

МИНИСТЕРСТВО ОБРАЗОВАНИЯ И НАУКИ РОССИЙСКОЙ ФЕДЕРАЦИИ

Нижегородский государственный университет им. Н.И. Лобачевского

АНГЛИЙСКИЙ ДЛЯ СЛУЖИТЕЛЕЙ ЗАКОНА
Часть 2

Практикум

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Данный практикум представляет собой сборник практических заданий для развития речевой компетенции по курсу «Английский язык в сфере юриспруденции» и содержит упражнения по первым четырем разделам учебного курса. Выполнение предложенных заданий способствует углубленному освоению соответствующих разделов и закреплению ранее полученных знаний. Практикум может быть использован для аудиторной и самостоятельной работы студентов.

Практикум предназначен для студентов ННГУ, обучающихся по специальностям 40.05.01 «Правовое обеспечение национальной безопасности», 40.05.03 «Судебная экспертиза», направлению подготовки бакалавров 40.03.01 «Юриспруденция».

Ответственный за выпуск:
заместитель директора Института филологии и журналистики ННГУ,
к.ф.н., доцент **И.В. Кузьмин**

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Module 5. The Legal System

A Basic legal concepts

Why do people decide **to take legal action**? There are many reasons for it. You may **get injured** because of someone's carelessness. You may be involved in a **dispute** with your neighbor. Somebody may **damage** your car in an accident. Your insurance company may not want to pay you. Law firms are available and ready to help you.

Everyone **is entitled to** a **due process**. When you decide **to initiate a lawsuit**, it is better to call a professional lawyer, as an ordinary citizen may not have enough legal knowledge. Lawyers make sure their clients get the **damages** they are entitled to. Their investigators are able to get all the proof needed for the trial. When a verdict is not in your favour, the lawyer **appeals** whenever possible.

Professional lawyers may **charge** their **fees** before or after the trial. Sometimes they fail **to settle** the argument or **win the case**. Decent lawyers will not charge anything if they **lose** your **case**. In other words, you won't **owe** the decent law firm any money if they didn't do their work well.

GLOSSARY 1

settle (an argument)	put right (an unfair situation)
take legal action	use the legal system to settle an argument
get injured	get a wound or damage to part of your body
a dispute	1) a serious argument or disagreement 2) a public or legal argument
damage	physical harm that is done to smth or smb so that it is broken or injured
damages	money that a court orders smb to pay to smb else as a punishment for harming them or their property
be entitled to smth	be given the official right to do or give smth
due process	the process designed to protect smb's legal rights (RUS правовая процедура)
initiate a lawsuit	begin a court case to try to prove that smb did smth wrong or is legally responsible for smth
appeal	make a formal request to a court asking to change the decision
charge	ask for a particular amount of money for your services
win (lose) the case	(fail) to prove in court that smb is guilty
owe	need to pay smb for smth they did for you or sold to you

Ex. 1 (A, B) Answer the questions on the text. Try not to look at it.

- 1 What are the possible reasons for legal action?
- 2 Can any person initiate a lawsuit?
- 3 Why may people go to a law firm?
- 4 Why is it better to go to a law firm?
- 5 When do professional lawyers charge fees?
- 6 Do you pay the lawyer if he or she loses your case?

Ex. 2 (A, B) Choose a proper word for each gap. You will not use some words.

proof damages due process a dispute a lawsuit
a trial appeal initiate court
take settle judge legal action

- 1 Karen received ... for her accident.
- 2 The law firm helps people involved in ...with their employers.
- 3 Mr McDonald wants to ...legal action.
- 4 Every citizen has the right to
- 5 Mr Lin initiated a ... against his neighbours as their dog barks too much.
- 6 Hopefully, Mrs Swenson will ... this problem without going to court.
- 7 My lawyer decided to ...after the judge decided against us.
- 8 Ms Carlos wants to take ... against her employer for not giving her a promotion.
- 9 Attorneys don't win cases when there is not enough ... to support their arguments.
- 10 The defendant was released after the ...

Ex. 3 (A, B) A lawyer is talking to the client. Read and answer the questions.

Lawyer: Hello, Mr. Wilkins. I received a call from Ms. Johnson's lawyer. She's ready to end the dispute.

Client: Really? What does she want?

L.: Well, she's not dropping the lawsuit unless you agree to settle.

C.: What is she asking for?

L.: She wants you to pay for half the damages to her car.

C.: But I did not wreck her car! Someone else ran into it!

L.: I know. But as you have no proof, I suggest you settle.

C.: I don't like it at all! But I guess you're right.

1 What is the conversation mostly about?

- | | |
|-----------------------|----------------------------------|
| a) an offer to settle | b) evidence in a trial |
| c) filing a lawsuit | d) an injury from a car accident |

2 What will the client most likely do?

- | | | | |
|------------------|-----------|--------|---------------------------------------|
| a) find evidence | b) refuse | c) pay | d) drop the lawsuit against the woman |
|------------------|-----------|--------|---------------------------------------|

Ex. 4 (A, B) Here is what happened next. Can you fill in the gaps? Act out the dialog.

Ms. Johnson's lawyer: Good morning, Ms. Johnson! I've just received a call from Mr. Wilkins's lawyer. He says he wants to put an end to your _____.

Ms. Johnson: Great! What do we do next?

L.: Well, he will only stop defending the lawsuit if you agree to _____.

J.: What is he asking for?

L.: He wants you to pay for the costs of arguing the case and he will pay for the _____ to your car.

J.: But I was parked on the other side of the road! He drove straight into me!

L.: I understand. But the _____ system for such cases can be very slow. I _____ you settle.

J.: OK. I think I'll agree.

Ex. 5 (A) Translate into English:

1/ Есть много причин, чтобы пойти в суд. 2/ Из-за небрежности водителя моя собака пострадала в ДТП. 3/ Я пойду в суд чтобы получить компенсацию. 4/ Твой адвокат порядочный? Почему ты так думаешь? 5/ Мне не нравится решение судьи, я буду подавать апелляцию. 6/ Следователь не смог собрать достаточно улик для судебного процесса. 7/ Он плохой следователь и не получит свою оплату. 8/ Обычно плата взимается юристом до процесса. 9/ Наша юридическая фирма всегда готова помочь вам в гражданских и уголовных делах. 10/ Сколько денег вы должны вашему юристу за помощь?

Ex. 6 (B) Translate into English:

1/ Когда было начато это дело? 2/ Кем оно было начато? 3/ Сколько юрист взял за свои услуги? 4/ Почему ваш юрист говорит, что вы все еще должны ему денег? 5/ Юрист должен помочь клиенту получить компенсацию, которая ему причитается. 6/ Я веду судебную тяжбу с соседом, он повредил мою машину. 7/ Он наехал прямо на нее и утверждает, что невиновен, т.к. не видел ее. 8/ Этот адвокат порядочный, он берет плату, только если выигрывает дело. 9/ Мой юрист не думает, что мое дело может быть легко улажено. 10/ Истец прекратит дело, только если вы заплатите ему компенсацию за поврежденное имущество. 11/ Я думаю, истец хочет слишком много. Ему был причинен небольшой ущерб. 12/ Если вы не смогли доказать в суде, что я невиновен, почему я должен вам платить? 13/ Вы не имеете права взимать с меня плату за ваши услуги. 14/ Я думаю, я не обладаю достаточными знаниями для судебного процесса, я позвоню в юридическую фирму. 15/ Закон говорит, что каждый гражданин имеет право на надлежащую правовую процедуру. Это правда? 16/ Разумно ли подавать апелляцию, если суд решил не в вашу пользу? 17/ Почему твоя страховая компания не хочет компенсировать тебе ущерб? 18/ Разве это не глупо – подать на меня в суд, потому что мой кот кричит по ночам? 19/ Какие доказательства истец хочет представить в суде?

B Legal resources

Where do legal professionals get the necessary information? There are many legal resources available, that is why it is important to know what they are.

Most legal libraries have a section for **primary materials**. These texts contain laws relevant to cases. Secondary materials give opinions on the law. They include **legal encyclopedias** and **digests**. Encyclopedias often **cite** primary sources in their **references**. Digests summarize individual cases that have similar topics.

Other legal publications include **case annotations** and **form books**. Annotations are articles about cases, they are printed in law **journals**. Form books show how legal documents should be worded and formatted.

Fortunately, most of these resources are available on **computerized databases**. That way, a lawyer doesn't have to carry around a lot of books!

GLOSSARY 2

WARNING! Before learning the definitions, *match them* with the words in bold!

primary materials	quote
encyclopedias	serious magazines for professionals
digests	contain facts about many different subjects
cite	show how to arrange legal documents properly
references	summarize and analyse similar cases
case annotations	store large amounts of legal information
form books.	contain laws used to settle legal cases
journals.	make comments on cases or explain them
computerized databases	part of smth you say / write, in which you mention a person or thing

Ex. 7 (A, B) Are these statements true or false? Correct the false statements.

- 1 Legal professionals publish their thoughts about cases in form books.
- 2 Judges use journals for making decisions.
- 3 Libraries keep primary materials as reference to relevant laws.
- 4 Lawyers use case annotations to organize their papers in the right way.
- 5 Attorneys use encyclopedias to find relevant laws.
- 6 Digests analyse similar cases or legal issues.
- 7 Legal encyclopedias do not focus on information about laws.
- 8 A paralegal can find the case annotations in the journals.
- 9 It is much easier for a law student to find information if he uses a form book.
- 10 When you write your final essay, don't forget to mention all the books you used in the list of digests.
- 11 You can find the case annotation in a legal journal.
- 12 A form book is useful for a student to look up what a legal term means.

Ex. 8 (A, B) Replace the underlined words:

1 The texts that contain laws are on the first floor of the library.

2 Mona should look at the collection of example documents to learn to arrange the contract correctly.

3 Many students' coursebooks mention information from primary materials.

4 The best place to find an opinion on the case is a book which summarises cases.

5 The firm's legal sources of information are located in the next room.

6 Courts keep records of past cases in electronic libraries.

7 Legal professionals need good research skills to find laws which refer to their cases.

Ex.9 (A, B) A lawyer is talking to a paralegal. Read and answer the questions. Try not to look back at the dialog! Can you guess the meaning of the underlined words?

Lawyer: Mary, you're back! Did the library have anything to help our case?

Paralegal: Yes, there were several similar cases in the legal encyclopedias. Obviously, judges often dismiss cases against young defendants.

L.: OK. Do those defendants have anything in common?

P.: According to the case annotations, none of them had any previous convictions.

L.: That's perfect.

P.: I also gathered primary materials about crimes involving young offenders.

L.: Thank you, Mary. Can you do me a favour? Write a summary of the similar cases you read about.

P.: Umm ... OK, boss, I'll do it right now.

1 Where did Mary look for legal information?

2 Which legal resources did she use?

3 What useful things did she find?

4 Why do you think judges often dismiss cases against young offenders?

5 Did Mary write a summary of the primary materials?

6 What will she do right now? Is she happy about it?

Ex. 10 (A, B) Answer the questions about yourself.

1 What legal resources do you use to get ready for your law classes?

2 Do you use legal resources in Russian or in English?

3 Is it easy for you to read and understand Russian laws?

4 Is it easy for you to understand laws without comments and explanations?

5 When can students use legal encyclopedias?

6 Does the Law Faculty have its own legal library?

7 Do first-year Law students read real case annotations or only textbooks?

8 What is better for a lawyer, to work with books or use electronic sources?

9 Can you always find on the Internet everything you need for Law classes?

Ex. 11 (A, B) Use the verb in the Passive after modals:

1/ The case may (to dismiss) if the defendant had no previous convictions. 2/ The article may (to publish) in the monthly journal. 3/ The trial can (to hold) next week. 4/ Some similar cases must (to find) in the legal library. 5/ This contract should (to arrange) properly. 6/ What must (to do)? 7/ The decision should (to make) today. 8/ The books you used must (to cite) in your report. 9/ A summary on these articles should (to write) by tomorrow. 10/ Reference books must (to use) by law students.

Ex. 12 (A,B) Use the verb in the Active or Passive:

1/ The fees (to charge) after the trial. 2/ How much your lawyer (to charge)? 3/ In our country, every citizen (to entitle) to a due process. 4/ Why you (to involve) in a dispute with your neighbour? 5/ Which proof (to need) for your trial? 6/ This law firm (to help) many clients. 7/ My boss (to help) by this law firm. 8/ A lawsuit (to initiate) last month against our company. 9/ Why the defendant (to release) after the trial? 10/ What damages you (to entitle) to? 11/ Your attorney (to win) the case? 12/ He (to appeal) or agree with the court's decision? 13/ How much you (to owe) your lawyer? 14/ The plaintiff (to settle) the argument with the defendant's lawyer. 15/ When the trial (to hold)?

Ex. 13 (A) Translate into English:

1/ Юристы получают юридическую информацию из многих источников. 2/ Большинство юридических библиотек содержат законы и юридические энциклопедии. 3/ Что такое вторичные материалы? 4/ Какие источники цитирует эта статья? 5/ Чтобы подготовиться к докладу, я использовала законы и юридические журналы. 6/ Наш университет имеет компьютерную базу юридических документов. 7/ Использовать компьютерную базу очень удобно. 8/ Современному студенту-юристу не нужно носить с собой много книг, он может пользоваться правовыми ресурсами онлайн. 9/ Какие законы имеют отношение к этому делу? 10/ Где я могу их найти и прочитать?

Ex. 14 (B) Translate into English:

1/ Когда вы читаете законы, вы можете что-то не понять, вам потребуется справочная литература. 2/ Комментарии к судебным делам можно найти (вы можете найти) в юридических журналах. 3/ Где мне можно поискать похожие судебные дела? 4/ Если вы пишете реферат, упомяните все книги и статьи, которые были использованы. 5/ Что общего имеют все эти дела? 6/ Мне нужен пример контракта, чтобы оформить его правильно. Где я могу его найти? 7/ Где хранятся первичные материалы в вашей библиотеке? 8/ Где печатаются аннотации на судебные дела? 9/ Какие источники приводят (дают) мнения о законах? 10/ К счастью, многие юридические материалы можно найти онлайн. 11/ К несчастью, сегодня в университете не работает интернет. Что мне делать?

C Types of legal systems

Text 1

There are hundreds of legal systems in the world. But, despite this great variety, there is one great division into **religious** and **secular legal systems**. Each type views law, its source, scope, sanctions, and functions differently.

The source of religious law is the deity which legislates through the prophets. Secular law is made by human beings, and one of its most famous examples begins with the words 'We, the people'. From this difference in their source it follows that religious laws are thought to be eternal and unchanged, while secular rules can be changed by their makers.

Religious law tells people what to believe as well as how to behave, whereas secular law deals with our external actions as they affect others. In a religious legal system disputes are usually settled by an officer of that religion, so the same person is both judge and priest. In a secular system, by contrast, the office of judge is separate, which guarantees judicial independence. A further difference lies in the enforcement of the laws: in a secular system sanctions are imposed *in this world*, and its severest punishment (the death penalty) means physical removal from the jurisdiction. The sanctions and rewards of a religious system may also occur *in this world*, but are most likely to be felt *in the next*.

GLOSSARY 3

deity	a god or goddess
secular	not controlled by a church or other religious authority
sanction	a form of punishment used when smb breaks the law
legislate	to make laws
affect	to influence, to impact
officer	smb who holds an office
priest	smb who performs religious duties and ceremonies
enforce	to implement, to make smth happen
impose	to force smb to accept smth
severe	very bad or serious

Ex. 15 (A, B) Compare the legal systems. Make a list of differences.

	<i>Religious systems</i>	<i>Secular systems</i>
1/ What is the source of law?		
2/ Can the laws be changed?		
3/ What does law control (tell people to do)?		
4/ Who settles disputes?		
5/ When are sanctions imposed on a guilty person?		

Text 2

Nowadays there are few countries whose legal system is exclusively religious, though some (mainly Muslim) aspire to this. By contrast a large number have secular systems, and this feature may be built into their legal structure, as in the 1958 French and the 1993 Russian constitutions, or the very first words of the First Amendment to the American Constitution, which came into force in 1789: 'Congress shall make no law respecting an establishment of religion'.

A number of other countries have 'dual' systems in which religious rules govern, and religious courts deal with such matters as marriage, divorce, family relationships and possibly family property, while a secular system with state courts covers the wider fields of public and commercial law. This is the case today in Israel, India, and Pakistan, while in some African countries these more private areas are ruled by local ethnic and religious custom. In these dual systems, the proportion of human activity governed by one or the other system may depend on the economic and political development of the country. It can be said in this context that in some countries a sophisticated secular system may well exist, but only on paper.

At the global level, international law is of great importance, whether created by the practice of sovereign states or by agreement among them in the form of treaties. Some transnational entities such as the European Union have created their own legal structures. At the national level there are over 180 sovereign states in the United Nations Organization. Many of these are federal or confederal, and their constituent parts may well have their own law.

GLOSSARY 4

aspire	to desire and work towards achieving smth
amendment	a small change, improvement or addition made to a law or legal document
custom	smth that is done in a society because it is traditional
sophisticated	very well designed and advanced
sovereign	independent and governs itself
treaty	a formal written agreement between countries
entity	smth that exists as a single and complete unit

Ex. 16 (A, B) Which words are missing?

- 1 Arabic countries aspire to have _____ legal systems.
- 2 In our country, the legal system is _____.
- 3 In India, the legal system is _____.
- 4 In Israel, such areas of human activity as _____, _____, or _____ are ruled by religious courts, but _____ are covered by state courts.
- 5 In some African countries, private areas of human life are controlled by _____ and _____.

Ex. 17 (A,B) Are these statements true or false? Correct the false statements. Consider both Texts 1 and 2.

- 1 There are four main types of legal systems in the world.
- 2 Religious law is made by human beings.
- 3 Secular law is legislated through the prophets.
- 4 Secular laws remain unchanged.
- 5 Religious laws are thought to be eternal.
- 6 Secular law tells people what to believe.
- 7 Religious law tells people how to behave.
- 8 In religious systems, a priest is also a judge.
- 9 In secular systems, judges are independent of church.
- 10 In religious systems, you will be punished or rewarded even after death.
- 11 Most Muslim countries do not have exclusively religious legal systems.
- 12 In European countries, secular systems are a feature of their legal structures.
- 13 Political or economic development of the country defines, which human activities are governed by religion.
- 14 Some legal systems are secular only on paper.
- 15 In the European Union, all the member countries have the same international laws, but they don't have their own laws.

Ex. 18 (A, B) Answer the following questions:

- 1 Which main types of legal systems do you know?
- 2 What is the difference between secular and religious law?
- 3 What is the difference between secular and religious judges?
- 4 What legal system is there in Russia? Prove it.
- 5 What are dual legal systems? How do they operate?
- 6 What is the legal system of the European Union?
- 7 What is international law? How is it formed?
- 8 What is a sovereign country? Does it have its own laws?

Ex. 19 (B) Translate into English:

1/ В некоторых странах законы говорят гражданам, как себя вести и во что верить. 2/ Светское законодательство создается людьми и для людей. 3/ Светское законодательство не всегда регулирует частную жизнь людей, семейные и имущественные вопросы. 4/ Религиозное законодательство стабильно и не подвергается изменениям. 5/ Законы по-разному реализуются в светском и религиозном законодательстве. 6/ Коммерческое право контролируется светским законодательством. 7/ В некоторых странах семейное право поддерживается религиозным законодательством. 8/ Международное законодательство создается суверенными государствами посредством договоренностей. 9/ Государства-члены Евросоюза имеют собственные законы, но существуют правовые структуры для всего Евросоюза в целом.

D Structure of the law

The main institutions of law in industrialised countries are independent courts, representative parliaments, a responsible executive, the military and police, bureaucratic organisation, the legal profession and civil society itself.

Separation of powers between the political, legislature and executive bodies guarantees that no person should be able to usurp all powers of the state. Nevertheless, modern military, policing and bureaucracy bring special problems in ordinary citizens' daily lives. The legal profession is an important part of people's access to justice, while civil society is a term used to refer to the social institutions, communities and partnerships that form law's political basis.

JUDICIARY

A judiciary is all the judges in a country, who, as a group, form part of the system. Most countries have systems of appeal courts, answerable to a supreme legal authority. In the United States and the UK, this authority is the Supreme Court. For most European countries, the European Court of Justice in Luxembourg can overrule national law, when EU law is relevant. The European Court of Human Rights in Strasbourg allows citizens of the Council of Europe member states to bring cases relating to human rights issues before it.

A judiciary is theoretically bound by the constitution, just as all other government bodies are. In most countries judges may only interpret the constitution and all other laws. But in common law countries, such as the UK, where matters are not constitutional, the judiciary may also create law under the doctrine of precedent.

In communist states, such as China, the courts are often subservient to the legislature; it means that governmental institutions may influence the judiciary. In Muslim countries, courts often examine whether state laws adhere to the religious doctrine: for example, in Iran the Guardian Council ensures the compatibility of the legislation with the "criteria of Islam".

LEGISLATURE

Prominent examples of legislatures are the Houses of Parliament in London, the Congress in Washington D.C., the Bundestag in Berlin, the Duma in Moscow. By the principle of representative government people vote for politicians to carry out *their* wishes. Although legislatures in countries like Israel, Greece, Sweden and China are unicameral, in most countries they are bicameral, meaning they have two separately appointed legislative houses.

One criticism of bicameral systems with two elected chambers is that the upper and lower houses may simply mirror one another. The traditional justification of bicameralism is that an upper chamber acts as a house of review in order to minimise injustice. To pass legislation, a majority of the members of a legislature must vote for a bill (proposed law) in each house. Normally there will be several readings and amendments.

GLOSSARY 5

WARNING! Before learning the definitions, *match them* with the words in bold!

representative	a set of beliefs which forms part of a system of ideas
usurp	very important or famous
be answerable to smb	a situation when people are treated unfairly and not given their rights
subservient	subordinate, less important than smth else
supreme doctrine	to have to explain your actions to smb in authority
adhere to	a representative system of government allows people to vote for other people to represent them in the government
prominent	to take smb else's power when you do not have the right to
injustice	to stick to smth, to continue to behave according to a particular rule
	having the highest position of power or importance

Ex. 20 (A, B) Correct the wrong statements

- 1 The European court of Human Rights is accessible to citizens of all states.
- 2 In Muslim countries, courts are independent of religious beliefs.
- 3 The main institutions of law are the military and police.
- 4 The Houses of Parliament in London are unicameral.
- 5 No court can overrule national law.
- 6 In no country can the judiciary create law.
- 7 To pass legislation, only one house must vote for a bill.

Ex. 21 (A, B) Which words are missing?

- 1 Powers are _____ to guarantee that nobody is able to _____ all powers of the state.
- 2 A judiciary is all the _____ in the country, viewed as a group.
- 3 Appeal courts are _____ to a _____ legal authority.
- 4 If someone is not satisfied with the Supreme Court decision, they may go to _____.
- 5 Cases related to human rights can be tried at _____.
- 6 It is hard to say that courts in _____ states are completely independent of governmental institutions.
- 7 In _____ countries, courts check state laws to _____ to the religious _____.
- 8 _____ government allows people to vote for politicians who will carry out people's wishes.
- 9 Bicameralism allows to minimize _____ in legislation.
- 10 Bicameralism is sometimes criticized as the two chambers may _____ one another.

EXECUTIVE

The executive in a legal system serves as the centre of political authority of the State. In a **parliamentary system**, as in Britain, Italy, Germany, India, and Japan, the executive is known as the cabinet, and composed of members of the legislature. The executive is led by the head of government. The head of state is apart from the executive, and symbolically enacts laws and acts as representative of the nation. Examples are the President of Germany (appointed by members of federal and state legislatures), the Queen of the UK (a hereditary office), or the President of Austria (elected by popular vote).

The other important model is the **presidential system**, found in the United States or Brazil. In presidential systems, the executive acts as both head of state and head of government, and has power to appoint an unelected cabinet. Thus, the executive branch is separate from the legislature to which it is not accountable.

Although the role of the executive varies from country to country, usually it will propose the majority of legislation. In presidential systems, the executive often has the power to veto legislation. Most executives in both systems are responsible for foreign relations, the military and police, and the bureaucracy. Ministers or other officials head public offices, such as a foreign ministry or defence ministry.

MILITARY AND POLICE

While military organisations have existed as long as government itself, the idea of a standing police force is a relatively modern concept. For example, Medieval England's system of traveling criminal courts used public executions to maintain control over communities. The first modern police were probably those in 17th-century Paris, in the court of Louis XIV, and the Paris Police claim they were the world's first uniformed policemen.

It can be said that the state has the monopoly on the legitimate use of force. The military and police enforce policies at the request of the government or the courts. If a state cannot implement or enforce policies, it means their police and military no longer control security and order. Then society moves into anarchy.

GLOSSARY 6

enact	to make a proposal into a law
hereditary	passed from a parent to a child
popular	done by a lot of people in the society
accountable	responsible for the effects of your actions
propose	to suggest smth as a plan or course of action
execution	1/ legal punishment 2/ (formal) the process of doing smth which was planned; implementation
claim	to say smth is true, though is not proved
enforce	to make smth happen or force smb to do smth N enforcement
implement	to take action that you officially decided should happen

Ex. 22 (A,B) Which words are missing?

1 In a _____ system, the executive acts both as the head of the state and the head of the government.

2 In a _____ system, the executive is led by the head of the government.

3 In the UK, the position of the King or Queen is _____.

4 Unlike the King or Queen, the President of the state is _____ by _____ or _____ by _____.

5 The USA have a _____ system, but the UK has a _____ system.

6 In the _____ system, the executive has power to appoint an unelected cabinet.

7 In _____ systems, the _____ has the power to veto legislation.

8 In the past, public _____ frightened people and helped control communities.

9 The police and the military are responsible for maintaining _____ and _____ in the country.

10 The state has the _____ on the legitimate use of force.

Ex. 23 (A,B) Are the sentences true or false? Try not to look back at the text! Correct the wrong statements.

1 In Japan, the Cabinet is composed of the members of the legislature.

2 In the UK, there is parliamentary democracy.

3 In Brazil, the president has the right to appoint the Cabinet.

4 In Germany, the president is elected by popular vote.

5 In Austria, the president is apart from the executive.

6 Criminal courts existed in Europe long ago.

7 The uniformed police originated in the medieval England.

8 Military organisations first appeared in France in the 17th century.

9 The police is 'younger' than the military.

10 If the police and the military do their work well, the society moves into anarchy.

Ex. 24 (A,B) Many countries are mentioned in the studied texts. Do you know how their people are called? Look up in the dictionary if necessary.

Country	People	Country	People
Russia	(the) Russians	Japan	?
The USA	?	Greese	?
Brazil	?	Sweden	?
China	?	Iran	?
India	?	Austria	?
Italy	?	Israel	?
Germany	?	Luxembourg	?

BUREAUCRACY AND CIVIL SOCIETY

Government servants and bodies make up bureaucracy. Like the military and police, they carry out the directives of the executive.

Writing in the early 20th century, Max Weber considered bureaucratic support to be a feature of a developed state. Weber wrote that the typical characteristics of modern bureaucracy are that officials define its mission, the scope of work is bound by rules, and experts manage top down, communicating through writing.

The most familiar institutions of civil society include economic markets, profit-oriented firms, families, trade unions, hospitals, universities, schools, charities, debating clubs, non-governmental organisations, neighbourhoods, and religious associations.

Freedom of speech, freedom of association and many other individual rights allow people to gather, discuss, criticise their governments, from which the basis of a deliberative democracy is formed. The more people are involved with, concerned by and capable of changing how political power is exercised over their lives, the more acceptable the law becomes to the people.

Nowadays in post-modern theory civil society is a source of law, the basis from which people form opinions and lobby for what they believe law should be.

LEGAL PROFESSION

As the European Court of Human Rights has stated, the law should be adequately accessible to everyone and people should be able to foresee how the law affects them. To make legal assistance available, legal professionals are here for you.

Modern lawyers are required by law to have a special qualification (a Bachelor of Laws or a Juris Doctor degree). Once accredited by the State, a lawyer will often work in a law firm, in a chambers as a sole practitioner, in a government post or in a private corporation as an internal counsel. In addition, a lawyer may become a legal researcher who provides legal research through a library, a commercial service or freelance work. Such research usually involves exploring case reports, legal periodicals and legislation.

GLOSSARY 7

make up	to combine together to form smth
define	to explain smth in detail
bound	limited
association	a relationship with a person or group of people
deliberative	existing for the purpose of discussing or planning smth
exercise	(formal) to use a right, power or quality
lobby	to try to persuade the government that smth should be changed
foresee	to predict; to know that smth should happen in the future
require	(formal) need smth
counsel	1/ advise 2/ a type of lawyer who represents you in court

Ex. 25 (A,B) Which words are missing?

1 _____ of _____ allows people to discuss and criticize their governments.

2 _____ democracy gives people the right to express their views on the social problems.

3 The group is _____ing for a reduction in defense spending.

4 The law should be equally _____ to everyone.

5 The law _____ that lawyers have _____ qualifications.

6 People should _____ how laws may affect them.

7 Government servants carry out the _____ of the state.

8 Bureaucratic support is considered a feature of a _____ state.

9 Charities and religious associations are _____ of _____.

10 The state _____ political power over people's lives.

Ex. 26 (A,B) Review all the texts on the topic and answer the questions:

1 What are the main institutions of law in industrialised countries?

2 Why does separation of powers exist in modern society?

3 What is a judiciary?

4 Is judiciary always independent of the legislature?

5 Can judges create law? When?

6 What are legislatures, what are their main types?

7 How is Russian legislative body called? Is it unicameral or bicameral?

8 What are the arguments for and against bicameralism?

9 How is a bill (proposed law) passed?

10 What is the executive in a parliamentary system? Who is it led by?

11 What power(s) does the executive in a presidential system have?

12 What are most executives in both systems responsible for?

13 What is the main function of the military and the police?

14 What makes up bureaucracy? What is its main function?

15 What are the main institutions of civil society?

16 What rights and freedoms form the basis of deliberative democracy?

17 Why is legal profession considered part of the Law Structure?

18 How are lawyers accredited by the State and where can they work?

Ex. 27 (A,B) Change into the Passive:

1/ Nobody can usurp all powers of the state. 2/ The constitution binds the judiciary. 3/ The European Court of Justice can overrule national law. 4/ Unicameralism can cause injustice in governmental action. 5/ The president appoints the Cabinet. 6/ The ministers head public offices. 7/ People elect Austrian president by voting. 8/ Louis XIV created the first police. 9/ Medieval criminal courts performed public executions. 10/ Government services and bodies make up bureaucracy. 11/ In civil society, people can lobby their interests. 12/ Everyone should foresee how the law affects them. 13/ The state accredits legal professionals. 14/ We consider the legal profession part of law structure.

Ex. 28 (B) Translate into English:

1/ Простые граждане имеют проблемы от современной бюрократии и полицейского надзора. 2/ Если вы недовольны решением апелляционного суда, обратитесь в верховный суд. 3/ международные суды могут опротестовать решения государственных судов. 4/ Суды не должны быть подчиненными законодательным органам. 5/ Законодательная власть обычно представлена двумя законодательными палатами. 6/ В парламентской системе исполнительная власть представлена кабинетом. 7/ Президент формально (символически) принимает законы. 8/ В президентской системе, исполнительная власть имеет право налагать вето на закон. 9/ Государство имеет монополию на законное использование силы. 10/ Бюрократия выполняет указания исполнительной власти. 11/ Современная бюрократия ограничена правилами и законами. 12/ Люди должны быть озабочены тем, как власть влияет на их жизнь. 13/ Современное гражданское общество является источником права, так как в нем люди формируют свое мнение и лоббируют свои интересы. 14/ Любой гражданин имеет право на доступную юридическую помощь. 15/ Юридические исследования проводятся фрилансерами или юридическими фирмами.

Е Constitution

Constitutions differ widely, and for good reason. Some provide for a federal structure, some, although unitary, include different legal systems within the one state (e.g. Britain, Canada). Some handle serious internal ethnic, linguistic, and religious differences, while others are written for a homogeneous population. A few are contained in no given text, e.g. in Israel, New Zealand or the United Kingdom.

The differences in constitutions are mainly caused by the value preferences prompted by national history. Different historical contexts have generated different priorities, and these in turn have led to different constitutional structures.

The following generalizations can be made. First, constitutions regulate the distribution of powers, functions, and duties among the agencies and officers of government and define the relationship between these and the public. Second, even a well-designed constitution cannot protect a political system against usurpation. Third, in many countries the holders of power ignore the constitution more or less entirely. Fourth, even where constitutions work, each operates within a matrix of compromise and custom. Fifth, they usually separate the legislative, executive and judicial organs of state. Sixth, they usually contain a Bill of Rights. Seventh, they often provide some method for vetoing laws which conflict with the constitution or the Bill of Rights. Eighth, they grant wide powers on the federal executive. Finally, they deal with the status of international law by either granting or denying it direct internal effect.

ADOPTION AND AMENDMENT

In many countries, constitutions follow some great event in national history: war, revolution, independence etc. Methods of adoption vary widely. The oldest and most prestigious US constitution was adopted by agreement among the 13 states and later ratified by the others; its Bill of Rights (technically called Amendments) was ratified by the State legislatures. By contrast, one of the most recent documents – the constitution of the Russian Federation – by-passed the legislature (which the President had dissolved) and was voted directly by the people on 12 December 1993, in the so called referendum. In between these two methods are other techniques such as the 1958 French constitution which involved both approval by the legislature under the existing constitution and then by the people in a referendum.

There are various methods to amend a constitution. The amending power may be divided among people, legislature, and executive, or between a federation and its components. Constitutions may declare certain features to be unamendable: e.g. in Germany, the basic human rights and the federal structure. In federal systems, amendments normally require majorities in the federal legislature followed by ratification by a majority of the constituents. This is the US provision, now adopted for some types of amendment by the Russian Federation.

GLOSSARY 8

internal	within a particular country, domestic. OPP external
value	an idea about what is right or wrong, what is important in life
entirely	completely
grant	(formal) to give smb smth or allow them to have smth
adopt	to formally approve of a proposal, especially by voting
ratify	to make a written agreement official by signing it
bypass	to avoid obeying a rule or system
dissolve	to formally end a parliament, a meeting etc.
constituent	one of the parts which combine to form smth

Ex. 29 (A,B) Which words are missing?

- 1 Some constitutions cannot be found in _____ // on _____
- 2 Some constitutions deal with ethnically heterogeneous population, some are for ethnically _____ countries.
- 3 In many countries, the people in power _____ the Constitution completely.
- 4 Even the best constitution can't protect the country from _____.
- 5 All constitutions contain something like the American _____ of _____
- 6 Constitutions seek compromise and take into account national _____
- 7 Constitutions may be _____-ed by direct _____ in the referendum, or _____-ed by agreement among the constituents.
- 8 Features like _____ or _____ may be declared unamendable.

*Ex. 30 (A, B) Are the sentences true or false? Try not to look back at the text!
Correct the wrong statements.*

1 Constitutions provided for unitary structures cannot include different legal systems within one state.

2 Constitutions are very different because of national value preferences.

3 You will never find some constitutions in books.

4 Constitutions do not regulate distribution of powers in the state.

5 Branches of power are separated by the constitution.

6 Relationship between governmental bodies and the public is regulated by constitutions.

7 The original Bill of Rights is actually a list of amendments to the American constitution.

8 No law in any country can be passed if it does not comply with the Bill of Rights.

9 Constitutions usually follow some historical event.

10 The US constitution was adopted by 51 states.

11 In 1993, the referendum was held in Russia, as the legislature could not make their decision about the new constitution.

12 In no country were constitutions approved by both the legislature and the people.

13 A referendum is when the legislature vote for or against smth.

14 In a federal state, constitutions are normally amended in two stages.

15 According to the text, both in Russia and in Germany basic human rights are unamendable.

GENEGAL CONSTITUTIONAL FEATURES

Although constitutions vary greatly in length, usually the greatest part is devoted to legislature and executive and the relations between them. Two widespread patterns which regulate these relationships are the **presidential** and the **parliamentary** systems.

The new Russian presidential system expands the presidency in a number of ways. First, following a tradition going back to the Tsars, the President is given wide power to rule by edict (ukaz). Apart from the need to comply with the constitution and with federal legislation, this power seems virtually unlimited. Second, the President appoints the prime minister (with the agreement of the lower House). Third, he or she may dismiss the government. Fourth, The Russian President may veto legislation, but it can be later overridden by special majority. Finally, the President can dissolve the lower House and call new elections if it thrice rejects his or her candidate for premier, or if it passes a motion of no-confidence in the government.

Some systems are a mixed parliamentary/presidential structure. For instance, in France the President is directly elected by the people, appoints the premier, has emergency powers, and extensive lawmaking functions. He or she can present bills to the people to enact by referendum, bypassing the Parliament, and can dissolve the National Assembly and call new elections.

EMERGENCY POWERS AND HUMAN RIGHTS

The constitutional commitment to a Bill of Rights makes it difficult to define emergency powers. On the one hand, the executive must be permitted to take emergency action; on the other, the emergency power should not abuse both the legislature and the Bill of Rights. The usual measure is to forbid the executive to use emergency powers to support the power of any government branches. Whether such provisions are effective in any given country is a matter of politics, not law. For example, in the UK a permanent statute permits the government to proclaim a state of emergency, but regulations are subject to Parliamentary revision.

The constitutional pattern of human rights protection is usually expressed as follows: “Congress shall make no law limiting the freedom of the press; the right to keep and bear arms shall not be infringed; the right to be secure shall not be violated; no person shall be deprived of life, liberty, or property without due process of law”. In the 20th century the rights to education, employment and so on were added, together with lines against discrimination on the grounds of gender, religion, nationality etc. To what extent these Bills of Rights are effective is more a matter of political power, than of legal technicality.

GLOSSARY 9

pattern	a traditional way of doing smth
override	to use your power to change smb else’s decision
a motion of no confidence	an official vote when people say they no longer trust some official(s)
emergency powers	special powers that are given to the government, police, or army because there is a very serious situation
abuse	to use smth in a way it should not be used
bear arms	to carry weapons, guns
infringe	to do smth that is against a law or smb’s legal right
deprive of smth	to prevent smb from having smth that they need

Ex. 31 (A,B) Can you finish the sentences?

- 1 The greatest part of the constitution is usually devoted to _____
- 2 The Russian President is in a way similar to Tzars because _____
- 3 The Russian President can dissolve the Lower House if _____
- 4 The presidential power in Russia is virtually limited by the need to _____
- 5 Mixed parliamentary/presidential systems are called so because _____
- 6 The emergency powers should allow the executive to _____
- 7 Using emergency powers the executive mustn’t abuse _____
- 8 Besides the basic rights and freedoms, modern constitutions now contain the rights to _____ and _____

Ex. 32 (A, B) Are the statements below about presidential or parliamentary systems? Revise the previous topic if necessary. Write PR or PA.

1 It fuses ceremonial and political power into one office, with its incumbent elected directly and quite separately from the legislature.

2 In this system, the Head of State is distinct from the head of government, who is called Prime Minister, Premier (or, in Germany, Chancellor).

3 It is quite possible (and in the USA, common) for the President to be of one party and a majority of the legislature of another.

4 The Head of State may be a hereditary monarch or directly elected President.

5 It separates executive and legislative powers so that neither body can dissolve the other: the President is removable only for crime, and the legislature acts as a tribunal.

6 The President usually has a veto over legislation, which may be overridden only by special parliamentary majority.

7 The executive can dissolve the legislature and call new elections.

8 On paper the Head of State's powers look impressive, in practice these are exercised on the instructions of the government.

Ex. 33 (B) Read about the UK constitution which does not exist as a single written document. Try to prove that it is still a Constitution.

Unlike the systems just described, the UK constitution is indistinct and unentrenched. It is found in no single constitutional document. The volumes entitled 'Constitutional Law' in the official edition of the 'Statutes in Force' print 138 Acts of Parliament, while a quite separate volume on 'Rights of the Subject' gives another thirty-two, including what is left of Magna Carta 1215. Furthermore, many issues in written constitutions, such as the procedure on a finance bill or a vote of no confidence, are governed entirely by custom, convention and Standing Orders of the Houses of Parliament. The basic constitutional instruments are those of 1707: the Treaty of Union and Acts of Union of the English and Scottish Parliaments.

As the British constitution is indistinct, there is no way to tell whether 'ordinary' laws conflict with those forming part of the constitution (although since October 2000 the courts may declare that a particular valid statute is incompatible with the Human Rights Act 1998. As the constitution is unentrenched, any element may be changed by an Act of Parliament.

Ex. 34 (B) Translate into English:

1/ Некоторые конституции (К.) имеют дело с существенными этническими и религиозными различиями в пределах одной страны. 2/ Различия в К. объясняются различными историческими событиями и приоритетными ценностями. 3/ Билль о Правах или что-то похожее на него содержится в каждой К. 4/ К. принимаются и исправляются разными способами. 5/ Отношения меж законодательной и исполнительной властью регулируются К. 6/ Чрезвычайные полномочия исполнительной власти не должны нарушать действующего законодательства и прав человека.

Ex. 35 (A, B) Review all the texts on the topic and answer the questions:

1 What is a constitution and what is it for?

2 Why are they different in length and content?

3 What are some common features for all constitutions?

4 How are constitutions adopted?

5 How are they amended?

6 How do they regulate the relations between the legislature and executive?

Name and describe the main types of systems.

7 How can you describe the Russian presidential system?

8 What are emergency powers of the executive?

9 How are human rights protected in constitutions?

Module 6. Sources of law

A What is legislation

Legislation (or "statutory law") is 1) law which is enacted by a legislature or other governing body or 2) the process of making it.

Legislation can have many purposes: to regulate, to authorize, to outlaw, to provide (funds), to sanction, to grant, to declare or to restrict. It may be contrasted with a non-legislative act which is adopted by an executive or administrative body under the authority of a legislative act or for implementing a legislative act.

Broadly, there are two kinds of legislation: primary legislation (Acts of Parliament) and secondary legislation. Acts are laws which Parliament enacted. Sometimes Acts are called 'Acts of Parliament', or statutes. Less often Acts are called 'primary legislation' to distinguish them from secondary legislation. Usually they have the word 'Act' in their title. An Act has to be read with any secondary legislation made on it. Secondary legislation will often fill in details not covered by the Act under which it is made. Not all Acts have or need secondary legislation.

Secondary (also delegated, subordinate or subsidiary) legislation are laws made by people using powers (governors etc.) that Parliament gives them by means of its Acts. The Governor is the person most often given power by Acts to make subsidiary legislation. Secondary legislation has various names, which do appear in its titles, such as regulations, local laws or by-laws, planning schemes, rules.

Subsidiary legislation is made 'under' an Act. Acts that say who can make secondary legislation also say what things the subsidiary legislation can deal with.

Legislation is regarded as one of the three main functions of government, which are often distinguished under the "Separation of powers" Doctrine. Those who have the formal power to create legislation are known as legislators; a judicial branch of government will have the formal power to interpret legislation; the executive branch of government can act only within the powers and limits set by the law.

Ex. 1 (A, B) Find the words which mean the following:

- 1 to recognize and understand the difference between the things or people
- 2 to completely stop smth by making it illegal
- 3 to take action or make changes which you officially decided should happen
- 4 in a less important position than smb/smith else
- 5 a local government law that should be obeyed by the people living in an area
- 6 smb who has the power to make laws or belongs to a lawmaking institution
- 7 to explain the meaning of smth in your own way

Ex. 2 (A, B) Provide synonyms:

- | | |
|---------------|-------------------------|
| 1 legislation | 4 differentiate |
| 2 lawmaker | 5 secondary legislation |
| 3 local laws | 6 primary legislation |

Ex. 3 (A, B) Which words are missing?

- 1 Legislation is the process of _____.
- 2 A _____ act is adopted by an executive or administrative body under the authority of a legislative act.
- 3 The purposes of legislation are different: _____.
- 4 Secondary legislation is made by _____, most often by _____.
- 5 Primary legislation documents have the word _____ in their titles.
- 6 Secondary legislation documents are _____.
- 7 One of the three main governmental functions is _____.
- 8 The _____ branch can act only within legal powers and limits.

B Background to making new laws in the UK

Before an item of legislation becomes law, it may be known as a **Bill**, and may be broadly referred to as "legislation", while it still remains under consideration. Legislation is usually proposed by a member of the legislature (e.g. a member of Congress or Parliament), or by the executive, then it is debated by members of the legislature and is often amended before it is enacted (passed). Most large legislatures enact only a small part of the bills proposed. Whether a given bill will be proposed and enacted is generally a matter of the government's legislative priorities.

A new Act is passed in order to:

- update or amend existing legislation;
- legislate for new circumstances and enforce government policies;
- ensure UK compliance with International or European Union (EU) Law;
- consolidate laws by bringing together all the existing statutes on one topic;
- codify rules by bringing together all the case law and statutes on a particular subject into one document where the common principles are established;
- repeal obsolete laws which are no longer relevant.

Note: Act of Parliament and Bill are always capitalized in legal usage; statute is not.

EARLY DEVELOPMENT OF A BILL

The government may proceed to initiate a consultative process by publishing a **Green Paper** in which its proposals are set out at an early stage with the intention of attracting public response, comment, debate and discussion. A Green Paper is an official government document also known as consultation document. It represents the best that the government can propose on the given issue, but, it is possible without loss of face to leave the final decision open, until the public reaction to it is considered. Green papers may result in the production of a White Paper.

The government's White Papers present more definite proposals, although these are often published after consultations or discussions with pressure groups, professional bodies, or voluntary organizations. A white paper is an authoritative report or guide that informs readers concisely about a complex issue and presents the issuing body's philosophy on the matter. It is meant to help readers understand an issue, solve a problem, or make a decision. White papers perform the dual role of presenting firm government policies, at the same time inviting opinions upon them.

A Bill does not have to be preceded by a White or Green paper, although it may have been presented for public scrutiny, that is, examination, in draft form earlier.

PASSING AN ACT

All Acts must be submitted to both Houses of Parliament in the form of a Bill. The legislative process involves three readings in both Houses. At the first reading, the title is read to Members of Parliament (MPs); at the second reading MPs debate proposals. Then a standing committee will scrutinize the provisions in the Bill and may amend it. This is reported back to MPs. At the third reading, the Bill is re-presented. The Bill then goes through readings in the upper house. The actual drafting of the legislation is undertaken by Parliament Council. Finally, a Bill must receive Royal Assent from the monarch before it becomes law on a specified date. In fact, this stage is reduced to a formal reading of the title of an Act in both Houses of Parliament and is now a formality.

Ex. 4 (A,B) Find the words which mean the following:

1 to combine things in order to make them more effective or easier to deal with

2 to arrange laws, principles, facts in a system

3 to examine very carefully

4 to officially end the law

5 a formal approval of smth

6 no longer useful, because smth newer and better is invented

7 a condition in an agreement or law

8 shortly, briefly, with no unnecessary words

9 the conditions that affect the situation, action, event, etc.

10 obeying a rule, agreement or demand

Ex. 5 (A, B) Which words are missing?

1 The Bill can be called _____, although it doesn't have legal power yet.

2 It is necessary to pass new legislation if the government enforces _____

3 If many statutes on similar topics exist, it is good to _____ them.

4 When laws become _____, the legislators have the right to _____ them.

5 Not every Bill is preceded by a _____ and a _____, but still it is a good idea to give legal projects a bit of public discussion.

6 _____ is a kind of document which presents the government's proposals on legal issues and is aimed at attracting public reaction and comment.

7 _____ is also a consultation document, but it presents more definite proposals which were discussed before.

8 Both _____ and _____ are legal documents, but neither of them is a law.

9 To become an Act, a _____ must be submitted to _____.

10 The Houses of Parliament give a Bill _____ hearings before it is enacted.

11 The first hearing is just a formality, only _____ is read to _____

12 The final stage for a Bill to become a law is receiving _____

Ex. 6 (B) Translate into English. You may need to revise the texts from part A.

1/ Цели законодательства – регулировать, налагать санкции, ограничивать и др. 2/ Как отличить первичное законодательство от вторичного? 3/ Очень часто парламентский акт сопровождается одним или несколькими вторичными документами. 4/ Часто созданием вторичного законодательства занимается губернатор. 5/ Доктрина «разделения властей» разделяет основные функции правительства – законодательную, исполнительную и судебную. 6/ Законопроект обычно предлагается членом парламента или представителем исполнительной власти. 7/ Не все предлагаемые законопроекты становятся законами, лишь малая их часть. 8/ Правительство имеет законодательные приоритеты, от которых зависит, будет ли принят законопроект. 9/ Может потребоваться принятие нового закона в случае если существующий закон по данному вопросу устарел. 10/ Когда существует прецедентное право и статуты по одной тематике, возможна их кодификация правительством. 11/ Чтобы выяснить общественное мнение по определенному вопросу, правительство может опубликовать предложение в «Зеленой книге». 12/ «Белая книга» может напечатать предложение повторно, после проведенных обсуждений и комментариев общественности. 13/ Конечный вид законопроект получает в Парламентском совете. 14/ Только после нескольких чтений в палатах парламента и формального одобрения монарха законопроект становится законом.

C Common law

(A ,B) Apart from legislation there is another set of laws called the ‘common law’ or ‘case law’. The common law is made by the courts by means of the decisions they make in the cases they decide. Legislation and the common law exist side by side, they interrelate. Legislation prevails over the common law if there is a conflict between them. However, the common law affects legislation and legislation affects the common law.

Statutory interpretation is how a piece of legislation can be understood and applied correctly in a specific case. Some of the rules on how to understand and interpret legislation may be found in the common law. It should also be clear that an individual piece of legislation (say Act A) exists alongside case law some of which is on statutory interpretation. Some case law might be about Act A itself. Which case law is relevant to a particular question of statutory interpretation will depend on the question. Thus, the meaning of legislation sometimes depends on what case law says.

Readers who are not lawyers should be careful when reading case law because one case’s decision may have been overruled or modified by a later case. So, a case that seems to answer a question of statutory interpretation may in fact not.

(B) The Common Law world begins in England. In 1066 the Common Law was born of a union between older Saxon law and the custom of the Norman conquerors. Early medieval law varied from shire to shire, and was based on various tribal customs. The concept of a "common law" developed during the reign of Henry II during the late 12th century, when Henry appointed judges that had authority to create an institutionalized and unified system of law "common" to the country.

The next major step in the evolution of the common law came when King John was forced by his barons to sign a document ("great charter" or *Magna Carta* of 1215) limiting his authority to pass laws. A concentrated and elite group of judges acquired a dominant role in law-making under this system, and compared to its European counterparts the English judiciary became highly centralized. This powerful judiciary gave rise to a systematized process of developing common law.

The Common Law was practiced and developed in London lawcourts, by judges and barristers and spread only by conquest and colonization: no one ever accepted it freely. Some version of the common law is found today only in places once occupied by the British, among them Ireland, the USA, Canada, Australia, New Zealand, India, Pakistan, Kenya, Uganda, Nigeria, etc. But no country which has the common law seems able or willing to get rid of it.

The main creators of the Common Law are the judiciary: that is to say the matrix, the basic operating system, laid down by caselaw. Recruited from the ranks of successful practising lawyers, the judges speak with individual and distinctive voices: they lay down the law. The great names are well known in common-law countries, and the highest court is an institution of enormous power and prestige.

(A, B) PRECEDENT

Where the basic principles are contained in an enacted code, this is the source of the law. Judicial decisions do not make law because they do not need to. Common-law perceptions are quite different. Historically, the judges made the law. Furthermore, to this day the legislator in common law countries does not lay down the basic rules of the legal system. But they are needed, and so a notion of precedent comes into being. For instance, the English parliament has never defined murder, never laid down that you must keep your contracts, or pay compensation for damage unlawfully caused to others.

Since such definitions and rules are necessary, courts and lawyers can find them only in earlier caselaw. This means that, in deciding a legal issue, the common-law judge must agree with any rule laid down by precedent. The doctrine of precedent is an operating rule of a common-law system. It is a judicial creation and can be amended or adapted by its makers. Lower courts, however, are bound by the highest court's rulings on matters of law.

(B) FACT

Legal disputes are as much about fact as about law. The work of the lower courts is much about determining facts. The judges who built up the common law system were few in number, and left the hard work of fact-finding to non-lawyers: the jury, originally of neighbours who might be thought to know the background, and then of disinterested strangers empanelled to hear the evidence and decide.

Nowadays only the USA makes much use of the jury for non-criminal matters (as required by the VII Amendment), but its ghost rules the procedure of all common-law countries. The very word 'trial' suggests a single, continuous and relatively short session in which all the evidence is presented to a jury who knew nothing about it beforehand. Similarly, there is no need for the judge to be acquainted with the case before the trial begins. The proceedings are oral, since that is the quickest and most effective way of conveying information to a number of laypersons. And their verdict is difficult to overturn, since an appellate court has not heard the evidence directly nor seen the witnesses in person. The result of the above features is that in common-law countries the legal system is not organised in a coherent and clear structure, and it is not easy for the foreign lawyer to approach.

Ex. 7 (B) Finish the sentences:

- 1 King Henry II developed the common law concept in order to _____
- 2 King John of England was made to sign Magna Carta because _____
- 3 The modern countries which practice the common law are _____
- 4 In the UK, the common law is created by _____
- 5 The common law judges of the past were too busy to look for _____, so they employed _____ or _____.
- 6 Nowadays in the UK, the jury is almost never used in _____, but in the USA it is still used as required by _____.

Ex. 8 (A, B) Find the words which mean the following:

(A, B) 1 to influence smb / smth

2 to be in connection that makes two things affect each other

3 the crime of killing smb

4 a set of rules or laws

5 unfairly, illegally

6 an idea, belief or opinion

(B) 7 easy to understand because it is clear and reasonable

8 to choose the members of a jury in court

9 to change a verdict or decision so that it becomes the opposite

10 no longer to have smth you do not need or want

11 related to the Middle Ages

12 getting control of a country by fighting

Ex. 9 (A, B) Are the statements true or false? Correct the false statements.

(A, B) 1 The common law prevails over legislation if they are in conflict.

2 The common law and legislation affect each other.

3 It is not easy for non-lawyers to interpret the case law.

4 Many basic rules of the UK legal system cannot be found in the legislation.

5 It is not necessary for an English judge to agree with a precedent.

6 A lower court decision based on the precedent cannot be overturned by any higher court.

(B) 7 The common law was brought to England by the Normans.

8 Some countries accepted the common law on a voluntary basis

9 Great English judges are very influential and respected people, well known in common law countries.

10 The judge and the jury do not know the case details before the first trial.

11 Trial should not be long, and all the evidence should be brought before the jury.

12 It is totally impossible to overturn the court decision based on the case law.

Ex. 10 (B) Translate into English

1/ Что более важно, законодательство или прецедентное право (ПП)? 2/ Какова взаимосвязь меж ПП и законодательством? 3/ Кто создает ПП? 4/ Легко ли понять ПП иностранному юристу? 5/ Как распространилось ПП в другие страны? 6/ Продолжает ли ПП создаваться в настоящее время? 7/ В странах, не имеющих ПП, судьям не нужно создавать законы, более того, это будет нелегально. 8/ Судья в системе ПП вынужден считаться с ПП, даже если он не согласен с ним. 9/ В таких вопросах, как уплата компенсации за ущерб или выполнение обязательств по контракту, законодательство отсутствует, и судья вынужден руководствоваться (применять) ПП. 10/ В Англии судьи традиционно не занимались поиском улики и доказательств, они предпочитали выслушать факты, представленные другими лицами.

D Law reports

Law reports are series of books that contain judicial opinions from a selection of case law decided by courts. In common law countries, court opinions are legally binding under the rule of precedent. This rule requires a court to apply a legal principle that was established earlier by a court of a superior (sometimes, the same) jurisdiction dealing with a similar set of facts. Thus, the regular publication of such opinions is important so that lawyers, judges, and laymen can all find out what the law is, as declared by judges.

Official law reports are those authorized for publication by statute or other governmental ruling. Governments designate law reports as official to provide an authoritative, consistent, and authentic statement of a jurisdiction's primary law. Official case law publishing may be carried out by a government agency, or by a commercial entity. **Unofficial** law reports, on the other hand, are not officially sanctioned and are published as a commercial enterprise. Some commercial publishers also provide court opinions in online databases that are part of larger fee-based, online legal research systems, such as Westlaw, Lexis-Nexis and Justis.

A good printed law report traditionally contains the following items:

- The citation reference.
- The name of the case (usually the parties' names).
- Catchwords (for information retrieval purposes).
- The headnote (a brief summary of the case, the holding, and any significant case law considered).
- A recital of the facts of the case (unless appearing in the judgment).
- The judgment (a verbatim transcript of the words used by the judge to explain his or her reasoning).

PUBLICATION ON THE INTERNET

The development of the Internet created the opportunity for courts to publish their decisions on Web sites. This is a relatively low cost publication method compared to paper and makes court decisions more easily available to the public (particularly important in common law countries where court decisions are major sources of law).

Decisions of courts from all over the world can now be found through the World Legal Information Institute (WorldLII Web site), and the sites of its member organizations. These projects have been strongly encouraged by the Free Access to Law Movement (FALM), the international movement and organization devoted to providing free online access to legal information such as case law, legislation, treaties, law reform proposals and legal scholarship. In theory, court decisions posted on the Web expand access to the law beyond the specialized law library collections used primarily by lawyers and judges. The general public can more readily find court opinions online, whether posted on Web-accessible databases, or through general Web search engines.

Ex. 11 (A, B) Find the words which mean the following:

- 1 to choose smth/ smb for a particular job or purpose
- 2 a keyword, a word or phrase that refers to some idea or situation
- 3 to motivate, give confidence
- 4 if smth is ... , it must be obeyed
- 5 opposite of subordinate
- 6 a process of thinking smth over carefully, to make a judgement
- 7 quotation
- 8 a commercial organization

Ex. 12 (A,B) Which words are missing?

- 1 Law reports contain _____ from real cases decided in courts.
- 2 It is not necessary to follow a precedent taken only from a _____ court practice, the judge may resort to cases tried in courts of the same jurisdiction.
- 3 _____ law reports are published by commercial _____.
- 4 Law reports are designated by the government to _____.
- 5 _____ law reports are not officially sanctioned.
- 6 A good law report should contain _____ of the case facts.
- 7 _____ is a word-by-word transcript of the judge's words used to explain his or her reasoning.
- 8 Publishing court decisions on the Internet is a _____ method.
- 9 FALM provides free access to _____.
- 10 Publishing court decisions on the Web is more convenient than _____, used by lawyers earlier.

Ex. 13 (A, B) Answer the questions based on Parts A-D of Module 6:

- 1 What are the two meanings of the word 'legislation'?
- 2 What are primary and secondary legislation?
- 3 Who is a Bill proposed by and what happens before it is passed?
- 4 When is there a need for new Acts?
- 5 What is a Green Paper and what is it for?
- 6 What is a White Paper and what is it for?
- 7 How many hearings does the Bill get before it becomes a law?
- 8 What is the common law? Who makes it?
- 9 How are the common law and statutory law interrelated?
- 10 How did the Common law originate? (B)
- 11 What are other common law countries? how did they get the case law system?
- 12 What is the doctrine of precedent?
- 13 Who is responsible for fact-finding in common law countries? (B)
- 14 What is a law report? What does it usually contain?
- 15 Where can law reports be found?

Module 7. The Court System

A Jurisdiction

(A, B) In law, **jurisdiction** is the authority given to a judge to take decisions in matters concerning the law. It also includes the authority of formal legal body or a political leader to deal with legal matters and to administer justice within a defined area of responsibility. Jurisdiction relies on public International Law, constitutional law and the powers of the executive and legislative branches of government to give resources to best serve the needs of its society.

The main types of jurisdiction are **personal** jurisdiction (authority over a person, e.g. a justice of the peace), **territorial** jurisdiction (authority over an area, e.g. the court has jurisdiction over Colorado), **subject** jurisdiction (authority over a particular subject, such as family law).

Court jurisdiction can be **exclusive** or **concurrent**. As the name implies, with exclusive court jurisdiction, only one court can adjudicate on the case, in other words the case can be tried only in one court. With concurrent jurisdiction, the issue may be decided in several courts. It means that lawyers can go forum shopping to choose the court which is more likely to rule in favour of their clients. Thus, some jurisdictions are known to be “plaintiff-friendly”.

(B) At the international level, there is no general rule in international law that its treaties have direct effect in municipal law, but some nations, being members of supranational bodies, allow the direct incorporation of rights or enact legislation to honor their international commitments. Thus, citizens in those nations can invoke the jurisdiction of local courts to enforce rights granted under international law. If there is no direct effect or legislation, there are two ways to incorporate international into municipal law:

(1) international and municipal law make up a single legal system with municipal law subordinate to international law. E.g. in the Netherlands, all treaties and the orders of international organizations are effective without any action required to convert international into municipal law. In nations adopting this theory, the local courts automatically accept jurisdiction to adjudicate on lawsuits relying on international law principles.

(2) international and municipal law are regarded as separate systems so that the municipal courts can only apply international law either when it has been incorporated into municipal law or when the courts incorporate international law on their own motion. In the United Kingdom, for example, an international treaty is not effective until it is incorporated, at which time it becomes enforceable in the courts where appropriate, even against the UK Government. Otherwise the courts may apply international law where it does not conflict with statute or the common law.

Ex. 1 (A, B) Find the words in the text which mean the following:

- 1 (A, B) belonging to only particular people or body, unique
- 2 existing or happening at the same time
- 3 taking a legal case to a court which is likely to provide a favourable judgement
- 4 unfavourable to the offender
- 5 (B) relating to the government of a town or city
- 6 to officially decide who is right in a disagreement
- 7 to include smth as part of a group, system
- 8 a proposal made formally and then usually decided on by voting
- 9 a formal written agreement between countries
- 10 correct or suitable for a particular time or situation

Ex. 2 (A, B) Guess the term. Do not look back at the text!

- 1 It grants authority over a person.
- 2 It has authority over one particular subject.
- 3 Its authority covers a particular area or region.
- 4 Only one court can decide the issue.
- 5 More than one court can try the case.

Ex. 3 (A, B) Replace the underlined part:

- 1 I'd like to know which court has authority over a region in this town.
- 2 The court decision in this case is the only one.
- 3 In which case does the court have authority over a certain type of person?
- 4 The case is under the authority of several different courts.
- 5 My lawyer is choosing a court to see which court is likely to rule in my favour.
- 6 The case will be heard in a civil court as it has authority over the topic.

Ex. 4 (A, B) Fill in the gaps with the words below and act out the dialog:

Forum shopping	concurrent	welcome	legal body
favour	territorial	choose	adjudicate

Lawyer 1: Which court is the case going to?

Lawyer 2: Probably to the county court, it has (1)_____ jurisdiction.

L1: A subject-specific court can (2)_____ the issue, too. Am I right?

L2: I'm afraid not.

L1: But why? I thought jurisdiction was (3)_____.

L2: You are (4)_____ to find out. But in my opinion, no other (5)_____ has authority.

L1: I'll check. I think we could go (6)_____ to (7)_____ a court more likely to rule in our (8)_____.

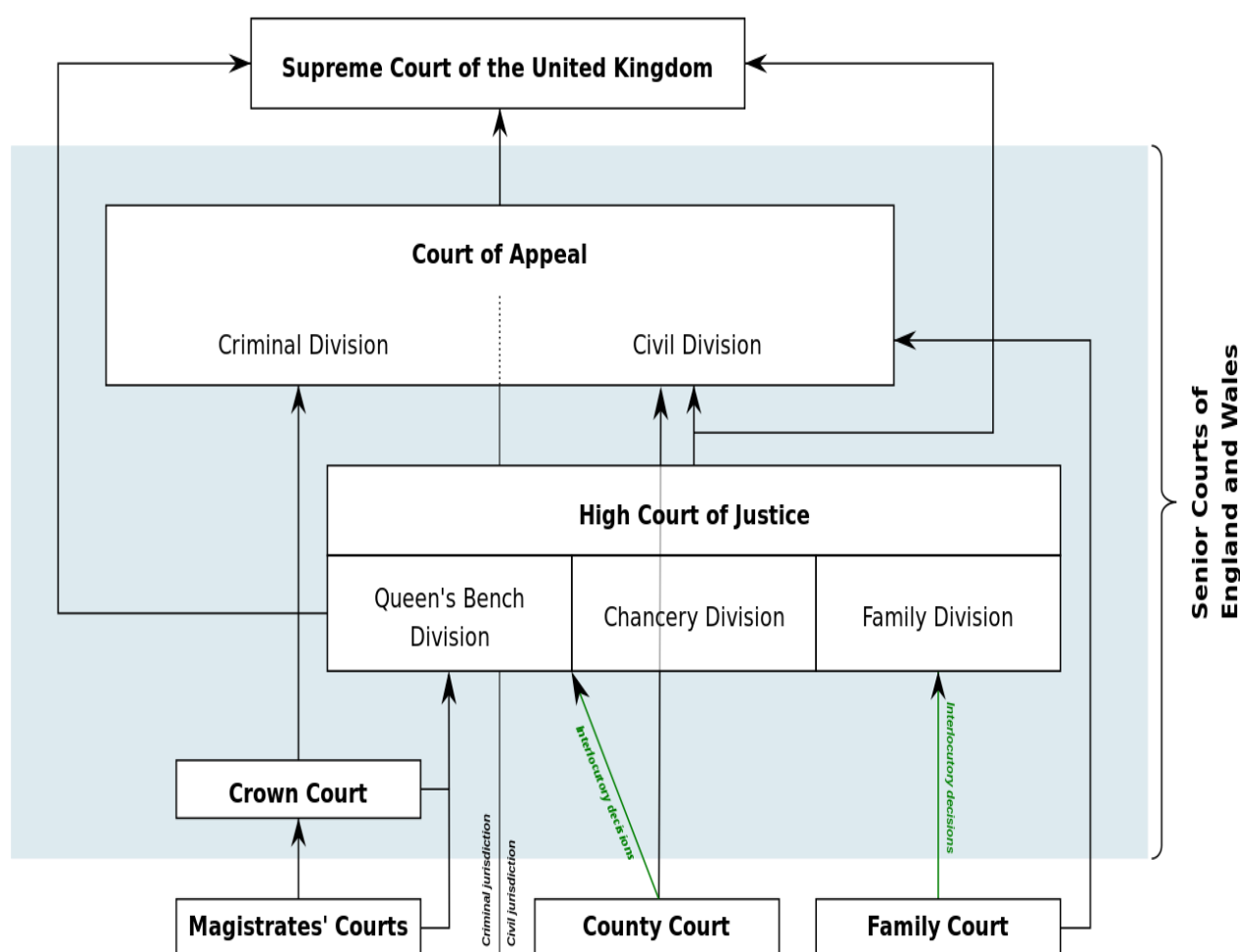
L2: Hope you're right.

B Court structure in the UK

(A,B) The **Courts of the United Kingdom** are separated into three jurisdictions, the Courts of England and Wales, Courts of Scotland and the Courts of Northern Ireland, as the UK does not have a single unified judicial system. However, there are exceptions to the rule, e.g. in the area of immigration law, the jurisdictions of the Immigration Tribunal and the Immigration Appeals Commission cover all of the United Kingdom; in employment law, Employment tribunals and the Employment Appeal Tribunal have jurisdiction in the whole of Great Britain.

The Constitutional Reform Act of 2005 created a new **Supreme Court** of the UK to take over the judicial functions of the House of Lords. Now, the Supreme Court serves as the court of last resort in England and Wales and in Northern Ireland, and for civil cases in Scotland.

Her Majesty's Courts of Justice of England and Wales are the civil and criminal courts responsible for the administration of justice in England and Wales, they are established under Acts of the Parliament. They are the **senior courts** including the Court of Appeal, the High Court, the Crown Court, and the **subordinate courts** - the County Court, magistrates' courts and Family Court.



SENIOR COURTS OF ENGLAND AND WALES

(A, B) The **Court of Appeal** deals only with appeals from other courts or tribunals. It consists of two divisions: the Civil Division hears appeals from the High Court and County Court and certain superior tribunals, while the Criminal Division may only hear appeals from the Crown Court connected with a trial on indictment (i.e., for a serious offence). Its decisions are binding on all courts, including itself, apart from the Supreme Court.

The **High Court of Justice** functions both as a civil court of first instance and a criminal and civil appellate court for cases from the subordinate courts. It consists of **three divisions**: the Queen's Bench, the Chancery and the Family divisions. The divisions of the High Court are not separate courts, but have separate procedures and practices adapted to their purposes. Particular kinds of cases will be assigned to each division depending on their subject matter.

The Queen's Bench Division (QBD) hears a wide range of common law cases and also has special responsibility as a supervisory court over inferior courts. Generally, the validity of any decision of a government minister, inferior court, tribunal, local authority or official body may be challenged by someone in the Administrative Court of the QBD. A single judge first decides whether the matter is fit to bring to the court and if so the matter is allowed to go forward to a full judicial review hearing with one or more judges. In addition, the QBD hears appeals from the Magistrates' Court and Crown Court.

The Chancery Division (CD) deals with business law, probate law, insolvency, and land law. It has specialist courts, the Patents Court and the Companies Court, which deal with patents and registered designs and company law matters respectively. All tax appeals are assigned to the CD.

The Family Division deals with personal human matters such as divorce, children, and medical treatment. Its decisions are often of great importance only to the parties, but may concern life and death and are perhaps regarded as controversial. For example, the Family Division permitted a hospital to separate conjoined twins without the parents' consent; it allowed one woman to have her life support machines turned off, while in another case it did not permit a husband to give his severely disabled wife a lethal injection with her consent. The Family Division exercises jurisdiction to hear all cases relating to children's welfare.

The Crown Court is a criminal court of both original and appellate jurisdiction which in addition handles a limited amount of civil business both at first instance and on appeal. It also hears appeals from magistrates' courts. The Crown Court is the only court in England and Wales that has the jurisdiction to try cases on indictment and when exercising such a role it is a superior court in that its judgments cannot be reviewed and overruled.

Ex. 5 (A, B) Which legal body is it?

1 Cases on business and land law are tried there.

2 It is the court of last resort. No other UK court can override its decision.

3 It deals only with appeals.

4 It is both criminal and civil, hears cases both at first instance and on appeal. It is subordinate to some other courts.

5 It can check if the decision of an inferior court, local authority or official body is valid.

6 It has several divisions.

7 It deals with personal human matters.

Ex. 6 (A, B) Find the word or phrase which means the following:

1 a court where you bring your case for the first time.

2 to be officially charged with a criminal offence

3 permission to do smth

4 causing a lot of disagreement

5 the condition of having a paid job

6 making sure smth is done properly and according to the rules

7 the opposite to “superior” (2 words)

8 to give smb a particular job or make them responsible for a certain thing

9 it is compulsory and must be fulfilled or followed

10 to start, to found a company or other official body

Ex. 7 (A,B) Are the statements true? Correct the false statements:

1 There is one unified legal system in the UK.

2 The House of Lords no longer has a judicial function.

3 The courts of the UK are subdivided into four territorial jurisdictions.

4 Both civil and criminal cases from Scotland can be taken to the Supreme Court.

5 The Supreme Court has both original and appellate jurisdiction.

6 There are 3 types of senior courts in the UK.

7 The divisions of the High Court are three separate courts.

8 The Appeal Court decisions are officially binding for the Supreme Court.

9 Only the crown court in England and Wales can try cases on indictment.

10 Cases on children’s welfare can be taken to the QBD.

11 The High Court of Justice may function as a criminal court of first instance.

12 In the QBD, a judge and the jury first decide whether the matter is fit to bring to the court, only then the case is heard.

13 The Court of Appeal cannot act as a court of first instance.

14 The QBD can act as an appellate court.

15 A case brought to the High Court can be tried in ANY division, regardless the subject matter.

16 Employment tribunals have all-UK jurisdiction.

17 The Family Division has a subject jurisdiction.

SUBORDINATE COURTS

(A, B) **The County Court** is a national court with a purely civil jurisdiction, sitting in 92 different towns and cities across England and Wales. Since unification in 2014 there has been a single County Court for England and Wales where previously there was a series of courts. Until then, county courts were local courts, each one had certain kinds of jurisdiction, for example, proceedings for possession of land had to be started in the county court in whose district the property lay, but in general any county court in England and Wales could hear any claim and claims were frequently transferred from court to court.

The County Court is so named after the ancient sheriff's court held in each county, but its jurisdiction nowadays is not based on counties. A County Court hearing is presided over by either a district or circuit judge and, in most cases, the judge sits alone without assistance from a jury.

The **Family Court** is a national Court and has jurisdiction to hear all Family cases in England and Wales. Local jurisdictional boundaries have now disappeared and there is only one jurisdiction for all family proceedings. The Family Court sits at many locations, usually at the County Courts and Magistrates Courts. Family Court judges are now many judges who have the right to hear family cases including lay magistrates, district judges, and High Court judges from the Family Division.

Magistrates' courts are the criminal courts where all criminal proceedings begin. They are presided over by a bench of three lay magistrates (a.k.a. justices of the peace), or one legally trained district judge, sitting in each local justice area. District judges usually sit in the more busy courts in cities or hear more complex cases (e.g. extradition). There are no juries. Magistrates have limited sentencing powers. Magistrates' courts have jurisdiction to hear minor criminal cases, as well as certain appeals.

Youth courts are similar to adult magistrates' courts but deal with offenders aged between the ages of ten and seventeen inclusive. Youth courts are presided over by a specially trained group of experienced adult magistrates or a district judge. Youth magistrates have a wider range of disposals available for dealing with young offenders and often hear serious cases against youths (which for adults would normally be dealt with by the Crown Court). Youth courts are not open to the public for observation, only the parties involved in a case being admitted.

Specialist courts have different rules and proceedings and operate in specialized areas. These are often described as "tribunals" rather than courts, but the difference in name is meaningless. For example, an Employment Tribunal is an inferior court which hears various kinds of disputes between employers and employees. Its most common disputes deal with unfair dismissal, redundancy payments or employment discrimination. In many cases there is a statutory right of appeal to a particular court or appellate tribunal.

Ex. 8 (A, B) Which legal body is it?

- 1 All criminal proceedings begin there.
- 2 Its name has no relation to the UK territorial division.
- 3 They are not open to the public.
- 4 Not long ago there were many of them, now there is only one.
- 5 Their name does not contain the word "court".
- 6 They may sit at the County Courts and Magistrates Courts.
- 7 Its name goes back to an old judicial tradition.
- 8 They have the right to hear serious cases, suitable for the Crown Court.
- 9 They can be presided over by a district judge.
- 10 They have subject jurisdiction.

Ex. 9 (A,B) Find the word or phrase which means the following:

- 1 (A,B) smb having enough experience
- 2 treating smb differently from others in an unfair way
- 3 (formal) things or objects you have
- 4 having smth, owning smth
- 5 the opposite of major
- 6 (B) limits, limitations
- 7 a case when an employee is fired
- 8 a case when the offender is not punished and the case is dismissed
- 9 the money an employee gets as compensation when he or she is fired
- 10 having no meaning

Ex. 10 (A,B) find the missing words in the text:

- 1 Youth courts deal with young _____.
- 2 Employment Tribunal is an _____ court, after which you can take your case to _____.
- 3 Local jurisdictional _____ for family proceedings have now disappeared.
- 4 After _____ in 2014 there has been a single County Court for England and Wales, previously there were _____.
- 5 Magistrates' courts can be presided over by a _____ of _____ magistrates, also known as _____.
- 6 Nowadays, the County Court hears only _____ cases, whereas Magistrates' Courts hear _____ cases.
- 7 Tribunals have _____ and _____ different from other courts, and they operate in _____ areas, such as _____.
- 8 The Family Court has a _____ jurisdiction, so that it can hear cases from _____.
- 9 A _____ trial is presided over by a _____ or _____ judge who sits alone, without a jury.
- 10 Youth courts deal with offenders aged _____.

Ex. 11 (A, B) Fill in the missing prepositions. Review all the texts in B:

1 The new Supreme Court _____ the UK was created _____ 2005.

2 There is no unified judicial system _____ the UK, but there are exceptions _____ the rule.

3 Civil and criminal courts are responsible _____ the administration _____ justice in the country.

4 The UK courts are established _____ Acts _____ the Parliament.

5 The Court of Appeals deals only _____ appeals from other courts.

6 The High Court functions as a court _____ first instance.

7 Divisions _____ the High Court have separate procedures adapted _____ their purposes.

8 Tax appeals are assigned _____ The Chancery Division.

9 Any decision of a governmental body may be challenged _____ smb _____ the Queen's Bench division.

10 Decisions _____ the Family Division are _____ great importance only _____ the parties.

11 The Crown Court is criminal, _____ addition it handles a limited number _____ civil cases.

12 The Crown Court has the jurisdiction to try cases _____ indictment.

13 The County Court sits in 92 towns and cities _____ the country.

14 In a County Court, _____ most cases, the judge sits alone _____ assistance _____ a jury.

15 The other name for 'magistrates' is 'Justices _____ the Peace'.

16 Youth courts are presided _____ _____ a district judge or a group _____ magistrates.

17 The Family court sits _____ many locations.

18 Youth courts are similar _____ adult courts but work with people aged _____ the ages _____ ten and seventeen.

19 The Employment tribunal hears disputes _____ employers and employees.

20 Only parties involved _____ a case are present at Youth Court trials.

Ex. 12 (A, B) Transform into the Passive. Review all the texts in B:

1/ The reform of 2005 created a new Supreme Court. 2/ The High Court of Justice includes three divisions. 3/ The Appeal Court Criminal Division may only hear appeals from the Crown Court. 4/ The High Court assigns particular cases to each division depending on their subject matter. 5/ the High Court Divisions use specific practices adapted for their needs. 6/ The Family Division tries cases on personal matters, such as divorce or family property. 7/ The Family Division did not allow a husband to give his disabled wife a lethal injection. 8/ The Chancery division settles issues related to taxes. 9/ In 2014 many County Courts made up one single County Court. 10/ Lay magistrates may hear family cases. 11/ Magistrates can hear only minor criminal cases. 12/ The Crown Court hears more complex or serious criminal cases. 13/ Youth courts do not allow reporters to attend trials.

C Criminal and civil courts

CRIMINAL MATTERS

(A, B) In relation to England and Wales, there are two kinds of criminal trial: 'summary' and 'on indictment'. Summary proceedings are used for summary (minor) offences. There is no jury, the judge decides the guilt or innocence of the accused. An indictable offence can only be tried after a preliminary hearing and / or by a jury, on an indictment which is a formal accusation that a person has committed a crime.

For an adult, summary trials take place in a magistrates' court, while trials on indictment take place in the Crown Court. Almost all criminal cases, however serious, commence in a magistrates' courts. It is possible to start a trial for an indictable offence, and go directly to the Crown Court, but that would be unusual.

Offences are of three categories: indictable only, summary and either way. Indictable only offences such as murder and rape must be tried in the Crown Court. The magistrates must immediately refer the defendant to the Crown Court for trial, their only role is to decide whether to remand the defendant on bail or in custody.

Summary offences, such as most motoring offences, are much less serious and most must be tried in a magistrates' court, although a few may be sent for trial to the Crown Court along with other offences, e.g. assault. The vast majority of offences are heard in a magistrates' court (over 90% of cases).

Either way offences are intermediate offences such as theft and may be tried either summarily (by magistrates) or by judge and jury in the Crown Court. If the magistrates consider that an either way offence is too serious for them to deal with, the defendant will go to the Crown Court. Conversely, even if the magistrates accept jurisdiction, an adult defendant has a right to have a jury trial. Defendants under eighteen will be tried in a youth court unless the case is homicide or else is particularly serious.

In the Crown Court, the case is tried before a recorder (part-time judge), circuit judge or a High Court judge, and a jury. The seniority of the judge depends on the seriousness and complexity of the case. The jury is involved only if the defendant pleads "not guilty".

CIVIL MATTERS

(A, B) Under the Civil Procedure Rules 1998, civil claims under £10,000 are dealt with in a county court under the 'small claims track'. Claims between £10,000 and £25,000 that are capable of being tried within one day are allocated to the 'fast track' and claims over £25,000 to the 'multi track'. These 'tracks' are not courts, but labels for the use of the court system – the actual cases will be heard in a county court or the High Court depending on their value.

Ex. 13 (A,B) finish the sentences:

- 1 a summary proceeding is ...
- 2 an indictable proceeding is ...
- 3 an indictment is ...
- 4 a trial on indictment is ...
- 5 offences indictable only are...
- 6 summary offences are...
- 7 either way offences are...
- 8 small claims track is ...
- 9 fast track is ...
- 10 multi track is ...

Ex. 14 (A, B) The statements below are WRONG. Correct them:

- 1 There are two types of civil trial: 'summary' and 'on indictment'.
- 2 At a summary trial, the jury decide if the accused is guilty.
- 3 There is always a preliminary hearing before a summary trial.
- 4 Criminal offences are subdivided into summary and indictable.
- 5 The majority of offences are tried in Crown courts.
- 6 Assault is an offence indictable only.
- 7 Speeding (very fast driving) is mostly an either way offence.
- 8 Young offenders are tried by the Crown Court in most cases.
- 9 Young offenders are never tried by higher courts.
- 10 If the defendant pleads guilty, he is given a trial by the jury.
- 11 If magistrates find the case suitable, the offender has no right to be tried by the jury.
- 12 A recorder is a judge working full-time.
- 13 The High Court deals with criminal offences.
- 14 Minor civil claims are heard in the High Court.
- 15 The small claims track is a kind of civil court.

Ex. 15 (B) Find the word or phrase which means the following:

- 1 to state in court that you are (not) guilty of a crime
- 2 a judge who travels to several small courts in a particular area
- 3 to use smth for a particular purpose, give smth to a particular person, especially after an official decision
- 4 a court session held before the trial itself
- 5 a crime committed by a driver
- 6 a status when you are higher in rank than anyone else
- 7 to begin (formal)
- 8 the crime of physically attacking smb
- 9 on the other hand
- 10 a word or a phrase which is used to describe a person or thing, but which is often incorrect

Ex. 16 (A, B) Review Texts from B and C. Are these courts civil, criminal, both?

Supreme Court Court of Appeal High Court of Justice - Queen's Bench Division - Chancery Division - Family Division Crown Court County Court Family Court Magistrates' Courts Youth Courts Specialist Courts	
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Ex. 17 (A, B) Use the verb in the correct form (Active or Passive):

1/ The County Court (to name) after the ancient sheriff's court. 2/ Nowadays, its name (to relate) to counties. 3/ Local jurisdictional boundaries (to disappear) some years ago. 4/ In the past, claims often (to transfer) from court to court. 5/ The Family Court sessions (to hold) at the County Courts and Magistrates' Courts. 6/ Lay magistrates often (to call) Justices of the Peace. 7/ Summary proceedings (to use) for simple offences. 8/ A person who committed a serious offence (to try) on indictment. 9/ If someone (to accuse) of either way offence, he or she may (to choose) a trial by a jury. 10/ Youth courts (to try) defendants under 18, unless the offence (to consider) very serious. 11/ Either way offences may (to try) either summarily or on indictment. 12/ The High Court (to deal) with civil claims of different value. 13/ Minor civil claims (to deal) with in the County Court. 14/ In the Crown Court, the jury (to involve) only if the accused (to plead) not guilty.

Ex. 18 (A, B) Review Texts from B and C. Translate into English:

(A, B) 1/ Апелляционный суд имеет два подразделения. 2/ Он не является судом первой инстанции. 3/ Верховный суд теперь исполняет судебные обязанности Палаты лордов. 4/ Суды Великобритании разделяются на Верховный суд, старшие и подчиненные суды. 5/ Высокий Суд является гражданским и уголовным и имеет два подразделения. 6/ Ювенальные суды похожи на магистратские суды для взрослых. 7/ Все уголовные дела начинаются в магистратском суде. (B) 8/ Гражданские и уголовные суды Англии созданы согласно Актам Парламента. 9/ Трибуналы действуют в более специализированных областях. 10/ Семейные дела рассматриваются магистратами и районными судьями. 11/ В трудовом трибунале рассматриваются дела по вопросам увольнений и других споров работников с работодателями. 12/ Гражданские иски до 25000 фунтов могут быть рассмотрены за один день в суде графства или Высоком суде.

D Relationship with International courts

(B) The **European Court of Justice (ECJ)** is the highest court in the European Union in matters of European Union law. As a part of the Court of Justice of the European Union it is tasked with interpreting EU law and ensuring its equal application across all EU member states. The Court was established in 1952 and is based in Luxembourg. It is composed of one judge per member state – currently 28 – although it normally hears cases in panels of three, five or 15 judges.

The ECJ acts only as a supreme court for the interpretation of European Union law. Consequently, there is no right to appeal at any stage in UK court proceedings to the ECJ. However, any court in the UK may refer a particular point of law relating to European Union law to the ECJ for determination. However, once the ECJ has given its interpretation, the case is referred back to the court that referred it.

The decision to refer a case to the ECJ can be made by the court of its own initiative, or at the request of any of the parties before it. Where a question of European law is in doubt and there is no appeal from the decision of a court, it is required to refer the matter to the ECJ; otherwise any referral is entirely at the discretion of the court.

The **European Court of Human Rights (ECHR or ECtHR)** is a supra-national or international court established by the European Convention on Human Rights. It hears applications alleging that a contracting state has breached one or more of the human rights provisions concerning civil and political rights set out in the Convention and its protocols. An application can be lodged by an individual, a group of individuals or one or more of the other contracting states, and, besides judgments, the Court can also issue advisory opinions. The Convention was adopted within the context of the Council of Europe, and all of its 47 member states are contracting parties to the Convention. The Court is based in Strasbourg, France.

It is not possible to appeal the decision of any court in England and Wales to the European Court of Human Rights. Although it is frequent to hear media references to an "appeal" being taken "to Europe", what actually takes place is rather different.

The ECtHR is an international court that hears complaints concerning breaches of the European Convention on Human Rights and Fundamental Freedoms. An unsatisfied litigant in England and Wales might complain to the ECtHR that English law has violated his rights. A decision in the ECtHR will not change English law, and it is up to the Government of the United Kingdom to decide what action (if any) to take after an adverse finding.

Courts in England and Wales are not bound to follow a decision of the ECtHR, although they should "take into account" ECtHR jurisprudence.

Ex. 19 (B) Find the word or phrase which means the following:

- 1 to consider
- 2 practical use of smth
- 3 someone making a claim against smb or defending themselves in court
- 4 to violate smth
- 5 not good or favourable
- 6 as a result
- 7 conditions in an agreement or law
- 8 to say that something is true or that someone has done something wrong, although it has not been proved
- 9 to make a formal or official application, complaint etc.
- 10 parties which sign a contract, agreement or treaty
- 11 the right to decide what should be done in a particular situation

Ex. 20 (B) Are the statements true? Correct the false statements:

- 1 The number of ECJ judges equals the number of the EU member states.
- 2 In the ECJ the case is heard by a panel of three or five judges.
- 3 There are currently 47 member states in the EU.
- 4 47 countries ratified the European Convention on Human Rights.
- 5 The Council of Europe includes 47 member countries.
- 6 You can appeal to the ECJ at any stage of the common law proceeding, when you feel something is wrong or unfair.
- 7 A trial cannot be presided over by a single judge in the ECJ.
- 8 You are not allowed to take cases based on local laws to the ECJ.
- 9 The local court may decide to send a case to the ECJ of its own initiative.
- 10 Both individuals and groups have to right to lodge applications to the ECtHR.
- 11 Any court decision in England and Wales can be taken to the ECtHR.
- 12 The ECJ provides help on interpreting the EU law.
- 13 A decision made by the ECtHR is only advisable, not mandatory.

Ex. 21 (B) Answer the following questions. When Text D is not enough to provide the answer, consult Wikipedia or other resources:

- 1 Where are the ECJ and ECtHR located?
- 2 Which court can you go to if your case is on interpretation of European law?
- 3 Can you go to the ECtHR if your insurance company refuses to pay the damages you are entitled to?
- 4 Can you go to the ECJ if your case is a UK common law issue?
- 5 When can you go to the ECtHR?
- 6 Is the ECtHR only an appellate court? Can it be a first instance court?
- 7 Does the ECJ interpret only EU law or local laws as well?
- 8 Is the ECJ an appellate court or it can hear cases at first instance?
- 9 Is an ECtHR decision legally binding in the UK courts?
- 10 Can an ECtHR decision change English laws in the common law system?

E Arbitration

(B) Arbitration, a form of alternative dispute resolution, is a technique for the resolution of disputes outside the courts. The parties refer the dispute to *arbitration* by one or more persons (the "arbitrators", "arbiters" or "arbitral tribunal"), and agree to be bound by the arbitration decision (the "award"). A third party reviews the evidence in the case and imposes a decision that is legally binding on both sides and enforceable in the courts. There are limited rights of review and appeal of arbitration awards.

Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. In certain countries such as the United States, arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts.

Arbitration can be either **voluntary** or **mandatory**. Mandatory arbitration can only come from a statute or contract, in which the parties agree to hold all existing or future disputes to arbitration, without necessarily knowing, what disputes will ever occur. It can be either **binding** or **non-binding**. A binding decision is compulsory to follow. Non-binding arbitration provides a decision which cannot be imposed on the parties. The non-binding arbitrator remains totally removed from the settlement process and will only give a determination of liability and, if appropriate, an indication of damages payable.

Parties often seek to resolve disputes through arbitration because of potential **advantages** over judicial proceedings:

- In contrast to litigation, where one cannot "choose the judge", arbitration allows the parties to choose their own tribunal. This is especially useful when the subject matter is highly technical: arbitrators with an appropriate degree of expertise (for example, in the case of a construction dispute) can be chosen.
- Arbitration is often faster than litigation in court.
- Arbitral proceedings are generally non-public, and can be made confidential.
- In most legal systems there are very few ways to appeal on an arbitral award, which is sometimes an advantage because it limits the duration of the dispute.

Some of the **disadvantages** include:

- There are very few ways for appeal, which means that an erroneous decision cannot be easily overturned.
- In some legal systems, arbitration awards have fewer enforcement options than judgments.
- Unlike court judgments, arbitration awards themselves are not directly enforceable. A party seeking to enforce an arbitration award must resort to judicial remedies, called an action to "confirm" an award.

Ex. 22 (B) Find the word or phrase which means the following:

- 1 obligatory, smth which must be done or carried out
- 2 smth which must be followed or obeyed
- 3 the process of taking claims to court
- 4 people who carry out arbitration process
- 5 knowledge on the subject which you acquire by learning or long practice
- 6 positive aspects of smth
- 7 legal responsibility for smth
- 8 the process of building smth
- 9 the arbitrary decision
- 10 a careful examination of smth
- 11 proof, facts
- 12 people or groups taking part in a dispute
- 13 level or amount of smth
- 14 not known to the third party
- 15 the amount of time smth lasts

Ex. 23 (B) Which prepositions are missing?

- 1 The parties agree to be bound _____ the arbitration decision.
- 2 They agree to hold the arising disputes _____ arbitration.
- 3 The arbitrator remains totally removed _____ the settlement process
- 4 Arbitrators _____ technical expertise are better than judges.
- 5 Parties seek arbitration because _____ certain advantages.
- 6 The decision is binding _____ both sides.
- 7 _____ the case _____ a technical dispute, it is better to take the case to arbitration.
- 8 Arbitration is widely employed _____ consumer and employment matters.
- 9 In some cases, arbitration may be mandated _____ the terms _____ employment or commercial contract.
- 10 When arbitration is non-binding, a decision cannot be imposed _____ the parties.

Ex. 24 (B) Answer the questions. Try not to look at the text!

- 1 What is arbitration? Describe the arbitration process in one sentence.
- 2 What is the arbitration decision called?
- 3 What are the people who carry out arbitration called?
- 4 When is arbitration most often used?
- 5 What is the difference between binding and non-binding arbitration?
- 6 When is arbitration mandatory?
- 7 Can the parties choose the arbiters?
- 8 Name several reasons FOR arbitration and AGAINST a court procedure.
- 9 Name several disadvantages of arbitration.
- 10 Is the non-binding arbitrator responsible for carrying out the award (decision)?

Ex. 25 (B) Review Texts D and E. Translate into English:

1/ ECJ состоит из 28 судей, по одному от каждого государства-члена Евросоюза. 2/ Суд может передать дело в ECJ, если необходима интерпретация международного права. 3/ ECJ гарантирует одинаковую реализацию Европейского права на территории всех государств-членов Евросоюза. 4/ Европейская Конвенция о правах человека подписана и соблюдается 47 государствами-членами Совета Европы. 5/ ECtHR рассматривает исключительно дела, касающиеся прав человека. 6/ Может ли гражданин государства – не-члена Совета Европы обратиться в ECtHR? 7/ Решение ECtHR обязательно к исполнению в стране истца? 8/ Заявление в ECtHR может быть подано физическим лицом, группой лиц или организацией. 9/ О ECtHR все слышали из средств массовой информации, но туда сложно обратиться простому человеку. 10/ Арбитраж является альтернативным способом урегулирования споров во внесудебном порядке. 11/ Решение арбитража может быть обязательным к исполнению, а может носить рекомендательный характер. 12/ Часто к арбитражу прибегают участники трудовых споров. 13/ При разрешении профессиональных и технических споров удобнее обращаться в арбитраж, чем в суд низшей инстанции. 14/ Решение арбитража не всегда легко оспорить. 15/ Но даже если арбитраж вынес решение в вашу пользу, могут быть трудности с вступлением решения в силу.

Ex. 26 (A, B) Review Texts A,B,C and E. Answer the following questions:

- 1/ What is jurisdiction? What types of it do you know?
- 2/ What are the Senior Courts? What are the Subordinate Courts?
- 3/ What divisions does the Court of Appeal have and what for?
- 4/ What are the High Court divisions? What are they for?
- 5/ What are Subordinate courts responsible for?
- 6/ In which courts are teenagers tried?
- 7/ What are Tribunals? What are they for?
- 8/ Which courts decide criminal cases? Provide details.
- 9/ Which courts decide civil cases? Provide details.

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Images

Личный архив автора, сотрудника кафедры АЯЗГУМ ННГУ им. Н.И. Лобачевского

АНГЛИЙСКИЙ ДЛЯ СЛУЖИТЕЛЕЙ ЗАКОНА

Часть 2

Составитель:
Мария Валерьевна **Белорукова**

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