency

1) Any study of modern law must start with agency, because it lies at the very heart of the subject and because without it modern commerce would not exist. An example will illustrate the point. Suppose that A wishes to open the business for the manufacture and sale of toys. He will have to acquire premises and machinery, engage staff, obtain supplies of the necessary materials and then he must sell the finished product to buyers at home and perhaps abroad. To do these things he will have to make a great many contracts and clearly it will be physically impossible for him to make all the contracts personally. He therefore employs other persons to make them on his behalf. These other persons are called agents. Then he may decide to take in one or more partners, in running of the business of the firm. Alternatively he may decide to form a limited company by filing certain documents to Companies House. A company registered under the Companies Act is a distinct legal person apart from its members and being an artificial person it can do business through agents.
2) What's the essential nature of the agency relations? It can be defined as the relationship which arises whenever one person (the agent) acts on behalf of another person (the principal) and has power to affect the principal's legal position with regard to

a third party. In practice the two most important functions of an agent are: (a) making contracts on his principal's behalf and (b) disposing of his property.

Since the agent usually brings his principal into relationship with a third party it is necessary to consider three different relationships.

(1) Principal and Agent.
(2) Principal and Third Party.
(3) Agent and Third Party.

When is an agent not an agent?

3) The word "agent" is used to describe a person who acts on behalf of another in his dealings with third parties. In commerce, however, the word is very often used in a different sense. For example, a "sole agent" may be simple a person who is given sole selling rights by a particular manufacturer. When such a person contracts with third parties he does so as principal. This distinction is fundamental and must be borne in mind.

The power to act through an agent

4) The common law rule is that any person can act through an agent – qui facit per se, the reason being the obvious one of practical convenience. The only exceptions to the rule occur where a person occupies a position requiring personal performance or where the parties make a contract which expressly or impliedly prohibits delegation to an agent. So far as statute law is concerned, some statutes expressly adopt the common law rule, while others are silent. In the latter case there is a presumption in favour of the common law rule, but this presumption cannot apply if it would be inconsistent with the clear and explicit words of the statute, which is in each case a question of construction.

Agency distinguished from the other relationships

(1) Agents and Trustees

5) Agents resemble trustees in that both stand in a fiduciary position so that they must not make a secret profit and must not allow their interests to conflict with their duty. Again if a principal entrusts property to an agent who misappropriates it,

the agent can be regarded as a trustee. On the other hand an agent differs from a trustee in various ways. A trustee is the legal owner of property while an agent has, at most, a legal power to dispose of it. Again, an agent genuinely represents his principal, whereas it cannot be said that a trustee represents his beneficiaries. Finally there are many cases where the principal-agent relationship is merely that of creditor and debtor. Thus an agent who receives a bribe from a third party is under a personal duty to pay it over to his principal, but this does not give the principal any proprietary interest in the bribe nor in any property bought with it.

(2) Agents, servants and independent contractors.

6) The distinction between servants and independent contractors turns on the master's right to control how the work is to be done, a right which exists in the case of a servant but not in the case of an independent contractor. The distinction between servants and independent contractors on the one hand and agents on the other is essentially one of function, in that agents are mainly employed to make contracts and to dispose of property, while servants and independent contractors are often employed for other tasks. It is not surprising therefore that in the law of contract, agency is all important while the distinction between servants and independent contractors has little significance, whereas in the law of torts the employer's liability turns primarily on the distinction between servants and independent contractors and the doctrine of agency has little importance except in relation to torts connected with contracts or with the transfer of property.

The key of agency

7) The key of agency is the agent's power to alter his principal's legal position, by making contracts on his behalf or disposing of his property. This power to bind the principal can arise in three ways:

(1) By consent.

(2) By operation of law.

(3) By the doctrine of apparent authority.

In the vast majority of cases the agent's power to bind his principal is based on consent. The principal authorizes the agent to do an act on his behalf and the agent does it. The authority can be express or implied, and it can be precedent or subsequent (when it is known as ratification). In two special cases, however, the principal is bound by his agent's act even if he did not consent to it. The first of these cases is of limited importance and is confined to agents of necessity. The second case, however, is far more interesting and important. When a third party deals with an agent he clearly cannot be expected to concern himself with the precise limits of the agent's actual authority. This has crystallised into the maxim that so far as the third party is concerned, the apparent authority is the real authority. Used in this sense the expression "apparent authority" means any authority which the agent appears to have, so that it overlaps with actual authority if the agent does an authorized act. It is more convenient, however, to use the words "apparent authority" to mean authority which appears to exist but does not exist in fact.

**qui facit per alium per se (лат.) – кто действует через посредство другого лица, действует сам.*

2. *Answer the following questions according to the content of the text.*

1) When does usually a manufacturer employ an agent?
2) What is the nature of the agency relationship?
3) What are the key functions of the agent?
4) Who can't be an agent?
5) What is the main principle for a person acting through an agent?
6) What is difference between duties of an agent and a trustee?
7) Ca the provisions of the employer's liability influence on the agency relations?
8) What cases can the agent alter the principal's legal position in?
9) What does the term "apparent authority" mean?

3. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

Agency; commercial law; to form a limited company; to file documents; legal (artificial) person; agency relationship; power (or authority); legal position; sole agent; selling rights; delegation (to); trustee; to adopt a common; law rule; to be consistent with; in a fiduciary position; to entrust property to; to misappropriate; proprietary interest; servant; independent contractor; master; the law of tort; subsequent authority (or ratification); agent of necessity; apparent authority.

4. Find the verb for the following nouns:
e.g. Exception – to except

Performance; delegation; presumption; construction; operation; authority; ratification; appearance.

5. Study the text and find the words that go together with the following verbs:

To acquire …; to make …; to employ …; to run …; to dispose …; to prohibit …; to adopt …; to entrust …; to represent …; to alter …; to bind …

6. The text contains a lot of adjectives; below there are some of them. Examine the corresponding part in the text to find the words that go together with the adjectives:

Modern … (2) (part 1); limited… (part 1); artificial … (part 1); sole … (part 3); selling … (part 3); particular … (part 3); explicit … (part 4); fiduciary … (part 5); legal … (part 5); personal … (part 5); proprietary … (part 5); special … (part 7); actual … (part 7).

7. *Match English collocations with Russian ones.*

1) to engage staff	a) вести дела; заключать сделки
2) to file documents	b) агент с исключительными правами на продажу; монопольный агент
3) to do business	c) правовое положение; статус
4) legal position	d) подать документы; оформить документы
5) dealings	e) быть несовместимым с чем-либо
6) sole agent	f) нанимать персонал
7) to be inconsistent (with)	g) деловые отношения; сделки
8) trustee	h) присваивать (неправомерно)
9) in a fiduciary position	i) подрядчик
10) secret profit	j) в доверительном положении
11) to misappropriate	k) хозяин, работодатель
12) proprietary interest (in)	l) скрытая прибыль
13) independent contractor	m) зависеть от чего-либо
14) to turn (on)	n) доверительный собственник
15) key feature	o) деликтное право
16) master	p) право собственности на что-либо
17) the law of tort	q) главный признак, основная отличительная черта

8. *Work with the text again, find the prepositions used in the following phrases:*

1) it lies … the very heart … the subject (part 1)
2) to form a limited company … filing certain documents … Companies House (part 1)
3) one person (the agent) acts … behalf … another person (the principal) (part 2)
4) to affect the principal's legal position … regard … a third party (part 2)
5) … the agent usually brings his principal … relationship … a third party (part 2)
6) any person can act … an agent (part 4)
7) there is a presumption … favour … the common law rule (part 4)

8) … the other hand an agent differs … a trustee … various ways (part 5)
9) who receives a bribe … a third party is … a personal duty to pay it … … his principal (part 5)
10) the distinction … servants and independent contractors turns … the master's right (part 6)
11) the doctrine … agency has little importance except … relation … torts connected … contracts (part 6)
12) a third party deals … an agent (part 7)

9. Read the following text and give a short summary:

Engaging Commercial Agent

There are a number of different approaches to selling to new markets. One of these is using a commercial agent. Companies have used commercial agents for hundreds of years and they are still crucial intermediaries for many companies (SMEs in particular) when entering new markets today. Other approaches include direct selling, distributors, export houses, employment of local sales staff and franchises.

1) Definition of commercial agents

Commercial agents are independent professional providers of sales and marketing services who, under a contractual arrangement, represent a manufacturer or supplier in a given geographical area.

In the Commercial Agents Directive (86/653/EEC) a commercial agent is defined as 'a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the 'principal', or to negotiate and conclude such transactions on behalf of and in the name of that principal'.

To strengthen the position of commercial agents, who for decades had found themselves in a disadvantaged position when dealing with their principals, the Commercial Agents Directive (Council Directive 86/653/EEC on the co-ordination of the laws of the Member States relating to self-employed commercial agents) was adopted on 18 December 1986. The Directive is still in force today and has not been amended since it was adopted. The Commercial Agents Directive was implemented into UK

legislation in 1993 by the Commercial Agents (Council Directive) Regulations 1993 which came into force on 1 January 1994.

The Commercial Agents Directive is product-focused and does not apply to services. It does not cover:

- Unpaid commercial agents
- Agents who operate on commodity exchanges or in the commodity market
- An officer of a company or association acting as an agent for that company
- A partner acting as an agent on behalf of his partnership Insolvency practitioners
- UK Crown Agents for Overseas Governments and Administrations

As a general rule, unless the parties to a commercial agency contract have chosen otherwise, the laws of the country in which the agent carries out his/her activities apply to the contract. Hence, the Commercial Agents (Council Directive) Regulations 1993 apply to all agents who undertake their activities in Great Britain unless their contract specifies that the laws of another EU Member State should apply.

2) How to find commercial agents

Commercial agents can be found in a number of ways; these include:

- The local Business Link is able to recommend suitable agents for your business. In most of the EU member states there are national commercial agents' organizations that publish journals which include advertisements from principals for their members. These organizations are also likely to have agent databases on their websites that principals can access (possibly for a fee)
- Trade fairs
- Exhibitions
- Trade missions
- Chambers of commerce
- Commercial libraries (for example the British Library IP & Business Centre, Manchester Commercial Library, Birmingham Central Library's Business Insights Centre)

3) Advantages and disadvantages of employing a commercial agent

As the relationship with an agent is based on mutual trust, this relationship is essentially personal and it is important that a principal meets prospective agent face to face before appointing them. It is equally important to keep in close contact after the appointment. Prior to engaging a commercial agent, a principal should ensure that the agent has experience with the product, has contacts among target customers, and has the right skills. A principal should also investigate the agent's reputation and financial standing. There can be advantages and disadvantages to using commercial agents.

Advantages:

- Commercial agents know already the local market and can therefore offer a fast means of entry and a good source of market intelligence
- Commercial agents can communicate with customers in their own language and offer a convenient and 'user-friendly' means of responding to customers' requirements and problems
- Commercial agents often represent a range of product lines and when these complement each other, they can be part of an integrated product range
- Commercial agents are usually paid on the basis of results and the principal maintains the responsibility for customers and the control of important considerations such as pricing, promotion, delivery and after-sales services
- The cost of investigating the market is borne by the agent

Disadvantages:

- A common cause of friction is that a principal believes that their products are not being promoted as well as the other products represented by the agent
- It can be difficult to control the agent's activities and to ensure they continually work hard on behalf of the principal
- Relying on an agent can sometimes tempt a principal to ignore the need to get to know the market and the customers
- Principals need to take the possibility of goodwill compensation into account when a contract is terminated

4) How to draw up a contract with a commercial agent

An agency agreement can be either oral or written but either party has a right to require a signed document containing the provisions of the contract from the other party.

As the purpose of the Commercial Agents Directive is to protect commercial agents, it is advisable for principals to draw up a written contract which outlines the exact details of the agreement to avoid as much trouble as possible if disputes arise or if the contract is terminated. The more detailed the contract, the better it will be because there will be fewer issues to dispute. The contract can be used to enhance an agent's obligations to his/her principal and can be used by the principal to better monitor his/her agent's performance. The contract should also define exactly where the agent can sell products and services, precisely what they are expected to sell and to which customers they are expected to sell.

Principals and agents alike are advised to use a model agency contract or to consult a lawyer specialized in commercial agreements. A standard contract usually contains the following information:

- Identification of the parties
- Definition of the contractual territory or group of customers and exclusivity
- Duration of contract (including whether it is a fixed or an indefinite contract), notice period, and right to renewal/ automatic renewal
- Regulatory requirement (some countries require agents to be registered)
- Agent responsibilities e.g. can the agent enter into contracts with third parties on behalf of the principal or should enquiries be passed on to the principal; treat received information confidentially; keep the principal informed about the situation in the territory/with the customer agent must use his/her best endeavor to promote his/her principal's product(s) in the area/to the customer group
- Principal responsibilities e.g. supply condition of sale to agents and clients; specify delivery details, order processing and quality of goods; set sales targets
- The product(s) covered by the contract, including after-sales services, guarantees, complaint procedures, conditions of sale and credit risk evaluations of customers

- Intellectual property rights (patents, trademarks) Payment of commission Indemnity/compensation
- Transferability of obligations i.e. is it possible for either party to transfer or delegate its obligations to a third party
- Restraint of trade clause (if required)
- Applicable law and jurisdiction
- Modifications to the contract

5) Remuneration of commercial agents

Commercial agents work usually on a commission basis which means that principals will pay their agents commission on the revenue that the principal accrues as a result of his/her agent's activities. Subject to the terms of the agency agreement, a commercial agent is entitled to commission on a transaction which has been concluded during the period covered by the contract if the transaction:

- Has occurred as a result of the agent's action
- Is a repeat order from a customer previously acquired by the agent, although the order is not placed through him/her
- Relates to the geographical area or group of customers entrusted to the agent

Unless contracted out, a commercial agent is entitled to commission on a transaction which has been concluded after the contract has been terminated if:

- The transaction is mainly attributable to the agent's effort during the period covered by the contract and if this transaction was entered into within a reasonable time after the contract terminated
- An order from a third party which was the result of the action of the agent, or a repeat order from a customer previously acquired by the agent reached the principal or the agent before the contract terminated

A commission is due from the principal to his/her agent when:

- The principal has accepted or delivered the goods
- The principal should, according to his agreement with the customer, have accepted or delivered the goods
- The customer accepts or delivers the goods

Commission is due at the latest when the customer has executed his/her part of the transaction or should have done so if the

principal had executed his/her part of the transaction. It is common for goods to be delivered in instalments and it would therefore be advisable to state in the agency contract when commissions on instalments become due.

When commission is due, the principal must pay his/her agent no later than on the last day of the month following the quarter in which it became due. The right to commission can only be nullified if the contract between the customer and the principal will not be executed and the cancellation is not due to the principal's actions.

A principal has an obligation to provide his/her agent with a statement of the commission due no later than on the last day of the month following the quarter in which the commission is due. This statement must outline the main features used to calculate the commission. A commercial agent is also entitled to be provided with all the necessary information, including extracts from his/her principal's books, to check the commission due if requested.

6) Termination of the contract

An agency contract can be for a fixed period, which means that it will come to an end on an agreed date, or it can be indefinite. If a contract for a fixed period continues after the end of the fixed term, it will be deemed to be converted into an indefinite contract. Either party to an indefinite contract may terminate the contract by giving notice.

Statutory notice periods are minimum periods which mean that the two parties are not allowed to agree on a shorter notice period but they are allowed to agree on a longer notice period.

Under English law an agent is entitled to either an indemnity or compensation for the damage caused due to the termination of a contract which has not been terminated because he/she has not fulfilled his/her contractual obligations. An agent is only entitled to an indemnity if this has been included in the contract, if it has not, the right to compensation applies. The amount of an indemnity is capped at a sum equal to the equivalent of the agent's average annual remuneration over the previous five years. If the contract does not go back five years, it will be the average

of the annual remuneration for the period of the contract. An agent is entitled to an indemnity if:

- He/she has expanded the principal's business by bringing in new customers or increased the volume of business from existing customers and the principal will continue to derive substantial business from these customers
- It is equitable having regards to all the circumstances and, in particular, the commission lost by the agent on the business transacted with those customers (please note that the word 'equitable' is very open to interpretation)
- An agent is entitled to compensation for the damage he/she has suffered as a result of the termination of his/her contract with his/her principal and in particular when:
- He/she has been deprived of the commission which a proper performance of the contract would have procured him/her whilst providing his/her principal with substantial benefits linked to his/her activities
- The agent has not been able to write off the debts (costs and expenses) that he/she has incurred while carrying out his/her activities under the advice of his/her principal

An agent is not entitled to indemnity nor compensation if his/her principal terminates the contract because the agent has not fulfilled his/her obligations, if the agent terminates the contract, unless the termination is due to age, infirmity, illness or death, or if the agent assigns his/her rights and duties to another agent.

Notice of an intention to make a claim for compensation or indemnity must be made by the agent in writing no later than one year after the contract was terminated. It is important to bear in mind that compensation or indemnity may be payable even if the principal has given proper notice to the agent. It is essential for both an agent and a principal to ensure that the compensation/indemnity clauses of a contract are drafted carefully. Principals should also note that, in addition to compensation/ indemnity, an agent may still be entitled to receive commission on future orders (please see the previous section on commission).

It is important for principals to remember that their agents are also entitled to indemnity or compensation if the contract is terminated

due to the agent's age, infirmity, illness or death. A contract automatically terminates when an agent dies if it is a 'one man band' operation. However, the situation is different if the agent is part of a partnership or a company, as the partnership or the company is likely to continue after the death of the agent.
(Enterprise Europe Network London, London Chamber of Commerce and Industry, June 2010 – londonchamber.co.uk).

UNIT 10

INTERNATIONAL LAW

Lead-in

1) What is implied under international law?
2) What relations are governed with international law?
3) Do you know what rules are applied to regulate international conflicts?
4) It there the supremacy of law of any State in the area of international law?

1. Read the text and try to determine the key points of it.

What is International Law?

1) International law is the universal system of rules and principles concerning the relations between sovereign States, and relations between States and international organizations such as the United Nations.
   Although international law is mostly made between States or in relation to States, its effects are broader and can also affect other entities. Sometimes these are called 'non-state actors' and include individuals, corporations, armed militant groups, groups that wish to secede or break away from a State, and other collective groups of people, such as minorities (ethnic, religious, linguistic) and Indigenous peoples.
2) The modern system of international law developed in Europe from the 17th century onwards and is now accepted by all countries around the world. The rules and principles of international law are increasingly important to the functioning of our interdependent world and include areas such as:
   - telecommunications, postal services and transportation (such as carriage of goods and passengers);
   - international economic law (including trade, intellectual property and foreign investment);
   - international crimes and extradition;

- human rights and refugee protection;
- the use of armed force by States and non-State actors;
- counter-terrorism regulation;
- nuclear technology;
- protection of the environment; and
- use of the sea, outer space and Antarctica.

3) An important aspect of international law is resolving international disputes, but it is only one part. Like any legal system, international law is designed to regulate and shape behaviour, to prevent violations, and to provide remedies for violations when they occur.

   Sources of International Law

   International law is a living body of law and principle – it grows and develops in response to contemporary challenges informed by how states behave, by what states agree between themselves, by what the international court of Justice and other national courts say, and also by what respected commentators think about how the law should develop. As there is no international parliament to pass law or the rules to make laws, we have to consider a variety of sources of law making and become comfortable with a degree of uncertainty about how the law can be described. There is debate about both the method and substance of international law amongst learned academics and jurists.

4) It is generally accepted that Article 38 of the Statute of the International Court of Justice is a complete statement of the sources of international law. Article 38 describes the following four sources:
   - international conventions and treaties that establish rules that States expressly recognise;
   - international custom as evidence of general practice(s) accepted by States as law;
   - general principles of law; and
   - judicial decisions and the teachings of highly qualified publicists of various nations.

   The International Court of Justice (ICJ), which is the principal judicial organ of the United Nations, is authorised to consider these sources when deciding disputes.

5) However, a decision of the ICJ has no binding force except between parties and in respect of that particular case: Article 59, Statute of the International Court of Justice.

The International Conventions and Treaties

Treaties, or international conventions, can be bilateral (between two States) or multilateral (between many States).

These agreements, known as 'arrangements of less than treaty status', are generally expressions of intention or political commitment.

A treaty is a written legal document (instrument) agreed between states and governed by international law. It may be in the form of a single instrument, or two or more related instruments although often used interchangeably, the term 'convention' is usually reserved for multilateral agreements, such as the Hague, Geneva and Vienna conventions. Treaties can also be called agreements, protocols or instruments.

6) The *Vienna Convention on the Law of Treaties* came into force on 27 January 1980. Although it is not a complete code of the law of treaties, it declares existing law and also provides evidence of emerging norms of international law. It deals with the conclusion of treaties, the termination of treaty relationships, and the effect of breach of treaty obligations. It does not deal with treaties between States and non-State organisations; questions of State succession; or the effect of war on treaty obligations and relationships.

7) The process for concluding a treaty generally includes the following steps:

Adoption – when the negotiators of the treaty finalise the text, the text is adopted. This may occur at a specially-called conference, or at a meeting of a body such as the UN General Assembly. The text will usually indicate how States are to consent to the terms of the treaty, whether through signature, exchange of letters, ratification, acceptance, approval, accession, or other agreed means: see Article 11 of the Vienna Convention on the Law of Treaties.

Signature – signature indicates an intention to become a party to a treaty, and does not usually establish consent to be bound by the terms of the treaty, unless the treaty provides for the signature having that effect.

Ratification – this is the confirmation of the signature of the treaty, and is the formal act by which a State indicates that it consents to be bound by the treaty. It is usually carried out by the sovereign or head of State.

8) Before ratifying a treaty, a State will usually have carried out any necessary steps to enable it to comply, such as legislation or other forms of domestic approval. A State which has signed a treaty is obliged not to act in such a way that would defeat the object and purpose of the treaty. A State is not, however, bound by a treaty until ratification, and is not bound to ratify a treaty it has signed.

   Accession – a State which has not signed a treaty can formally indicate its intention to be bound by the treaty before or after the treaty has come into force.

   Entry into force – the terms of a treaty will usually specify how and when it comes into force. Many multilateral treaties require that a specified number of States consent to be bound before the treaty can enter into force. An example is the 1982 UN Law of the Sea Convention, which required 60 ratifications before it came into force in 1994.

9) *Treaties are binding* – the principle of pacta sunt servanda (from Latin, meaning 'agreements are to be kept' or 'treaties are binding') asserts that:
   - when treaties are properly concluded, they are binding on the parties, and must be performed by them in good faith;
   - the obligations created by a treaty are binding in respect of a State's entire territory;
   - a State cannot use inconsistency with domestic law as an excuse for failing to comply with the terms of a treaty.

   Reservations to treaties – once a treaty comes into force, a State cannot decide which parts of a treaty it chooses to be bound by. However, upon signing a treaty, a State may lodge a formal reservation to it which may modify the scope of the legal obligation owed by that State under the treaty.

   A reservation cannot be made if the terms of the treaty exclude reservations, or if the reservation is incompatible with the object and purpose of the treaty; and other parties to the treaty can also object to a reservation. A party objecting to a

reservation may either not enter into a treaty relationship with the reserving State, or may enter into a treaty relationship, but not enjoy the provision to which the reservation relates.

10) *Custom*

Customary international law describes general practices accepted as law by States. The development of customary international law is an ongoing process, making it more flexible than law contained in treaties. The task of identifying or describing customary international law, involves consideration of the following elements:

- the degree of consistency and uniformity of the practice;
- the generality and duration of the practice;
- the interests of specially affected States; and
- the degree to which the States who adopt the practice do so from a recognition that the practice is required by, or consistent with prevailing international law. The shorthand for the belief that the practice is required by law is ecogni juris et necessitates, a Latin phrase.

(legalanswers.sl.nsw.gov.au)

2. *Answer the following questions according to the content of the text.*

1) What does international law concern?
2) What do ‘non-state actors’ include?
3) When was the modern system of international law developed?
4) Which areas do rules and principles of international law concern?
5) What kinds of disputes are resolved with international law?
6) What bodies regulate contemporary challenges that occur in the world?
7) What are the main sources of international law?
8) What is the principal judicial organ of the United Nations?
9) Are the decisions of the International Court of Justice binding?
10) What’s a treaty?
11) It there a complete code of the law of treaties?

12) What does the Vienna Convention of the Law of Treaties deal with?
13) What id adoption?
14) What indicates a signature?
15) What does State indicate with ratification?
16) What's accession?
17) What does the term "entry in force" mean?
18) When are treaties considered "binding"?
19) When can the reservation of a treaty be made?
20) What do law scholars understand under the term customary international law?

3. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

Universal system of rules and principles; sovereign States; the United Nations; affect other entities; to secede or break away from a State; Indigenous peoples; accepted by all countries; to be increasingly important; refugee protection; environment; to resolve disputes; to prevent violations; in response to challenges; the method and substance of international law; to pass law; the principal judicial organ; to have no binding force; bilateral; emerging norms of international law; questions of State succession; negotiators; an intention to become a party; consent to be bound; to be obliged not to act in such a way; to object to a reservation.

4. Find the verb for the following nouns:
e.g. Relation – to relate

Extradition; protection; regulation; prevention; violation; provision; development; behaviour; acceptance; statement; authority; arrangement; obligation.

5. Match the words to make a phrase found in the text:

1) international	a) technology
2) around	b) decisions
3) postal	c) challenges
4) intellectual	d) succession
5) human	e) the world
6) nuclear	f) relations
7) living	g) organizations
8) contemporary	h) principles
9) national	i) services
10) general	j) force
11) judicial	k) body
12) binding	l) the object
13) treaty	m)rights
14) state	n) courts
15) defeat	o) law
16) domestic	p) roperty

6. Study the text and find the words that go together with the following verbs:

To break away from …; to share …; to provide …; to establish …; to decide/resolve …; to come/enter into …; to declare …; to deal with …; to consent with …; to become …; to be bound by …; to ratify …; to comply with …; to object to …; to enjoy …; to adopt …

7. The text contains a lot of adjectives; below there are some of them. Examine the corresponding paragraph in the text to find the words that go together with the adjectives:

Sovereign (part 1); armed militant (part 1); indigenous (part 1); foreign (part 2); outer (part 2); legal (part 2); national (part 3); complete (part 4); qualified (part 4); binding (part 5); political (part 5); existing (part 6); specially-called (part 7); general (part 7); multilateral (part 8); good (part 9); domestic (part 9); ongoing (part 10).

8. Work with the text again, find the prepositions used in the following phrases:

1) the modern system … international law developed … Europe … the 17th century (part 2)
2) is now accepted … all countries … the world (part 2)
3) it grows and develops … response … contemporary challenges informed … how states behave (part 3)
4) become comfortable … a degree … uncertainty … how the law can be described (part 3)
5) a decision … the ICJ has no binding force except … parties and … respect … that particular case (part 5)
6) it may be … the form … a single instrument (part 5)
7) the term 'convention' is usually reserved … multilateral agreements (part 5)
8) it does not deal … treaties … States and non-State organisations (part 6)
9) the process … concluding a treaty (part 7)
10) this may occur … a meeting … a body such … the UN General Assembly (part 7)
11) the treaty provides … the signature (part 7)
12) … ratifying a treaty, a State will usually have carried … any necessary steps (part 8)
13) use inconsistency … domestic law … an excuse … failing to comply … the terms … a treaty (part 9)
14) other parties … the treaty can also object … a reservation (part 9)

9. Translate into Russian the following sentences paying attention to Passive Voice Verbs.

1) The roots of many Anglo-American legal concepts **are being traced** to Roman legal principles both by jurists and historians.
2) Norman French terms alongside Anglo-Saxon ones **were introduced** in legal procedure after the Norman conquest of England in 1066.
3) English legal proceedings **were carried** on in the French language until the late fourteenth century.

4) Numerous French terms **are** still commonly **used**, such as petit and grand juries.
5) It **is charged** that conservative jurists no longer hold the high ground in the jurisprudential debate and that we have, in fact, become indistinguishable from those whom we were once accustomed to criticise.
6) In the case of a new global war the existing world order **will have been altered** gone by the end of this war.
7) The only liberal in a die-hard conservative government **was gone** in eight months, charging that the administration had reneged on its promises.
8) The outcome of the Supreme Court's decision **was** not **expected** to fall on one side or the other of the federalism divide, but these expectations **would** not **be justified.**
9) The celebrity singers found good reason to believe that Vice President **had been elected** President by a clear constitutional majority of the popular vote.
10) Cultural issues **were being suppressed** in the election campaign because the two sides **were** so **cemented** and evenly **matched** that the marginal voters in the middle became a near exclusive focus of campaign rhetoric and positioning.
11) The European "code" system **is used** in Louisiana and **will be used** for an indefinite period, because the Napoleonic code took hold before the territory became part of the United States.
12) While though questions on the country's foreign policy **were being asked** the candidate seemed at a loss, but given an opportunity to speak on domestic issues he convinces almost everybody that he was the states' best choice.
13) With the decreased knowledge of classical languages and the trend away from elitism, fewer and fewer non-English terms **have been employed** over the years.
14) The senator promised that in the case of his re-election poverty in the states **would have been eliminated** by the end of his tern.
15) Most delegates who participated in the state-wide political convention **had been elected** by local political meetings.

10. Make the following sentences Passive and translate the initial ant transformed sentences.

1) The creators of the International Court of Justice provided that although its seat would be in the Hague, it would hold sessions whenever it reckons it advantageous.
2) A legal system will not execute its rules without the work of a great number of people.
3) Lawyers have always informed their clients of how to use law.
4) Scholars define the legal culture as the climate of social thought and force that determines the usage of law.
5) The legal system deals with the control of behaviour.
6) The existent rules, norms, and behaviour patterns of people within the legal system form its essence.
7) It is not proper to regard law as a dictatorial ruler.
8) People refer to law when they mean the network of rules and regulations of the governmental social culture.
9) The public was furious that the Court had upheld the collective right against constitutional challenge in the context of the family and the church.
10) The Supreme Court protected the rights of labour organizations in two significant cases.

11. Read the text and give a short summary:

Conflict of laws

"Conflict of laws, or private international law, or international private law is that branch of international law and interstate law that regulates all lawsuits involving a "foreign" law element, where a difference in result will occur depending on which laws are applied as the lex causae. Firstly, it is concerned with determining whether the proposed forum has jurisdiction to adjudicate and is the appropriate venue for dealing with the dispute, and, secondly, with determining which of the competing state's laws are to be applied to resolve the dispute. It also deals with the enforcement of foreign judgements.

Its three different names are generally interchangeable, although none of them is wholly accurate or properly descriptive. Within local federal systems where inter-state legal conflicts require

resolution, (such as in the United States), the term "Conflict of Laws" is preferred simply because such cases are not an international issue. Hence the term "Conflict of Laws" is a more general term for a legal process for resolving similar disputes, regardless if the relevant legal systems are international or inter-state, though this term is also criticised as being misleading in that the object is the resolution of conflicts between competing systems rather than "conflict" itself.

History

The first instances of conflict of laws can be traced to Roman law where parties from foreign countries would go before a praetor perigrinus in Rome to plead their case. The praetor pergrinus would often choose to apply the law native to the foreign parties rather than Roman law.

The modern field of conflicts emerged in the United States during the 19th century with the publishing of Joseph Story's treatise on the Conflict of Laws in 1834. Story's work had a great influence on the subsequent development of the field in England such as those written by A.V. Dicey. Much of the English law then became the basis for conflict of laws for most commonwealth countries.

The stages in a conflict case

1) The court must first decide whether it has jurisdiction and, if so, whether it is the appropriate venue given the problem of forum shopping.
2) The next step is the recognizable definition of the cause of action into its component legal categories which may sometimes involve an incidental question (also note the distinction between procedural and substantive laws).
3) Each legal category has one or more choice of law rules to determine which of the competing laws should be applied to each issue. A key element in this may be the rules on renvoi.
4) Once it has been decided which laws to apply, those laws must be proved before the forum court and applied to reach a judgment.
5) The successful party must then enforce the judgment which will first involve the task of securing cross-border recognition of the judgement. In those states with an underdeveloped set of

Conflict rules, decisions on jurisdiction tend to be made on an ad hoc basis, with such choice of law rules as have been developed embedded into each subject area of private law and tending to favour the application of the lex fori or local law. In states with a more mature system, the set of Conflict rules stands apart from the local private civil law and adopts a more international point of view both in its terminology and concepts. For example, in the European Union, all major jurisdictional matters are regulated under the Brussels Regime, e.g. the rule of lis alibi pendens from Brussels apply in EU Member States and its interpretation is controlled by the European Court of Justice rather than by local courts. That and other elements of the Conflict rules are produced supranationally and implemented by treaty or convention. Because these rules are directly connected with aspects of sovereignty and the extraterritorial application of laws in the courts of the signatory states, they take on a favour of public rather than private law because each state is compromising the usual expectations of their own citizens that they will have access to their local courts, and that local laws will apply in those local courts. Such aspects of public policy have direct constitutional significance whether applied in the European context or in federated nations such as the United States, Canada, and Australia where the courts have to contend not only with jurisdiction and law conflicts between the constituent states or territories, but also as between state and federal courts, and as between constituent states and relevant laws from other states outside the federation

Choice of law rules

Courts faced with a choice of law issue have a two-stage process:

1) the court will apply the law of the forum (lex fori) to all procedural matters (including, self-evidently, the choice of law rules); and
2) it counts the factors that connect or link the legal issues to the laws of potentially relevant states and applies the laws that have the greatest connection, e.g. the law of nationality (lex patriae) or domicile (lex domicilii) will define legal status and capacity, the law of the state in which land is situated (lex

situs) will be applied to determine all questions of title, the law of the place where a transaction physically takes place or of the occurrence that gave rise to the litigation (lex loci actus) will often be the controlling law selected when the matter is substantive, but the proper law has become a more common choice.

For example, suppose that A who has a French nationality and residence in Germany, corresponds with B who has American nationality, domicile in Arizona, and residence in Austria, over the internet. They agree the joint purchase of land in Switzerland, currently owned by C who is a Swiss national, but they never physically meet, executing initial contract documents by using fax machines, followed by a postal exchange of hard copies. A pays his share of the deposit but, before the transaction is completed, B admits that although he has capacity to buy land under his lex domicilii and the law of his residence, he is too young to own land under Swiss law. The rules to determine which courts would have jurisdiction and which laws would be applied to each aspect of the case are defined in each state's laws so, in theory, no matter which court in which country actually accepts the case, the outcome will be the same (albeit that the measure of damages might differ from country to country which is why forum shopping is such a problem). In reality, however, moves to harmonise the conflictual system have not reached the point where standardisation of outcome can be guaranteed.

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**praetor pergrinus – претор в Древнем Риме, решавший споры между иностранцами и римлянами.*

**lis alibi pendens – иск, находящийся на рассмотрении.*

**lex causae – право, свойственное договору; право, регулирующее существо отношений сторон в договоре (в отличие от права, определяющего дееспособность сторон и форму сделки.)*

12. Match English collocations with Russian ones.

1) conflict of laws	a) суд; собрание
2) lawsuit	b) международные правовые конфликты
3) forum	c) спорный вопрос
4) enforcement of judgement	d) коллизионное право
5) interstate legal conflict	e) защищать дело в суде
6) issue	f) приведение в исполнение судебного решения принудительным путем
7) to plead a case	g) судебный процесс; иск
8) commonwealth countries	h) вопросы права собственности
9) jurisdiction	i) правила отсылки
10) substantial law	j) компетенция; сфера полномочий
11) rules on renvoi	k) государства, подписавшие договор
12) ad hoc basis	l) страны Содружества
13) application of law	m)материальное право
14) questions of title	n) сделка
15) transaction	o) применение права
16) signatory states	p) размер возмещения убытков
17) measure of damages	q) специальная основа

13. Find the corresponding definition to the following terms.

1) lawsuit	a) disagreement among people;
2) venue	b) the power or right to make judgments about the law;
3) dispute	c) an opinion or a decision given by a legal court;
4) judgement	d) a place or opportunity for discussing a subject;
5) resolution	e) aspect of a legal system that deals with the technical aspects (practices and procedures) and prescribes the steps for enforcing civil and criminal law;

6) jurisdiction	f) the place from which a jury is drawn and in which trial is held;
7) forum	g) law that governs rights and obligations of those who are subject to it;
8) substantive law	h) a process by which a court of law makes a decision to end a disagreement between people or organizations;
9) procedural law	i) the state of living in a particular place;
10) litigation	j) legal method for settling controversies or disputes between and among persons, organizations, and the State;
11) residence	k) the act of finding an answer or solution to a conflict

14. Match the nouns to make a phrase.

1) branch of	a) the field
2) enforcement of	b) recognition
3) development of	c) documents
4) commonwealth	d) action
5) the cause of	e) court
6) choice of	f) sovereignty
7) forum	g) law
8) cross-border	h) citizens
9) court of	i) outcome
10) aspects of	j) justice
11) expectations of	k) judgement
12) two-stage	l) damages
13) contract	m)rules
14) measure of	n) process
15) standardisation of	o) countries

15. Render the following text into English.

Современное международное право можно определить, как систему юридических норм, регулирующих отношения между государствами и другими субъектами международного права, которые создаются путем согласования воли участников этих отношений и обеспечиваются в случае необходимости принуждением, осуществляемым государствами и международными организациями.

Международному частному праву свойственны свои специфические приемы и средства регулирования прав и обязанностей участников гражданских правоотношений международного характера. Выделяются два метода: коллизионный и материально-правовой.

Коллизионный метод действует посредством применения коллизионной нормы, которая определяет, право какого государства будет регулировать соответствующее отношение. Таким образом, коллизионный метод регулирования действует посредством обращения к коллизионной норме, которая, в совокупности с определенной материальной нормой, составляет коллизионный механизм регулирования.

Материальный метод регулирования существует в двух формах. Первая – международно-правовая. Она имеет место при наличии материальной (неколлизионной) нормы, унифицированной международным договором, которая регулирует отношения непосредственно. Второе проявление материально-правового метода заключается в действии национальных материальных норм, специально ориентированных на регулирование отношений, входящих в предмет международного частного права.

Коллизионные нормы международного частного права представляют собой инструмент для определения конкретного национального правопорядка, который будет регулировать отношения по существу.

Например, при заключении договора аренды, французский арендодатель и российский арендатор не определили самостоятельно право, которое будет регулировать их отношения, вытекающие из этого договора (автономия воли). В случае возникновения спора, суд или иной правоприменительный орган, в условиях отсутствия материального международно-правового регулирования по этим вопросам, будет вынужден обратиться к коллизионным нормам, на основании которых он и определит, какое право (российское или французское) можно применить. А уже нормы российского либо французского права будут регулировать отношения, по существу. Таким образом, коллизионные нормы сами по себе лишены регулятивного воздействия, их функция состоит в формировании коллизионного механизма регулирования.

Универсализация международно-правового регулирования различных сфер межгосударственных отношений, максимальная детализация взаимных прав и обязанностей субъектов международного права и создание международных механизмов по осуществлению контроля и мер доверия в их совокупности могли бы привести к своевременному выявлению фактов любых отступлений от международных обязательств.

16. Study the following words and phrases.

court

1) суд, судья, судьи; судебное заседание: court – главный суд первой инстанции, territorial court – территориальный суд, traffic court – дорожный суд, Court of Appeal – апелляционный суд, Supreme Court – верховный суд, out of court – не подлежащий обсуждению, бесспорный. Syn: tribunal, magistrate, judge, bench, bar; 2) здание суда. Syn: courthouse, city hall, federal building.

law

закон: to adopt/enact/pass a law – принимать закон, to administer/ apply/enforce a law – применять закон, to annul/ repeal/revoke a law – аннулировать, опротестовать закон, to be at law with smb – быть в тяжбе с кем-либо, to break/flout/ violate a law – нарушить закон, to draft a law – готовить законопроект, to obey/ observe a law – соблюдать закон, to promulgate a law – опубликовать закон, to go beyond the law – совершить противозаконный поступок, to keep within the law – придерживаться закона, to lay down the law –формулировать закон, fair/just law – справедливый закон, unfair law – несправедливый закон, stringent law – строгий закон, in law – по закону, common law – общее право, англосаксонское право, civil law – гражданское право, law of God – моральный закон, естественное право, natural law – естественное право, shield law – закон об охране конфиденциальности, law and equity – закон и право справедливости, law and order – правопорядок. Syn: enactment, statute, ordinance, edict, decree, ruling.

rule

1) *n.* правило, норма: to adopt a rule – принять за правило, to apply/enforce a rule – ввести правило; to establish/lay down/ make rules – устанавливать правила, to obey/observe a rule –

подчиниться правилу, to rescind/revoke a rule – отменять правило, firm/hard-and-fast/inflexible/strict rule – твердое правило, general rule – общее правило, ground rule – основные правила игры, (to be) against/in violation of the rules – нарушать правила, rule of law – власть закона. Syn: law, dictum, regulation. 2) *adj*. правовой, юридический; судебный: legal system – законодательство. Syn: lawful, judicial, juristic.

postulate

1. *n.* 1) аксиома, постулат. Syn: axiom; 2) предварительное условие; важное допущение; вероятное предположение
2. *v.* 1) постулировать; принимать без доказательства, теоретически допустить. Syn: to suppose; 2) требовать; обусловливать, ставить условием. Syn: to demand, to claim.

treaty

1) договор, соглашение, конвенция: to abrogate denounce a treaty – расторгать договор, to break/violate a treaty – нарушать договор, to conclude/sign a treaty – заключать договор, to confirm/ratify a treaty – утверждать, ратифицировать договор, to negotiate/work out a treaty – обсуждать, разрабатывать соглашение, treaty provisions – условия договора, bilateral treaty – двусторонний договор, peace treaty – мирный договор, treaty of alliance – договор о союзе, treaty of limits – договор о границах, treaty of cession – договор о передаче территории, treaty of commerce and navigation – договор о торговле и мореплавании, commercial/trade treaty – торговое соглашение, treaty of friendship – договор о дружбе, treaty of mutual assistance – договор о взаимной помощи, treaty of friendship, cooperation and mutual assistance – договор о дружбе, сотрудничестве и взаимной помощи, treaty of neutrality – договор о нейтралитете, non-proliferation treaty – договор о нераспространении ядерного оружия, test-ban treaty – договор о запрещении испытаний ядерного оружия, treaty commitments/obligations – договорные обязательства, treaty law – международное договорное право. Syn: contract, agreement, compact, pact, settlement, concord, convention, covenant; 2) переговоры: to be in treaty with smb. for smth. – вести с кем-либо переговоры о чем-либо. Syn: negotiation, talks.

17. Translate quickly the following phrases.

Supreme court – подчиняться правилу – common law – власть закона – treaty provisions – расторгать договор – to ratify a treaty – предварительное условие – to draft a law – договор о запрещении испытания ядерного оружия – to lay down the law – твердое правило – treaty of alliance – нарушить договор – bilateral treaty – ставить условием – to be at law with smb. – заключать договор – out of law – договорные обязательства – апелляционный суд – natural law – договор о нейтралитете – law and order – нарушить закон – in law – международное договорное право – to be beyond the law – готовить законопроект – договор о границах – hard-and-fast strict rule – устанавливать правила – to work out a treaty – законодательство – treaty of friendship – закон и право справедливости – твердое правило – trade treaty – договор передачи территории – принимать закон – to be in treaty with smb. for smth. – договор о нераспространении ядерного оружия – расторгать договор – to go beyond the law – отменять правило – rule of law – формулировать закон – general rule – договор о торговле и мореплавании – shield law – моральный закон – to promulgate the law – договор о дружбе, сотрудничестве и взаимной помощи.

18. Fill the gaps with the words from the box.

supranational / non-governmental / inter-state / bilateral/ customs-union / charter / legal framework / conflict of laws

1) A … organization is a legally constituted organization created by private person or organizations with no participation or representation of any government.
2) The EU is a … organization that creates, implements and enforces policies for its members.
3) The International Court of Justice has been criticized for its failure to resolve … disputes.
4) Russia and Armenia have concluded a … agreement on trade and economic cooperation.
5) A … is a group of nations who wish to remove customs barriers between them.

6) … refers to the body of law dealing with disputes between private persons who live in different jurisdictions.
7) A … is, in essence, a broad system of rules.
8) A … is an agreement by which rights are granted to an international body by the signatory nations to the agreement.

19. Review your knowledge regarding International Law.

a) Scan the text.

International law (or Public International Law) consists of rules and principles which govern the relations and dealings of nations with each other. It concerns itself only with questions of rights between several nations or nations and the citizens or subjects of other nations. In contrast, Private International Law deals with controversies between private persons, natural or judicial, arising out of situations having significant relationship to more than one nation. In recent years the line between public and private international law has become increasingly uncertain, because issues of private international law may also involve issues of public international law, and *vice versa.*

b) Classify legal areas into Public International Law or Private International Law.

~~adoption~~ / arms control / asylum / contractual relations/ divorce ~~environmental issues~~ / human rights / immigration/ international crime / maritime law / piracy / war crimes

Public International Law	**Private International Law**
environmental issues	*adoption*

20. Read the text on the sources of Public International Law below and find the definitions of the key words.

Public International Law derives its authority from three main sources.

1. Treaties and international conventions are written agreements concluded by two or more sovereign nations or by a nation and an international organization, such as the European Union. The power to enter into treaty relations is an essential attribute of sovereignty. There is a cardinal law that treaties validly concluded must not be broken by the signatories. This source is also known as conventional international law.

2. International agreements or conventions create law for the parties of the agreement. They may also lead to the creation of customary international law when they are intended for adherence generally and are in fact widely accepted. Treaties and conventions were, at first, restricted in their effects to those countries that ratified them. They are particular, not general, international law; yet regulations and procedures contained in treaties and conventions have often developed into general customary usage, that is, have come to be considered binding even on those states that did not sign and ratify them. Some customs may become part of international law because of general acceptance by most nations, even if not embodied in a written treaty instrument.

3. General principles common to systems of national law fall into the same category and rare, in fact, often difficult to distinguish from customs as a source of international law.

1) convention	a) the customary method of performing or carrying out an activity that is followed by a particular group of people;
2) sovereign	b) to give formal approval to something in order that it can become law;
3) conclude	c) self-governing and not ruled by another state;
4) binding	d) rule;
5) treaty	e) legally required;
6) usage	f) the action of following a rule or keeping to an agreement;
7) custom	g) legally binding agreement between states sponsored by an international organization;
8) regulation	h) legally binding agreement between two or more states;
9) adherence	i) a formal legal document;
10) ratify	j) a long established tradition or usage that becomes customary law if it (a) consistently and regularly observed and (b) recognized by those states observing it as a practice that they must follow;
11) instrument	k) to make a formal agreement complete and fixed, especially after long discussions or arrangements

21. Learn the active vocabulary and translate the following sentences from Russian into English.

Active vocabulary

public international law – международное публичное право
private international law – международное частное право
supranational law – наднациональное право
conflict of laws – коллизия правовых норм, коллизионное право
body of rules – совокупность норм
to govern rights and duties – регулировать права и обязанности
source of law – источник права
custom – обычай
principal vehicle – основной инструмент
(private) individual – физическое лицо
business entity – юридическое лицо
to be concerned with – иметь дело с (syn. to deal with)
to be distinguished from – отличаться от
to unite authority – объединять власть

1) В самом широком смысле термин «международное право» может означать публичное международное право, частное международное право, а с недавних пор и наднациональное право.
2) Частное международное право иногда называют коллизионным правом.
3) Публичное международное право это совокупность норм и правовых принципов, которые регулируют права и обязанности национальных государств в их отношениях друг с другом.
4) Источниками международного публичного права являются договоры, обычай и общие принципы права.
5) Международные институты и межправительственные организации являются основным инструментом создания и обеспечения международного публичного права.
6) Частное международное право отличается от публичного международного права тем, что регулирует отношения между физическими и юридическими лицами, а не отношения между государствами или международными организациями.
7) В настоящее время единственным примером транснациональных отношений является Европейский союз, в котором суверенные государства объединили свою власть через систему судов и политических институтов.

UNIT 11

COMMERCIAL LAW

Lead-in

1) What area of law do we apply to support businesses in making money out of their products and services?
2) Is it possible to govern relations in the Intellectual Property area with Commercial law?
3) Commercial law is sometimes called as Business Law. Why? What do you think?
4) What areas of law is it concerned with?

There are many commercial relations which are established by people in the world of business. These relationships will typically be regulated by a body of law. Brought together, these branches of law represent the law of commercial transactions. Below are the main areas of commercial law. Match each branch to the contents it covers.

~~Banking~~ Bankruptcy Commercial Law Consumer Credit Contracts Debtor and Creditor Landlord and Tenant Mortgages Negotiable Instruments Real Estate Transactions Sales Secured Transactions

1	These regulations establish which institutions may offer credit and debit facilities.	*Banking*
2	This law provides for the development of a plan that allows a debtor, who is unable to pay his creditor, to resolve his debts through the division of his assets among his creditors.	
3	This branch of law governs the broad areas of business, commerce, and consumer transactions.	

4	This law regulates how consumers may finance transactions without having to pay the full cost of the merchandise at the time of the transactions.	
5	This law covers promises that the law will enforce. It provides remedies if a promise is breached.	
6	This law governs situations where one party is unable to pay a monetory debt to another.	
7	This law governs the rental of commercial and residential property. The basis of the legal relationship between the parties is grounded in both contract and property law	
8	This transaction involves the transfer of an Interest in land as a security for a loan or other obligation. It is the most common method of financing real estate transactions.	
9	These are ‘unconditioned writings’ that promise or order the payment of a fixed amount of money.	
10	The agreement to sell between a buyer and seller is governed by the general principles of contract law. It is normally required that these types of contract be in writing.	
11	This branch of law regulates every phrase of a transaction for a sale of goods and provides remedies for problems that may arise. It provides for implied warranties of merchantability and fitness.	
12	This interest arises when in exchange for a type of loan a borrower agrees, in a security agreement, that a lender (the secured party) may take specified collated owned by the borrower if he should default on the loan.	

1. Read the text and try to determine the key points of it.

What is Commercial Law?

1) Commercial law is the body of law that governs the broad and sometimes vague areas of business, consumer transaction, and commerce. The application of commercial law has developed a specific set of laws that apply to commercial activities, pursuits, and transactions. This arm of civil law deals with issues both simple and complex that often relate to questions of both public and private sector laws. Commercial law governs sale and distribution of goods, and proper procedure for payment of transactions.
2) Many nations operate under civil codes that are made of detailed statements regarding commercial law. In the United States (US), commercial law is regulated by Congress under the power granted to it to regulate interstate commerce, and by state governments under jurisdiction of police power. The commercial laws in the US were adopted from 17th century principles of the law merchant and were first incorporated into common law. The US federal government has attempted to have some form of unified commercial law in passing the Uniform Commercial Code (UCC).
3) Domestically, commercial laws are of interest to consumers, as the laws are usually applied to regulate consumer law. In the US, the consumer credit industry is regulated under the commercial arm of statutory law. Credit is what allows a consumer to finance a purchase over time instead of paying the entire cost at the time of the transaction. Credit cards are a common form of consumer credit used by consumers in most parts of the world. Individuals, businesses, and banks also provide this financing through mortgages and various loans.
4) In 11 states of the US and Guam, the Uniform Consumer Credit Code (UCCC) has been passed to protect consumers attempting to obtain credit to finance various transactions, ensure availability of credit to consumers, and govern fair practice of the credit industry. Federally, the Consumer Credit Protection Act was passed to regulate the consumer credit industry. It goes further to protect against discrimination in granting credit to consumers and to govern the fair practice of collections.

5) Internationally, trade has grown tremendously, leading to a surge in the importance of international commercial laws. The need for united or harmonized commercial international law codes has become obvious as revealed by the jointly sponsored international survey of attorneys conducted by Lexis Nexis and the International Bar Association. It revealed that though legal practice is still mainly domestic, there is a convergence of laws in the areas of trade and investment. Surveyed attorneys from eight nations agreed that some standardization on an international level of trade and investment law would be of great benefit to international trade.
6) The European Union (EU) has made this harmonization of private law essential in its goal of development of its own internal market. The EU requires all states entering the union to sign contracts and adopt certain rules, regulations, and statutes that encourage the harmonization of international commercial laws before final acceptance. Another way this concept is explored is through the ratification or adoption of treaties governing commercial law. The most recognized treaty in this arena is the United Nations (UN) Convention on Contracts for the International Sale of Goods (CISG). There are many other tools used to regulate and harmonize commercial law domestically and internationally, and with the continued increase in international trade, development of new methods of harmonization may prove integral.

2. Answer the following questions according to the content of the text.

1) Which areas of business does Commercial Law govern?
2) Which activities does Commercial Law deal with?
3) Where can Americans find all statements regarding Commercial Law?
4) What is the unified commercial law formed in?
5) What law regulates the consumer credit industry?
6) What is credit?
7) What are the usual ways of credit?
8) Why was the Uniform Consumer Credit Code passed?
9) Why has the need for united commercial international codes become urgent?
10) What beneficial did attorneys consider for international trade?
11) What does the EU require from all states entering the union? Why?
12) What is the most recognized treaty for international trade?

3. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

To govern; transaction; the application of law; set of laws; pursuit; an issue; proper procedure; operate under smth.; the law merchant; in passing; the arm of statutory law; the entire cost; mortgage; loan; to obtain credit; to ensure availability of credit; discrimination in granting credit; jointly sponsored survey; convergence of law; states entering the union.

4. Find the verb for the following nouns:
e.g. Consideration – to consider

Government*;* application*;* operation*;* regulation*;* adoption; provision; protection; investment; harmonization; acceptance.

5. Match the words to make a phrase found in the text:

1) commercial	a) issues
2) consumer	b) government
3) complex	c) procedure
4) proper	d) market
5) detailed	e) cards
6) federal	f) law
7) credit	g) practice
8) fair	h) trade
9) international	i) transaction
10) internal	j) statements

6. Study the text and find the words that go together with the following verbs:

To govern …; to develop …; to relate to … ; to regulate …; to protect …; to grant …; to require …; to enter …; to sign …; to encourage … .

7. Read the texts below.

What Is a Commercial Agreement?

1) A commercial agreement is a contract typically between two business entities. It states its terms in plain language but includes warranties and boilerplate that have usually been reviewed by a business attorney in advance. This type of agreement can ordinarily be one of the standardized forms that are used over and over again with suppliers and business customers in the ordinary course of operations.
2) Business-to-business transactions have a different legal character than business-to-consumer sales. There are fewer default legal protections built into business-to-business transactions that are designed to protect uninformed or uneducated parties, or will allow such parties to escape from a properly executed deal. The law assumes that the average business is aware of its legal obligations and will rely on the specific terms of a contract to resolve disputes.
3) The negotiated terms of a commercial agreement are particularly important. Basic contract law will look to the written terms of the agreement to identify the intentions of the parties, and will not consider outside circumstances unless there is a claim of fraud. Businesses are expected to know how to protect their interests, and part of that responsibility is to understand what constitutes a valid and enforceable commercial agreement.
4) Since commercial agreements are used between business parties, plain language instead of legal jargon should be used when preparing the contract. The first part of an agreement usually requires the most work. It should identify the parties, define any unusual terms, and detail the substance of the transaction with specificity, such as the product or service being sold, dates, times, delivery, and price. Contract law requires all parties to clearly understand the basis of the bargain, and using clear language in a contract that is used for ordinary business purposes will help meet this requirement.
5) The second part of the contract should include terms that address nonperformance. This section might contain some boilerplate from an attorney and would be standard from

contract to contract. Warranties, indemnification, termination, and liquidated damages clauses would typically be included here. This boilerplate is sometimes provided on the back of the contract form for convenience.

6) A place for signatures should be included on the bottom of the form. An authorized representative from each business should sign the contract. It is important to verify that the person signing the commercial agreement is authorized to do so by the contracting company. An unauthorized signer will invalidate the transaction and may precipitate an unrecoverable loss.

What Is Commercial Fraud?

7) Commercial fraud is a legal term that describes deceptive practices or legal violations committed by corporate executives for financial gain. There are many different kinds of commercial fraud. Some involve misrepresentative statements to the public about corporate performance in order to boost sales or inflate stock value. Failing to disclose certain income on business tax returns can also constitute fraud, as can colluding or self-dealing, insider trading, executive kick-backs, and the misuse of corporate goods for personal gain. Most countries impose criminal fines and sanctions on corporate executives found guilty of commercial fraud.

8) Fraud laws – that is, laws prohibiting and punishing fraud – are nearly ubiquitous in legal systems throughout the world. In its most basic sense, fraud is any misrepresentation or deception that is (1) intentional and (2) designed for some tangible gain. Commercial fraud is simply a kind of fraud that happens in a corporate setting, usually by and through the actions of corporate executives.

9) In most cases, commercial fraud involves some kind of misrepresentation that ends with corporate executives making more money or earning more in bonuses than they otherwise would. This includes stock and securities manipulations as well as false testimony, tax return inaccuracies, and schemes to shield money and profits off-shore. Even something as simple as using a corporate account for a family vacation can be seen as company fraud, particularly if the executive writes off that

vacation as a business expense. In so doing, he is taking something that is not his, claiming it as his own, and then lying about it.

10) It can be tempting to think of commercial fraud as somewhat insular: how a company wants to handle its affairs is largely that company's concern, or so the sentiment goes. To a certain extent, this is true. Most corporations are publicly funded, however. Investors from the private sector often own a significant portion of many businesses in the form of stock shares and futures interests. Fraud and fiscal mismanagement amongst executives defrauds not only the company as an entity, but also every individual investor who owns an interest.
11) Commercial fraud is also bad for the economy more generally, as it sends a signal that big businesses are unchecked and not to be trusted. This can discourage investments, which can stymie growth. It is for this reasons that governments set and enforce corporate fraud law. Identifying commercial fraud is usually a job for government enforcement agencies. Individuals can also report corporate fraud. Many governments have established laws that protect employees and others who wish to reporting fraudulent corporate conduct. These laws are often called "whistle-blower" statutes. The main goal of whistle-blower statutes is to encourage people to report questionable practices and incidents of potential business fraud in exchange for immunity and insulation from retaliatory action.

(http://www.wisegeek.com/what-is-commercial-fraud.htm)

8. The texts contain a lot of adjectives; below there are some of them. Examine the corresponding paragraph in the texts to find the words that go together with the adjectives:

Commercial (par. 1); plain (par. 1); standardized (par. 1); legal (par. 2); properly executed (par. 2); average (par. 2); specific (par. 2); outside (par. 3); enforceable (par. 3); clear (par. 4); liquidated (par. 5); authorized (par. 6); deceptive (par. 7); corporate (par. 7); tangible (par. 8); fraudulent (par. 11); retaliatory (par. 11).

9. Work with the text again, find the prepositions used in the following phrases:

1) a contract typically … two business entities (par. 1)
2) it states its terms … plain language (par. 1)
3) that have usually been reviewed … a business attorney … advance (par.1)
4) there are fewer default legal protections built … business-to-business transactions (par. 2)
5) rely … the specific terms … a contract (par. 2)
6) detail the substance … the transaction … specificity (par. 4)
7) using clear language … a contract that is used … ordinary business purposes (par. 4)
8) to be provided … the back of the contract form … convenience (par. 5)
9) to be included … the bottom … the form (par. 6)
10) legal violations committed by corporate executives for financial gain (par. 7)
11) involve misrepresentative statements … the public … corporate performance … order … boost sales (par. 7)
12) something … simple … using a corporate account … a family vacation can be seen … company fraud (par. 9)

10. Translate quickly the following phrases.

Commercial agreement – субъекты хозяйственной деятельности – warranties – поставщики и бизнес клиенты – business-to-business transactions – правовая защита – a properly executed deal – правовые обязательства – to resolve disputes – согласованные условия коммерческого соглашения – to identify the intentions of the parties – иск о мошенничестве – responsibility – действительное и исполнимое соглашение – the substance of the transaction – основа сделки – to meet a requirement – неисполнение – indemnification – уполномоченный представитель – to sign a contract – аннулировать сделку – an unrecoverable loss – правовые нарушения – committed by corporate executives – раскрывать определенный доход в налоговых декларациях предприятия – executive kick-backs – законы о мошенничестве – stock and securities manipulations – лжесвидетельство – government enforcement agencies – освобождение/неприкосновенность.

11. Translate the following sentences paying attention to "once" and "otherwise".

Once – как только, коль скоро, раз, однажды (когда-то).
Otherwise – иначе, в противном случае, по-другому.

1) Once consumers bought something, they were struck with the purchase, even if they got less than they bargained for, such as unsafe or poor-quality products.
2) Sellers must avoid sales and advertising practices that mislead, deceive, or are otherwise unfair to consumers.
3) Once in force, EC regulations must be applied by national courts with precedence over national legislation.
4) If the plaintiff alleges that something happened he must prove that it did, otherwise the court must assume that it did not.
5) Once a court decides that there has been a breach of contract, it must then judge how the party in breach must compensate the other party.
6) Most industrial societies throughout the world impose punishments on traders who overcharge or otherwise deceive their customers.
7) Exact fulfilment of the terms of a contract is demanded, otherwise the course of business would be hardly possible.
8) Once the House has voted an impeachment, it then selects members to present the case before the Senate.
9) Australia, Hong Kong, Canada were once parts of the British Empire.
10) Of course, none have certain knowledge about the future path of interest rates, otherwise they could become very rich indeed.

12. Open the bracket with applying either "used to do" or "be used to doing".

Used to do – бывало, когда-то.

The company and its clients **used to lose** the rights to remedies for breach of contract over an ultra vires transaction.

To be used to doing – привыкать, иметь в привычке.
People **are used to asserting** their rights.

1) Companies (to draft) very wide objects clauses.
2) Consumer law (to be characterized) by the legal expression caveat emptor.
3) The Japanese still (to rely) on informal ways of solving disagreements.
4) Before World War II, Japan had a jury system, but it (to be criticized) for the ease with which jurors were bribed.
5) People (to appeal) if they are not satisfied with the decision of a lower court.
6) Before the tradition of equity was introduced people in England (to get) damages when the contract was breached.
7) In the United States people (to consult) lawyers.
8) Bakers in England (to add) an extra roll free to the batch of twelve because the laws against selling underweight bread were very strict.
9) Barristers (to argue) cases in court.
10) Before court of common law and equity were unified, people (to start) an action in two different courts to get a satisfactory solution.
11) People in developed countries (to have) a wide range of information available.

13. Read the following texts and give a short summary:

Product liability under the Consumer Protection Act

Product liability is the area of law in which manufacturers, distributors, suppliers and retailers are held responsible for any injuries products cause. Regardless of any contractual limitations of liability, if a product or any of its component parts are defective its manufacturer may be liable for damage under the Consumer Protection Act (CPA) or the common law of negligence.

An action under the CPA or for negligence can be brought for death, personal injury and damage caused to private property as the result of a product defect. Neither type of action can be used to compensate for pure economic or consequential loss.

Liability under Part I of the CPA

The CPA introduced statutory liability for defective products. Liability under the CPA exists alongside liability in negligence, and in some cases a common law claim may succeed where a claim would not be available under the CPA.

The CPA applies to both products used by consumers and products used in a place of work. The CPA imposes strict liability on manufacturers of defective products for harm caused by those products. This means that people who are injured by defective products can sue for compensation without having to prove that the manufacturer was negligent. It is merely necessary to prove that the product was defective, and that any injury or damage was most likely caused by the product.

Applicability

The CPA applies to all consumer products and products used at a place of work. The inclusion of "products used at a place of work" extends the scope of the law to include sales of products between businesses rather than just sales to consumers if such products are used in a place of work.

A claim may be brought under the CPA by any person who is injured by a "defective product", regardless of whether that person purchased the product. A claim may be brought for death, personal injury or damage to private property in excess of £275. However, no claim may be brought for damage to business property or for "pure" economic losses. In particular, the CPA provides that a claim cannot be made for the loss of or damage to the defective product itself. Other than these restrictions, the CPA imposes no financial limit on the producer's total liability.

Who is liable?

Under the CPA, the "producer" of a product is liable for any defects. The producer is the manufacturer of the finished product or of a component of the finished product, or any person responsible for an industrial or other process to which any essential characteristic of the product is attributable. Liability may also be imposed on any party who holds itself out to be the producer through the use of a name or trade mark, and any person who imported the product into the European Community.

As such, there may be more than one party liable under the CPA in respect of the same damage. Liability is joint and several, so the injured party may sue any or all of these people. Liability cannot be excluded or limited.

What is a "defective product"?

A "product" can include goods, electricity and the component parts of any product. Where a component of or raw material incorporated

into a finished product is defective both the manufacturer of the component and the manufacturer of the finished product are potentially liable.

A product is defective for the purposes of the CPA if its safety, including not only the risk of personal injury but also the risk of damage to property, is "not such as persons generally are entitled to expect". A product will not generally be considered defective just because a safer version is later put on the market.

In assessing the safety of the product the court will take into account all of the circumstances, specifically including:

- all aspects of the marketing of the product;
- the use of any mark in relation to the product;
- instructions and warnings;
- what might reasonably be expected to be done with the product at the time the product was supplied.

This last factor allows the court to take account of the "state of the art" at the time of supply.

Defences to a claim under the CPA

Although liability under the CPA is strict, the producer has a number of defences available if a claim is made. It is a defence to show:

- that the product is defective in order to comply with domestic or European law;
- the party the claim is being made against did not supply the product;
- that the product was not manufactured or supplied in the course of a business;
- that the defect did not exist at the time the product was put into circulation;
- if the party is being sued because it manufactured a component – that the defect is a defect within the finished product, and came about because of the way the finished product was designed or because of instructions given by the manufacturer of the finished product.

The CPA also includes a "development risks" defence, which creates a defence if the "scientific and technical knowledge" at the time the product was manufactured was not such that the producer of a similar product might have been expected to discover the defect. This could be particularly important in relation to innovative and high-tech products. However it has been argued that the wording of the UK law is less strict than the

wording of the law at European level, which deals with the state of scientific and technical knowledge generally rather than what a producer of similar products might be expected to discover.

How long are producers liable for?

The basic limitation period for claims under the CPA is three years from the date of damage or injury. However, since damage may not be immediately apparent, an alternative period of three years from the date when the producer knew – or could reasonably have known – of the claim, is provided. Since a product may remain in circulation for many years, a claim cannot be made more than ten years after the product was put into circulation.

Product liability for negligence

Product liability is the area of law in which manufacturers, distributors, suppliers and retailers are held responsible for any injuries products cause. Regardless of any contractual limitations of liability if a product or any of its component parts are defective its manufacturer may be liable for damage under the Consumer Protection Act (CPA) or the common law of negligence.

An action under the CPA or for negligence can be brought for death, personal injury and damage caused to private property as the result of a product defect. Neither type of action can be used to compensate for pure economic or consequential loss.

Liability for negligence

A claim in negligence is based on the assumption that the manufacturer owes a duty of care to all those who can reasonably be expected to make use of its product. In the case of "dangerous" products such as those which, if defective, could cause extensive harm this duty may be owed to anybody who may reasonably be affected by a defect in the product. This means that a claim in negligence is not limited by the doctrine of privity of contract, which states that only a party to a contract can sue under it. A claim may be brought by a consumer-purchaser of the product, a person who uses the product or a third party bystander who is injured by the product.

The manufacturer's negligence may be:

- a failure to take care during the manufacturing process, resulting in a particular product being defective;
- a failure to take care during the design of the product, including a failure to carry out sufficiently careful research;

- a failure to carry out effective tests;
- a failure to provide an effective warning of dangers;
- a failure to recall a product, or to issue appropriate warnings if a danger becomes apparent after the product has been put into circulation.

Liability is not limited to the manufacturer of the product – other parties who supplied components or distributed the product may be held liable if they can be shown to have been negligent.

Limitations on negligence liability

Despite the significance of negligence liability, it is subject to a number of limitations which may restrict its effectiveness in product liability claims. The manufacturer can only be held liable where it has failed to take reasonable care, which the injured party must be able to prove. This may be difficult and expensive.

In some cases, particularly concerning manufacturing defects, the injured party may be able to rely on the principle of "res ipsa loquitur" – meaning that no explanation other than negligence can be the case. If this applies, it is up to the manufacturer to prove that it did in fact take reasonable care. In cases like this, it may be difficult for the manufacturer to avoid liability unless it can show how the defect occurred. The manufacturer will have to show that it took reasonable care to establish a safe system of production and quality control to avoid defects, and that the employees who implemented that system took reasonable care when doing so.

Where the complaint is a result of negligent design, the injured party's position will be much weaker. Expert evidence will be necessary to establish negligence. The courts may be reluctant to impose liability for negligent design as this would involve "second guessing" executive decisions on the relative cost and benefit of different design options.

A second difficulty faces the injured party is the need to establish a causal link between the defendant's negligence and his own loss or injury. However, he would also have to do so if his claim was under contract.

Since the action is one for common law negligence, the manufacturer will be able to rely on any of the usual defences available in tort. For example, the manufacturer may be able to rely on the partial defence of contributory negligence if the

injured party ignored warnings, misused the goods or continued to use them after a danger becomes apparent.

A further restriction on negligence actions is that, although damages may be awarded for personal injuries or damage to property, damages will generally not be awarded for purely economic losses.

(http://www.out-law.com/topics).

14. Match English collocations with Russian ones.

1) product liability	a) производитель
2) to be held responsible	b) ввести в обращение/оборот
3) manufacturer	c) некачественная продукция
4) defective products	d) причинение материального ущерба
5) personal injury	e) халатность, небрежность, неосторожность
6) to impose strict liability	f) ответственность производителя за качество продукции
7) damage to property	g) контроль за качеством продукции
8) to comply with smth.	h) нести ответственность
9) to be put into circulation	i) свидетель/очевидец
10) limitation period for claims	j) причинение физического вреда личности
11) negligence	k) обязанность соблюдать осторожность
12) a duty of care	l) налагать строгую ответственность
13) bystander	m)срок исковой давности по требованиям
14) warning of dangers	n) соответствовать чему-либо
15) production and quality control	o) пострадавшая сторона
16) to be reluctant to do smth.	p) предупреждение об опасности
17) the injured party	q) с неохотой/вынужденно делать что-то

15. Study the text and find the words that go together with the following verbs:

To compensate for …; to apply to …; to cause …; to sue for …; to injure …; to bring …; to impose (no) …; to take into …; to supply …; to be put into …; to discover …; to be brought for …; to be based on …; to cause …; to be affected by …; to issue …; to be subject to …; to avoid …; to establish … .

16. Match the nouns to make a phrase.

1) the area of	a) defect
2) limitations of	b) products
3) product	c) liability
4) liability in	d) negligence
5) consumer	e) law
6) a place of	f) property
7) business	g) care
8) risk of	h) supply
9) the time of	i) evidence
10) a duty of	j) work
11) quality	k) control
12) expert	l) damage

17. Find the corresponding definition to the following terms.

damages / the injured person / product liability/ defect warning / manufacturer / claim / negligence / statutory liability circulation / liability

1) _____ is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make products available to the public are held responsible for the injuries those products cause.
2) _____ is a failure to exercise the care that a reasonably prudent person would exercise in like circumstance.
3) _____ is any legal obligation for which a person is responsible.
4) _____ is any nonconformity in a product or process.

5) _____ is a demand for something as rightful or due.
6) _____ is a legal term meaning that someone can be held responsible for a certain action or omission because of a related law that is not open to interpretation.
7) _____ is a person or organization that uses economic services or commodities.
8) _____ is the company that built your vehicle a business engaged in manufacturing some product someone who manufactures something.
9) _____ is a man having a wound or damage to part of his body.
10) _____ movement to and fro or around something.
11) _____ is something that makes you understand there is a possible danger or problem, especially one in the future.
12) _____ is an award, typically of money, to be paid to a person as compensation for loss or injury.

UNIT 12

COMMERCIAL ARBITRATION

Lead-in

1) What way are commercial disputes resolved by, litigation or arbitration? Why?
2) Do you know some remedies that are applied for resolving a commercial dispute?
3) What is most common way of resolving disputes? Why?

1. Read the text and try to determine the key points of it.

Use of commercial arbitration and current trends

1) The use of commercial arbitration as the preferred dispute resolution procedure for international parties is continuing to increase. This is partly due to greater certainty of enforcement through the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). In 2015, both the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) reported their highest number of referrals with 801 and 326 requests filed respectively. For a number of reasons, London remains a very attractive venue for parties to choose as a seat for arbitration.
2) There is a desire for transparency in the appointment of arbitrators and greater involvement from arbitration institutions to ensure impartiality. The 2015 *International Arbitration Survey: Improvements and Innovations in International Arbitration* showed a desire on behalf of users of arbitration to have decisions published with regard to challenges to the appointment of arbitrators and for more insight into the appointment process.
This has been a particular focus for the ICC, which published its *Guidance Note for the Disclosure of Conflicts by Arbitrators*, adopted on 22 February 2016. This lists a number of specific facts

and matters to be considered (and disclosed) by arbitrators when assessing independence and impartiality.

3) For arbitrations registered from 1 January 2016, the ICC publish the names of the arbitrators, their nationality, their role within a tribunal, the method of their appointment and whether the arbitration is pending or closed. However, the arbitration reference number and the names of the parties and of their counsel will not be published.

   In certain sectors (particularly construction and engineering) there is a desire to amend multi-step dispute resolution provisions to make the expert determination step final and binding (so the determination cannot be opened up, reviewed or revised in subsequent steps). In these circumstances, only a failure to comply with a determination could be referred to a subsequent step (such as arbitration).

4) **Advantages/disadvantages**

   The principal advantages of arbitration include:

   - Greater certainty about the enforcement of awards.
   - Avoiding the specific legal systems/national courts of certain jurisdictions.
   - Flexibility in terms of the procedure.
   - Confidentiality.
   - Limited grounds for challenges and appeals (which can also be a disadvantage, *see below*).

5) The principal disadvantages of arbitration include:

   - Reluctance of tribunals to dispose of weak claims/defences on a summary basis.
   - Reluctance of tribunals to issue sanctions for non-compliance with deadlines.
   - The time it can take from commencement of the arbitration to publication of the final award.
   - The limited grounds for challenges and appeals which, together with the confidential nature of the process, can create a risk of a lack of intellectual rigour in the award.

2. Answer the following questions according to the content of the text.

1) Why is the use of commercial arbitration continuing to increase?
2) What measures have been used to ensure impartiality?
3) What way do arbitrators demonstrate their independence and impartiality to the public?
4) What does the International Chamber of Commerce publish from 1 January 2016 concerning arbitrations?
5) Why are names of parties and their counsels not published?
6) What are advantages of commercial arbitration?
7) What are disadvantages of commercial arbitration?

3. Read the following text and focus your attention on the main points.

Commercial Dispute Resolution in the UK

The UK contains three distinct legal jurisdictions: England and Wales, Scotland and Northern Ireland (collectively, UK law). There are differences in the way in which each jurisdiction within the UK resolves disputes. This article summarizes some of the key differences in relation to contractual disputes in England and Wales and Scotland. These differences are important to many businesses, such as those within the financial services and oil and gas sectors, whose operations stretch across the UK. In particular, it examines the following main areas within which distinctions can be drawn:

- Establishing jurisdiction.
- Costs and funding.
- Procedure and timescales.
- Contractual interpretation.
- Available remedies.
- Alternative dispute resolution (ADR).
- Proposed reforms.

Establishing jurisdiction

The jurisdictional rules that apply across the UK are largely similar. The European regulation that governs jurisdiction, Regulation (EC) 44/2001 on jurisdiction and the recognition and

enforcement of judgments in civil and commercial matters (Brussels Regulation), applies to the UK as a whole. This means that jurisdiction between the UK's constituent parts is determined by reference to the law of the part of the UK in which a claim has been made. The provisions within Schedule 4 of the Civil Jurisdictions and Judgments Act 1982 (CJJA 1982) are the primary source for determining how jurisdiction is allocated within the UK. When the meaning or effect of a provision of the CJJA 1982 is unclear, the courts must have regard to the decisions of the European Court of Justice (ECJ) in relation to the Brussels Regulation *(section 16(3), CJJA 1982)*. However, the ECJ has no jurisdiction to interpret the provisions in Schedule 4 of the CJJA 1982 *(Kleinwort Benson Ltd v City of Glasgow District Council (Case C-346/93) [1995] EUECJ)*.

This similarity is supplemented by the legislation of the UK Parliament, such as the Companies Act 2006, which generally applies to the whole of the UK (with some specific provisions only applying to certain parts). The rules of jurisdiction contained within Schedule 4 of the CJJA 1982 are supplemented by Schedule 8 which only applies to Scotland. There are some minor differences between Schedule 4 and Schedule 8 of the CJJA 1982 but these do not impact to any great extent on the rules which are relevant to contractual disputes.

Intra-jurisdictional forum shopping in the UK

The primary ground of jurisdiction in the UK is the domicile of the party being sued. For companies this is normally their registered office. However, in both England and Wales and Scotland if a claim relates to a branch office or other premises of a company it can be brought in the jurisdiction where this is located. This means that if, for example, a party has a claim against a company with its registered office in England but the claim relates to a contract with a branch, or the place of performance of the contractual obligation, in Scotland, the claimant (known as the pursuer in Scotland) may be able to demonstrate that there are grounds to bring a claim in either jurisdiction.

When assessing where the place of performance of the contractual obligation is, the obligation in question must be the one on which

the claimant is bringing proceedings. For example, a party claiming that payment should have been made to an account in England by an English domiciled party should not be able to found jurisdiction in Scotland on the basis that the claimant provided the services giving rise to the payment obligation in Scotland. Place of performance of the obligation in question is a special ground of jurisdiction that in Scotland can be used when there is only one possible place that the obligation should have been performed, otherwise a claim must be made in the jurisdiction in which the defendant (known as the defender in Scotland) is domiciled *(Bank of Scotland v Seitz 1990 SLT 584)*. However, an English court may still exercise jurisdiction in such a situation when a defendant is not domiciled in the jurisdiction *(Medway Packaging v Meurer [1990] 2 Lloyd's Rep. 112)*.

Jurisdiction clauses

The greatest barrier to the freedom to choose the jurisdiction in which a party can issue a claim is an exclusive jurisdiction clause. However, the courts in both England and Wales and Scotland recognise the doctrine of *forum non conveniens*. This is a test which is applied to determine what is the most appropriate court to try the case for the interests of all the parties and the ends of justice *(Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460)*. This means that if a contract contains a jurisdiction clause which states that it is subject to the exclusive jurisdiction of the courts and law of England and Wales, a court may still decide by applying this test that the claim relates to the actions of a branch office in Scotland and so should be determined by the Scottish courts. The claimant, therefore, may make a tactical decision to issue a claim in one jurisdiction and the defendant (known as the defender in Scotland) then must decide whether to challenge this. This carries with it the usual costs risk, which must be considered by both parties in the circumstances of the case. In cases in the UK this is particularly significant as often there is not much to separate whether one forum is more appropriate than the other, and so the case may remain in the jurisdiction in which the claim has been made.

Impact of EU legislation on jurisdiction in the UK

The CJJA 1982 was passed to implement the Brussels Regulation into UK law but there are a number of key differences which impact on intra-jurisdictional conflicts within the UK. These include:

The form that a jurisdiction clause should take is set out under the Brussels Regulation *(Article 23 (1) (a) to (c)* but there is no equivalent provision within the CJJA 1982, which means that this is determined by reference to the law of the relevant part of the UK.

Unless the parties agree otherwise, the choice of jurisdiction clause is automatically exclusive under the Brussels Regulation *(Article 23 (1)*. However, this is not repeated within the CJJA 1982. This means that whether a particular jurisdiction is exclusive depends on the application of the law of the relevant part of the UK.

The principle of *forum non conveniens* applies to UK law *(see above, Jurisdiction clauses)* to determine what court would be the most appropriate forum to decide the dispute. This is a departure from the Brussels Regulation, which gives effect to the *lis pendens* rule which prohibits parallel proceedings in different EU courts *(Articles 27 to 30)*. This means that a party can selectively choose to make a claim in one member state in order to delay proceedings. This rule is currently under review (*see below, Reform*).

Claims brought under an insurance contract are not specifically dealt with in the CJJA 1982 (as they are in Articles 8 to 13 of the Brussels Regulation). This means that the insured is protected from the operation of clauses conferring exclusive jurisdiction on the insurer's own courts.

The CJJA 1982 provides that jurisdiction in relation to proceedings which have, as their object, a decision of an organ of a company or other legal person is not exclusive (unlike Article 22(2) of the Brussels Regulation). Such proceedings can (rather than must) be brought in the courts of the part of the UK in which the company, legal person or association has its seat *(rule 4, CJJA 1982)*.

In disputes relating to a contract a person domiciled in a part of the UK can, in another part of the UK, be sued where the contractual obligation was to be performed *(rule 3(a), CJJA 1982)*. The Brussels Regulation states that the place of performance of the obligation is where goods or services were or should have been provided under the contract *(Article 5(1), Brussels Regulation*). This means that the courts of the relevant part of the UK must interpret what is meant by the place of performance of the obligation (*see above, Intra-jurisdictional forum shopping in the UK*).

When lending is secured over immovable property, proceedings can be brought in the courts of the part of the UK where the property is situated *(rule 3, CJJA 1982)*. There is no equivalent provision in the Brussels **Regulation.**

The provisions in relation to consumer contracts are largely repeated *(rules 5 to 7, CJJA 1982)* but there is no provision (as in Article 15(2) of the Brussels Regulation) that a branch or agency of a party domiciled within another part of the UK is domiciled where they have their operations. This protects a consumer's right to sue where they are domiciled.

Costs and funding

It is difficult to be precise about what any given action may cost in one jurisdiction when compared to the other. There are differences procedurally, such as pre-action conduct and disclosure *(see below, Procedure and timescales)*, which apply in England and Wales but not normally in Scotland, that on the face of it, lead to additional upfront costs. However these procedures may take place in Scotland in a commercial action. This must be balanced against the possibility that these procedural steps, which place a greater burden on parties comparatively early on in the procedural timetable, may lead to earlier settlement and an overall costs saving.

In both England and Wales and Scotland, if a claim is decided by the court in a party's favour the general principle is that the losing party pays the winner's costs. However, in both jurisdictions it is very rare for the successful party to obtain their full costs. There is no formal guidance in relation to what a party can recover, since this is at the court's discretion. Generally a successful party

in England and Wales normally recovers somewhere between 65% to 80% of its costs. A successful party in Scotland is only likely to be awarded in the region of 50% of their costs by the courts. In Scotland expenses are awarded by reference to a standard scale. The Court does maintain discretion over what to award but it is arguable that the standard scale does have a depressive effect on what is awarded, which may lead to lower rates of recovery for a successful party than in England and Wales. In both jurisdictions, a defendant can apply for security for the costs that they will incur by defending the claim (known as caution in Scotland). This can be completed by way of a payment into court or by guarantee.

Sources of funding

The vast majority of commercial litigation is funded from a party's own resources in England and Wales and Scotland. These funds can be supplemented by insurance taken out to provide cover for a future legal problem (before-the-event insurance) or to cover litigation costs once a dispute has commenced (after-the-event insurance).

Conditional fee agreements (CFAs) can be entered into in England and Wales and Scotland (often called speculative fee arrangements in Scotland). This is where there is no fee, or a reduced fee, if a party is not successful, with fees being uplifted by up to 100% if the matter is successful. CFAs are more popular in personal injury claims but are increasingly being used in commercial dispute resolution in England and Wales. It is common for these to be used in conjunction with after-the-event insurance and, in England and Wales (but not Scotland), the success fee and insurance premium are recoverable from the losing party. However, this practice will be abolished.

The use of third party funding, where a party not connected to a claim funds litigation in return for a share of the proceeds, is a comparatively new source of funding, which appears to be becoming more popular with funders in view of the likely changes to the rules in relation to CFAs. This source of funding is not prohibited under Scottish law but has received very little attention in Scotland as a potential funding solution.

Contingency fee arrangements, where fees are based on a percentage of the proceeds recovered in the litigation are not currently permitted in either jurisdiction. These fee arrangements will be introduced in England and Wales.

Representation

Rights of audience. In England and Wales, the vast majority of hearings are conducted by barristers, who have full rights of audience in both the County Courts and higher courts of England and Wales, and are normally instructed by a solicitor. A solicitor, who is directly instructed by the client, has full rights of audience in the County Courts and limited rights of audience in the higher courts, although full rights can be obtained through qualification as a solicitor advocate. Only authorised persons or exempt persons may carry out reserved legal activities in England and Wales, which includes the exercise of the rights of audience and the conduct of litigation *(sections 12–13, 18 and 19, Legal Services Act 2007)*. Authorised persons include (amongst others):

- Solicitors qualified to practice in England and Wales.
- Barristers qualified to practice in England and Wales.
- The exempt person category may allow those who do not fall within the category of authorised persons to, for example:
- Represent a client at a hearing in chambers.
- Assist the conduct of litigation.
- Appear in court alongside someone who is an authorised person *(Schedule 3, Legal Services Act 2007).*

An individual who is not qualified in England may be able to assist a party in litigation slightly more than in Scotland. There may be little practical difference as it is normally best practice to instruct someone who is appropriately qualified in the relevant jurisdiction.

In Scotland, solicitors have full rights to conduct matters in the Sheriff Court, the closest equivalent to the County Courts, but not in the Court of Session, the equivalent to the higher courts. Again, full rights can be obtained through qualification as a solicitor advocate. Advocates, the Scottish equivalent to barristers, have full rights of audience in both the Sheriff Court and higher courts of Scotland.

There is a greater divide between the branches of the profession (solicitor and barrister) in England and Wales than there is in Scotland. This may be because whether a claim should be issued in the Sheriff Court or Court of Session is less clear cut than it is in England.

Allocation of the claim. In England and Wales, a claim below GB£25,000 (as at 1 March 2012, US$1 was about GB£0.6) must be issued in the County Courts. A claim worth more than this amount may be heard in either the High Court or the County Court. However, claims worth less than GB£50,000 which are issued in the High Court are normally transferred to the County Court unless there is a specific reason that the case should be tried in the High Court, for example if it is a complex case or fraud is alleged *(Civil Procedure Rules (CPR) Practice Direction (PD) 29.2.2)*.

In Scotland, a claim below GB£5,000 must be made in the Sheriff Court. A claim above this amount can be issued in the Sheriff Court, where a solicitor has a right of audience, or the Court of Session. In the Sheriff Court the court decides for the purposes of expenses whether or not a particular case was sufficiently complex to warrant the instruction of counsel. There is no upper limit on the value of claims in the Sheriff Court.

For major commercial disputes in both jurisdictions it is likely that a barrister, in England and Wales, or advocate in Scotland, will be instructed by a solicitor to conduct proceedings in the High Court or Court of Session respectively.

Generally, inter-solicitors' correspondence may be more aggressive in tone in England and Wales than it is in Scotland. This should be noted when passing correspondence to clients, as the aggressive tone may give them cause for concern and they may need to be advised accordingly as to the strength (or weakness, if appropriate) of their case.

Procedure and timescales

There are a number of procedural differences between England and Wales and Scotland. These include:

- Pre-action conduct.
- Court structure and procedural timetable.

– Limitation periods.
– Disclosure.
– Pre-action conduct

The pre-action protocols identify the steps that parties should take before a claim is issued in England and Wales. This is not generally required for claims in Scotland (only claims relating to personal injury, disease and professional negligence have pre-action protocols and these are not statutory but voluntary in nature). However, certain pre-action conduct is necessary for commercial actions in the Court of Session. The practice direction on pre-action conduct in England and Wales and the practice note on commercial actions in the Court of Session in Scotland are broadly similar. They both require that the parties have pre-action communications and substantially set out their respective positions, disclosing documents or expert reports, as necessary.

Both jurisdictions also encourage the parties to consider ADR. The underlying aim is that all issues are fully explored before formal proceedings are commenced or significant expenses are incurred to allow the best possible chance for settlement. The consequences of a claimant not complying with these steps are that the court will take this into account when giving directions and making orders about costs.

Court structure and procedural timetable

Commercial disputes. Large commercial disputes in England and Wales are likely to be brought in the High Court. This is divided into the Chancery Division and the Queen's Bench Division. The Chancery Division deals with disputes relating to:

– Tax (including warranty claims).
– Competition.
– Financial regulatory matters.
– Insolvency.
– Civil fraud.
– Intellectual property.

The Queen's Bench Division deals with:

– Contractual claims.
– Negligence.
– Defamation.

The Commercial Court which deals with complex business disputes, and the Admiralty Court, which deals with shipping and maritime disputes, both sit within the Queen's Bench Division. An unsuccessful party can appeal a decision of the High Court to the Court of Appeal, provided that they have permission to do so from the lower or appeal court. Any decision of the Outer House can be appealed to the Inner House of the Court of Session. Both jurisdictions share the same final tier of appeal: the UK Supreme Court.

In Scotland, large commercial disputes are likely to be brought in the Outer House of the Court of Session either as an ordinary or commercial action. In both jurisdictions parties are encouraged to resolve the dispute as quickly as possible.

Non-commercial disputes. There are clear differences in the procedure for non-commercial actions in Scotland compared to the general procedure in England and Wales. In Scotland, there is no court generated timetable for the progress of an ordinary action. There are rules providing timescales for various steps of procedure (which may be slower than a commercial action) but these only apply once a party has completed the various steps required *(Rules of the Court of Session 1994)*. Commercial action procedure is available in Scotland broadly for any dispute or transaction of a commercial or business nature and this procedure allows the court to set a timetable. In practical terms, for commercial cases the Scottish judiciary may be more interventionist in setting a timetable than their English counterparts (although this is not always the case). This may be because parties more often agree directions between themselves in England.

Timetables. Once a claim has been issued in England and Wales, or raised as a commercial action in Scotland, this must be served on the defendant by a permitted means of service, for example, a process server (distinct rules apply to service out of the jurisdiction). The Brussels Regulation does not apply to service intra-UK and is determined by the rules of the relevant part of the UK in which a claim is made. Service can be completed by any of the permitted methods of service and permission to serve out of the jurisdiction may not be required *(CPR 6* and *Chapter 16, Rules of the Court of Session 1994)*.

In England and Wales, the general rule is that the defendant must acknowledge service of the claim form (if served with the particulars of claim) or serve a defence *(CPR 10.3 and 15.4)*. If an acknowledgement of service is filed, the defendant then has 28 days after service of the particulars of claim to file a defence *(CPR 15.4)*. In a commercial action in Scotland, defences must be lodged within seven days after the summons (equivalent to the claim form and particulars of claim) is lodged for calling, It is noteworthy that the summons is expected to be briefer than those required for an ordinary action *(rule 18.1, Rules of the Court of Session 1994)* and so may potentially be less detailed than particulars of claim in England (although this is often not the case in practice). The court then normally holds a case management conference (CMC) where the court makes directions. These directions can be agreed but this is ultimately the court's decision.

Limitation periods

In England and Wales, the limitation period for an action under a contract or in tort (excluding personal injury cases) is six years from the date that the cause of action accrued *(Limitation Act 1980*). However, in Scotland, a claim under a contract or in delict, excluding personal injury cases, (the equivalent of tort) must be brought within five years of the cause of action *(Prescription and Limitation (Scotland) Act 1973)*. Personal injury claims in both jurisdictions must be made within three years. A claim under contract runs from the date of breach and a claim under tort (or delict), for example in negligence, normally runs from the date damage is suffered.

The consideration that a claim is, or is partially, time barred in one jurisdiction may lead to forum shopping in another *(McElroy v McAllister 1949 SC 110)*. However, a court will have to be convinced first that it is the most appropriate forum to determine the dispute and then it will apply the relevant limitation period within that jurisdiction. *(See above, Intra-jurisdictional forum shopping in the UK and Jurisdiction clauses).*

Disclosure

The methods that a party may use to obtain evidence differ between England and Wales and Scotland.

The directions that a court will make in England and Wales include disclosure. Each party must disclose all documents relevant to the litigation, provided they are not subject to legal privilege, even if they are damaging to its own case *(CPR 31)*. The general rule is that parties in Scotland are not required to disclose any document unless they wish to rely on it in proceedings, although parties may be ordered to disclose certain documents, or certain categories of documents, in a commercial action.

The Scottish courts have certain limited powers to allow a party to recover documents. However, these powers are exercised very cautiously by the Scottish courts. The procedure for obtaining documents from another party is completed by a motion (broadly equivalent to an application in England and Wales) and specification of documents. A specification of documents is a list describing the particular documents that a party wishes to recover. The motion will also ask the court to order a commission and diligence for recovery of the documents which have been approved in the specification. The normal practice is that once a specification is approved, the party who holds the documents will pass these on without further procedure. However, if these are not produced, a party can make a formal request to those holding the documents to produce these and/or a commission can be held. A commission is a form of hearing where the parties can examine witnesses and the commissioner has all the powers of the court to seek the recovery of the specified documents. This procedure resembles, in some respects, the document request procedure under the International Bar Association Rules for the Taking of Evidence in International Arbitration.

The practical effect of Scottish procedure is that the parties may not see all documentation relevant to the litigation. The process of disclosure in England and Wales can be a costly and burdensome exercise but it may mean that parties have a much better understanding of their prospects of success. This may lead to an increased chance of settlement and potentially (but not always) an overall costs saving.

The directions that a court makes in England and Wales also include a date for parties to exchange witness statements. The

parties do not exchange witness statements in Scotland. In Scotland, each party takes precognitions (witness statements) to let them know what witness evidence is likely to be. However, witnesses are not required to comply with this, including the other party's witnesses, so it is likely that each party will only "preconize" their own witnesses before a proof (trial).

The above factors can mean that the evidence likely to come out in court is less predictable in Scotland than it is in England and Wales.

Interpretation

The starting point for the interpretation of contractual terms in both jurisdictions is the ordinary and natural meaning of the words used. However, the knowledge of the parties to the contract and surrounding circumstances or factual matrix will be considered to assist interpretation. The English courts and the Scottish courts now agree that the literal meaning of words is no obstacle to interpretation when background facts can be used to show that a reasonable person in the relevant context would have taken the words to mean something different *(Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896 (HL), Multi-Link Leisure Developments v North Lanarkshire Council [2010] UKSC 47* and *Rainy Sky SA v Kookmin Bank [2011] UKSC 50)*.

In England and Wales, pre-contractual negotiations cannot be examined to assist contractual interpretation *(Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38)*. In Scotland, the position is less clear and pre-contractual negotiations have been considered on occasion *(Bank of Scotland v Dunedin Property Investment Co Ltd 1998 SC 657)*, despite the general rule that this is not permitted *(Luminar Lava Ignite Ltd v MAMA Group plc [2010] CSIH 1)*. This means that it is much more difficult to advise whether such evidence will be considered in Scotland than in England and Wales.

Conduct subsequent to the formation of the contract being used as an aid to interpretation has not been subject to high level judicial determination in England and Wales and Scotland. However, the *Investors Compensation Scheme* case *(see above)* does infer

that in England and Wales such evidence is inadmissible, because only information available to the parties at the time of the contract will be considered. Again, the position is less clear in Scotland and post-agreement conduct has been considered as an aid to interpretation on occasion *(Wincanton Group Ltd v Reid Furniture Ltd [2008] CSOH 109)*.

There are a number of other differences in the way the courts interpret contracts in Scotland which would not be replicated in England and Wales:

There is no requirement for there to be consideration for a contract to be formed in Scotland.

In Scotland, the parties cannot execute the contract by counterpart and must all sign the same document.

The law of Scotland provides that a party can bind itself to an obligation without any need for acceptance (known as a unilateral promise). This is not possible in England and Wales.

The rights of third parties in England and Wales are governed by the Contracts (Rights of Third Parties) Act 1999. In Scotland, third party rights are recognised at common law under the doctrine of *jus quaesitum tertio (право на вопрос в третий раз)*.

The evidential rule known as estoppel, which prevents a party from denying or contradicting something previously asserted which he has encouraged or permitted another party to accept, is equivalent (but different in its application) to the unitary doctrine of personal bar in Scotland. This is not an equitable remedy in Scotland. Indeed, Scotland does not recognise the law of equity in its English form.

However, in a number of areas, the interpretation of contractual terms or concepts is largely the same, such as remoteness of damages *(Hadley v Baxendale (1854) 9 Exch 341)*, interpretation of indemnity clauses (*Smith v UMB Chrysler (Scotland) Ltd 1978 SC (HL) 1)* and rescission. However, there may be some differences in application. For example in Scotland, it is not necessary when considering whether a party can rescind a contract to determine whether the term breached is a condition or warranty. It is simply a question of whether there has been a material breach of contract.

Available remedies

The right to damages following loss suffered from a breach of contract is largely the same in England and Wales and Scotland. However, there may be differences in the remedies available.

In Scotland, a party is able to choose whether to seek an order requiring a party to perform the obligation which has been breached (known as specific implement) or damages. Specific implement may not be appropriate in all cases.

The law of England and Wales approaches the question of available remedies from the opposite direction. A party can still obtain damages or specific performance (equivalent to specific implement in Scotland). However, historically specific performance was only available when damages were not an adequate remedy. This position has relaxed somewhat and specific performance is available in a wider range of cases.

The position in England and Wales and Scotland is broadly similar but not always, and sometimes these differences will produce opposite results. For example, in cases involving keep open clauses in commercial leases *(Highland & Universal Properties Ltd v Safeway Properties Ltd 2000 SC 297)*. There is also the possibility in some cases, such as defamation claims, that a party may choose to claim in one jurisdiction to obtain a higher level of damages *(Lennon v Scottish Daily Record and Sunday Mail Ltd [2004] EWHC 359 (QB)*. However, this should be less of an issue in contractual claims where losses should be more readily quantifiable.

The courts in England and Wales and in Scotland can grant interim remedies to prohibit a party starting or continuing a claim in another jurisdiction within the UK. This is known as an interim injunction in England and Wales and interim interdict in Scotland (these can also be final remedies as injunction and interdict respectively). A party who wishes to guard against such an order being made against it in Scotland can lodge a caveat. This means that an interim interdict cannot be granted unless all reasonable steps have been taken to allow the person who lodged the caveat to be heard. This is lodged in the petitions department of the Court of Session and is renewed annually. There is no equivalent to this in England and Wales.

ADR

In both jurisdictions, mediation and arbitration are increasingly being used as an alternative means to resolve disputes. Mediating disputes is increasingly popular in both England and Scotland. England is commonly used as a forum for arbitration of complex commercial disputes involving international parties based in different jurisdictions. This has been comparatively less popular in Scotland but has been more frequently used following the recent Arbitration (Scotland) Act 2010 and the newly formed Scottish Arbitration Centre.

Reform

The Review of civil litigation costs in England and Wales (Review) proposed a number of changes to court funding. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 incorporates many of the changes from the Review (amongst others) into the law of England and Wales. In relation to commercial disputes, perhaps the most significant change is that after-the-event insurance premiums and success fees under CFAs will no longer be recoverable from the losing party. Furthermore, contingency fees will be permitted for contentious business (where the fee represents a share of the client's damages). These changes take effect during 2013. It is also intended that secondary legislation will provide that general damages awards should be increased by 10%.

The Scottish Civil Courts Review proposed a great number of modernizing changes to civil procedure in Scotland. These remain outstanding for implementation although the Scottish Government have recently completed a consultation into the establishment of a Scottish Civil Justice Council to implement these changes. One major proposed change is that the Sheriff Court should have exclusive jurisdiction for claims up to GB£150,000. Other changes include greater judicial intervention to prevent delays that can be caused by the parties under ordinary procedure.

The Brussels Regulation is also undergoing a process of reform. The proposed reforms include:

When a contract contains an exclusive jurisdiction clause, proceedings (including arbitration proceedings) brought in any

other member state must be stayed until the court referred to as having exclusive jurisdiction has ruled on its own jurisdiction.
A judgment in one member state can be enforced in another without registration in the country in which enforcement is sought.
The courts will determine the jurisdiction of those domiciled in non-EU member states by reference to the Brussels Regulation, not a member state's own law.
It is also proposed that other proceedings must be stayed when an arbitration agreement exists. This is to allow the tribunal or Court designated as the seat of the arbitration to determine whether or not an arbitration agreement is valid.
It appears that while the EU continues to seek to harmonise jurisdictional rules, the establishment of the devolved law-making Scottish Parliament may lead to further divergences between the laws of England and Wales and Scotland. However, it may be possible for parties to exercise some degree of control over where to make a claim when there are connecting factors to both England and Wales and Scotland. In such a scenario, it may be worthwhile weighing up on a case-by-case basis the pros and cons of bringing a case in one jurisdiction as opposed to the other, particularly as the end result may be different.
(http://uk.practicallaw.com)

4. While reading the text, you have come across the following words and expressions. Find the suitable equivalents in Russian for them. Use the context to help you find the proper translation.

To resolves disputes; alternative dispute resolution; apply across the UK; enforcement of judgments in civil and commercial matters; some specific provisions; the domicile of the party being sued; grounds to bring a claim; performance of the contractual obligation; to issue a claim; claims brought under an insurance contract; to place a greater burden on parties; to cover litigation costs; personal injury claims; the losing party; a comparatively new source of funding; a right of audience; to warrant the instruction of counsel; inter-solicitors' correspondence; disclosing documents; to appeal a decision; rules providing timescales for various steps of procedure; particulars of claim; the law of equity in its English form; the remedies available; to exchange witness statements; surrounding circumstances; the right to damages following loss suffered; specific performance.

5. Find in the texts above suitable equivalents in English for the following words and phrases.

Решения Европейского суда Справедливости; иметь отношение к договорным спорам; место исполнения договорных обязательств; истец; обстоятельства дела; недвижимое имущество (собственность); сторона с местом проживания в Великобритании; процедура предоставления информации противной стороне; затраты выигравшей стороны; условное соглашение об оплате; финансирование третьей стороной; уполномоченные лица; иметь полное право вести дела; клевета; иск по договору начинается с даты нарушения; добиться/получить доказательства; ходатайство; перечень; официальный запрос; доступные средства правовой защиты; исполнение договора в натуре; временный запрет; затраты на гражданский процесс.

6. Study the text and find the words that go together with the following verbs:

To stretch across …; to be determined by …; to issue …; to implement …; to prohibit …; to be secured over …; to obtain …; to be funded from …; to carry out …; to warrant …; to set out …; to be served with …; to be approved in …; to execute … .

7. Match the words to make a phrase found in the text.

1) branch	a) contracts
2) jurisdiction	b) periods
3) consumer	c) advocate
4) dispute	d) agreement
5) fee	e) office
6) solicitor	f) state
7) inter-solicitors’	g) resolution
8) limitation	h) correspondence
9) pre-action	i) clause
10) member	j) conduct
11) arbitration	k) arrangements

8. The texts contain a lot of adjectives; below there are some of them. Examine the texts to find the words that go together with the adjectives:

Key; financial; jurisdictional; primary; contractual; immovable; procedural; losing; professional; respective; intellectual; surrounding; equitable; available.

9. Work with the text again, find the prepositions used in the following phrases:

1) this article summarizes some … the key differences … relation … contractual disputes;
2) the primary source … determining how jurisdiction is allocated … the UK;
3) the obligation … question must be the one … which the claimant is bringing proceedings;
4) the insured is protected … the operation … clauses conferring exclusive jurisdiction … the insurer's own courts;
5) a defendant can apply … security … the costs that they will incur … defending the claim;
6) a party not connected to a claim funds litigation … return … a share … the proceeds;
7) conditional fee agreements can be entered … … England and Wales and Scotland;
8) full rights can be obtained … qualification … a solicitor advocate;
9) there are clear differences … the procedure … non-commercial actions … Scotland compared … the general procedure … England and Wales;
10) conduct subsequent … the formation … the contract being used … an aid to interpretation;
11) a judgment … one-member state can be enforced … another … registration … the country … which enforcement is sought.

10. Read the following text and decide which skills and qualities are necessary to be a commercial lawyer.

Hannah Poulton
Previous employer
Associate with TLT LLP, a large commercial firm with offices in London, Bristol and Piraeus.
I practised with TLT for nearly 10 years as a non-contentious commercial lawyer specializing in franchising, intellectual property and data protection and continue to be a franchise consultant for TLT.

A day in the life ...
I joined TLT in March 2001 and, after a 12-month seat in the commercial team, qualified into commercial in March 2003. I was promoted to Associate in May 2007 and was listed "Leader in Field" as an "Associate to watch" in franchising in Chambers and Partners 2010 and 2011.
I don't think there is any such thing as a typical day in commercial as the work is so varied. Certainly, as a trainee, I rarely gave the advice on the same subject twice and prepared many different types of agreements – it made for a steep learning curve but it was an interesting, challenging and rewarding team to work in. From very early on I was advising clients directly and I was frequently attending client meetings on my own before I was qualified.
The work I undertook included general commercial work such as drafting and advising on agency and distribution agreements, standard terms and conditions of supply or purchase and other trading agreements and I specialized in franchising, intellectual property and data protection. A typical week would see me giving advice on consents for sending marketing communications, drafting third party data processing agreements for processing undertaken oversees, reviewing and advising on franchise agreements, advising on international business expansion, negotiating long term supply agreements and/or liaising with a client about its branding strategy and reviewing its brand portfolio. At times I would deal with many or all of these types of work in a single day!

I was fortunate to work with a wide variety of clients too from sole traders and start up companies, right through to SMEs, FTSE 100 companies and international conglomerates in a variety of industries.

Often a day might see me starting with a supervision meeting with junior members of a brand portfolio management team about the matters they would be dealing with that day, perhaps responding to queries about the merits of an application of a new trade mark or opposing a third party mark.

I would usually spend part of the day reviewing an agreement to see if it met the client's needs, if there were any provisions that were onerous or unenforceable or that might need updating to reflect changes in the law. This might take anything between an hour or so to 6 or more hours, depending on the length and complexity of the agreement. With clients all over the country and often oversees, advice would more often than not be given over the telephone so another regular task would be keeping an attendance note of the advice given and actions and instructions arising.

For some projects, advice might need to be given to and discussed between a number of contacts within a client (or between the client and other parties) and I would regularly dial in to multi-party telephone conferences. Sometimes advice might involve liaising with UK and international group companies so I often had to be mindful of internal politics (and time zones!) and manage this to keep a project on track e.g. advising group companies on the data protection compliance requirements for international data transfers.

Of course, advising clients is often done in person too and I would also often spend time at a client getting to know their business well to enable me to give the most appropriate client focused solutions and contractual documentation.

Clients aren't the only people with which you deal and the high profile/high value and long term contracts will almost always be heavily negotiated. Some days I would be on the telephone to the representatives for the other contractual party and then the client

to get instructions alternately to get points finalized in a draft. There would then be the task of marking up a draft with provisional wording for the other side to review. It isn't uncommon for versions of a draft to run well into double figures and you get quite adept at using document comparison software!

In any corporate firm, commercial layers will work closely with those dealing with mergers and acquisitions assisting with the due diligence process in a corporate transaction. As part of this I could be reviewing the trading agreements or intellectual property rights of the target business to advise the buyer client on risk or I could be drafting warranties to be offered by the seller client to the buyer about various aspects of the business being sold.

Often business operations will have several legal dimensions so I would regularly liaise with colleagues in other parts of the firm too e.g. speaking to property lawyers in relation to concession agreements, insolvency lawyers in relation to agreements entered into with administrators or employment lawyers in relation to drafting restrictive covenants in consultancy agreements.

I was often working on many matters at any one time so part of the skill required is to manage these competing priorities.

Legal requirements that stand in the way of business opportunity or operation can often be unpopular. Inevitably then, sometimes the advice we have to give is not necessarily what the client wants to hear (e.g. an exclusion of liability sought by the client may not be enforceable or a restriction on a distributor may breach competition law). It's important to anticipate how it will be received and you need to think about how it can best be presented, anticipate questions and be ready to discuss alternatives to keep things as constructive as possible.

One of the most challenging aspects to the role can be managing the client's costs and this is a daily consideration. It's not always easy to depart from getting on with the job at hand to update the client on costs, least of all when it's not what they want to hear. It's important to be transparent about the basis of charging and keep the client updated to manage these difficulties, preferably at the time when work is fresh in the client's mind (we don't do this

just to comply with our regulatory requirements!). Avoiding the issue never makes it easier!

You're probably getting the idea that a commercial role is varied and challenging. The commercial advice we give depends on the client's business and the current law, both of which are constantly changing. So, whilst there may not be a typical day, one thing that can be said is, it's never dull!

Best moments

That variety is exactly one of the best things about working in commercial. The breadth of work you can be involved in and the different types of businesses that can be your clients means that no two days are the same and there are always new challenges.

For me, the best thing of all is the opportunity to form close working relationships with clients and really get to know their businesses. Advising on the day to day business operations and commercial needs of clients requires you to come up with practical legal solutions enabling the business to move forward and I get a real satisfaction from knowing the advice I give is making a difference.

Advice to students

A key skill for any lawyer is to be commercial and pragmatic about the advice you give. This is particularly the case in commercial where your clients will be balancing costs, risk, practicality and a number of other factors on a daily basis in order to decide which legal solution is the best way to proceed. It's therefore essential to think commercially early on in your career to help clients with this decision making.

Developing commerciality is not about reading a book so you need to start putting yourself in the client's shoes. If you have or get the opportunity to work within a business this will help. If you get the opportunity to do a secondment, seize it! You might also look to get involved in enterprise challenges or other projects like fundraising or involvement on a committee, all of which will require you to think about budgets, business planning, managing costs and compliance with legal requirements. Reading the legal and business press will also help to become familiar with the economic pressures and other challenges faced by businesses.

You should also develop your negotiation skills. Although you may not do much contentious work, commercial lawyers will get involved in contract negotiation and regularly deal with potentially contentious situations. Sign up to training in negotiation skills and take notice of the different negotiating skills you get to observe and how effective they are.

Finally, if you go into commercial, try to get as broad an experience as possible and don't be tempted to specialize too early. Stay alive to the other legal disciplines that may also be relevant to your client. You'll be a much better lawyer if you have a good grounding in the wider legal and commercial issues affecting your clients.

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