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Rationale

Education providers, policy makers and other stakeholders agree that education and training need to be envisaged at:

- the **micro-level** (learners'/trainees' sense of achievement and degree of satisfaction)
- the **meso-level** (institutional capacity) and
- the **macro-level** (education and training programmes are demand-driven and have an impact on society).

Target population

Legal practitioners

Level of proficiency:

B2 (upper intermediate)

Timeframe

40 hours

Objectives

- Raise trainees' awareness of the status and complexity of legal language
- Raise trainees' intercultural awareness
- Develop trainees' multilayered communicative competence in legal language
- Develop trainees' strategies of managing legal terminology
- Develop trainees' research and information dissemination skills
- Develop trainees' successful task management skills
- Trigger trainees' systemic, critical and creative thinking in legal language learning

- Foster self-directed learning and autonomy
- Develop trainees' self-evaluation skills
- Develop a flexible integrated framework of reference of quality assurance in legal language training
- Develop a flexible integrated framework of reference of quality assurance in legal language training

Course description

The course addresses legal practitioners, i.e. English legal language learners practising law and other stakeholders involved with the law so as to develop their *language skills* in an international legal environment.

The thematic units have been grouped under headings that are concerned with featuring legal language and legal systems alike. Each unit is a comprehensive one, including information and activities with a view to build legal language awareness and communicative competence for real-life purposes.

Language awareness focuses on the internalization and operationalisation of grammar areas such as verb tenses, active and passive voice, the system of modal verbs, conditionals, determiners and quantifiers, linking devices, formal and informal register markers, alongside law-specific and workplace-related vocabulary and terminology.

As far as language skills are concerned, both receptive (reading and listening) and productive (speaking and writing) skills are envisaged through a varieties of strategies and techniques, based on the exploitation of authentic texts and carefully selected to meet learners' needs and interests.

From a detailed-oriented perspective, the development of reading/listening skills focuses on reading/listening for gist (general meaning) and reading/listening for scanning (to detect specific information and details), intensive/listening reading (to understand opinions, attitudes, implication and referencing). The language output in the oral mode of communication (i.e. speaking skills) is based on the ability to answer work-related questions, to express and justify opinions, to cooperate in conversation, etc. Written communication involves writing letters and well-planned memorandum covering specific language functions:

explaining, persuading, refuting, presenting and supporting arguments, suggesting, recommending, describing, summarizing, etc.

UNIT 1

LAW AND LEGAL LANGUAGE

READING

1. Read the excerpts below and answer the questions:

Google pays the price of common usage

There is a risk that the word ‘Google’ could become so commonly used that it becomes synonymous with the word ‘search’. If this happens, we could lose protection for this trademark, which could result in other people using the word ‘Google’ to refer to their own products, thus diminishing our brand. (Max de Lotbinière quoting Google in: *The Guardian Weekly*- Learning English 21 July 2006)

Sir Edward Coke’s (1628) definition of murder

When a man of sound memory and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature in *rerum natura* under the King’s Peace, with malice aforesaid, either expressed by the party or implied by law, so as the party wounded, or hurt, *et cetera*, die of the wound or hurt, *et cetera*, within a year and a day after the same.

(Source: Coulthard and Johnson, 2007: 35)

1. How many meanings of the words *lie* and *right* can you find in the first excerpt?
2. How many meanings of the word *google* are presented in the second excerpt?
3. What are the English equivalents of *rerum natura* and of *et cetera*?

sound *adjective* in good condition; not damaged, injured, or diseased

AWARENESS POINTS

Historical background

Broadly speaking, today's legal English evolved over the 300-year period that spanned the setting up of the first printing press in England (1476) and the American Declaration of Independence. Its terminology and style remain **largely frozen** in the form they had reached by the early years of the 19th century.

Legal English reflects the **mixture of languages** that has produced The English language generally. The principal sources of the modern legal lexicon are **French and Latin**. But they are not the only sources. Another is **Scandinavian**: by AD 900 invaders from Scandinavia had installed themselves in the eastern part of Britain called the Danelaw. The Scandinavian influence gives us the word *law* itself.

Jackson (1985: 47) admits that legal language historically **derives from ordinary language** and still appears to be intelligible to the lay person, yet, managing to shape its own identity: "It is lack of knowledge of the system rather than lack of knowledge of individual lexical items, which produces this effect".

VOCABULARY

2. Match the Latin phrases with their English counterparts and the corresponding definition:

1. <i>ad hoc</i>	a. produce the body	I. a description to explain a statement
2. <i>bona fide</i>	b. on site	II. qualifying a statement by explaining through a relevant example
3. <i>de jure</i>	c. thing adjudged	III. instructions should not be followed verbatim but by amending where necessary
4. <i>exempli gratia</i>	d. for this purpose	IV. once a case has been finally decided upon by a Court the same parties cannot attempt to
5. <i>habeas corpus</i>	e. without a day	
6. <i>id est</i>	f. the necessary changes being made	
7. <i>in situ</i>	g. by right	
8. <i>mutatis mutandis</i>	h. for example	
9. <i>res judicata</i>	i. that is to stay	
10. <i>sine die</i>	j. in good faith	

		<p>raise the issue by or during further proceedings</p> <p>V. genuinely without attempt to fraud</p> <p>VI. a writ which directs a person to produce someone held in custody before the court</p> <p>VII. in its own right</p> <p>VIII. standing open indefinitely without a further hearing having been allocated</p> <p>IX. decisions are made as and when a situation demands</p> <p>X. in its original situation</p>
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EXTENSION

Latin is dead, long live Latin!

Latin is in evidence everywhere in legal English. However, not all the Latin phrases in legal English can be readily understood based solely on knowledge of Latin; there is need for acquiring technical or specialised information.

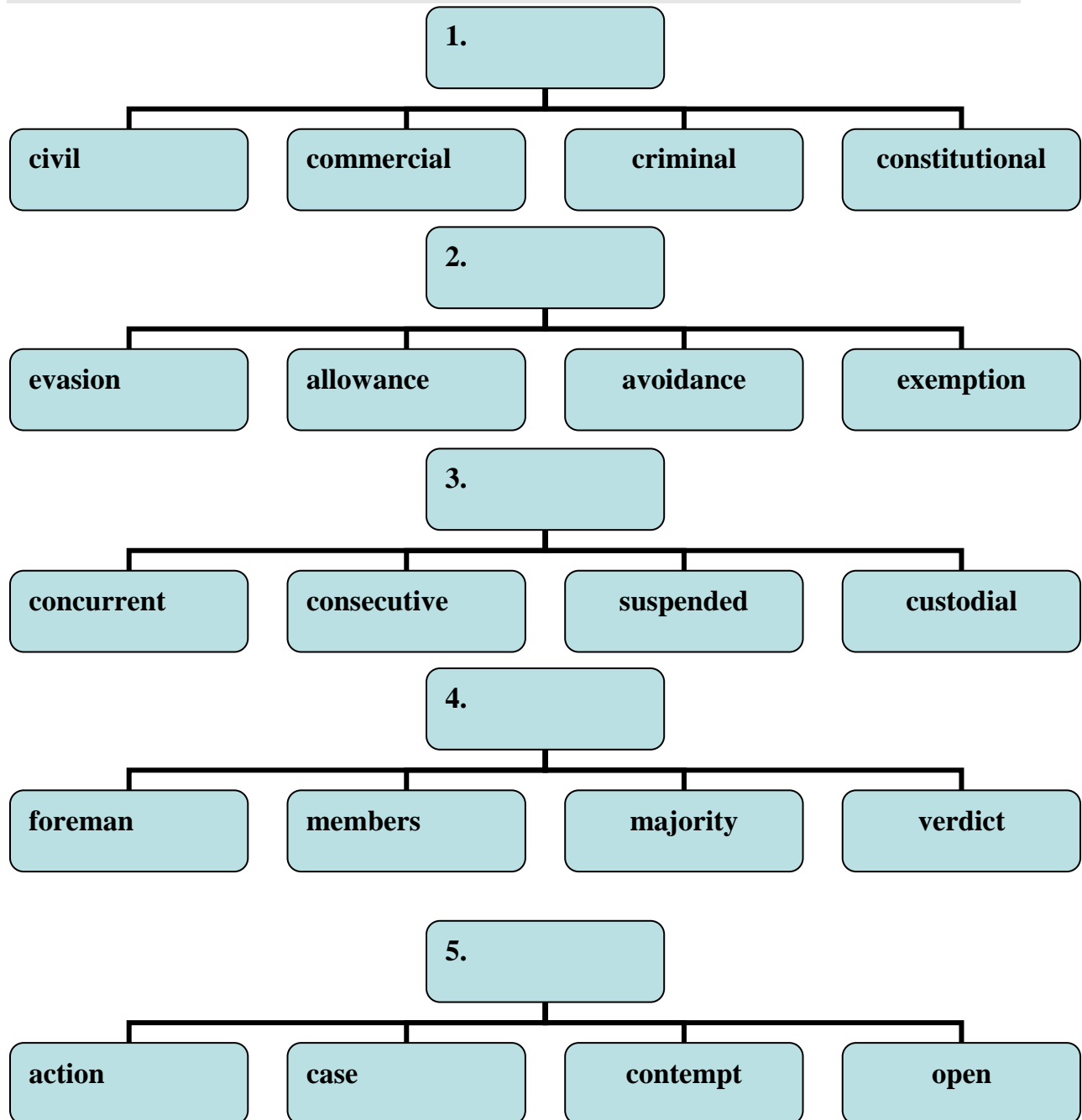
e.g.: *amicus curiae* - literally, *friend of the court*; legal meaning: to someone who is not strictly speaking a party to a case but to whom the court grants leave to present an opinion in the matter. Culturally speaking, the phrase is more frequent in the United States than in the UK. An *amicus curiae* (either a natural person or a legal person, even the State) provides the court specific legal information (for instance, on the content of foreign law in a case involving private international law) or – notably in the United States – draws the attention of the court to matters that fall within the interest of a party and at the same time in the public interest – for instance, civil rights.

3. Analyse the following phrases by providing their literal as well as their legal meaning in English:

in forma pauperis

pro se

4. Fill in with the word(s) that collocates with the other four items:



(Source: Riley, 1996: 5)

5. Match the verbs in the left column to the nouns in the right column to make the right collocation. Some verbs may be combined with more than one noun:

- | | |
|------------------|----------------|
| 1. break | A. a case |
| 2. commit | B. a market |
| 3. cross-examine | C. a fee |
| 4. charge | D. an interest |
| 5. declare | E. a law |
| 6. enter | F. a crime |
| 7. evade | G. a verdict |
| 8. hear | H. terms |
| 9. negotiate | I. a witness |
| 10. return | J. taxes |

(Source: Riley, 1996: 5)

AWARENESS POINT

collocation This term is used in two main ways. The first use refers to any grammatically well-formed sequence of words that go together without oddness, such as *an excellent performance*. We say that, for instance, *excellent* ‘collocates with’ *performance*, meaning that they go together normally; we can also say that *excellent* is ‘a normal collocate’ of *performance*. The other use is to refer to a sequence of words that is **compositional** (unlike a prototypical **idiom**, for example), but nonetheless forms a unit in some way. This may simply be because they occur together very frequently, but usually the sequence also has a semantic unity. For instance, one or more of the constituent words may have a special sense which only appears in that combination, or in a limited set of related combinations. The following expressions, for instance, are collocations in this sense: *a high wind*, *high seas*, *high office*, *have a high opinion of*. In each case, the word *high* has a (different) special meaning, and this meaning is different from the **default meaning** present in, for instance, *a high wall*. (This type of collocation is sometimes called an ‘encoding idiom’.) (A. Cruse, 2006: 27)

6. It is endemic to legal language to use strings of two or more synonyms in one and the same phrase. Nevertheless, it should be understood that there are no absolute synonyms and that overtones should be taken into consideration in the interpretation of legal language. The excerpt below exemplifies such a stereotyped pair.

‘Excepting and reserving’

‘Exception’ comes from the late Latin *exceptio*: exception, restriction, limitation. ‘Reservation’ comes from the late Latin *reservatio*, itself derived from the verb *reservare*: to keep back, lay up, reserve, to keep for some purpose. The pairing commonly heralds a qualification to the transfer of a property, intoned as if the words were synonyms. However, the law draws a clear difference between them. An ‘exception’ is a subtraction from something already in existence, while a ‘reservation’ is a creation of something new out of the thing granted. For example, a right of drainage through an existing pipe is an exception, while a new right of way over the property sold is a reservation. Indiscriminate pairing of the words sometimes demonstrates the drafter’s ignorance of the essential difference between them.

‘Agreed and declared’

‘Agreed’ has its roots in the Latin *ad gratus* (pleasing, welcome) and ‘declared’ in the Latin *de clarus* (clear). The words are sometimes said to be synonymous and are almost certainly used with that intention. Strictly, however, they are capable of performing different functions. An ‘agreement’ is an arrangement between people; it arranges, or re-arranges, the relationship between them.

A ‘declaration’ is a formal statement about an existing state of affairs; it is not in itself an agreement, though it may amount to a warranty or create an estoppel.

A companion pairing is ‘agrees and warrants’ – as where a party to a contract ‘agrees and warrants’ that a state of affairs exists. Here too, ‘agrees’ or ‘warrants’ would suffice, unless the drafter deliberately (and dare we say, pedantically) wants to foreshadow an argument that ‘warrant’ carries the sense of a promise (a ‘warranty’) breach of which sounds only in damages, as distinct from giving a right of termination. But in all except the most special circumstances, this technical argument would be irrelevant.

(Source: Butt, 2006: 29-30)

herald *verb* be a sign that (something) is about to happen

drainage *noun* the action or process of draining something

drain *verb* cause the water or other liquid in (something) to run out, leaving it empty or dry

drafter *noun* a person preparing a preliminary version of (a document)

affair *noun* an event or sequence of events of a specified kind or that has previously been referred to; a matter that is a particular person's concern or responsibility; (affairs) matters of public interest and importance; (affairs) business and financial dealings

estoppel [UN] the principle which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination:

foreshadow *verb* be a warning or indication of (a future event)

damages [UN] 1. physical harm that impairs the value, usefulness, or normal function of something; detrimental effects; 2. (damages) a sum of money claimed or awarded in compensation for a loss or an injury

EXTENSION - Dictionary building skills

7. Using a dictionary, state the difference between the items making up the following series of synonyms:

bind and obligate

final and conclusive

full and complete

over and above

full force and effect

have and hold

null and void

power and authority

assign, transfer and set over

give, devise and bequeath

documents, instruments and writings

business, enterprise or undertaking

changes, variations and modifications

AWARENESS POINT

Archaic flavour

English legal language still displays features (obsolete phrases and structures) of the Middle Ages or early modern times. It is what lends it the ritualistic usage.

e.g.

The cry *Hear ye!* (*ye* is the old nominative plural form of *you*) in court in relation to procedural matters.

The standard phrase in the minutes *Further affi ant sayeth not* = *The affi ant has nothing else to say*.

The archaic character of legal language is also evident in unusual word order:

Comes now plaintiff

EXPLORE - Formal vs. informal language

8. Read the texts below and identify the correspondents of the words and phrases in bold as encountered in the text in the left column.

<u>Theft Act 1968</u>	
A person is guilty of theft if he dishonestly [cf. knowing] appropriates property belonging to another with the intention of permanently depriving the other of it; and 'thief' and 'steal' shall be construed accordingly (section 1).	A: Mhm. I think so.
Any assumption by a person of the rights of an owner amounts to an appropriation (section 3).	B: knowing for a while that all the monies that you've transferred from the date we've just gone through those transactions
Property includes money and all other property, real or personal including things in action and other intangible property (section 4).	A: Mhm. I: we're talking from the fourteenth of the second, the transactions I've just done, all the monies there, you knew wasn't your money?
	A: Yeah. I: And you've actually stolen it from the Skipton Building Society haven't you,

<p>A person appropriating property belonging to another without meaning the other permanently to lose the thing itself is nevertheless to be regarded as having the intention of permanently depriving the other of it if his intention is to treat the thing as his own to dispose of regardless of the other's rights; and a borrowing or lending of it may amount to so treating it if, but only if, the borrowing or lending is for a period and in circumstances making it equivalent to an outright taking or disposal (section 6).</p>	<p>that amounts to theft. A: Why do you need – I: You've taken – you've taken money which in effect – A: Yes. I: – is property. A: Mhm. I: And you've assumed rights of ownership and you've used that A: Mhm. Yeah. I: Is that right? A: Yeah. I: Knowing that that money is not yours. A: Yeah.</p>
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(Source: Coulthard and Johnson, 2007: 58)

theft *noun* the action or crime of stealing

borrow *verb* take and use (money) from a person or bank under an agreement to pay it back later

lend *verb* allow (a person or organization) the use of (a sum of money) under an agreement to pay it back later, typically with interest

AWARENESS POINT

Complexity of legal language
Sentences in legal language are said to be **lengthy and complex**.
Danet and Bogoch's (1994) word count of complex structures amounts to 70-100 words per sentence, whereas Salmi-Tolonen (2004) puts it crudely: the sentences in legal texts are longer than in other texts.
A special mention concerns the **noun phrase**, which is **richly modified**.

Generalizations concerning the **verbal phrase** envisage the frequent use of the Indicative Mood, Present Tense, 3rd person singular, passive voice, impersonal constructions, alongside the prevailing modal verb *shall*.

e.g.

While this agreement is in effect, the Author shall not, without the prior written consent of the Publisher, write, edit, print, or publish, or cause to be written, edited, printed or published any other edition of the Work, whether revised, supplemented, corrected, enlarged, abridged, or otherwise

(Extract from a standard publishing contract – source Tiersma, 1999:63)

9. In the examples below, a longer formula is replaced by a shorter one:

including, but without limiting the generality of the foregoing

= *including without limitation = including but not limited to.*

Until the expiration of twenty one years from the death of the last survivor of the purchasers the trustees for the time being of this Deed shall have power to Mortgage Charge Lease or otherwise dispose of all or any part of the said property with all the powers in that behalf of an absolute owner. =

For 21 years after the death of the last surviving purchaser, the trustees have all the powers of an absolute owner.

10. Rewrite the following paragraph in a simpler and more concise way (move towards plain English):

The vendor, Mary Smith, shall dispose of five books concerned with the art of cookery which are in the possession of the said vendor to the vendee, Fred Brown, for consideration of twenty US dollars which transaction shall take place twenty four hours after the vendor and the vendee attach their signature hereto”.

(Source: Kurzon 1997: 129)

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SPEAKING AND WRITING

11. Case study

A Mr Jacober took out car insurance. He was killed while travelling as a passenger in his own car, which was being driven, with his permission, by a friend Mr Dell. Subsequently, Mrs Jacober sued Mr Dell to get compensation from the insurance company for the death of her husband, but the insurance company refused to pay on the grounds that, although Mr Dell was insured on Mr Jacober's policy as the driver, Mr Jacober himself as the policy holder was specifically excluded from injury insurance.

On what *linguistic grounds* would you argue the case for and against an award of compensation? The relevant clauses in the insurance contract are presented below; highlighting in bold has been added:

*[The insurer agrees] to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages ... because of bodily injury [including death] sustained by **other persons***

*The unqualified word 'insured' includes (1) **the named insured** ... and (4) any other person while using the owned automobile ... with the permission of the named insured.*

Exclusions

Insurance does not apply] to bodily injury to the insured.

(Source: Coulthard and Johnson, 2007: 52)

HAVING FUN WITH ENGLISH

Find the homophones of the words in bold in the following phonetic riddles:

1. Why couldn't the pony talk?

Because he was a little **hoarse**.

2. What did the cow say to the pig?

You are just a **boar**.

3. How can you recognise rabbit stew?

It has **hares** in it.

4. What fruit is found in the light bulbs?

The **current**.

5. Why should "watermelon" be a good name for a newspaper?

Because we are sure it's **read** on the inside.

6. What sort of necktie would a smart pig wear?

A **pig's tie**.

7. Why is a prince like a cloudy day?

Because he's going to **reign**.

8. Why is an orange like a bell?

Because we get a **peel** from it.

UNIT 2

SOURCES OF LAW

READING

Past imperfect

Twenty years after the fall of the Soviet empire, the Russian Federation is still dealing with its legacy in terms of rule of law

1. Developing a system of law that is simple, stable and predictable

Liubimov noted that some laws were contradictory, unpredictable and therefore confusing, and that the volume of legislation was excessive. These features posed an unwelcome challenge, and were of concern, to foreign investors as well as to Russian citizens and businesses, all of whom presently have to negotiate their way around several hundred (in some cases thousands) of laws and by-laws. The legal framework needed to be reduced and simplified so that it could be easily understood by the general public and business alike. In recognition of this, it was proposed that the existing system of by-laws across different regions would be replaced with one based firmly in national law, in relation to which there should be a clear criteria for decision-making by the judiciary. Work has already begun to address this issue, but Liubimov acknowledged that much more still needed to be done.

2. Developing a system of law that is known and accessible to the population as a whole

The Deputy Minister repeated an observation made by President Medvedev shortly before assuming office that legal nihilism had a long history in Russia. The Ministry of Justice proposed to change that custom through an education programme that made clear what the laws were and their benefits. A public information campaign had already begun that would offer accessible information on free legal aid and the structures of the legal system and allow transparency of information.

3. The elimination of corruption

This was a top priority for the Ministry of Justice and President Medvedev. The review of normative acts that had already begun would focus, among other things, on this issue. There

was a need to fight a system of “exceptions to the rule” and to simplify the complex processes that facilitated this trend. To this end, some state functions were being transferred to jointly run state and private bodies, or exclusively to private bodies.

4. Enforcing court decisions

Until recently, between 20 and 30 per cent of court decisions were not being enforced. However, a revised bailiff system now features new rules that are already making a difference. As one example, those owing money to the courts are now not allowed to leave the country until the relevant debt has been repaid.

(*The Lawyer*, 16 November 2009)

1. Mark the following statements as true (T) or false (F):

1. The legal framework needed to be reduced and simplified so that it could become comprehensible readily by the lay population alone.. _____
2. The existing system of by-laws across different regions had been replaced with one based firmly in national law. _____
3. The removal of corruption was addressed by the Ministry of Justice and President Medvedev. _____
4. There was not a system of “exceptions to the rule” in place. . _____
5. The bailiff system will endure as such. _____

legacy *noun* something left or handed down by a predecessor

rule of law the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws

acknowledge *verb* accept or admit the existence or truth of

review *noun* a formal assessment of something with the intention of instituting change if necessary

body *noun* (specialized meaning) institution, organisation

bailiff *noun* officer authorised to remove and sell possessions in order to pay the money a debtor owes to a person or an organization.

AWARENESS POINT

Euphemisms / politically correct language

In current usage, both in speech and writing, euphemisms are associated with taboo, superstitions or sensitive matters. It is therefore also **the language of evasion and understatement**. The euphemistic word or phrase used to mean, or apparently still means, something else.

The text above contains one such instance, namely the word *challenge*, which *prima facie* refers to “a call to someone to participate in a competitive situation or fight to decide who is superior in terms of ability or strength”.

Holder (2002: 59) discusses the euphemistic meaning of the participle form *challenged*: differing from the norm in a taboo fashion. Not faced with a duel, but of those thought to be facing life at a disadvantage. The use extends to the bald, who are *follicularly challenged*; to the deaf, who are *aurally challenged*; to the blind, who are *visually challenged* (and not by 'Halt! Who goes there?'); to the mentally ill, who are *cerebrally challenged*; to those of low intelligence who are *developmentally* or *intellectually challenged*; to a dwarf, who is *vertically challenged*; to a lame person, who is *physically challenged*; to a crook, who is *ethically challenged* (a phrase used on 18 June 1996 by the chairman of the committee investigating *inter alia* Hillary Clinton's deals in Arkansas); and so on.

2. Explore

Provide contexts of your own in which to activate the ordinary/specialised meaning and euphemistic meaning of the following words:

acquire

Hint: euphemistic meaning: to steal

bar

Hint - euphemistic meaning: a place for the sale and consumption of alcohol. A plank was used both as a counter and a barrier, giving the word perhaps its most multinational word.

chair

Hint - euphemistic meaning: (the) judicial death by electrocution. From the furniture to which the victim is strapped:

dealer

Hint - euphemistic meaning: selling deal illegal narcotics

deprived

Hint - euphemistic meaning: poor. Literally, having lost something, which is not so for most paupers

eliminate

Hint - euphemistic meaning: to kill. Usually of political or espionage killings

Free

Hint - euphemistic meaning: included in the price

inside

Hint - euphemistic meaning: in prison

no comment

Hint - euphemistic meaning: I admit nothing Political and business use in reply to journalists. It is a defence of those who know that, when scandal is in the air, to be quoted is to be misquoted, and selectively.

redundant

Hint - euphemistic meaning: dismissed from employment

VOCABULARY

3. Match each type of legal documents with the corresponding definition:

- | | |
|------------------------------|---|
| A. act | 1. formal written law enacted by a legislative body |
| B. bill | 2. rules issued by a government agency to carry out the intent of the law; authorised by a statute. and generally providing more detail on a subject than the statute |
| C. directive | 3. a draft piece of primary legislation |
| D. ordinance (in UK: by-law) | 4. legal device used by the European Union to establish policies at the European level to be incorporated into the laws of the Member States |
| E. regulation | 5. draft document before it is made into law |
| F. statute | 6. law enacted by a town, city or county government |

LANGUAGE FOCUS: Linking devices

4. Fill in the gaps with one single word:

New payment regime: considerations for M&A practitioners

Should the parties to a share or asset purchase agreement not stipulate the exact conditions (1)... the payment of consideration, or not decide (2)... default interest rates for late payments, Austrian dispositive law includes a set of default rules that must be applied.

On 16 March 2013, a law based on the EU Directive on Combating Late Payment (3)... Commercial Transactions (2011/7/EU) came into (4)... in Austria. M&A practitioners should take (5)... of the provisions introduced by the new law when evaluating whether it is better to rely on the default rules (6)... whether separate contractual clauses should be drafted.

Austrian civil law differentiates (6)... three types of obligation, determined in relation to the place of their respective performance: obligations to be performed at the debtor's domicile or place of business; obligations to be performed at the creditor's domicile or place of business; (7)... obligations to be fulfilled by transporting the goods (8)... the creditor to the debtor.

READING

5. Complete the table with the information extracted from the text below:

Bodies of law

The term *civil law* contrasts with both *common law* and *criminal law*. In the first sense of the term, *civil law* refers to a body of law based on written legal codes derived from fundamental normative principles. Legal disputes are settled by reference to this code, which has been arrived at through legislation. Judges are bound by the written law and its provisions.

In contrast, *common law* was originally developed through custom, at a time before laws were written down. Common law is based on precedents created by judicial decisions, which means that past rulings are taken into consideration when cases are decided. It should be noted that today common law is also codified, i.e. in written form.

In the second sense of the term, *civil law* is distinguished from criminal law and refers to the body of law dealing with non-criminal matters, such as breach of contract.

	Based on	Dealing with	Codified Yes/No

Common law			
Civil law			
Criminal law			

to be bound to something or by something/somebody- obliged by law, circumstances, or duty to do something

custom *noun* 1. a traditional and widely accepted way of behaving or doing something that is specific to a particular society, place, or time. With this meaning, the noun is countable [CN].
2. as an uncountable noun [UN], in the plural form *customs*, it refers to the official department that administers and collects the duties levied by a government on imported goods

AWARENESS POINT

Word formation

6. Fill in with the correct form by using the right prefixes and suffixes. Wherever there is a gap, put a cross (x). If more derivatives for the same part of speech are possible (with different or similar meanings), write as many as you can. The first line is already done for you:

Noun	Verb	Adjective	Adverb	Negative word
custom customer	x	customary	customarily	
bind				
	oblige			
			lawfully	
		legal		

		legalese		
				inauthentic
	systematic			
				non-member
part party				
		judgemental		

BUILDING INTERCULTURAL AWARENESS

The phrase *common law* has three different meanings. Firstly, *grosso modo*, common law refers to the systems of law of English origin, i.e. the laws of England (and Wales), Ireland, the United States, Canada, Australia, and New Zealand. The common law is then considered as a major system of law, on a par with the other major systems, namely the civil law system. Thus, the phrases “*Anglo-Saxon law*” and “*Anglo-American law*” are, more often than not, used as synonyms of common law. However, these two expressions are ambiguous: Anglo-Saxon law can equally designate the law of England before the Norman Conquest, while Anglo-American law can also denote North American laws, i.e. those of the United States (and Canada).

In the second place, common law refers to the law created by the courts of England and other countries that inherited English culture and language, set alongside written law (statute law, statutory law), in other words, legislation. In this sense, common law is the synonym of the expression *case law*.

Thirdly, in an even more specialized meaning, *common law* refers to one of the two main areas of English case law, namely, *equity*.

7. Answer the following questions from a comparative or contrastive perspective:

Which body of law is the basis of the legal system of your country?

Which body of law is the basis of the overarching European legal system?

What about Member States national legal system?

Can you identify the framework of the law in the zone beyond the European culture, i.e. USA, Australia and New Zealand?

AWARENESS POINT

What's in a name?

American legal terms sometimes differ from their **British counterparts** even if the concepts behind the terms are the same.

e.g. in the USA, the appellate court *affirms* or *reverses* a lower court's judgment *vs.*

the synonyms of these verbs, *allow* and *dismiss* as used in the UK;

the law of companies is called *corporate law* in the USA *vs.*

the British counterpart *company*

in the field of family law, an absent parent in divorce has the right to see the child or children of the family: in the United States s/he has *visiting rights* *vs.*

right of access in the UK.

In this respect Mattila (1999: 244) advocates that American terms are often more transparent (clearer) than British terms. The explanation is doublefold: firstly, American terms are "less burdened by the dead weight of history"; secondly, they have to be understood by lawyers in the 50 American states whose legislations may sometimes differ considerably. Hence, American terms cannot be associated with strictly defined legislative solutions (unlike British terms).

HAVING FUN WITH ENGLISH

Humorous quotations

I busted a mirror and got seven years bad luck, but my lawyer thinks he can get me five.

Steven Wright

Make crime pay. Become a lawyer.

Will Rogers

The trouble with law is lawyers.

Clarence Darrow

UNIT 3

THE ENGLISH LEGAL SYSTEM

READING

1. Read the following excerpts:

Traditionally, the English legal system is based on case law. Certainly, Parliament is sovereign: it can change any case-law rule whatever by the legislative route. Indeed, the amount of English legislation today is quite comparable with that of continental countries. In spite of that, case law remains the principal source of English law: it forms the framework of the law. Parliamentary laws are considered to be incomplete until the moment when they are “covered” by numerous precedents specifying the interpretation of their main provisions. It is also symptomatic that parliamentary laws are interpreted literally; they are held to be something exceptional in a legal system based on cases. Technically, the priority of cases as a source of law appears in the form of the doctrine of precedent (*stare decisis*). The significance of this lies in using judicial decisions as a basis for crystallising rules of law that have to be followed in later cases. The basic method of English lawyers lies not in interpreting laws but in the technique of distinctions – the art of distinguishing between the essential and secondary grounds of a judgment.

As emphasised above, common law differs considerably from civil law as to divisions of law and legal concepts. Even the fundamental *common law – equity* division is unknown in the legal systems of continental countries. In addition, many institutions, such as the *trust*, are foreign to civil-law Europe. As already concluded, these divisions and institutions were originally produced by the forms of action: the legal system was fashioned by the possibilities of a claimant to gain access to the legal remedies in each particular case-type.

(Source: Mattila, 1999: 223-224)

provisions *noun* a condition or requirement in a legal document

are held to to be considered

grounds *noun* factors forming a basis for action or the justification for a belief [UN]. As a [CN], it has three different meanings: 1. the solid surface of the earth; 2. an area of land or sea used for a specified purpose; 3. an area of knowledge or subject of discussion or thought.

fashioned *verb* make into a particular form

claimant *noun* a person making a claim, especially in a lawsuit or for a state benefit (civil law)

Find out 5 contrast areas between the English system and those in other European countries as presented by the two texts.

English system	other European countries

EXTENSION

2. Read the following text and decide if the statements are true (T) or false (F):

In line with the English tradition, three fundamental ideas are deep-rooted in American legal culture: (1) the supremacy of the law, which means that even the public authorities are subject to legality checks by independent courts of law; (2) the rule of precedent, according to which judicial decisions are based on earlier decisions; and (3) the idea according to which the judicial process is thought of as a kind of combat in which the parties have to take the initiative as to the progress of the case; the chairman of the court and members of the jury are basically neutral arbiters in the combat.

In the image of English law, the divisions of American law are not those of civil law. However, differences exist between English and American law. The division of law between equity and common law is also known, it is true, in the United States but the fields of application of these institutions are partly other than in England.

Today, equity has merged with the common law system in the United States. This concerns all branches of the law: the law of property, the law of contracts, and so on. This is why American law faculties no longer offer separate courses in equity.

Despite merger, the separation between the two institutions retains its importance in certain particular matters. This is notably the case when it comes to knowing whether trial of a case requires the presence of a jury. To resolve this question, one has to know whether the legal rules involved originate from common law or from equity. The rights going back to the system of equity are still called *equitable rights* today.

As in continental Europe, the separation between substantive and procedural law is important in the United States. If interpretation appears to involve a procedural rule, then the prohibition on retroactivity of laws is not applied. The separation between substantive and procedural law also provides a basis for resolving conflict of laws problems between the various states of the Federation: if a procedural rule is involved, then the Federal courts apply federal law, despite the possible application in the case of the substantive law of a particular state. The same applies at international level: American courts always apply the *lex fori* in procedural matters.

In line with the English tradition, the separation between public and private law is less important in the United States than in continental Europe. The United States has no administrative courts – that is, it does not have a system that imposes this separation, as in continental countries, with a view to defining the parameters of competence of the courts. American lawyers rarely speak of civil law as a branch of the law, although some Federal states may have put a civil code in force. These lawyers classify cases rather according to particular sectors of the branch, e.g.: contracts, torts, property. The explanation is straightforward. Like the British, American lawyers are chiefly interested in precedents, that is, in specific cases. This is why they avoid generalisations in their reasoning and think it strange to create abstractions far from practical legal matters. (Source: Mattila, 2006: 241-242)

1. The judicial process resembles a combat in which the parties are neutral. _____
2. Equity has merged with common law in some divisions of the American legal system.

3. The separation between public and private law is far less valued in the United States than in Europe. _____
4. The Civil Code has taken effect in some federal states. . _____
5. Similarly to their British counterparts, American lawyers are hardly interested in specific cases. _____

subject to *adjective* 1. likely or prone to be affected by (a particular condition or occurrence, typically an unwelcome or unpleasant one); 2. dependent or conditional upon; 3. under the authority of.

check *noun* an examination to test or ascertain accuracy, quality, or satisfactory condition

merge *verb* combine or cause to combine to form a single entity

straightforward *adjective* uncomplicated and easy to do or understand

chiefly *adverb* mainly, more than anything else

AWARENESS POINT

The passive voice

Form: TO BE + Past Participle (3rd form of the verb)

The object of the active sentence becomes the subject of the passive sentence:

All the students have read the book. → The book has been read by all the students.

Verbs such as *give, lend, offer, owe, pay, provide, promise, sell, send, show, teach, tell*, etc are followed by two objects (direct - WHAT? WHOM? and indirect – TO WHOM?) and allow for two passive constructions:

They showed her the photograph. →

1. *The photograph was shown to her.*
2. *She was shown the photograph.* (this sentence is more common)

The person which does the action (the agent/doer) is introduced by the preposition **BY (BY-AGENT)**. There are cases when BY is omitted:

- when it is indefinite (they, people, somebody, someone, anybody, anyone, nobody, no one, etc): *It was agreed to take steps without further delay.*
- when the agent is obvious: *The thief was arrested.*

- when the agent is unknown: *The painting was stolen.*
- when the speaker does not want to mention it: *I was told that ...*

Use:

A sentence containing a passive construction is **more formal** than one using the active voice:

We shall sent you a letter (informal). vs.

A letter will be sent to you (formal).

The construction **IT IS + Past participle + THAT Clause** expresses what people in general say, think or feel about a situation. It usually used with verbs of the type: agree, announce, believe, claim, decide, expect, fear, feel, find, know, intend, report, say, think, understand, etc.

It is believed that Mark caused the accident.

3. Rephrase the sentences by using the passive voice:

A.

1. I'm sure the witness will provide you with the evidence.
2. The jury gives the verdict whereas the judge passes the sentence.
3. The injured man filed a complaint shortly after the accident.
4. Most people think that the death penalty should be abolished.
5. They are going to charge him with first degree murder.
6. Nobody denied that Tom had met the victim several times.
7. They intend to refer the case to a higher court.
8. American lawyers rarely speak of civil law as a branch of the law.
9. The government is to enforce a new education law soon.
10. Legal practitioners know very well that some laws are interpreted literally.

B. Headlines

DISCOVERY THAT COFFEE MAY HELP FIGHT CANCER

AGREEMENT THAT UN WILL SEND IN TROOPS

AID WORKERS TELL OF MASSACRE

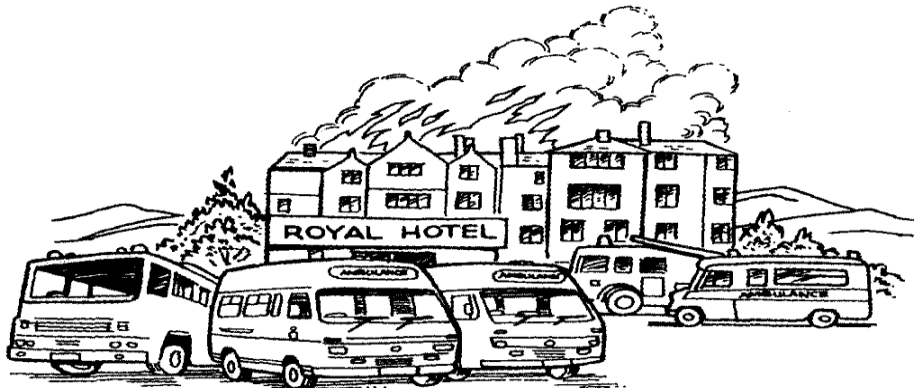
EARTH SHRINKING BY TEN METRES EACH YEAR" CLAIM SCIENTISTS

EARTHQUAKE CALCULATED TO HAVE COST \$3 BILLION

YOUNG PEOPLE ENCOURAGED TO APPLY FOR GOVERNMENT GRANTS

REPORTS OF REBEL TROOPS ENTERING CAPITAL

4. Rewrite the following text so as to contain as many passive constructions as possible:



Fire almost completely destroyed the Royal Hotel last night. By the time someone called the Fire Brigade, the hotel was already blazing. Ambulances took fifteen people to hospital suffering from severe burns. They say that seven of them are in a serious condition. People think that a cigarette that someone discarded started the fire.

(Adapted from Walker and Elsworth, 2000: 73)

5. The sentences below may contain errors. Identify and correct them:

- 1 Ken was appointed be the chairman of the board.
- 2 He had been taught English by the time he was five.
- 3 Susan considered to be the most successful candidate for the advertised position.
- 4 The paintings has been reported to be missing.
- 5 Fiona is envied for being so popular in such a short time.
- 6 Joan and Frank are being allowed to keep the prize money.
- 7 In some countries beer is preferred to wine.
8. If you don't mind, smoking is not allowed in here.
9. He was fined by the policeman for overspeeding.

10. They had been warned of the stalking man by other people in the neighbourhood.

SPEAKING AND WRITING

6. How far do you agree with the following statement? Bring arguments to support your position.

If interpretation appears to involve a procedural rule, then the prohibition on retroactivity of laws is not applied.

EXPLORE - The language of persuasion

The art of legal story telling

Legal storytelling is the process of constructing scene-setting stories for the courtroom. Practised and taught widely in the US, it is largely ignored in the UK, to our detriment.

That's because stories win cases. Trial lawyers usually acknowledge the usefulness of stories: we say that a speech should tell a good story and we recognise the need to get a witness to tell a clear story in examination in-chief. We might even appreciate that our cross-examination questions should advance our client's story. But we could do much more.

Too few of us fully understand the power of a story to persuade the decision-makers. Fact finders often analyse the evidence using stories. They reach conclusions based in part on the appeal of stories. Some stories are more persuasive than others.

A story may be put forward by a lawyer as part of the overall trial strategy; if one is not, rest assured that the fact finders will come up with their own. The lawyer who fails to acquire this know-how is simply not doing the best for their client.

Psychologists think that people use stories in many ways and they give us an insight into the psychology of decision-making. In turn, this should lead to a better understanding of the construction of a case theory and its associated themes.

Stories can help make sense of the evidence presented in court. Like it or not, our evidence is assessed against fact finders' 'knowledge' of how the world works. This 'story-framing' allows fact finders to place the evidence at trial into an existing story and test it for 'fit'.

For example, when jurors listen to forensic evidence at trial, they may compare the witness's evidence on scientific methods with what they have 'learnt' while watching episodes of CSI on television. The better the fit, the more likely they are to find the evidence credible. Gaps

in the evidence could be very dangerous - fact finders will fill the gaps with their own stock of 'knowledge'.

Knowledge about stories can help us make decisions about witnesses' testimonies and the thrust of our speeches. When thinking about trial tactics, the advocate could consider putting forward a case based on an understanding of it that is outside the mainstream perspective. Will it be necessary to overtly challenge a decision-maker's world view? Anyone involved in decision-making is likely to bring their prejudices into the courtroom, as well as their emotions. The advocate needs to be aware of this and to decide whether to ignore it, factor it in to their case in a subtle fashion or confront it head-on.

Ultimately, stories can help fact finders to reach a decision in the case - through the identification and use of a persuasive case theory at trial and the story that fits with that. This extends even down to the language used by witnesses and in lawyers' speeches.

Socio-linguists have studied the use and misuse of 'powerful' and 'powerless' language, the use of metaphor in legal argument and the strategic choices made in formulating a trial vocabulary. So the story one tells at trial, and even the individual words one uses, are important strategic choices. A deeper understanding of persuasion would help lawyers to be more effective. Stories are the key to that understanding.

Lawyers should ask their firm or chambers to provide in-house instruction so that their team can learn how to use legal storytelling to their advantage.

And, of course, give your clients more time in consultations so that you can understand and find their stories for trial. In an ideal world your evidence fits together as a complete story and that story matches the fact finders' beliefs about how the world works, and you win.

(The Lawyer, 10 September 2007)

examination in-chief *noun* the questioning of a witness by the party which has called that witness to give evidence, in support of the case being made

cross-examination *noun* the questioning of a witness called by the other party in a court of law to challenge or extend testimony already given

appeal *noun* 1. a serious, urgent, or heartfelt request: *his mother made an appeal for the return of the ring*; 2. *Law* an application to a higher court for a decision to be reversed; 3.

[UN] the quality of being attractive or interesting

insight [UN] the capacity to gain an accurate and deep understanding of someone or something:

assess *verb* evaluate or estimate the nature, ability, or quality of

forensic *adjective* 1. relating to or denoting the application of scientific methods and techniques to the investigation of crime; 2. relating to courts of law.

thrust *noun* principal purpose or theme of a course of action or line of reasoning

advocate *noun* 1. a person who publicly supports or recommends a particular cause or policy; 2. a person who puts a case on someone else's behalf; a professional pleader in a court of justice; Scottish and South African term for barrister

7. Identify 3 rules of successful presentation.

AWARENESS POINT

DO's and DON'T's

1. Prepare your presentation: plan ahead to have a clear, structured and organised argument.
2. Take into consideration the target audience and tailor your presentation to their needs and interests.
3. Focus on three key messages that you want to carry across.
4. Don't imitate, develop your own presenting style.
5. Use prompts if necessary, do not read your presentation directly from notes.
6. Use visuals (images, charts etc), paralanguage (intonation, pitch of voice, pausing) and body language, not only words.
7. Listen to the answers and analyse the feedback before heading for the next question.
8. Don't ask a question unless you are sure you know the answer.

8. State which of the above rules, if any, apply to the following famous speeches:

Julius Caesar: "Friends, Romans, Countrymen, lend me your ears..." (Shakespeare, *Julius Caesar*)

Churchill: "I can promise you blood, sweat, toil and tears" (the "Blood, Sweat and Tears" speech).

SPEAKING AND WRITING

9. Do you think that the questioning strategies differ in the case of examination-in-chief and cross-examination? Justify your opinion.

Hint: Examination-in-chief questions are open-ended questions or “W” and “H” questions: *where, what, who, when, why, how?*

10. Suppose you are trying to persuade your friend to do something which s/he has never done before. You allot yourself 5 minutes. How easy will you find that? What is your strategy?

HAVING FUN WITH ENGLISH

Andrew Cross once compared marriage to a cafeteria. To find out why, find the letter that is missing in each of the following words and write it in the slot(s):

- | | |
|-----------------|----------------|
| 1. psychanalist | 10. blac |
| 2. commitee | 11. rhythm |
| 3. secretry | 12. thiner |
| 4. Februar | 13. Mississipi |
| 5. hight | 14. scisors |
| 6. mariage | 15. typeriter |
| 7. forteen | 16. cofee |
| 8. adress | 17. agregation |
| 9. galon | 18. recept |

4 1 7 2 3 10 5 15 11 3 2 9 1 1 10 14

17 1 1 8 2 1 4 1 7 3 12 8 13 3 4 16 1 6

18 2 9 3 2 5 6.

UNIT 4

THE EUROPEAN LEGAL SYSTEM

READING

The law of the European Communities, “European law” or “Community law”, today forms a legal system of its own, partly superimposed on those of Member States. (De Cruz, 1995: 157–158).

The legal sources of union law

The term ‘legal source’ has two meanings: in its original meaning, it refers to the reason for the emergence of a legal provision, i.e. the motivation behind the creation of a legal construct. According to this definition, the ‘legal source’ of Union law is the will to preserve peace and create a better Europe through closer economic ties, two cornerstones of the EC. In legal parlance, on the other hand, ‘legal source’ refers to the origin and embodiment of the law.



(Source: http://eur-lex.europa.eu/en/editorial/abc_c04_r1.htm#h2)

emergence [UN] the process of coming into existence or prominence

construct *noun* an idea or theory containing various conceptual elements, typically one considered to be subjective and not based on empirical evidence

parlance [UN] a particular way of speaking or using words, especially a way common to those with a particular job or interest

embodiment *noun* a tangible or visible form of an idea, quality, or feeling

1. Analyse the diagram above and extend your knowledge by completing the definitions of the following terms (see also the glossary at the end of the coursebook):

The founding **Treaties** and the instruments amending and supplementing them (chiefly the Treaties of Maastricht, ..., Nice and Lisbon) and the various Accession Treaties contain the basic provisions on the EU's objectives, organisation and *modus* ..., and parts of its economic law.

Legislative acts are legal acts adopted by ... or special legislative procedure (Article 289 TFEU).

Delegated acts are ... acts of general and binding application to supplement or ... certain non-essential elements of a legislative act. (Article 290 TFEU).

Implementing acts - where uniform conditions are needed for implementing legally ... EU acts, this is done by means of appropriate implementing acts, which are generally adopted by the ..., and, in certain exceptional cases, by the Council. (Article 291 TFEU).

Other legal acts which the Union institutions can use to issue non-binding measures and statements or which regulate the internal ... of the EU or its institutions, such as agreements or arrangements between the institutions, or internal ... of procedure. (Article 288 TFEU) These include resolutions, declarations, action programmes or White and Green

The EU concludes **agreements** in international law with non-... countries ('third countries') and with other international ...; these range from treaties providing for extensive cooperation in trade or in the industrial, technical and social fields, to agreements on trade in particular products. Three kinds of agreement between the EU and non-member countries are worth mentioning. *association agreements* (to promote economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole; as preparation for ... to the Union or for the establishment of a customs union; on the European Economic Area (EEA)), *cooperation agreements* (aimed ... at

intensive economic cooperation), *trade agreements* (with individual non-member countries, with groupings of such countries or within international trade organisations relating to ... and trade policy).

AWARENESS POINT

EU terminology management

First and foremost, the **equivalence of terminology**, which is not restricted to one-to-one relationship, should observe the principles of **internal coherence** (consistency throughout the translated text) and of **external coherence** (consistency across all the translated texts) avoiding multiple designations of the same concept. Under the circumstances, such accommodation work is pragmatically governed as involving cooperation.

Secondly, the EU conceptual and terminological system seems to be **supra-national** in nature leading to numerous **internationalisms** (in Cabre's words "an international outlook" – 1999: 34), yet, this does not mean that the terminology management is solely done via transfer or calque, it may also involve term creation.

Furthermore, there is need to develop awareness with respect to pitfalls such as **multiple-meaning specialised terms**, Either as

- **multiple meaning items pertaining to ordinary language and legal field**

e.g. *accede to* (formal style) – *a accepta*; **legal meaning**: *a adera*;

application – *aplicație*; **legal meaning**: *aplicare*;

arrangement (of flowers)/seating arrangement; *aranjament/mod de așezare a musafirilor la masă*; in the plural – *arrangements* – *pregătiri*; **legal meaning**: *accord*;

authority – *autoritate asupra cuiva*; *expertiza*; **legal meaning**: *autoritate*;

competence – *competență*; **legal meaning**: *competență*;

compliance (formal style) - *docilitate*; **legal meaning**: *respectare*;

contemplate – *a contempla*; **legal meaning**: *a prevedea*;

convention – *convenție*; **legal meaning**: *convenție*;

cover(ed)- *acoperit(ă)*; *book cover* – *copertă*; *bed cover* – *cuvertură*; *under cover* – *sub acoperire*; **legal meaning**:

decision - *decizie*; **legal meaning**: *decizie*;

dispute – *ceartă, dispută*; **legal meaning**: *litigiu*;

instrument – instrument; **legal meaning:** instrument;

object – obiect; **legal meaning:** obiect;

organisation – organizare; **legal meaning:** organizație;

person – persoană; **legal meaning:** persoană;

pledge- promisiune; **legal meaning:** contribuție;

recommendation - recomandare; **legal meaning:** recomandare;

settlement – așezare umană; **legal meaning:** soluționare.

o **multiple meaning items pertaining to different fields**

e.g. **agreement** - **legal meaning:** acord; acord (grammar category);

application – **legal meaning:** aplicare, candidatură; aplicare (a unui strat); aplicație (software);

cover - **legal meaning:** a reglementa; (financial term) – a asigura, a acoperi cheltuielile;

deposit/depositary – **legal meaning:** depozitar; depozit, depunător- financial terms in collocations such as *deposit account/administration/banking/currency, etc*; *deposit* is also a geological term: *alluvial deposit*;

discharge – **legal meaning:** a descărca; a externa;

donors - **legal meaning:** donator, also a medical term;

endorse - **legal meaning:** a recunoaște; (finance) a cheque/bill – a andoasa;

implement/implementation - **legal meaning:** punere în aplicare; (software) a implementa, implementare;

object - **legal meaning:** obiect; complement;

opinion- **legal meaning:** aviz; (in medicine) to get a second opinion: – a consulta și un alt medic;

person - **legal meaning:** persoană; (grammar category) – persoană;

protocol- **legal meaning:** protocol (de colaborare; (in politics and Computer Science) – protocol;

provide/provision - **legal meaning:** a prevedea/ dispoziție; a furniza/furnizar, aprovizionare;

regulator - **legal meaning:** autoritate de reglementare; (in physics) voltage regulator – regulator de tensiune;

settlement - **legal meaning:** soluționare; (in history) colonie;

sub-paragraph – **legal meaning:** literă; sub-paragraph.

2. Provide the ordinary and legal meaning of the following multiple-meaning items in English, as well as their equivalent in your mother tongue:

agree _____

legal meaning: _____

body _____

legal meaning: _____

conclude/conclusion _____

legal meaning: _____

draft _____

legal meaning: _____

opinion _____

legal meaning: _____

reference _____

legal meaning: _____

3. Provide another specialized meaning(s) of the following legal terms in English and in your mother tongue:

adopt

legal meaning: _____

other specialized meaning: _____

article

legal meaning: _____

other specialized meaning: _____

body

legal meaning: _____

other specialized meaning: _____

draft

legal meaning: _____

other specialized meaning: _____

milestone

legal meaning: _____

other specialized meaning: _____

reference

legal meaning: _____

other specialized meaning: _____

EXTENSION

4. Read the following excerpts on the nature of EU's means of action and fill in the gapped table:

Regulations

The legal acts that enable the Union institutions to impinge furthest on the domestic legal systems are the regulations.

A Member State has no power to apply a regulation incompletely or to select only those provisions of which it approves as a means of ensuring that an instrument which it opposed at the time of its adoption or which runs counter to its perceived national interest is not given effect. Nor can it invoke provisions or practices of domestic law to preclude the mandatory application of a regulation.

The similarities between these legal acts and statute law passed in individual Member States are unmistakable. If they are enacted with the involvement of the European Parliament, they are described as 'legislative acts'. Parliament has no responsibility for regulations, which are only enacted by the Council or the European Commission and thus, from a procedural point of view at least, they lack the essential characteristics of legislation of this kind.

Directives

Its purpose is to reconcile the dual objectives of both securing the necessary uniformity of Union law and respecting the diversity of national traditions and structures. What the directive primarily aims for, then, is not the unification of the law, which is the regulation's purpose, but its harmonisation.

A directive is binding on the Member States as regards the objective to be achieved but leaves it to the national authorities to decide on how the agreed Community objective is to be incorporated into their domestic legal systems.

Directives do not as a rule directly confer rights or impose obligations on the Union citizen. They are expressly addressed to the Member States alone. The direct effect of directives in relations between citizens themselves ('horizontal direct effect') has not been accepted by the Court of Justice. The Court concludes from the punitive nature of the principle that it is not applicable to relations between private individuals, since they cannot be held liable for the consequences of the Member State's failure to act.

Decisions

In some cases the Union institutions may themselves be responsible for implementing the Treaties and regulations, and this will be possible only if they are in a position to take measures binding on particular individuals, undertakings or Member States. The situation in the Member States' own systems is more or less the same; legislation will be applied by the authorities in an individual case by means of an administrative decision.

In the EU legal order this function is assumed by decisions, which are the means normally available to the Union institutions to order that a measure be taken in an individual case. The Union institutions can thus require a Member State or an individual to perform or refrain from an action, or can confer rights or impose obligations on them.

Recommendations and opinions

They enable the Union institutions to express a view to Member States, and in some cases to individual citizens, which is not binding and does not place any legal obligation on the addressee.

In recommendations, the party to whom they are addressed is called on, but not placed under any legal obligation, to behave in a particular way.

Opinions, on the other hand, are issued by the Union institutions when giving an assessment of a given situation or developments in the Union or individual Member States. In some cases, they also prepare the way for subsequent, legally binding acts, or are a prerequisite for the institution of proceedings before the Court of Justice.

The real significance of recommendations and opinions is political and moral.

Resolutions, declarations and action programmes

Resolutions may be issued by the European Council, the Council and the European Parliament. They set out jointly held views and intentions regarding the overall process of integration and specific tasks within and outside the EU. Resolutions relating to the internal

working of the EU are concerned. The primary significance of these resolutions is that they help to give the future work of the Council a political direction.

Declarations - there are two different kinds of declaration. If a declaration is concerned with the further development of the Union, such as the Declaration on Fundamental Rights and Freedoms, it is more or less equivalent to a resolution. Declarations of this type are mainly used to reach a wide audience or a specific group of addressees. The other type of declaration is issued in the context of the Council's decision-making process and sets out the views of all or individual Council members regarding the interpretation of the Council's decisions. Interpretative declarations of this kind are standard practice in the Council. Their legal significance should be assessed under the basic principles of interpretation, according to which the key factor when interpreting the meaning of a legal provision should in all cases be the underlying intention of its originator.

Action programmes - are drawn up by the Council and the Commission on their own initiative or at the instigation of the European Council and serve to put into practice the legislative programmes and general objectives laid down in the Treaties. If a programme is specifically provided for in the Treaties, the Union institutions are bound by those provisions when planning it. In the Union, these programmes are published in the form of White Papers. On the other hand, other programmes are in practice merely regarded as general guidelines with no legally binding effect. Such programmes are published in the Union as Green Papers.

Publication and communication

Legislative acts in the form of regulations, directives addressed to all Member States and decisions which do not specify to whom they are addressed are published in the *Official Journal of the European Union* (Series L = Legislation). They enter into force on the date specified in them or, if no date is specified, on the 20th day following their publication.

Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, are signed by the President of the institution which adopted them. They are published in the Official Journal (Series C = Communication).

Other directives, and decisions which specify to whom they are addressed, are notified to those to whom they are addressed and take effect upon such notification.

There is no obligation to publish and communicate non-binding instruments, but they are usually also published in the Official Journal ('Notices').

Type	Audience	Effect
Regulation	All Member States, natural and legal persons	
Directive		Binding with respect to the intended result. Directly applicable only under particular circumstances
Decision	Not specified; Member States; specific natural or legal persons	
Resolution		
Declaration		
Recommendation		Not binding
Action programme		
Publication		
Opinion		
Communication		

5. Is there any other instrument that you are aware of? Please provide the information related to this item as specified in the table above.

Hint: a - - -

impinge (on) *verb* have an effect, especially a negative one:

preclude *verb* prevent from happening; make impossible:

undertaking *noun* a formal pledge or promise to do something

refrain (from) *verb* stop oneself from doing something:

addressee *noun* the person to whom something is addressed

issue *noun* 1. an important topic or problem for debate or discussion; [UN] the action of supplying or distributing an item for use, sale, or official purposes; a number or set of items distributed at one time; each of a regular series of publications

verb 1. supply or distribute (something) for use or sale; (issue someone with) supply someone with (something); formally send out or make known; 2. (issue from) come, go, or flow out from.

underlying be the cause or basis of (something):

the latter the last (out of two) as opposed to *the former* – the first (out of two)

AWARENESS POINT

The European Union

Terms Expressing New Concepts

To express original concepts of Community law, the attempt has been made to create entirely **new legal terms**. Illustrative examples include *acquis communautaire* (see below), *principle of subsidiarity*, etc. In coining new Community terms, the aim is to avoid expressions closely associated with the content of the legal order of any one Member State. This **goal of neutrality** sometimes results in coinage of somewhat complicated terms, or use of **circumlocution**.

Nevertheless, in legal contexts a complicated or simple term is preferred to a misleading term. It is worth noting that the EU staff often read texts in (working) languages other than their native one. Admittedly, it becomes crucial to use terms that are easy for a non-native to understand.

Further, in the European Union **generic terms** are often **used in a specialized sense**. The European institutions are notably designated by words whose semantic field is very broad indeed (e.g., “Union”, “Community”, “Council”, “Commission”, “Court of Justice”). In official texts, these words are supplemented by epithets (e.g., “Commission of the European

Communities”, “Council of the European Union”). Normally, however, they are used alone. This can cause confusion if the context is unclear.

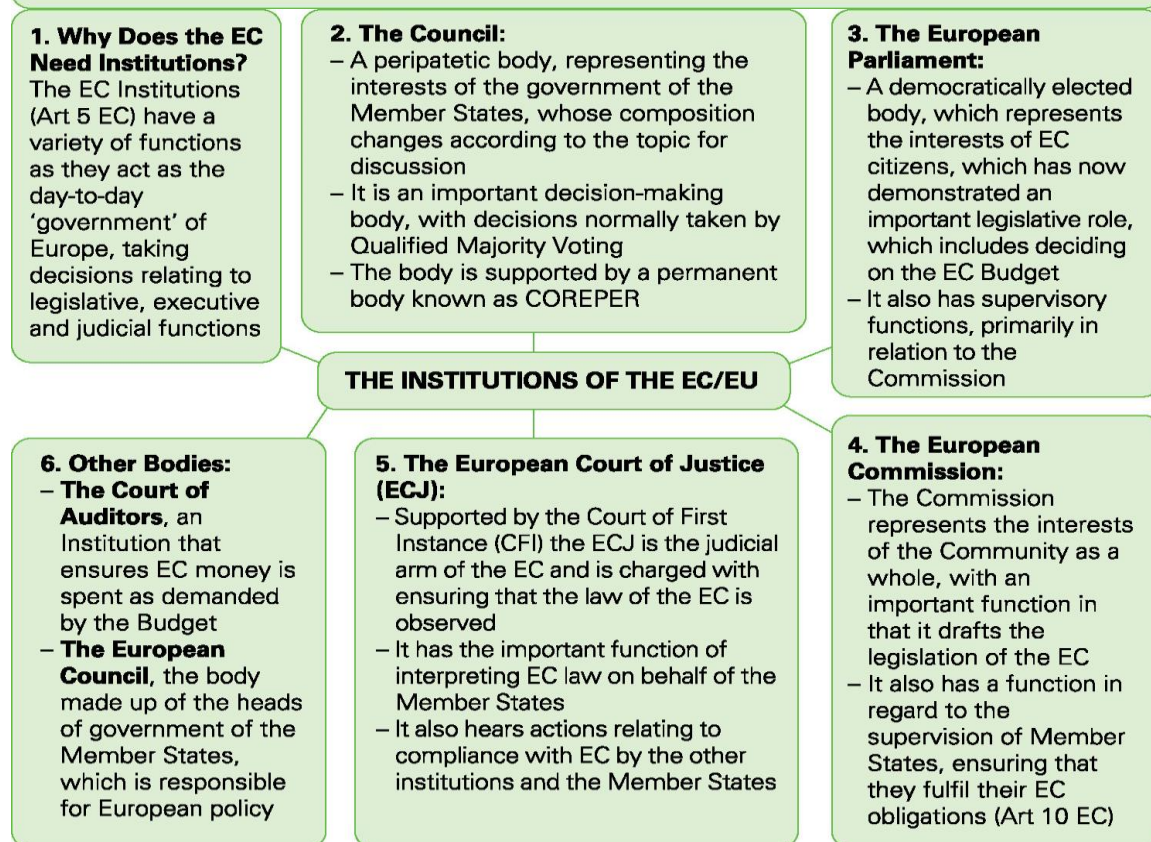
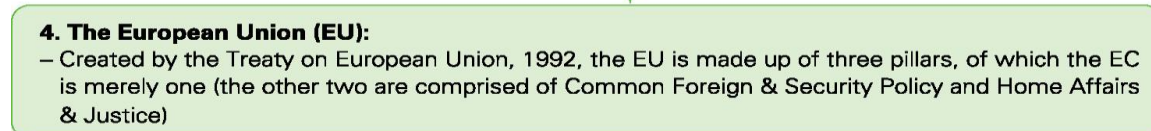
An example that best illustrates this fact is the basic term “community”, which – depending on the context – designates different entities. This is explained by the structure of the European Union. As already mentioned, the first pillar of the Union consists of “the European Communities” (in the plural) which currently number two; previously, there were three. The most important of these communities was – and still is – the “European Community” (in the singular), originally called the “European Economic Community”. The two other communities were the “European Atomic Energy Community” and the “European Coal and Steel Community”. As we have seen, as of 2002 the last of these (Coal and Steel) no longer exists.

Construction of the Union’s first pillar is therefore complicated, as is reflected at the terminological level. In works on European law, the word “community” may refer to (a) the European Community (the former European Economic Community); (b) one of the two (formerly, three) communities (the European Community, the European Atomic Energy Community or – before 2002 – the European Coal and Steel Community); (c) to the whole formed by the two (three) communities.

(Source: Mattila, 2006: 118ff)

EXPLORE - WHO'S WHO?

6.



Find sentences in which “Union”, “Council”, “Commission”, “Committee” and “Court

of Justice” are used to refer to different entities in the EU texts as full names or elliptical denominations/abbreviations.

Hint 1: search EurLEX database

Hint 2: some examples of names have been provided for you:

The Committee of the Regions, The European Economic and Social Committee, International Court of Justice, etc

AWARENESS POINT

Compounding

Compounding is a highly productive way of word formation in contemporary English.

The structure of a compound unit is presented below:

	Noun	Verb	Adjective	Preposition
Noun	paperwork	decision-making	sugarfree	-
Verb	pickpocket	broadcast	-	break-in
Adjective	second hand	blue-eyed	dark blue	-
Preposition	insight	download	forthcoming	upon

Dictionary building skills

7. Can you match a word in column 1 with a word in column 2 to make new words.

Can you work out the meaning of each of the new words? Check the definitions in a monolingual dictionary (please visit <http://oxforddictionaries.com>):

land	screen
cyber	melon
fresh	shot
break	slow
water	friendly
motor	light
down	collar
birth	husband
day	date

snap	space
white	lord
environmentally	way
house	stairs
go	fast
wind	water

WRITING

8. Report/Overview

You have been contacted by the head of the biosciences department of a major local university, a long-time client of your firm. She explains that the laboratory has had a recent breakthrough in the genetic modification of cotton plants, allowing cotton to be grown in a range of colours other than white. The economic implications of this development are significant, particularly if the lengthy, costly and environmentally hazardous process of dyeing cotton fabrics can be avoided.

Approximately 70% of the research budget is provided by a French manufacturing conglomerate which has a significant stake in the textiles industry. The conglomerate insists that it owns the intellectual property in this discovery by virtue of the assignment of all intellectual property rights to developments in the laboratory in exchange for providing funding. In a rush to protect this potentially invaluable technology, it has demanded the immediate surrender of all documentation and research results – including plants and seeds. The university does not dispute the assignment of rights to the intellectual property and wishes to maintain a good relationship with the conglomerate. However, being ever cautious, the university is concerned that the export of the biotechnology or genetically modified samples to the French headquarters may violate applicable laws. The department head is aware that the European Union has very strict rules concerning the import and dissemination of genetically modified products within its borders.

Your firm specialises in intellectual property and contract law, and agrees to examine the EU import regulations regarding genetically modified products. As the university is very anxious, you agree to submit a brief overview of the law on this matter within 24 hours.

Write the report in 180-220 words.

(Source: <http://www.translegal.com/cup>)

INTERCULTURAL AWARENESS

9. Case study

You are assisting a litigation partner at your law firm in an international arbitration involving a breach of contract. Your firm's client is a Russian supplier of electronics equipment which is now in a dispute with one of its customers, a US manufacturer, regarding liability for payment of value added tax under a supply contract.

According to the arbitration clause in the contract, the place of arbitration will be the Stockholm Chamber of Commerce in Sweden. The arbitration clause also provides that there will be three arbitrators. Each party is allowed to pick one arbitrator, who must be a qualified judge, but the arbitration clause is silent about the appointment of the third.

Your client has already selected an arbitrator. The US manufacturer has also chosen an arbitrator, a retired Swedish judge. The former judge's English-language CV states that he formerly worked for the Skatteverket in Sweden, and was also a notarie.

The partner you are assisting will have a conference call with the Russian client later this afternoon. Before the call, she wants as much information as possible and asks you to do some quick research. Using the Internet, find the answers to the following questions:

1. What, if anything, do the rules of the Arbitration Institute say about choosing a third arbitrator?
2. Naturally, your client is interested to know the credentials of the Swedish arbitrator. What is the business of the Skatteverket?
3. What is a Swedish notarie?

(Source: <http://www.translegal.com/cup>)

HAVING FUN WITH ENGLISH

Change one letter at a time:

BASE	a large bundle (of cotton etc)
----	without hair
----	brave
GOLD	
CAT	small bed
---	small round mark

DOG	
TAKE	body of water
----	be fond of
----	dwell, have life

GIVE	
HATE	possess
----	bees' home
----	dwell

LOVE	
MORE	female horse
----	German money
----	cover to disguise the face
----	quantity
----	untidiness
LESS	
HAVE	keep
----	act of selling
----	bottom of the foot
----	past tense of "sell"
HOLD	

UNIT 5

INTERNATIONAL LAW AND HUMAN RIGHTS

READING

Re-arrange the following paragraphs in the right order. Pay attention to devices signposting development of ideas.

Human rights select committee to investigate civil legal aid cuts

Grayling warns he will not 'go back to the start' on criminal legal aid

In a separate development, the justice select committee has said in its report on the legal aid cuts that it intended to invite the justice secretary back for a second session to explain the government's response to the first consultation and discuss its latest proposals.

In a letter to the committee, the justice secretary said he could not provide more details of the timing of the second consultation and warned: "This will not be a re-consultation on every element of the package". "As I said at the committee session, we are not going back to the start and must bear down on the cost of legal aid."

He said the MoJ's current projections for post-LASPO legal aid spending, if fee levels remained the same, were £1.836bn for 2013-14, falling to £1.719bn for 2014-15, £1.679bn for 2015-16 and 1.666bn for the following year.

The Commons joint committee on human rights, chaired by Welsh-speaking Labour MP Hywel Francis, has today launched an inquiry into the implications of the further cuts in civil legal aid demanded by justice secretary Chris Grayling.

Earlier this month, at the justice select committee, Grayling announced a rethink on his plans for price-competitive tendering and criminal legal aid. On civil legal aid, he made only one minor concession, agreeing that the new residency test would not apply to babies aged younger than 12 months. Grayling strongly defended cuts to prison law and the restrictions

on judicial review, such as limiting legal aid to successful applications. Nor did he give any ground on the fourth item on the select committee's agenda - removing legal aid from 'borderline' cases.

The further cuts to civil legal aid outlined in the MoJ's Transforming Legal Aid consultation paper are due to be implemented this autumn. However, the joint committee on human rights said it had written to the government asking it not to implement them until after it had held its hearings in October and published its report later in the year.

The committee has issued a call for written evidence on the human rights implications of the cuts, which can be submitted directly online through the committee's portal, by 27 September.

(*Solicitors Journal*, 18 July 2013)

tendering *noun* an offer to carry out work, supply goods, or buy land, shares, or another asset at a stated fixed price

outline *verb* give a summary of

due to *adjective* expected at or planned for at a certain time: *the baby's due in August*

hearing *noun* an act of listening to evidence in a court of law or before an official, especially a trial before a judge without a jury

submit *verb* present (a proposal, application, or other document) to a person or body for consideration or judgement

response *noun* 1. a verbal or written answer; 2. a reaction to something

the latest *adjective (superlative)* the most recent news or fashion

bear down on *verb* take strict measures to deal with

AWARENESS POINT

Coherence and cohesion

These are types of connectedness which distinguish texts from random collections of words.

Cohesion is a matter of form and concerns (mainly grammatical) ways of connecting one piece of language to another, such as agreement and anaphora (reference to already known

entities or previously introduced). Grammatically, such means of expressing cohesion are equated to linking devices (adverbs, pronouns, prepositions, conjunctions, etc)

Coherence is a matter of meaning compatibility and relevance (logical flow of ideas).

Mini-text 1 is cohesive, but not coherent, whereas mini-text 2 is short on overt indicators of cohesion, but is coherent:

1. *My father came into my room. So I plugged him in and switched him on.*

2. *There was a loud knock. I opened the door. Two policemen.*

(A. Cruse, 2006: 26-27)

EXTENSION

2. In the following excerpts, place the linking devices under the categories in the table:

1. TAKING INTO ACCOUNT:

Article 2 of the Treaty on European Union establishing that the Union is founded ...

2. ... **after** obtaining the consent of the European Parliament ...

3. ... the Union shall aim to combat discrimination, including discrimination **based on** disability

4. ... the Council Decision of 26 November 2009 **concerning** the conclusion ...

5. These Acts include, **among others**, Council Directive 2000/78/EC (4) **as well as** Council Regulation (EC) No 1083/2006 (5) ...

6. WELCOMING:

the commitments **and** progress made by the Member States and the European Union ...

7. ...**in particular** by providing innovative education, training and employment opportunities ...

8. ... it also urges the Member States to define and implement, **taking into account** national responsibilities...

9. ... the new Autonomous Agreement **between** the European social partners...

10. ...strengthening private sector involvement helps **to** enable persons with disabilities to lead an independent life ...

11. ... non-discrimination advance participation of persons with disabilities in society and bring economic returns to society **as a whole** ...

12. ... to prepare, in cooperation with the Member States...

13. to mainstream disability issues in all relevant flagship initiatives of the Europe 2020 Strategy and, **at the same time, where appropriate**, to develop disability-specific measures, without prejudice to national competences ...
14. .. with the aim of allowing them to meet the diverse needs of their students with disabilities ...
15. **In this regard**, it is recalled that Regulation (EC) No 1083/2006 on the European Regional Development Fund ...
16. ... to combat discrimination **on the ground of** disability in the area of employment...
17. ... **with a view to** awareness-raising ...
18. ... **while** providing the necessary support to public administrations at all levels ...
19. The Member States shall undertake to accept and recognise the prerogatives **thus** granted **in so far** as they are **in conformity with** international commitments ...
20. ... to make full use of coordination and advisory groups, **such as** the High-Level Group on Disability ...,
21. **Whereas:**
 - (1) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (2) lays down the conditions, criteria and detailed rules governing checks at border crossing points and surveillance at the border, **including** checks in the Schengen Information System.
22. **In order to** verify whether the entry conditions for thirdcountry nationals laid down in Article 5 of Regulation (EC) No 562/2006 are fulfilled ...
23. **However**, given the potential impact of such searches on waiting times at border crossing points ...
24. **Since** the objectives of this Regulation, **namely** the establishment of the rules applicable on the use of the VIS at the external borders ...
25. **Furthermore**, the Convention, as interpreted by the European Court of Human Rights ...
26. **Indeed, whilst** various measures have been taken at European Union level to guarantee a high level of safety for citizens ...
27. ... **with due respect for** their legal traditions ...

28. ... **no matter** where citizens decide to travel, study, work or live in the European Union
...
29. **In view of** the non-exhaustive nature of the catalogue of measures laid down in the Annex to this Resolution ...
30. Such decisions should be taken **following** careful consideration of particular needs.
31. Decision 2002/187/JHA is hereby amended **as follows**: ...
32. ... **provided** the matter could not be resolved through mutual agreement ...
33. **Notwithstanding** the provisions contained in any instruments adopted by the European Union regarding judicial cooperation ...
34. ... **especially** between the national member, the European Judicial Network contact points of the same Member State and the national correspondents for Eurojust ...
35. **To that end**, he shall be responsible for establishing and implementing ...

Connection type	Items
Giving examples	
Adding information	
Summarising	
Sequencing	
Reason / Cause	
Result / consequence	
Sequencing	
Contrasting	
Comparing	
Listing	
Reinforcement	
Generalising	
Highlighting	
Restatement	
Alternative	
Concession	

EXPLORE

3. Information mining skills

One of your firm's leading clients is involved in the forestry and paper pulp business, primarily in the Nordic countries. Due to expensive labour and timber, and very stringent environmental controls in the Nordic countries, your client is seeking to expand outside of the region and is considering a number of options. One country under consideration for development is Belarus. The economic climate and availability of cheaper labour, together with the presence of substantial agricultural areas, make it worth further scrutiny.

Your client is interested in acquiring large tracts of land from which to harvest timber and to construct and operate paper mills operated by local labour. Before your client embarks on a more extensive (and costly) analysis of its options, the partner responsible has asked you to conduct preliminary research on the following:

1. Is it possible for a foreigner to acquire and privately hold land in Belarus?
2. Is there any general legislation regarding environmentally hazardous industries?
3. Is there any specific legislation regarding the paper pulp industry?

Prepare a list of directories of foreign law that you find during your research, which can be emailed to your colleagues.

Exchange e-mails and compile a common (enlarged) list together with your colleagues.

(Source: <http://www.translegal.com/cup>)

SPEAKING AND WRITING

4. Case study

You have just received a nervous voicemail message from a client, the owner of a small, multi-national Internet Service Provider (ISP) and web hosting company, which provides data storage services on its servers at its premises in several different countries.

The voicemail stated that the client's business premises in the UK, several other EU countries and Australia were being simultaneously served with search orders. These orders are being administered by both solicitors for the claimant, Electric Banagramme (an Australian record producer) and a supervising solicitor. However, the police do not seem to be involved. Computers belonging to the client are being seized because they allegedly contain protected materials, constituting a copyright infringement.

You are aware that the client was recently sued by Electric Banagramme for allegedly allowing the use of its servers for file sharing, thus facilitating the pirating of thousands of songs.

In order to advise the client you must first identify the current action being taken against him.

(Source: <http://www.translegal.com/cup>)

AWARENESS POINT

Non-literal meaning. Figurative language

figurative language, figure of speech Linguistic expressions are said to be figurative, or used figuratively, if their intended meaning is

(a) something other than their **literal meaning** and

(b) can be understood on the basis of generally applicable principles of meaning extension (rather than an ad hoc arrangement, for instance between Pete and Liz before a party so that if Liz says *I love that picture* she means ‘I want to go home now’).

The most frequently encountered figurative language concerns the use of **euphemism, hyperbole, irony, metaphor, metonymy, simile**, and **understatement** (for euphemism and understatement, see Unit 2).

hyperbole A figure of speech involving deliberate exaggeration for rhetorical effect, to increase impact or to attract attention. Exaggeration may be negative or positive. For instance: *He shot off like a rocket when told him you were here; The traffic was moving at a snail’s pace; She never stops talking.*

irony A species of figurative language, in which the intended meaning of an expression is usually some kind of opposite of the literal meaning, as, for instance, when someone says *You’ve been a great help!* to a person whose actions or words have just precipitated a disaster; it is intended to mock or ridicule.

metaphor A variety of figurative language. It involves a relation of resemblance or analogy, although this is not explicitly stated (compare **simile**). Thus, if a writer in the financial pages of a newspaper speaks of *a headlong flight into bonds* (perhaps because of a collapse in share prices on the stock market) she is relying for her effect on correspondences between a lot of people running away from some physical threat to a safer place and the precipitate selling of

shares and buying of bonds by large numbers of investors. We are invited to ‘see something as something else’, in this case to see the widespread selling of shares as a disorderly flight.

metonymy A variety of figurative language. It involves a relation of association. Take the example *England were beaten 4–3 by Germany*. In their default uses, the words *England* and *Germany* denote countries, but here they are used to refer indirectly to sporting teams representing those countries.

simile A simile involves an explicit comparison between two things or actions. The majority of similes include the word *like*: *You are behaving like a spoilt child*, *He treats her as if she were a delicate piece of porcelain*, *Peter is like a lion*.

(A. Cruse, 2006: 63, 80, 90, 106-108, 165)

EXTENSION

5. Derive the intended meaning in the following cases:

1. Does it ring a bell?
2. A swallow doesn't make a summer.
3. We are in the same boat.
4. Scratch my back and I'll scratch yours.
5. We have our hands full.
6. No news is new news.
7. She's losing her grip.
8. Justice is blind.
9. Sue is tied up.
10. She has a nose for it.
11. Lay your cards on the table!
12. I got the picture.
13. They will sink or swim.
14. You took the words right out of my mouth.
15. That's a hard nut to crack.

Awareness point

Legal genres

Genre can be defined simply: conventional, repeated and distinctive features of text that arise from its communicative purpose.

Broadly speaking, we distinguish between **written genres** vs. **oral genres**.

Undoubtedly, there is an **interdisciplinary culture of law** as law pervades all the arenas of life:

e.g. law and economics, law and sociology, law and religion, law and medicine

On the one hand, academic and professional genres may be rightly considered builders of knowledge within the law; on the other hand, **culturally situated practices** reveal the different assumptions the writers make about their texts.

Legal genres display of certain features of vocabulary, form (morphology and syntax) and style which are wholly function-specific and conventional in nature.

Why legal language sometimes differs from ordinary formal writing in ways that are not explainable by the likely strategic aims of the author? Many archaic features of legalese seem to have no legitimate function, except perhaps to make a document seem more impressive to non-experts. Or the language may be intentionally complex in order to suggest to non-experts that they should not try to draft such documents themselves.

Wordiness and redundancy seem to be more prevalent in Anglo-American law than in the civil law system. As a general matter, European statutes and documents are substantially shorter than those in England and the United States.

A **text** is an example of a particular genre, therefore we can speak of legal textuality.

A legal text has several **functions**:

- to carry out a legal purpose (producing legal effects by speech acts)
- to communicate
- to inform
- to persuade (to reinforce the authority of the law)
- to reinforce the team spirit of the legal profession.

According to Coulthard and Johnson (2007: 62), the legal community “shares ways of speaking at the level of register”, but we should differentiate between different ‘communities of practice’ such as lawyers, judges, police officers and other legal practitioners who use language differently and for different purposes in professional communication, “thereby generating different genres of talk and writing”.

6. Identify the main function(s) of the following legal texts:

1. The leading case on recovery of compensation in such circumstances is *Alcock v Chief Constable of South Yorkshire Police* (1992), which arose from the Hillsborough Stadium disaster. At the FA Cup semi-final match at Hillsborough Stadium in Sheffield between Nottingham Forest and Liverpool in April 1989, 96 people were killed and over 400 physically injured in a crush which developed owing to poor crowd control by the police. The Chief Constable admitted liability towards those physically harmed. Many more people variously related to, or connected with, the dead and injured suffered psychiatric illness resulting from the shock of witnessing the event, seeing it on television or identifying the bodies. Sixteen claims were heard at first instance, of which 10 succeeded in 1991.

2. The Builder shall at his own expense construct sewer level pave metal kerb flag channel drain light and otherwise make good (including the provision of street name plates in accordance with the requirements of the appropriate District Council and road markings and traffic signs in accordance with the requirements of the Council) the street.

3. ALL THOSE offices and toilet on the second floor of the building at Mill Lane shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called 'the Building').

4. We have now seen our client as regards preliminary enquiries and accordingly return replies to the same herewith together with any enclosures referred to therein.

(Source: Butt, 2006)

EXTENSION

In 2002 Stuart Campbell was tried and convicted for the murder of his niece Danielle. Part of the evidence against him was a couple of text messages sent to his phone from Danielle's shortly after she disappeared. The prosecution suspected that he had sent them to himself using her phone and Coulthard was asked to compare the style of the two suspect messages with a set of 70 which Danielle had sent over the previous three days; unfortunately there

was no similar corpus of texts composed by the uncle to use for comparison purposes. Below is the first of the suspect message

HIYA STU WOT U UP 2.IM IN SO MUCH TRUBLE AT HOME AT MOMENT EVONE HATES ME EVEN U! WOT THE HELL AV I DONE NOW? Y WONT U JUST TELL ME TEXT BCK PLEASE LUV DAN XXX

The text displays a series of linguistic choices which were either absent from, or rare in, the Danielle's corpus: the use of capitals rather than sentence case, the spelling of 'what' as 'wot', the spelling in full of 'one' in 'EVONE', rather than its substitution by the numeral '1', the omission of the definite article in the abbreviation of the prepositional phrase 'AT MOMENT' and the use of the full form of the word 'text' rather than an abbreviation in the phrase TEXT BCK.

7. How could you reach and then express an opinion on the likelihood that Danielle did or did not produce the message?

(Source: Coulthard and Johnson, 2007: 202)

SPEAKING AND WRITING

8. Psychiatric harm

In what circumstances can someone who has suffered psychiatric injury as a result of having witnessed a terrible accident successfully sue the person whose negligence has caused the accident?

HAVING FUN WITH ENGLISH

Humorous quotations

I've never had a problem with drugs. I've had problems with the police. (Keith Richards)

We don't give our criminals much punishment, but we sure give 'em plenty of publicity. (Will Rogers)

It's about time law enforcement got as organized as organized crime. (Rudolph Giuliani)

(Source: www.quotegarden.com)

Lawyer: "What is your date of birth?"

Witness: "July 15th."

Lawyer: "What year?"

Witness: "Every year."

Lawyer: "Now sir, I'm sure you are an intelligent and honest man--"

Witness: "Thank you. If I weren't under oath, I'd return the compliment."

(Source: <http://www.rinkworks.com>)

Funny poem - A Crime Scene

There's been a murder, a woman was killed,
found in a bathtub, partially filled.

A pair of policemen went into the house
and questioned the poor woman's spouse.

He'd just come home from working all night
and found her like that, a terrible sight.

The younger policeman looked on with dismay.

He'd never forget that terrible day.

He saw the young woman from behind the door
and empty milk cartons all over the floor,

Scattered strawberries, slices of fruit,
and spoonfuls of sugar and honey to boot.

"Who could have done this terrible thing?"

His voice had a horrified, pitiful ring.

"Just look at the clues," replied Sargeant Miller.

"It looks like the work of a cereal killer."

(Source: <http://www.poemsclub.com/a-crime-scene.html>)

UNIT 6

COURT SYSTEMS

READING

Magistrates' Courts

Magistrates' courts are a key part of the criminal justice system and 97% of cases are completed there. In addition magistrates' courts deal with many civil cases e.g. anti-social behaviour, public health and are responsible for the enforcement of fines and community punishments.

Where cases required a penalty greater than magistrates' sentencing powers, cases will be sent to the Crown Court.

County Courts

The county court, often *referred* to as the small claims court, deals with civil matters, such as:

- Claims for debt repayment, including enforcing court orders and return of goods bought on credit,
- Personal Injury,
- Breach of contract concerning goods or property,
- Family issues such as relationship breakdown or adoption,
- Housing disputes, including mortgage and council rent arrears and re-possession.

County Court Money Claims Centre

The County Court Money Claims Centre (CCMCC) deals with designated money claims providing a critical supporting service to the county courts.

The work done includes issue, entry of judgment, acknowledgements of service, defences and processing completed allocation questionnaires. If at any stage an oral hearing is required the claim will be transferred to a local county court. The CCMCC will also issue warrants of execution on designated money claims where judgment has been entered at the centre.

A dedicated telephone contact team deals with all queries relating to cases issued through the CCMCC up until the point of transfer to a local county court.

The Crown Court

The Crown Court deals with more serious criminal cases such as murder, rape or robbery, some of which are on appeal or *referred* from magistrates' courts. Trials are heard by a Judge and a 12 person jury. Members of the public are selected for jury service or may have to go to court as witnesses. Crown Court cases originate from magistrates' courts.

The Crown Court also hears appeals against decisions of magistrate's courts.

The High Court

The High Court deals with higher level civil disputes within three divisions

- the Queen's Bench Division
- the Chancery Division
- the Family Division

and deals with other jurisdictions including the Administrative Court.

The High Courts sits at the Royal Courts of Justice.

(Source: <http://www.justice.gov.uk/about/hmcts/courts>)

complete *verb* 1. finish making or doing; 2. provide with the item or items necessary to make (something) full or entire

fine *noun* a sum imposed as punishment for an offense

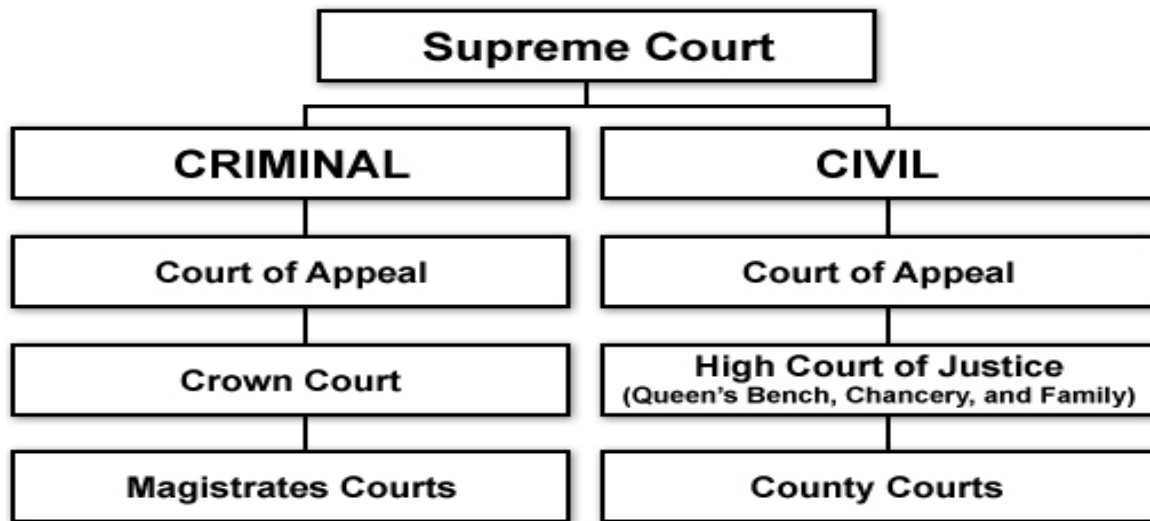
arrears *noun* money that is owed and should have been paid earlier

acknowledgement [UN] 1. acceptance of the truth or existence of something; 2. recognition of the importance or quality of something; 3. (acknowledgements) a statement printed at the beginning of a book expressing the author's or publisher's gratitude to others

query *noun* a question, especially one expressing doubt or requesting information

Memory aid

1. Identify the function(s) of each component of the court system.



2. The word *referred* occurs twice in the text above. Picking up clues, identify the two different contextual meanings.

INTERCULTURAL AWARENESS

The United States has 51 hierarchies of courts: the Federal justice system and the justice systems of the individual Federal states. Usually, these hierarchies consist of three instances. At first instance, the Federal justice system consists of U.S. district courts and certain specialised courts. The country is divided into judicial districts. Each Federal state contains at least one district (some larger states have several). Cases are usually heard by a single judge. The second instance comprises U.S. courts of appeals. The country is divided into twelve regional circuits; each circuit includes one or more Federal states. A Federal court of appeal hears appeal cases coming from district courts within its own circuit. Cases are heard by three judges. If a contradiction occurs in the jurisprudence of different chambers of a Federal court of appeal, then a case can be heard in plenary session. The U.S. Supreme Court is the only court whose establishment is foreseen by the Federal Constitution. Its tasks are threefold.

Firstly, it maintains watch on observation of the provisions of the Constitution. Secondly, the Supreme Court ensures the uniform application of Federal legislation throughout the country

as a whole. Thirdly, it hears disputes between Federal states and between the Federal State and individual states.

In most cases, the structure of the justice system of the states of the Federation resembles that of the Federal State itself. The states have their own courts of first instance, competent to hear civil and criminal matters within the state in question. These courts have general competence and cases are usually heard by a single judge. Sometimes, courts of first instance include a special chamber for criminal matters. In addition, some states have separate courts specialising in criminal cases, as for example for teenage offenders. Most states have courts of second instance. All states have established a supreme court. This last hears appeal cases coming from lower courts. Further, it determines disputes concerning interpretation of the Constitution of the state concerned.

As indicated, the Federal courts are called *district court*, *court of appeal* and *supreme court*. As for the first-instance courts of the individual states, these have names such as *district court*, *circuit court* or *court of common pleas*. In some states, the name is misleading: courts of first instance may be called *superior court* or even – in New York State – *supreme court*. The courts of second instance are usually designated by the name of *court of appeals* or *appellate court*. As for the supreme court, this is most often – but not necessarily – called the *Supreme Court*.

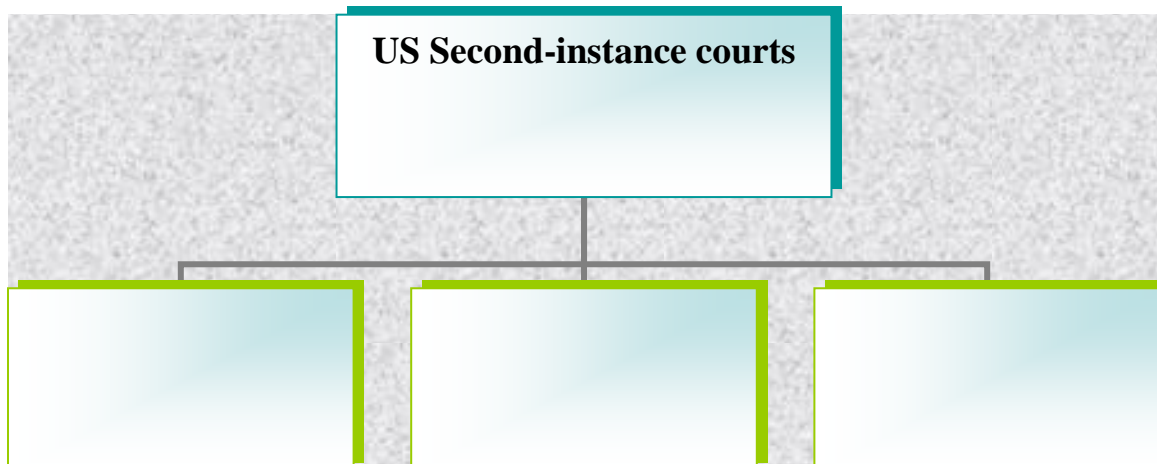
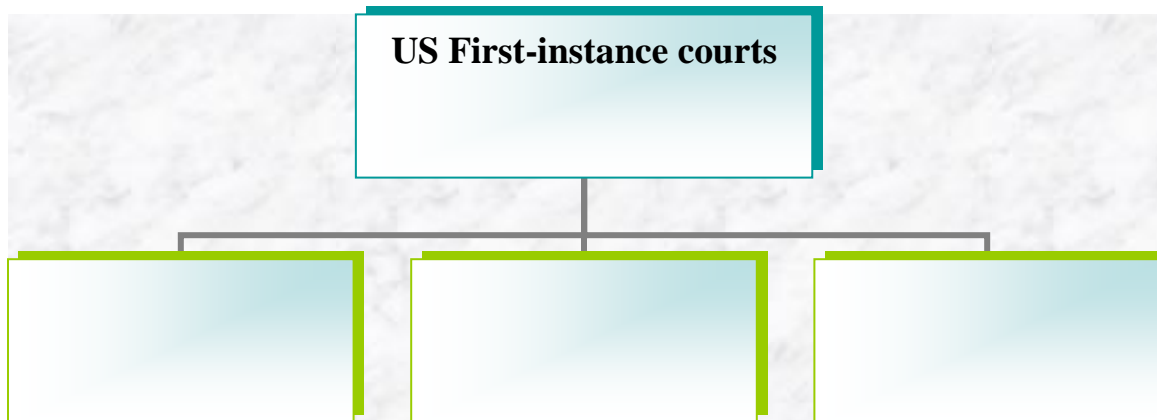
In England, by contrast, the tripartite division – court of first instance, court of appeal, supreme court – only very roughly describes the country's judicial system. At the same time, the names of English courts diverge radically from those of American courts. In England can be found, at first instance, the *magistrates courts* (with orthographic alternatives: *magistrates' courts* or *magistrate's courts*) and the *county courts*. The second instance consists of a single court, the *Supreme Court of Judicature*, comprising three bodies: the *High Court of Justice*, *Crown Court*, and *Court of Appeal*. The first of these bodies (*High Court of Justice*) is composed of three divisions: *Queen's Bench Division*, *Chancery Division*, and *Family Division*.

At final instance, judicial matters are heard in England by the *House of Lords*, or to be more precise, by the *Appellate Committee* of the House. Some appeal cases coming from the *Commonwealth* countries are heard by the *Judicial Committee of the Privy Council*. (Source: Mattila, 2006: 243-244)

3. Establish cultural equivalents by putting a tick (✓) or a cross (x) to the following pairs:

U.S.	UK	
Supreme Court	Supreme Court of Judicature	_____
district court	county court	_____
court of appeals	Court of Appeal	_____
circuit court	House of Lords	_____

4. Based on the text above, design your own memory aid. Add / remove as many boxes and lines as necessary:



AWARENESS POINT

Meaning and form. Lexical fields and relations. The odd one out

5. Eliminate the word that does not fit the series. Justify your choice (mention the criterion that you applied).

provide	stipulate	say	prescribe
ensuing	succeeding	pursuant	subsequent
justice	evidence	witness	information
responsibility	undertaking	duty	discretion
prior	previous	prerequisite	preceding
flout	infringe	breach	violate
margin	leeway	latitude	interpretation
forbid	forestall	hinder	preclude

Highest percentage of women appointed High Court judges

Five women chosen for High Court, but proportion of solicitor applicants to judicial roles falls

Five women have been recommended for appointment as High Court judges, making up 36 per cent of the total - the highest proportion ever recorded by the Judicial Appointments Commission. The JAC said that in the three previous comparable High Court selections, the highest percentage recorded was only 23 per cent, followed by 15 and 14 per cent.

Sue Carr QC, a recorder since 2009, started work as a judge last week. She will be joined in October by Frances Patterson QC, a law commissioner for over three years. Names of the three remaining judges will be announced shortly.

However, the JAC said the proportion of solicitors applying to be judges had fallen, particularly in the past three years. It is understood this is not because of a lack of solicitors applying but because the number of barristers has greatly increased.

Just 1 per cent of High Court applications were from solicitors in private practice and, not surprisingly, none were successful. In contrast women applying to the High Court easily outperformed men. Female candidates made up only 17 per cent of applications, but 29 per cent of those shortlisted for interview.

Christopher Stevens, chairman of the JAC, said: "Women have been making good progress at the entry and middle levels of the judiciary for some time and it is very positive to see this filtering through to the High Court, which had a very strong field of candidates.

"Further encouragement can be taken from the most recent Court of Appeal selections, in which three of the 10 judges recommended were women; and the fact that 43 per cent (21 in total) of the individuals authorised in 2012/13 to sit as a deputy judge of the High Court were women."

Justice minister Helen Grant said the number of women achieving positions in the judiciary was encouraging. "The work done by government, the JAC and other partners is key to keeping up this momentum," Grant said. "Where more remains to be done, we will continue our push to promote diversity at all levels of the judiciary."

Solicitors accounted for 57 per cent of applications for district judge, but only 47 per cent of recommendations for appointment. They were even less successful in obtaining deputy district judge posts, achieving 52 per cent of recommendations while making up 65 per cent of applications.

Law students at Durham Law School struggled to identify the gender of Court of Appeal judges in a research project for BBC's Law in Action, broadcast later today. Following a suggestion from Lord Neuberger, 30 law students studied 16 anonymised judgments from the Court of Appeal, half made by male judges, half by female.

Professor Erika Rackley, who carried out the project, said rulings were attributed to judges of the correct gender in only 46 per cent of cases. Employment and family judgments were easier to attribute, but criminal rulings more difficult.

(Solicitors Journal, 18 June 2013)

appointment *noun* 1. an arrangement to meet someone at a particular time and place; 2. an act of assigning a job or position to someone

make up *verb* 1. (of parts) compose or constitute (a whole); 2. invent a story, lie, or plan

shortlist *verb* put (someone or something) on a list of selected candidates from which a final choice is made

deputy *noun* a person who is appointed to undertake the duties of a superior in the superior's absence

ruling *noun* an authoritative decision or pronouncement, especially one made by a judge

SPEAKING AND WRITING

There have been a lot of great innovations this century. For instance, there's Wikipedia, which has revolutionised the way we look for information. Then there are social networking

sites such as Facebook, which have helped millions of people to keep in touch with friends – and make new ones.

But if I had to choose one, I'd go for . Not only is it one of the most useful gadgets I've ever owned, but it's also really aesthetic. It's very straightforward to use too, designed for people (like me) who are not really into technology. You don't need to read an instruction manual to make it work, because it's really intuitive. And it's got a touch screen, which means you can easily teach yourself to use it.

But what I really love about it is that for such a small gadget, it's absolutely packed with functions. For example, you can make calls, listen to music, take photos and connect to the Internet. I use mine to record music and even to tune my guitar. And all that in a pocket-sized piece of technology!

7. What is the best innovation according to the speaker?

Choose from the list:

1. social networking (Facebook)
2. iPhone
3. e-books
4. Skype
5. YouTube
6. Wikipedia
7. iPod
8. Google translate
9. Wi Fi
10. Twitter
11. High definition TV

8. Which of the above has impacted most on the crime rate? Think of two positive aspects and of two negative aspects.

AWARENESS POINT

Relative Clauses

Definition: a *clause* represents a part of a sentence. A Relative Clause provides information on the person/thing or the kind of person/thing that the speaker refers to.
e.g. The clauses *that were negotiated in the contract* are based on the principle of mutual interest.

Relative Clauses are introduced by

WHO/WHOM/WHOSE [+ person]

WHICH [-person]

THAT [± person]

WHERE [+place]

Generally speaking, THAT is more usual than WHICH.

There are two types of Relative Clauses (RC):

- **Defining RC:** they bring essential information and they are not separated by commas.
- **Non-Defining RC:** they bring extra-information and they are always separated by commas.

e.g. We stayed at the hotel that our friends recommended.

We stayed at the Hilton, which our friends recommended.

9. Find and underline in the text:

1. words and phrases used to introduce examples.
2. *which* clauses (Non-defining Relative Clauses) used to give extra information.

10. State the difference between the following pairs of sentences:

1. His daughter, who studies law, lives in London.
His daughter who studies law lives in London.
2. A woman without her man is nothing.
A woman, without her, man is nothing.
3. *What* are you doing here?
What are *you* doing here?
4. While waiting for the judge to pass the sentence, the ceiling fell on their heads.

While they were waiting for the judge to pass the sentence, the ceiling fell on their heads.

5. He left the place which made him happy.
He left the place, which made him happy.

11. Correct the mistakes in the following sentences:

1. A suspected or accused person who does not speak or understand the language for which is used in the proceedings will need an interpreter and translation of essential procedural documents.
2. The OCC shall rely on one representative per Member State whom may be either the national member, his deputy, or an assistant entitled to replace the national member
3. The national member shall have a position what grants him the powers referred to in this Decision in order to be able to fulfil his tasks.
4. The driver, who caused the accident, was fined £600.
5. The people with who I work are high standing professionals.
6. The Convention for the Protection of Human Rights and Fundamental Freedoms constitutes the common basis for the protection of the rights of suspected or accused persons in criminal proceedings, that for the purposes of this Resolution includes the pre-trial and trial stages.
7. There exist European Union standards for the protection of procedural rights, which are properly implemented and applied in the Member States.
8. Conservatives, unlike their opponents, welcome opposition which is good for the democratic system.

12. Match these documents in court with their definitions:

- | | |
|--------------|---|
| 1. affidavit | a a document informing someone that they |
| 2 answer | will be involved in a legal process and |
| 3 brief | instructing them what they must do |
| 4 complaint | b a document or set of documents |
| 5 injunction | containing the details about a court case |

6 motion

7 notice

8 pleading

9 writ

c a document providing notification of a fact, claim or proceeding

d a formal written statement setting forth

the cause of action or the defence in a case

e a written statement that somebody makes

after they have sworn officially to tell the

truth. which might be used as proof in court

f an application to a court to obtain an

order. ruling or decision

g an official order from a court for a person

to stop doing something

h in civil law. the first pleading filed on

behalf of a plaintiff, which initiates a

lawsuit. setting forth the facts on which the

claim is based the principal pleading by the

defendant in response to a complaint

(Source. Krois-Lindner, 2006: 12)

HAVING FUN WITH ENGLISH

Jokes

Hear about the terrorist that hijacked a 747 full of lawyers? He threatened to release one every hour if his demands weren't met.

Question: How can you tell that a lawyer is lying?

Answer: His lips are moving.

Judge: Are you the defendant?

Defendant: No, I'm the guy who stole the chickens.

(Source: <http://www.languageandlaw.org>)

UNIT 7

CRIMINAL JUSTICE

READING

Juror age limit to be raised to 75

New law to implement change set for early next year

Justice minister Damian Green has announced today that the government will introduce **legislation** early next year to increase the upper age limit for jurors to 75. The age limit was last raised, from 65 to 70, by the Criminal Justice Act 1988. "Our society is changing and it is vital that the criminal justice system moves with the times," Green said.

"The law as it currently stands does not take into account the increases to life expectancy that have taken place over the past 25 years. "This is about harnessing the knowledge and life experiences of a group of people who can offer significant benefits to the court process."

In its comment section 'The Daily Telegraph' called for the upper age limit for jurors to be scrapped completely, following the example set by Scotland. It described as "daft" the decision to introduce a compulsory retirement age of 70 for judges under the Judicial Pensions and Retirement Act 1993.

"If you can sit on a jury after the age of 70, then you must surely be allowed to sit on the bench," the newspaper said. "While he is at it, Mr Green should change that law as well."

Professor Cheryl Thomas, director of the Jury Project at UCL, told the BBC that the latest age increase was long overdue. "Virtually every other common law jurisdiction that has a jury system currently has no upper age limit at all for jury service," she said. "This new policy change will bring England and Wales up to speed with the rest of the common law systems."

However, the BBC also reported that the Council of Circuit Judges warned in 2010 that allowing people aged over 70 to serve on juries could lead to "substantial disruption" to criminal trials. "There would, inevitably, be an increase in 'days lost' as a result of illness or

incapacity," it said. "Proceedings might be hampered by poor hearing, poor vision or physical disability."

(*Solicitors Journal*, 20 August 2013)

upper *adjective* situated above another part

harness *verb (figurative)* control and make use of

scrap *verb* discard or remove from service

daft *adjective (informal)* silly; foolish

compulsory *adjective* required by law or a rule; obligatory

disruption *noun* disturbance or problems which interrupt an event, activity, or process

hamper *verb* hinder or impede the movement or progress of

1. Read the text and answer the following questions:

1. When was the judge age limit last raised?
2. What are the grounds for changing the age limit?
3. What is Professor Cheryl Thomas's opinion about this latest change?
4. Do you think that the tone of the writer is neutral? Justify your answer.

2. Decide if the following rephrased sentences have the same meaning as the original ones:

1. The government will introduce legislation early next year to increase the upper age limit for jurors to 75.

The government is likely to introduce legislation early next year to increase the upper age limit for jurors to 75.

36. "Our society is changing and it is vital that the criminal justice system moves with the times," Green said.

Our society is changing and it is vital that the criminal justice system should move with the times," Green said.

37. This is about harnessing the knowledge and life experiences of a group of people who can offer significant benefits to the court process.

This is about harnessing the knowledge and life experiences of a group of people for whom significant benefits can be offered to the court process.

38. "If you can sit on a jury after the age of 70, then you must surely be allowed to sit on the bench," the newspaper said.

The newspaper speculated that if you could sit on a jury after the age of 70, then you must surely have been allowed to sit on the bench.

39. Professor Cheryl Thomas, director of the Jury Project at UCL, told the BBC that the latest age increase was long overdue.

Professor Cheryl Thomas who is director of the Jury Project at UCL told the BBC that the latest age increase was long overdue.

AWARENESS POINTS

Faux amis/False friends/Deceptive or false cognates

Definition 1: *Faux amis* - Term (from French meaning ‘false friends’) denoting word pairs from different languages which, in spite of similarities in form, have different meanings. Frequently such similarities lead to **interference** errors in **second language acquisition**, e.g. Eng. *Figure* vs Fr. *figure* (‘face’) or Eng. *cold* vs Ital. *caldo* (‘warm’), or Span. *presidio* ‘prison, imprisonment’ and Ger. *Präsidium* ‘residence of a president; office of chairman.’

(Bussman, H., *Routledge Dictionary of Language and Linguistics*, 1998: 405)

Definition 2: **false cognate**, also **faux amis**, **false friend** - a word which has the same or very similar form in two languages, but which has a different meaning in each. The similarity may cause a second language learner to use the word wrongly. For example, the French word *expérience* means “experiment”, and not “experience”. French learners of English might thus write or say: *Yesterday we performed an interesting experience in the laboratory.*

(Richards and Schmidt, *Longman Dictionary of Language Teaching and Applied Linguistics*, 2002: 198)

EXTENSION

Carlill v Carbolic Smoke Ball Co Ltd (1892)

Facts

Mrs Carlill made a retail purchase of one of the defendant's medicinal products: the 'Carbolic Smoke Ball'. It was supposed to prevent people who used it in a specified way (three times a day for at least two weeks) from catching **influenza**. The company was very confident about its product and placed an **advertisement** in a paper, *The Pall Mall Gazette*, which praised the effectiveness of the smoke ball and promised to pay £100 (a huge sum of money at that time) to:

... any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, having used the ball three times daily for two weeks according to the printed directions supplied with each ball.

The advertisement went on to explain that the company had deposited £1,000 with the Alliance Bank, Regent Street, London as a sign of its sincerity in the matter. Any proper plaintiffs could get their payment from that sum. On the faith of the advertisement, Mrs Carlill bought one of the balls at the **chemists** and used it as directed, but still caught the 'flu. She claimed £100 from the company, but was refused it, so she sued for breach of contract. The company said there was no contract for several reasons, but mainly because:

- (a) the advert was too vague to amount to the basis of a contract – there was no time limit and no way of checking the way the customer used the ball;
- (b) the plaintiff did not give any legally recognised value to the company;
- (c) one cannot legally make an offer to the whole world, so the advert was not a proper offer;
- (d) even if the advert could be seen as an offer, Mrs Carlill had not given a legal acceptance of that offer because she had not notified the company that she was accepting;
- (e) the advert was a 'mere puff', that is, a piece of insincere sales talk not meant to be taken seriously.

Decision

The Court of Appeal found that there was a legally enforceable agreement, a contract, between Mrs Carlill and the company. The company would have to pay damages to the plaintiff.

Ratio decidendi

The three Lord Justices of Appeal who gave judgments in this case all decided in favour of Mrs Carlill. Each, however, used slightly different reasoning, arguments and examples. The

process, therefore, of distilling the ‘reason for the decision’ of the court is quite a delicate art. The *ratio* of the case can be put as follows.

Offers must be sufficiently clear to allow the courts to enforce agreements that follow from them. The offer here was ‘a distinct promise expressed in language which is perfectly unmistakable’. It could not be a ‘mere puff’ in view of the £1,000 deposited specially to show good faith. An offer may be made to the world at large and the advert was such an offer. It was accepted by any person, like Mrs Carlill, who bought the product and used it in the prescribed manner. Mrs Carlill had accepted the offer by her conduct when she did as she was invited to do, and started to use the smoke ball. She had not been asked to let the company know that she was using it.

Obiter dictum

In the course of his reasoning, Bowen LJ gave the legal answer to a set of facts which were not in issue in this case. This answer was thus an *obiter dictum*. He did this because it assisted him in clarifying the answer to Mrs Carlill’s case. He said: If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal? Why, of course, they at once look [for] the dog, and as soon as they find the dog they have performed the condition.

If such facts were ever subsequently in issue in a court case, then the words of Bowen LJ could be used by counsel as persuasive precedent.

This decision has affected the outcome of many cases. The information system LEXIS, for example, lists 70 cases in which *Carlill* is cited. It was applied in *Peck v Lateu* (1973) and distinguished in *AM Satterthwaite & Co v New Zealand Shipping Co* (1972).

retail [UN] the sale of goods to the public in relatively small quantities for use or consumption rather than for resale:

supposed to *verb* (be supposed to do something) be required to do something because of the position one is in or an agreement one has made:

prevent from *verb* keep (something) from happening; stop (someone) from doing something

plaintiff *noun* a person who brings a case against another in a court of law; in England and Wales the term *plaintiff* was officially replaced by *claimant* in 1999

sue *verb* institute legal proceedings against (a person or institution), typically for redress

advert *noun* (British informal) an advertisement; also *ad*

enforce *verb* compel observance of or compliance with (a law, rule, or obligation)

3. Starting from the definitions above and from three instances in the text, i.e. *influenza*, *advertisement*, *prevent*, etc detect the false friends (through guesswork, too) in the sentences below and provide their meaning in English and in your mother tongue:

1. RESOLUTION OF THE COUNCIL of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (2009/C 295/01)

2. At the same time, there is room for further action on the part of the European Union to ensure full implementation and respect of Convention standards, and, where appropriate, to ensure consistent application of the applicable standards and to raise existing standards.

3. Also, the 2004 Hague Programme states that further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards of procedural rights in criminal proceedings.

4. Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

5. Any extension of deadlines for processing personal data, where prosecution is statute barred in all Member States concerned, should be decided only **where** there is a specific need to provide assistance under this Decision.

EXTENSION

The language of advertising

According to *The New Encyclopaedia Britannica*, *advertising* (such a hold-all term) is designed to inform, influence, or persuade people. At this point, we should remember that all texts are hybrid structures, that they are multifunctional, unfolding different perspectives. As

we shall see from the on-going discussion, advertisements seem to be very complex in nature, possibly the most intricately interwoven type of texts.

As far as the above definition is concerned, there is one important distinction to be made: advertisements influence in the sense of passive manipulation (branding) and persuade in the sense of active manipulation (people recognize the implicit intention to sell and do take a stand, i.e. they buy the product, they become consumers).

Rhetoric strategies of advertisements fall into:

- **Basic appeals** - in general advertisers may present their message either in a factual way (logos-oriented), the focus being on the practical value of the product, or in an emotional way (pathos-oriented) when the product becomes the catalyst of human bonds. Advertisements that use a factual approach describe the demonstrable characteristics of a product. On the other hand, advertisements that resort to the emotive appeal focus on the way the product will give you personal satisfaction (need for love, security or prestige) and transgresses the ordinary (exotic flavour, original lifestyle, everlasting happiness). To persuade the largest possible number of people, most advertisements combine factual information with an emotional load.
- **Attention-getting headlines** - a successful headline inevitably leads a person into reading the rest of the advertisement. Some headlines attract attention by promising the reader a potential benefit; others simply arouse a person's curiosity while a third category carries news such as the launching of a new product.
- **Slogans** - are short phrases used repeatedly in the advertisements. Effective slogans are easy to remember and tend to stick to people's minds as they are created to promote a favourable image of a company and of its products.
- **Testimonials** - are advertisements in which a person endorses a product. The person may be someone who looks like an average user of the product, or film or TV stars, popular sportsmen or other celebrities who may induce a feeling of trust.
- **Product characters** - are fictional people and animals or characters that are used in advertisements over a long period of time. The characters become highly familiar to people (especially if they advertise a whole line of products) and consequently provide lasting identification with a brand.

- **Comparison of products** - is used most frequently to sell products that compete heavily with other brands. Advertisers compare their products with similar brands and point out the advantages of using their brand (a competitor's product may be named or just hinted at).
 - **Repetition** - although it flouts the aesthetic function of language, lexical or/and syntactic repetition is used to get the message across.
- (Vilceanu, 2006)

SPEAKING AND WRITING

4. Decide which rhetoric strategies are activated in the following advertisements and enlarge upon this strategy in a contextualised way:

Darling, I'm having the most extraordinary experience...

I'm head over heels in DOVE!

No, darling— wait, it's like in addition. I told you, sweet, I'm in the tub. Taking a bath. A warm bath— my very bath.

Remember "The Queen of England" said? How does she feel about it? And "The Queen" has awarded me an award for something called every day her hair.

Well, darling, I'm all over you. Just being here makes me feel like I'm in a dream. And when I think about it, I don't know what I can do to keep you.

And you know how long I've been with you? Well, every night.

And what a beautiful person you are. The feeling? It's just as if I'd never really bathed before!

The, dear, it isn't a day. There was never like that the whole time. That was on TV and that was in some magazine. I'm not like that. I never see you, when I bath— and you I really love you.

Why, darling, you are so beautiful. I don't know what to do.

And what a beautiful person you are. The feeling? It's just as if I'd never really bathed before!

The, dear, it isn't a day. There was never like that the whole time. That was on TV and that was in some magazine. I'm not like that. I never see you, when I bath— and you I really love you.

Why, darling, you are so beautiful. I don't know what to do.

And what a beautiful person you are. The feeling? It's just as if I'd never really bathed before!

The, dear, it isn't a day. There was never like that the whole time. That was on TV and that was in some magazine. I'm not like that. I never see you, when I bath— and you I really love you.

Why, darling, you are so beautiful. I don't know what to do.

DOVE creams your skin while you bathe

Gucci - Guilty

The very scent of defiance, for the most contemporary of rebels.

- a warm yet striking oriental floral fragrance
 - top notes of pink pepper
 - heart note of lilac
- base notes of patchouli and amber



(Sources:

<https://www.newthinktank.com/2010/03/marketing-examples-most-successful-ads-in-history/>

<http://www.gucci.com>

<http://inspirationfeed.com/inspiration/advertising-inspiration/50-creative-effective-advertising-examples/>

<http://www.youthdesigner.com/2011/10/05/44-clever-outdoor-advertising-samples/>

5. In the light of all of the above, comment on the legal answer in *Carlill v Carbolic Smoke Ball Co Ltd (1892)*.

AWARENESS POINT

The use of modals in legal English as rhetorical strategies

ABILITY (physical and/or mental)

CAN/CANNOT

*In order to safeguard the fairness of the proceedings, it is important that special attention is shown to suspected or accused persons who **cannot** understand or follow the content or the meaning of the proceedings, owing, for example, to their age, mental or physical condition*

PERMISSION (in formal settings)

MAY

*More deputies or assistants **may** assist the national member and **may**, if necessary and with the agreement of the College, have their regular place of work at Eurojust.*

POSSIBILITY

CAN (theoretical or generic possibility)

*By addressing future actions, one area at a time, focused attention **can** be paid to each individual measure.*

CANNOT (impossibility)

*Where two or more national **cannot** agree on how to resolve a case of conflict of jurisdiction as regards the undertaking of investigations or prosecution **pursuant to** Article 6 and in particular Article 6(1)(c), the College shall be asked to issue a written non-binding opinion on the case.*

COULD (more factual possibility)

*The rights included in this Roadmap, which **could** be complemented by other rights, are considered to be fundamental procedural rights.*

PROBABILITY/LIKELIHOOD

WILL (prediction)

*The Council **will** act in full cooperation with the European Parliament, in accordance with the applicable rules, and **will** duly collaborate with the Council of Europe*

OBLIGATION/NECESSITY**MUST (strong obligation)**

*The suspected or accused person **must** be able to understand what is happening and to make him/herself understood.*

SHALL (strong obligation)

*A suspected or accused person who is deprived of his or her liberty **shall** be promptly informed of the right to have at least one person, such as a relative or employer, informed of the deprivation of liberty.*

SHOULD (advisability)

*The 1999 Tampere European Council concluded that, in the context of implementing the principle of mutual recognition, work **should** also be launched on those aspects of procedural law on which common minimum standards are considered necessary.*

Sources:

- 1. Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*
- 2. Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime*

5. Identify the function of modal verbs in the following sentences:

1. Elections shall be held yearly for one permanent member of the Joint Supervisory Body by means of secret ballot.
2. An assistant may also act on behalf of or substitute the national member if he fulfils the criteria provided for in paragraph 1.
3. Such action, which can comprise legislation as well as other measures, will enhance citizens confidence that the European Union and its Member States will protect and guarantee their rights.

4. Particular attention should also be paid to the needs of suspected or accused persons with hearing impediments.
5. The time that a person can spend in detention before being tried in court and during the court proceedings varies considerably between the Member States.

6. Fill in the gaps with the right modal. Choose from: *should, need, must, have to, can, could, may, will*. Some of the modal verbs may be used twice. In some other cases, several answers are acceptable.

1. Candidates not enter the premises without written approval.
2. What ... you have: tea or coffee?
3. What ... you be doing in five years' time?
4. The road ... be blocked in winter.
5. ... I smoke in here?
6. She to go to court every other day.
7. ... I bring another witness?
8. They ... have paid more attention to the matter.
9. It ... rain in the afternoon.
10. ... I tell the news to everybody?

HAVING FUN WITH ENGLISH

Graphic language

Find the message in each box:

S H O W	BALLOT	PETE PETE	SIT IT
FAIR	<u>STAND</u> I	MAN BOARD	R R E D D
BACK: BACK	ONCE TIME	SPEED	ICE ³

UNIT 8
COMMERCIAL LAW

READING

NOW THIS DEED WITNESSETH as follows:

1. In consideration of the sum of nineteen thousand seven hundred and fifty pounds (£19,750) paid to the Lessor by the Tenant on or before the execution **hereof** (the receipt **whereof** the Lessor hereby acknowledges) and of the rents and covenants **hereinafter** reserved and contained and on the part of the Tenant to be paid observed and performed the Lessor hereby demises unto the Tenant ALL THAT the upper maisonette being 25 Anyroad Derrytown (**hereinafter** called "the maisonette") forming part of the said property known as Numbers 25 and 27 Anyroad Derrytown Plymouth **aforesaid** (hereinafter called "the building") including one half part in depth of the structure between the floors of the maisonette and ceilings of the lower maisonette and (subject to clause 7(1) **hereof**) the internal and external walls of the maisonette to the same level and the land and structure of the building above the maisonette including the roof space gutters downpipes windows and window frames TOGETHER WITH the front garden and a portion of the rear garden which is delineated on the plan annexed **hereto** and **thereon** edged in green AND TOGETHER ALSO with the pathway (including the gate and gateway) edged blue on the said plan AND TOGETHER ALSO with the easements rights and privileges mentioned in the second schedule **hereto** subject as **therein** mentioned but EXCEPTING AND RESERVING as mentioned in the third schedule **hereto** TO HOLD the maisonette hereby demised unto the Tenant from the first day of April one thousand nine hundred and eighty for the term of ninety nine years paying **therefor** yearly during the said term the rent of thirty pounds (£30) by equal yearly payments (in advance) on the twenty fifth day of December in every year free of all deductions whatsoever the first payment thereof being a proportionate part of the said annual sum calculated from the date **hereof** to the twenty fifth day of December next to be paid upon the signing hereof.

(Source: Butt, 2006: 145)

1. Decide if the following statements are true or false:

1. The Tenant shall pay the Lessor an amount of £19.750. _____
2. The parts of the maisonette that the Tenant may use are: the upper maisonette situated in 27 Anyroad Derrytown including, among others, one of the structure between the floors of the maisonette and ceilings of the lower maisonette and the internal and external walls of the maisonette to the same level and the land and structure of the building above the maisonette including the roof space gutters downpipes windows and window frames TOGETHER WITH the front garden and part of the backyard. _____
3. Easement rights and privileges are laid down in the second paragraph. _____
4. The maisonette shall be demised until 2079. _____

Deed *noun* a legal document that is signed and delivered, especially one regarding the ownership of property or legal rights

lessor *noun* person who leases or lets a property to another; a landlord

tenant *noun* a person who occupies land or property rented from a landlord

demise *verb* convey or grant (an estate) by will or lease

maisonette *noun* a set of rooms for living in, typically on two storeys of a larger building and having a separate entrance

rear *adjective* at the back

easement *noun* a right to cross or otherwise use someone else's land for a specified purpose

schedule *noun* 1. a plan for carrying out a process or procedure, giving lists of intended events and times; one's day-to-day plans or timetable; a timetable; *Law* an appendix to a formal document or statute, especially as a list, table, or inventory

2. While reading the text, using contextual data, match the words in the first column with the corresponding definitions in the second column:

hereof

adjective denoting a thing or person

previously mentioned

whereof	adverb (<i>archaic</i> or <i>formal</i>) in that place, document, or respect
hereinafter	<i>adverb</i> (formal) of what or which
aforesaid	adverb (<i>archaic</i>) for that object or purpose
hereto	<i>adverb</i> (formal) to this matter or document
therein	<i>adverb</i> (formal) further on in this document
therefor	<i>adverb</i> (formal) of this document

AWARENESS POINT

Butt (2006: 145 ff) draws our attention towards the following terms:

‘**Herewith**’ and ‘**therein**’ are pure legalese. All these words and phrases give the clause a legal feel without serving any legal purpose.

‘**Hereby**’ deserves special mention. Drafters in the traditional style have a particular affinity with it. Presumably, the drafters consider that ‘hereby’ adds precision. But this is not always the case – ‘hereby’ can in fact introduce ambiguity. For example, in a New Zealand case a section in a statute gave landowners the right to compensation for loss or damage suffered from ‘the exercise of any of the powers *hereby* given’. Did *hereby* mean ‘by this section’, or ‘by this Part of the Act’, or ‘by this Act’? It took an appeal to the New Zealand Court of Appeal to decide that it meant ‘by this Act’.

It is true that ‘hereby’ can give a particular emphasis to an action. But even then it is usually legal surplusage. For example, in an Australian case, a tenant purported to exercise an option to renew a lease by sending a letter which began, plainly enough: ‘We would hereby like to exercise our option to renew the lease’. Were these words sufficient to indicate an intention, then and there, to exercise the option, or were they merely an expression of intention to

exercise the option formally on some later occasion? The judge held that they amounted to an intent to exercise the option then and there. In reaching this conclusion, the judge considered that the use of ‘hereby’ was relevant. It was ‘a very strong indication’ that the option was being exercised by the letter.

On closer examination, however, it is obvious that the uncertainty arose from the polite expression ‘we would like to’—an expression displaying a diffidence of tone appropriate in conversation but not in the exercise of legal rights. The judge could have reached the same conclusion even without the presence of *hereby*.

EXPLORE

3. Identify what legalese terms in bold anaphorically refer to, i.e. to things previously mentioned. Decide if there are any cases of obscurity or vagueness, i.e. no precise reference in the sentence.

1. Having regard to the 23 September 1991 Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws, and the exchange of interpretative letters dated 31 May and 31 July 1995 in relation to that Agreement (together **hereinafter** the 1991 Agreement')

(Source text: AGREEMENT between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws)

2. IN WITNESS **WHEREOF**, the undersigned, being duly authorised, have signed this Agreement

(Source text: AGREEMENT between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition laws)

3. An ASD breath sample is legally obtained where it is either provided **forthwith**, pursuant to a lawful demand under s. 254(2), or provided voluntarily. While the word “forthwith”, in the context of s. 254(2) of the *Code*, may in unusual circumstances be given a more flexible interpretation than its ordinary meaning strictly suggests, the “forthwith” requirement connotes a prompt demand by the peace officer and an immediate response by the person to whom that demand is addressed. Therefore, drivers to whom ASD demands are made under

s. 254(2) must comply immediately — and not later, at a time of their choosing. Here, the second demand for a breath sample made at the police station does not fall within s. 254(2), as it fails the “immediacy” criterion implicit in that provision. To accept as compliance “forthwith” the furnishing of a breath sample more than an hour after being arrested for having failed to comply is a semantic stretch beyond the literal bounds and constitutional limits of s. 254(2).

(Source: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/2275/index.do>)

4. If as a result of any present or future taxes, assessments or governmental changes (together “taxes”) imposed by the United States of America or any political subdivision or taxing authority **thereof** ...

(Darmstadter, 2008: 89)

5. If any provision in this agreement is held invalid, illegal or unenforceable in any respect, the legality, validity and enforceability of the remaining provisions in this agreement shall not in any way be affected or impaired thereby.

(idem, 132)

EXTENSION

Read the following analysis carried out by Coulthard and Johnson (2007: 137-138):

ALL THOSE offices and toilet on the second floor of the building at Mill Lane shown for the purpose of identification only edged red on the plan annexed hereto (hereinafter called ‘the Building’).

This language is the product of pure habit. It is justified neither by legal necessity nor by precision. The words were intended to describe the leased property, which was the whole of the second floor in the building, and nothing more than the second floor. The drafter apparently inserted the references to ‘the Building’ and ‘edged red on the plan’ because, from a bird’s-eye view, the boundaries of the building and of the floor to be let were identical. But surely it would have been clearer to say:

4. Do you think that the following reformulation is clearer? Why / Why not?

ALL THOSE offices and toilet (on the second floor of 'the Building' at Mill Lane) shown for the purpose of identification only edged red on the plan annexed hereto.

edged *adjective* provided with a border or edge

bird's-eye view *noun* a general view from above

boundary *noun* a line which marks the limits of an area; a dividing line

5. Apply the criteria provided by the authors to detect and comment upon vagueness of legal language in the following excerpts:

1. The right to pass and repass at all times with or without vehicles over that part of the vehicular access as is shown coloured brown on the plan annexed hereto subject to the payment to the Council . . . of a proportion of the cost of maintenance and upkeep thereof.

(idem, 203-204)

2. Noting that coordination of their enforcement activities may, in certain cases, result in a more effective resolution of the Parties' respective competition concerns than would be attained through independent enforcement action by the Parties;

3. Acknowledging the Parties' commitment to giving careful consideration to each other's important interests in the application of their competition laws and to using their best efforts to arrive at an accommodation of those interests;

4. Any reference in this Agreement to a specific provision in either Party's competition law shall be interpreted as referring to that provision as amended from time to time and to any successive provisions

5. Where notifiable circumstances are present with respect to mergers or acquisitions, notification shall be given

6. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activity on its own important interests.

7. The request shall be as specific as possible about the nature of the anticompetitive activities and their effects on the interests of the requesting Party...

(Source text: *AGREEMENT between the European Communities and the Government of Canada regarding the application of their competition laws*)

AWARENESS POINT

There are expressions that are characterised as inherently **vague**:

e.g. *reasonable, as soon as possible, as soon as practicable, immediately, whenever, reputable, satisfactory, usual, material, fair, proper.*

The term **vagueness** is defined in Oxford dictionary as follows: *thinking or communicating in an unfocused or imprecise way.*

Furthermore, Mellinkoff (1963) is in favour of ‘**calculated**’ **ambiguity**, referring to the flexible use of vague words such as *necessary, proper, reasonable, substantial, satisfactory, etc.*

6. Unlike vague words and phrases, we have the problem of excessive particularity:

e.g. a tenant’s covenant in a commercial lease:

Not at any time on or after [*date*] to bring keep store stack or lay out upon the land any materials equipment plant bins crates cartons boxes or any receptacle for waste or any other item which is or might become unsightly or in any way detrimental to the Premises or the area generally.

Does the covenant preclude the tenant from bringing onto the land any barrels or tins?

Hint:

interpretation 1- *expressio unius est exclusio alterius* (the inclusion of one thing is the exclusion of the other)

interpretation 2 – *ejusdem generis* (where a list of two or more items belonging to the same category is followed by general words, the general words are construed as confined to the same category)

(Source: Coulthard and Johnson, 2007: 206)

SPEAKING AND WRITING

7. Investigate some of the EU commercial legal texts (please visit eur-lex.europa.eu). Identify strategies of legal drafting alongside lexical and grammatical items aimed to

secure inclusiveness and produce no borderline statements, i.e. clear and unambiguous sentences. Justify your choices.

HAVING FUN WITH ENGLISH MISTAKES ON A CV

The following statements are from actual CVs:

1. Personal:

I'm married with 9 children. I don't require prescription drugs.

I am extremely loyal to my present firm, so please don't let them know of my immediate availability.

Qualifications: I am a man filled with passion and integrity, and I can act on short notice.

I'm a class act and do not come cheap.

I intentionally omitted my salary history. I've made money and lost money. I've been rich and I've been poor. I prefer being rich.

Note: Please don't misconstrue my 14 jobs as 'job-hopping'. I have never quit a job.

Number of dependents: 40.

Marital Status: Often. Children: Various.

2. Reasons for Leaving the Previous Job:

Responsibility makes me nervous.

They insisted that all employees get to work by 8:45 every morning. I couldn't work under those conditions.

I was met with a string of broken promises and lies, as well as cockroaches.

I was working for my mom until she decided to move.

The company made me a scapegoat - just like my three previous employers.

3. Job Responsibilities:

While I am open to the initial nature of an assignment, I am decidedly disposed that it be so oriented as to at least partially incorporate the experience enjoyed heretofore and that it be configured so as to ultimately lead to the application of more rarefied facets of financial management as the major sphere of responsibility.

I was proud to win the Gregg Typing Award.

4. Special Requests and Job Objectives:

Please call me after 5:30 because I am self-employed and my employer does not know I

am looking for another job.

My goal is to be a meteorologist. But since I have no training in meteorology, I suppose I should try stock brokerage.

I procrastinate - especially when the task is unpleasant.

5. Physical Disabilities:

Minor allergies to house cats and Mongolian sheep.

6. Personal Interests:

Donating blood. 14 gallons so far.

7. Typos and Other Bloopers:

Here are my qualifications for you to overlook.

Education: College, August 1880-May 1984.

Work Experience: Dealing with customers' conflicts that arouse.

Develop and recommend an annual operating expense fudget.

I'm a rabid typist.

Instrumental in ruining entire operation for a Midwest chain operation.

(Source: <http://www.fun-with-english.co.uk/2012/08/mistakes-on-cv.html>)

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CAN DO SUMMARY LEVEL B2

Read the following descriptors of performance and assess your level by analysing your language skills and communicative competence in an objective way:

Listening and Speaking

Can ask for factual information and understand the answer

Can ask questions, for example for clarification, while following a lecture, talk or presentation

Can express own opinion, and present arguments to a limited extent

Can give a simple, prepared presentation on a familiar topic

Reading and Writing

Can understand the general meaning of non-routine correspondence

Can understand the general meaning of a report even if the topic is not predictable

Can write a simple report of a factual nature and begin to evaluate, advise, etc.

Can write non-routine correspondence where this is restricted to matters of fact

(2008: 26 ****ILEC Guidelines How to Design a Teaching Course for ILEC Examination Preparation*, University of Cambridge ESOL Examinations)

QUIZZ 1

1. The main function(s) of the legal system run as follows:

- a. it imposes social order
- b. it regulates social control
- c. it has no effect on the society
- d. both a and b

Answer key: d

2. Who brings a claim in a criminal case?

- a. A prosecutor
- b. A claimant
- c. A defendant
- d. A witness

Answer key: a

3. To be a successful legal practitioner, one has to

- a. Think carefully and critically about the law
- b. Consider the law in the political context
- c. Memorise as many laws as possible
- d. None of the above

Answer key: a

4. The principle of the separation of powers refers to

- a. Each of the courts should be kept separate
- b. Each of the three functions of government should be kept separate
- c. Each of the three functions of government should be ranked against each other
- d. Each of the three functions of government should be amended in turn

Answer key: b

5. Under human rights law, 'derogation' refers to

- a. A State may substitute some of the essential human rights under no circumstances
- b. A State may abolish the essential human rights in particular circumstances
- c. A State may discard the essential human rights in particular circumstances
- d. None of the above

Answer key: d

6. Statutory interpretation refers to

- a. The interpretation of statutes by the court
- b. The interpretation of statutes by the executive
- c. The interpretation of statutes by the lawyers
- d. The interpretation of statutes by the Parliament

Answer key: a

7. The High Court is made up of

- a. The Court of Appeal and Queen's Bench
- b. Queen's Bench and Family Divisions
- c. Queen's Bench, Chancery and Family Divisions
- d. Both b and c

Answer key: c

8. *Ratio decidendi* refers to

- a. The doctrine of precedent
- b. The legal reasoning of a case
- c. The statements of a case
- d. Both a and b

Answer key: b

9. The ultimate authority on European law is

- a. The European Commission
- b. The Council of Europe
- c. The European Court of Justice
- d. None of the above

Answer key: c

10. Which of the following offences could not be re-tried after acquittal?

- a. Theft
- b. Murder
- c. Criminal damage
- d. None of the above

Answer key: c

11. What is understood by *habeas corpus*?

- a. An individual has a defence for murder, on the grounds that the body has never been found
- b. An individual is protected from murder, on the grounds that s/he stays in detention
- c. An individual is protected from unfair trial
- d. An individual is protected from unlawful detention

Answer key: d

RESOURCES

LIST OF AFFIXES (PREFIXES AND SUFFIXES)

Noun-forming prefixes and suffixes													
Prefixes													
ante	bi	circum	demi	epi	fore	inter	mal	neo	peri	re	step	tri	vice
anti		co	di	ex		intra	maxi		poly	retro	sub		
arch		crypto					meta		pro				
auto		co					micro		proto				
		counter					mid		pseudo				
							mini						
Suffixes													
acy	burg(h/	c(h)ester	dom	ee,	hood	icity	kin	let	man	ness	ship	town	ure
age	borough	/caster		eer		ician		land	ment		shire		
al	by			er /or		ie/-y							
ancy/				ery		ing							
ence				-ess		ism							
ard/						ist							

art ation						ity							
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Adjective-forming prefixes and suffixes

Prefixes

a anti arch auto	bi	cis	di	extra	hyper hypo	inter intra	mal mono multi	neo	pan para per pro proto pseudo	re retro	super supra sur	trans tri	ultra uni
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Suffixes

able/ ible al an/ ian ant/ ent arian ary ate	ed en ern ery ese esque	ful fold	ic ie/ y ine/ in ing ish ist ive	kin	less like ly	most	ory ous	sy	th	ward
--	--	-------------	--	-----	--------------------	------	------------	----	----	------

Verb-forming prefixes and suffixes

Prefixes

be	circum	en/	fore	para	re	inter	mal	neo	pan	re	super	trans
----	--------	-----	------	------	----	-------	-----	-----	-----	----	-------	-------

	co	em				intra	mono multi		para per pro proto pseudo	retro	supra sur	tri	
Suffixes													
ate					en			ify ize					
Adverb-forming suffixes													
ly													
Negative prefixes													
de dis		in/ il im ir			mis			non			un		

GLOSSARY OF LATIN TERMS

A		
<i>actus reus</i>	Guilty act	The offence of which the defendant is accused
<i>ad colligenda bona</i>	To collect the goods	A temporary order for the Administration of an estate of a deceased person used when the estate is of a perishable nature
<i>ad hoc</i>	For this purpose	Ad Hoc decisions are made as and when a situation demands:- Ad Hoc committees are formed to address a particular issue - Ad Hoc meetings would take place to discuss specific matters
<i>ad idem</i>	Of same mind	ie as one; agreed eg the parties are ad idem on this point
<i>ad infinitum</i>	Without limit	Describes an event apparently continuing without end
<i>ad litem</i>	For the suit	Denotes a temporary appointment which continues during legal proceedings ie Guardian Ad Litem
<i>amicus curiae</i>	A friend of the court	A neutral party who does not represent any individual party in the case who will be asked by the Court to make representations from an independent viewpoint
<i>ante</i>	Before	An indication within text to refer to an earlier passage
B		
<i>bona fide</i>	In good faith	A Bona Fide Agreement is one entered into genuinely without attempt to fraud

<i>bona vacantia</i>		Denotes the absence of any known person entitled to the estate of a deceased person
C		
<i>caveat</i>	Beware/take care	An entry in the court records that effectively prevents action by another party without first notifying the party entering the Caveat
<i>compos mentis</i>	Of sound mind	Legally fit to conduct/defend proceedings
<i>cor (coram)</i>	In the presence of	
D		
<i>de bonis non administratis</i>	Of goods not administered	A person appointed to administer an estate following the death of the original administrator
<i>de facto -</i>	In fact	"As a matter of fact"
<i>de jure</i>	By right	
<i>doli incapax</i>		Incapable of crime
<i>duces tecum</i>	Bring with you	Order to produce document to court
E		
<i>ejusdem generis</i>	the same kind, the same class	A rule of language that is used in statutory interpretation. Where a statute contains a list, such as 'cats, dogs and other pets', an animal not specified within that list will only be included if it is the same kind of animal as those listed. Thus it is likely that a domestic pet, such as a hamster, would be included, but a wild animal, such as a tiger, would not.
<i>erratum</i>	An error	

<i>exempli gratia</i> (eg)	For example -	Used when qualifying a statement by explaining through a relevant example
<i>ex gratia</i>	As a matter of favour	An Ex Gratia payment would be awarded without the acceptance of any liability or blame
<i>ex officio</i>	By virtue of his office	A magistrate sitting with a judge at the Crown Court would appear ex officio in a case where no judicial function is to be exercised by the magistrate eg case committed to Crown Court for sentence only
<i>ex parte</i>	By a party	An ex parte application is made to the Court during proceedings by one party in the absence of another or without notifying the other party
<i>ex post facto</i>	By a subsequent act	Something that occurs after the event but having a retrospective effect

F

<i>forum conveniens</i>	At a convenient place	A Court having jurisdiction in a particular case
<i>functus officio</i>	Having discharged duty	A judicial or official person prevented from taking a matter further because of limitation by certain regulations

H

<i>habeas corpus</i>	Produce the body	A writ which directs a person to produce someone held in custody before the court
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I

<i>ibid</i>	In the same place	Used in text to refer to a page previously mentioned
<i>id est (ie) -</i>	That is to say	Used as a description to explain a statement

<i>ignorantia juris non excusat -</i>	Ignorance of the law is no excuse	If committing an offence a guilty party cannot use as a defence the fact that they did so without knowledge that they were breaking the law
<i>in camera</i>	In the chamber	The hearing of a case in private without the facts being reported to the public
<i>in curia</i>	In open court	The hearing of a case before a court sitting in public
<i>in personam</i>	Against the person	Proceedings issued against or with reference to a specific person - an admiralty action in personam would be issued against the owner of a ship
<i>in re</i>	In the matter of	A heading in legal documents which introduces the title of the proceedings
<i>in rem</i>	Against the matter	Proceedings issued or directed against property as opposed to a specific person - an admiralty action in rem would be issued against the ship itself
<i>inter alia</i>	Among other things	Indicates that the details given are only an extract from the whole
<i>in situ</i>	In its original situation	
<i>intra</i>	Within	
<i>intra vires</i>	Within the power of	An act that falls within the Jurisdiction of the Court
<i>ipso facto</i>	By the fact	The reliance upon facts that together prove a point
L		
<i>locus in quo</i>	The place in which	during proceedings may be used as reference to subject matter ie scene of accident

M

<i>mens rea</i>	Guilty mind	The intention to commit an offence whilst knowing it to be wrong
<i>mutatis mutandis</i> -	The Necessary changes being made	Denotes that instructions should not be followed verbatim but by amending where necessary

N

<i>non compos mentis</i>	Not sound in mind	A person classed as unfit to conduct/defend legal proceedings
<i>noscitur a sociis</i>	a word is known by the company it keeps	A rule of language that is used in statutory interpretation. Effectively, it means that the words in a statute should be read in context.
<i>Nota Bene (nb)</i>	Note well	An abbreviation denoting that the reader of an article should make a particular note of the article mentioned.
<i>nulla bona</i>	No effects	A return entered by a Sheriff to a High Court writ of execution which indicates the defendant had no goods of any value to remove

O

<i>obiter dictum</i>	A saying by the way	Words said in passing by a Judge on a legal point but not constituting part of the evidence (<i>ratio decidendi</i>) or judgment
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P

<i>per</i>	As stated by	
<i>per capita</i>	By heads	eg the cost is £50 per capita - £50 each person

<i>per pro (pp)</i>	Through another	A person delegated to act for another
<i>per se</i>	By itself	Denoting that the topic should be taken alone
<i>post</i>	After	An indication to refer to something to be found further on
<i>prima facie</i>	First sight	Prima Facie evidence would be considered sufficient to prove a case unless disproved - if no Prima Facie evidence can be offered there is no case to answer
<i>pro bono</i>	As a volunteer	Unpaid legal work by a member of the legal professions
<i>pro forma</i>	A matter of form	Pro Forma procedure is performed subject to and following an agreed manner
<i>pro rata</i>	In proportion	Dividends distributed on a Pro Rata basis would be according to the amount of investment
<i>pro tempore (pro tem)</i>	For the time being	Temporarily

Q

<i>quasi</i>	As if	Any person exercising powers similar to those of a judge would be sitting in a Quasi-Judicial capacity
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R

<i>ratio decidendi</i>	Reasoning	The principles of law applied by a Court upon which a judicial decision is based
<i>res judicata</i>	A thing adjudged	Once a case has been finally decided upon by a Court the same parties cannot attempt to raise the issue by or during further proceedings

<i>res ipsa loquitur</i>	The thing speaks for itself	An event that has occurred which, if the subject of litigation, would not require an onus of proof by the plaintiff because of the obvious negligence of the defendant
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S

<i>semble</i>	It appears	
<i>sine die</i>	Without a day	A hearing adjourned sine die stands open indefinitely without a further hearing having been allocated
<i>sub judice</i>	In the course of trial	Whilst a court case is under consideration. Proceedings are sub-Judice and details cannot be disclosed
<i>subpoena ad testificum</i>	To produce evidence	A writ directed to a person commanding him/her, under a penalty, to appear before a Court and give evidence
<i>stare decisis</i>	let the decision stand	The fundamental principle of the doctrine of precedent. According to this doctrine, lower courts are required to follow the decisions of higher courts unless they have a very good reason for departing from them. Sometimes courts are also bound by decisions of other courts at the same level.

U

<i>ultra vires</i>	Beyond the power	An act that falls outside or beyond the jurisdiction of the court
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V

<i>videlicet (viz)</i>	Namely	Used in text to indicate examples
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(Sources: <http://www.justice.gov.uk/courts/glossary-of-terms>,
<http://cw.routledge.com/textbooks/9780415566957/glossary.asp>)

GLOSSARY OF LEGAL TERMS

A

Accused

The person charged. The person who has allegedly committed the offence

Acknowledgement of service

When the particulars of a claim form (outlining details of the claim) are served on (delivered to) a defendant, they receive a response pack including a form which they must use to acknowledge they have received the claim. The defendant must file (return) the acknowledgment form within 14 days of receiving the particulars of the claim. The particulars can be served with, or separately from the claim form.

Acquittal

Discharge of defendant following verdict or direction of not guilty

Act

Law, as an act of parliament

Act of Parliament

A piece of written law that has been made by Parliament. An Act goes through a series of stages in both Houses of Parliament. An Act of Parliament is also referred to as an example of statute law, or primary legislation.

Action see CLAIM

Adjourned generally or sine die

Temporary suspension of the hearing of a case by order of the Court (maybe for a short period, e.g. to next day or sine die). See LATIN TERMS

Adjournment

the postponing of the hearing of a case until a later date.

Adjudication

A judgment or decision of a court, tribunal or adjudicator in alternative dispute resolution (ADR) cases where disputes are resolved outside of the court

Administrative Court

the Administrative Court is part of the High Court. It deals with applications for judicial review.

Administration order

An order by a County Court directing a debtor to pay a specified monthly installment into Court in respect of outstanding debts. The Court retains the payments made and at intervals distributes it between the creditors on a pro-rata basis

Admiralty Court

Part of the High Court. An admiralty claim is a claim for the arrest of a ship at sea to satisfy a debt.

Admission (including part admissions)

A party involved in a claim may admit the truth of all or part of the other party's case, at any stage during proceedings. For example, a defendant may agree that he or she owes some money, but less than the amount being claimed. If the defendant makes an admission, the claimant may apply for judgment, on the admission.

Adoption

An act by which the rights and duties of the natural parents of a child are extinguished and equivalent rights and duties become vested in the adopter or adopters, to whom the child then stands in all respects as if born to them in marriage

Adultery

Voluntary sexual intercourse between a married person and another person who is not the spouse, while the marriage is still valid. This is a common fact relied on for divorce

Adversarial

Arrangements designed to bring out the truth of a matter, through adversarial (conflict based) techniques such as cross-examination.

Advocate

A barrister or solicitor representing a party in a hearing before a Court

Affidavit

(see Statement) A written statement of evidence confirmed on oath or by affirmation to be true and taken before someone who has authority to administer it

Affirmation

Declaration by a witness who has no religious belief, or has religious beliefs that prevent him/her taking the oath. They declare by affirmation that the evidence he/she is giving is the truth

Allocation

The process by which a judge assigns a defended civil case, to one of three case management tracks, the small claims track, the fast track or the multi-track

Allocation questionnaire

A case (claim) is allocated to a case management track, when an allocation questionnaire has been returned completed by the people involved (parties) in the case. Responses to the questionnaire provide a judge with information on case value and other matters, to assist him or her to allocate the case to the correct track

Alternative dispute resolution

These are schemes such as arbitration and mediation which are designed to allow parties to find a resolution to their problem, without legal action. A party's refusal to consider ADR could lead to sanctions (penalties) against that party, by a judge, even if the party wins the case

Amendment

The process by which corrections to court documents, such as statements of case, can be made. A statement of case can be amended at any time, before it is served or with permission of all other parties or the court, (once served). The court may reject the amendment, even if the party concerned has permission of other parties to the case

Ancillary relief

Additional claims (e.g. in respect of maintenance) attached to the petition for divorce/judicial separation/nullity

Amount offered in satisfaction

An amount of money offered by a defendant to pay a debt or to settle another type of claim, for example in a personal injury case

Annul

To declare no longer valid

Appeal

Application to a higher court or other body for review of a decision taken by a lower court or tribunal. The higher court may overturn or uphold (i.e. reject) the lower court's decision. Often, permission (leave) is required, to for an appeal to occur.

Appellant

A person appealing to a higher court or body against a decision made in a lower court or body

Appellate court

Any court that hears appeals from a lower court. In England and Wales, the highest appellate court currently is the House of Lords. In 2009, the Supreme Court will replace the House of Lords as the highest appellate court.

Applicant

Person making the request or demand, e.g. person who issues an application

Application

The act of applying to a civil court to ask it to do something, for example to start proceedings

Appraisement or appraisal

Valuation of goods seized under warrant of execution prior to sale

Apportioning

To place or assign

Appraisement or appraisal

Valuation of goods seized under warrant of execution prior to sale

Arbitrator or Arbitration

A process in which both sides agree to use an independent arbitrator (an impartial person) who gives a binding decision in the matter. The person making the claim (claimant) has to choose between going to arbitration and court – it is not usually possible to take a claim to court after it has been through arbitration

Assisted person (legally)

A party to legal proceedings who is receiving legal aid

Assured tenancy

A tenancy defined by the Housing Act 1996 where the tenant enjoys security of tenure

Attachment of earnings order

An order that instructs an employer to deduct a regular amount, fixed by the court, from a debtor's earnings and to pay that money into court. The court pays the money to the person or people to whom it is owed

Attorney General

The Attorney General is the Government's chief legal adviser and is politically accountable for the work of a number of State bodies, including the Treasury Solicitor, the Crown Prosecution Service Inspectorate and the Director of Public Prosecutions. The Attorney General can refer cases to the Court of Appeal where an acquittal is questionable on a point of law or where a sentence has been passed which is considered 'unduly lenient'.

Automatic transfer

Providing that a number of criteria are met, proceedings must be transferred automatically to the court nearest to the defendant's home.

Award

Result of an arbitration hearing or the amount of damages assessed by a Court

B

Bail

Release of a defendant from custody, until his/her next appearance in Court, subject sometimes to security being given and/or compliance with certain conditions

Bailiff

Bailiffs and enforcement officers are people authorised to remove and sell possessions in order to pay the money a debtor owes to a person or an organisation. They may also conduct evictions, and arrest people. A bailiff can also serve (deliver) court documents on people

Bankrupt

Insolvent - unable to pay creditors and having all goods/effects administered by a liquidator or trustee and sold for the benefit of those creditors; as a result of an order under the Insolvency Act 1986

Bar

The collective term for barristers

Bar Council

The governing body of the barristers' profession. Run by elected officials, it is responsible for the Bar's Code of Conduct, disciplinary matters and representing the interests of the Bar to external bodies. It was formally known as the General Council of the Bar.

Bar Vocational Course (BVC)

Following completion of a law degree (or completion of a post-graduate conversion course to law), would-be barristers must undertake a vocational stage of training. The BVC is a very practical course, which prepares students for life as a barrister.

Barrister

(see Counsel; Silk) A member of the bar: a lawyer entitled to represent clients in all the courts

Bench

A term describing a judge or group of judges sitting in court.

Bench warrant

A warrant issued by the judge for an absent defendant to be arrested and brought before a Court

Bill

A draft piece of primary legislation as it goes through the stages of becoming an Act of Parliament.

Bill of costs

(see Taxation of costs, Summary assessment and Detailed assessment.

Bill of indictment

A written statement of the charges against a defendant sent for trial to the Crown Court, and signed by an officer of the Court

Binding precedent

A precedent established by judges in the higher appeal courts that must be followed by the lower courts unless there is a good reason for departing from it; for example, that it can be distinguished. The binding element of the judicial decision is referred to as the *ratio decidendi*. The doctrine of binding precedent is also known as *stare decisis*.

Bind over

In the Crown Court or (more usually) the Magistrates Court, and signed by an officer of the Court

Bind over for sentence

An order which requires the defendant to return to Court on an unspecified date for sentence. Failure to observe this order may result in a forfeit or penalty to be enforced

Bound / binding

A binding decision is one that must be obeyed by the people concerned. For example, it is not possible to go to court after a binding decision has been issued by an arbitrator

Brief

Written instructions to counsel to appear at a hearing on behalf of a party prepared by the solicitor and setting out the facts of the case and any case law relied upon

Bulk Centre

See Northampton Bulk Centre

Business address

Premises or place from which business activities take place

C**Case**

An action, suit or claim in a court of law. It can also mean the arguments put forward by parties in a court of law

Case disposal

The case is taken out of the court process (see Disposal).

Case Management Conference (CMC)

This is a meeting between all parties to a case and the Judge to check the progress of the case, with regards to costs and other matters. The numbers of CMCs held depend on the complexity of the case

Case management tracks

Civil cases are allocated to one of three case management tracks, depending on financial value, issues of law and the likely duration (length) of the case. The three tracks are (i) the small claims track in which cases to the value of five thousand pounds can be considered and the claimant does not have to have legal representation (ii) the fast track

for cases of value between five and fifteen thousand pounds and (iii) the multi-track for cases of value over fifteen thousand pounds. Legal representation is advisable in the fast and multi-tracks

Case number

A unique reference number allocated to each case by the issuing Court

Case value

The financial value of a case - known as case value - is one of the factors used to assess which track a case (claim) should be allocated to. See also case management tracks

Caution

- i) Notice given to the Land Registry by any person with an interest in particular land to ensure that no action is taken in respect of the land without the person's knowledge
- ii) Warning, given by a Police Officer, to a person charged with an offence
- iii) Warning, given by a Police Officer, instead of a charge

Caveat

A notice given to the registrar that effectively prevents action by another party without first notifying the party entering the caveat

Centralised Attachment of Earnings Payments (CAPS)

A computer system that manages attachments of earnings orders in bulk.

Certificate of Legal Aid Costs

A certificate of costs allowed following taxation by a judicial or taxing officer (Previously referred to as an Allocatur)

Certificate of service

A document stating the date and manner in which the parties were served (given) a document. For example where a claim form is served by the claimant court rule requires the claimant to file a certificate of service within seven days of service of the claim form otherwise he may not obtain judgment in default.

Cessate

A grant of representation of limited duration which has ceased and expired

Chambers

- i) Private room, or Court from which the public are excluded in which a District Judge or Judge may conduct certain sorts of hearings

ii) Offices used by a barrister

Chancery Division

The Chancery Division is part of the High Court It deals with cases involving land law, trusts and company law.

Charge

A formal accusation against a person that a criminal offence has been committed (see also Charging order)

Charging Order

A court order directing that a charge be put on the judgment debtors' property, such as a house or piece of land to secure payment of money due. This prevents the debtor from selling the property or land - without paying what is owed to the claimant

Circuit Judge

A judge between the level of a High Court Judge and a District Judge, who sits in the County Court and/or Crown Court

Citizen's Advice Bureau (CAB)

A charity which can offer free legal and financial advice to the general public.

Civil

Matters concerning private rights and not offences against the state

Civil case or claim

A civil dispute that involves court action. See claim

Civil Justice or civil law

A branch of the law which applies to the rights and dealings of private citizens, (including such matters as unpaid debts, negligence and the enforcement of contracts). It does not include criminal, immigration, employment or family matters

Civil Justice Reforms

The result of the Access to Justice report by Lord Woolf The aim is to provide more effective access to Justice through quicker, cheaper and more proportionate justice for defended cases It introduced a unified set of Rules and Practice Directions for the County and High Courts, and Judicial Case Management The reforms came into effect on 26 April 1999

Civil Procedure

The rules and procedures to be followed for civil cases in the county courts and High Court

Civil Procedure Rules

The rules and procedures for proceedings in civil courts England and Wales. An important feature is active case management by the courts.

Claim

Proceedings issued in the County or High Court. Previously known as an Action. See also Civil case or claim

Claimant

The person issuing the claim. Previously known as the Plaintiff

Claim form

Proceedings in a civil court start with the issuing of a claim form. The form, which is issued by the court (after the claimant has filed the form in court), includes a summary of the nature of the claim and the remedy (compensation or amends) sought

Claim Production Centre (CPC)

See Northampton Bulk Centre

Codicil

An addendum signed and executed which amends or adds something to a will

Coercion

Coercion exists when an individual is forced to behave in a particular way, by threats of violence, for example. The person concerned does not act freely

Collaboration / collaborative

Working together to solve a problem

Commercial Court

Part of the Queen's Bench Division of the High Court.

Commissioner of Oaths

Solicitors authorised by the Lord Chancellor to administer oaths and affirmations to a statement of evidence

Committal

- i) Committal for trial: Following examination by the Magistrates of a case involving an indictable or either way offence, the procedure of directing the case to the Crown Court to be dealt with
- ii) Committal for Sentence: Where the Magistrates consider that the offence justifies a sentence greater than they are empowered to impose they may commit the defendant to the Crown Court for sentence to be passed by a judge
- iii) Committal Order: An order of the Court committing someone to prison
- iv) Committal Warrant (see WARRANT OF COMMITTAL)

Common Law

The law established, by precedent, from judicial decisions and established within a community

Compensation

Usually a sum of money offered in recompense (to make amends) for an act, error or omission that harmed someone. The harm suffered may have been loss, personal injury or inconvenience

Complainant

A person who makes a complaint

Complaint

Expressing discontent for something

Conciliation

A form of alternative dispute resolution where the parties try to settle their differences without going to court. The process is assisted by an independent third party, the conciliator, who helps the parties to reach an agreement.

Concurrent Sentence

A direction by a Court that a number of sentences of imprisonment should run at the same time

Concurrent Writ

A duplicate of the original writ bearing the same date and expiring at the same time as the original

Conditional Discharge

A discharge of a convicted defendant without sentence on condition that he/she does not re-offend within a specified period of time

Conduct Money

i) Money paid to a witness in advance of the hearing of a case as compensation for time spent attending Court ii) Commonly used to describe expenses paid to a debtor to cover the costs of traveling to Court

Consecutive Sentence

An order for a subsequent sentence of imprisonment to commence as soon as a previous sentence expires. Can apply to more than two sentences

Constitution

A set of rules and customs that set out, in effect, how a country should be run. A constitution does not have to be written but may have evolved over the years. The British constitution is an example of an unwritten constitution.

Contempt of Court

Disobedience or wilful disregard to the judicial process.

In civil cases, for example, failing to appear as a witness without informing the court or the party that called you. A person found to be in civil contempt of court could be fined.

Contents of trial (civil)

see trial contents

Contributory Negligence

Partial responsibility of a claimant for the injury in respect of which he/she claims damages

Co-respondent

A person named as an adulterer (or third person) in a petition for divorce

Corroboration

Evidence by one person confirming that of another or supporting evidence, for example forensic evidence (bloodstain, fibres etc) in murder cases

Costs (civil)

In civil proceedings the general rule is the person who wins the case is entitled to his or her costs. The court may decide to reduce the costs to be paid by the losing side if it feels that the winner has behaved unreasonably. The award of costs is at the court's discretion

Counsel

A Barrister or solicitor in legal proceedings

Count

An individual offence set out in an indictment

Counterclaim

A claim made by a defendant against a claimant in an action. There is no limit imposed on a counterclaim, but a fee is payable according to the amount counterclaimed

County Court

County courts deal with civil matters such as disputes over contracts, unpaid debts and negligence claims. County courts deal with all monetary claims up to £50,000. There are 218 county courts in England and Wales. The county court is a court of the first instance – where civil cases start

County court judgment (CCJ)

A judgment of the county court that orders a defendant to pay a sum of money to the claimant. CCJs are recorded on the Register of County Court Judgments for six years and can affect a defendant's ability to borrow money

Court

Body with judicial powers (see also Courtroom)

Court fees

The County Court will charge to issue a claim in a civil case and to launch enforcement proceedings if the defendant ignores the judgment of the court. You will also be charged if you make applications to the court

Court of Appeal

Divided into:

- i) civil and
- ii) criminal divisions and hears appeals:
 - i) from decisions in the High Court and county courts and,
 - ii) against convictions or sentences passed by the Crown Court, (see also Public trustee Monies held in Court, in the name of the Accountant General, for suitors, minors, Court of Protection patients etc)

It is second only to the House of Lords in the hierarchy of English courts. It sits in the Royal Courts of Justice in London.

Court of First Instance

A court that hears a case for the first time.

Court of Protection

The branch of the High Court with jurisdiction over the estates of people mentally incapable of handling their own financial affairs

Courtroom

The room in which cases are heard

Court sanction

See sanction

Covenant

A formal agreement or a contract constituting an obligation to perform an act

Creditor

A person to whom money is owed by a debtor

Criminal

Person who has been found guilty of a criminal offence

Cross-examination

The questioning of a witness for the other side in a case.

Crown Court

The Crown Court deals with all crime committed for trial by Magistrates Courts. Cases for trial are heard before a judge and jury. The Crown Court also acts as an appeal Court for cases heard and dealt with by the Magistrates. The Crown Court can also deal with some civil and family matters.

The Crown Court is divided into tiers, depending on the type of work dealt with.

First Tier

- Defended High Court Civil work.
- All classes of offence in criminal proceedings.
- Committals for sentence from the Magistrates' Court.
- Appeals against convictions and sentences imposed at Magistrates' Court.

Second Tier

- All classes of offence in criminal proceedings.
- Committals for sentence from Magistrates' Court.
- Appeals against convictions and sentences imposed at Magistrates' Court.

Third Tier

- Class 4 offences only in criminal proceedings.
- Committals for sentence from Magistrates' Court.
- Appeals against convictions and sentences.

Crown Prosecution Service (CPS)

The CPS advises the police on bringing a prosecution. It makes the decision whether or not to prosecute someone who has been charged with an offence and then prepares the case against the offender and brings the prosecution to court. The CPS is headed by the Director of Public Prosecutions (DPP).

Custody

The detainment of a person in a place of security, such as a prison or a police station.

D

Damages

An amount of money claimed as compensation for physical/material loss, e.g. personal injury, breach of contract

Date of service (civil claims)

The date of service of the claim is the date upon which the defendant receives the claim form issued by the court on behalf of the claimant. If the 'particulars of claim' section is completed or the particulars of claim are attached, the defendant must acknowledge receipt within 14 days

Debt recovery after judgment

See Enforcement

Debtor

A person who owes money to someone or to an organisation

Decree

An order of the Court in proceedings commenced by petition

Decree Absolute

A final certificate, resulting from an application, dissolving a marriage

Decree Nisi

Order for divorce unless cause to contrary is shown within a set period

Declaration

Court order setting out the rights of a party in the form of a statement

Deed

A legal document which sets out the terms of an agreement, which is signed by both parties

Default Judgment

May be obtained without a hearing by the claimant if the defendant fails to reply or pay within a 14 day period after service of the claim. A claimant can apply for a default judgment if the amount claimed is specified or for a judgment on liability if the amount claimed is unspecified.

Defence or defending a claim (civil)

When the defendant disputes the claim made by the claimant

Defendant (civil)

The person who has a claim made against them. They can defend (dispute the claim) or admit liability, in part or in full

Defendant (criminal)

Person standing trial or appearing for sentence

Delegated legislation

Legislation passed not in an Act of Parliament itself but through powers conferred on a body through an Act of Parliament. Most delegated legislation is passed to supplement Acts of Parliament, for example, by providing detailed rules or regulations. Also known as subordinate legislation.

Deponent

Person giving evidence by affidavit

Deposition

A statement of evidence written down and sworn on oath, or by affirmation

Designated Civil Judge

A Judge designated to deal with the Civil Justice Reforms for a group of courts

Detailed Assessment (of costs)

When a court makes a costs order it may make a detailed assessment of costs, usually at the conclusion of proceedings. A costs officer would carry out the assessment. See also Summary assessment.

Determination (criminal)

Act of scrutinising a bill of costs in criminal proceedings to see if the work done and amount claimed is reasonable

Determination (civil)

If the defendant offers to pay to the claimant an amount by instalments and the claimant refuses the offer, an officer of the court will make an assessment of what would be reasonable for the defendant to pay

Devi

Person to whom freehold land is given by a will

Director of Public Prosecutions (DPP)

The Government's most senior prosecutor. The DPP is head of the Crown Prosecution Service, and reports to the Attorney General.

Directions (civil)

case management instructions given by the judge which give a time-table for pre-trial procedures. In cases allocated to the small claims track the judge will usually give standard directions, in cases allocated to the multi-track, there may be several hearings on directions

Disability

The inability of a person to handle their own affairs (e.g. through mental illness or a minor under 18 years of age) which prevents involvement in civil legal proceedings without representation

Discharge

A sentence that follows a defendant's conviction, but where punishment would be inappropriate. It allows the defendant to walk free from court, but, unlike an acquittal, the conviction is recorded. The discharge may be absolute, which means that no further action will be taken against the defendant, or conditional, which means that further action will be taken only if the defendant offends again within a specified time period.

Disclosure

Parties to a civil case must disclose (show to the other party) documents they intend to rely on in court to support their case

Discovery of documents

(see INSPECTION OF DOCUMENTS) Mutual exchange of evidence and all relevant information held by each party relating to the case

Discontinuance

Notice given by the Court, on instruction by the claimant, that they no longer wish to proceed with the case

Dismissal

To make order or decision that a claim be ceased

Disposal

See Case disposal

Dispute

A civil problem not dealt with in court, (a civil dispute which comes to court is called a civil case); challenging the views of the opposing party in a civil case

Distinguishing

Judges are bound by the doctrine of judicial precedent. However, if the facts in the case before the judge differ from the precedent that he or she is required to follow, the judge may distinguish it, that is, declare it different from the precedent. The judge may then make his or her own decision on the case.

District Judge

A judicial officer of the Court whose duties involve hearing applications made within proceedings and final hearings subject to any limit of jurisdiction Previously known as Registrars

District Registry

see High Court

Divisional Court

As well as having an original jurisdiction of their own, all three divisions of the High Court have appellate jurisdiction to hear appeals from lower Courts and tribunals. The Divisional Court of the Chancery Division deals with appeals in bankruptcy matters from the County Court. The Divisional Court of the Queen's Bench Division deals largely with

certain appeals on points of law from many Courts. The Divisional Court of the Family Division deals largely with appeals from Magistrates Courts in matrimonial matters a 'next friend' or 'guardian ad litem'

Divorce

Dissolution or nullity of marriage

Dock

Enclosure in criminal Court for the defendant on trial

Double jeopardy

An historical rule that a person acquitted for an offence could not be charge with that offence again. The law has now changed and in certain circumstances the Court of Appeal will permit a defendant to be re-tried.

E

Either-way Offence

(see Indictable Offence, Summary Offence) An offence for which the accused may elect the case to be dealt with either summarily by the magistrates or by committal to the Crown Court to be tried by jury

Enforcement

Method of pursuing a civil action after judgment has been made in favour of a party. Process carried out by Magistrates Court to collect fines and other monetary orders made in the Crown Court

Enforcement / enforcing a judgment

When a judgment/order has not been paid or terms obeyed with, enforcement proceedings can be issued to ensure compliance. A court can order such action as the seizure of a defendant's property for sale

Entering judgment on admission

The claimant can ask the court to enter judgment on admission when the defendant has admitted all or part of the case and offered payment or other restitution

Entry of Judgment

Decision of the Court in favour of one or other of the parties

Equity

The body of law that developed originally through the Courts of Chancery. It is separate from the common law, although the administration of both has now been combined. Some concepts, such as the trust, are only recognised in equity. The Judicature Acts provided that if equity and the common law conflict, equity will prevail.

Estate

The rights and assets of a person in property

European Community (EC) Law

The body of law that has emerged from the European Community.

European Convention on Human Rights (ECHR)

A charter setting out a series of fundamental human rights, such as the right to life and the right to respect for private and family life. It was incorporated into English law by the Human Rights Act 1998.

European Court of Human Rights (ECtHR)

The legal institution of the Council of Europe. Its jurisdiction is the European Convention on Human Rights. Its judges are drawn from Member States, although they sit as individuals, rather than as representatives of the State. The ECtHR sits at Strasbourg.

European Court of Justice (ECJ)

The judicial arm of the European Union (EU). The ECJ is an institution of the EU which hears actions brought by the European Commission against Member States for breaches of EC law and hears Art 234 References from Member State courts to clarify questions of EC law. In the field of community law, ECJ judgments overrule those of national courts. The ECJ sits at Luxembourg.

European Parliament

A directly elected body which is an institution of the European Union. It plays a significant role in the European Community legislative process, though it is not a legislative body in the same way as the UK Parliament. For example, it does not have sole law making power, though it does have an increasing role of co-decision with the Council of Ministers.

European Union (EU)

The EU was formally brought into being by the Maastricht Treaty 1991 but reflects the social, political, economic and geographical growth of the European project initiated by

the Treaty of Rome 1957. Today it brings together 28 Member States. The EU is governed by four institutions and is responsible for European Community law.

Executive

A term that represents the government of the day, and particularly the Prime Minister and his or her Cabinet of senior Ministers. It is the administration that runs the country and is one of the three organs of the state along with the **judiciary** and the **legislature**.

Evidence

Documentary or other material which is used to support a person's case in a court of law

Execution

(see Levy) Seizure of debtors goods following non payment of a Court order

Executor

A person or persons specified to carry out the provisions of a will

Exempt

To be freed from liability or allegiance

Exhibit

Item or document referred to in an affidavit or used as evidence during a Court trial or hearing

Expert Witness

Person employed to give evidence on a subject in which they are qualified or have expertise

F

Family Division

see High Court

Fast Track

The path to which defended claims of not more than £15,000 are allocated. See also: Allocation; Case Management tracks

Fees and costs

see Court fees

Fiat

A decree or command

Fieri-Facias (FI-FA)

(see Sheriff) High Court version of warrant of execution in County Court. A directive by a High Court to a sheriff to seize sufficient goods of a debtor to satisfy judgment debt

Filing

The process of delivering or presenting forms and other documents to a court. For example a claim or a defence to a claim must be filed

Fixed costs

Costs in civil cases that are set at a certain level and can be claimed in specific circumstances. For example, if a defendant does not acknowledge a claim, the claimant can obtain judgment and an order for fixed costs to offset the cost of beginning the claim

G

Garnishee

A summons issued by a plaintiff, against a third party, for seizure of money or other assets in their keeping, but belonging to the defendant

Golden rule

A common law rule of statutory interpretation. It is a modification of the literal rule and is used to avoid absurdity. The courts may only use the golden rule if there are genuine difficulties in applying the literal rule.

Group Litigation Orders

A Group Litigation Order can be made in a claim in which there are multiple parties or claimants. The order will provide for the case management of claims which give rise to common or related issues of fact or law

Guarantor

Someone who promises to make payment for another if payment is not made by the person responsible for making the repayments of a loan or hire purchase agreement

Guardian

A person appointed to safeguard/protect/manage the interests of a child or person under mental disability (see Next Friend)

H

Hearing

A hearing is the trial of the case. Hearings are usually held in public

High Court

A civil Court which consists of three divisions:-

- i) Queen's Bench (can be known as King's Bench Division if a King is assuming the throne) - civil disputes for recovery of money, including breach of contract, personal injuries, libel/slander;
- ii) Family - concerned with matrimonial matters and proceedings relating to children, e.g. wardship;
- iii) Chancery - property matters including fraud and bankruptcy

It acts as both a Court of First Instance and an appellate court. The High Court sits at the Royal Courts of Justice in London.

High Court Enforcement Officers

An enforcement officer appointed by the Lord Chancellor to enforce High Court judgments and orders

High Court Judge

see Judge and High Court

Home court (civil)

The court nearest to the defendant's home or place of business

House of Lords

Parliamentary chamber, referred to as the Upper House. It is the highest appellate court in England and Wales until it was replaced by the Supreme Court in 2009.

Housing claim

The procedure that a landlord may use in a county court to recover land or property (and money for arrears of rent or damage to property, if applicable). See also Possession Claim Online (PCOL)

I

Impartial

Not having or showing any favouritism to one side in a dispute

Independent

Person or organisation not connected to any of the parties in a dispute or legal case

Indictable Offence

A criminal offence triable only by the Crown Court. The different types of offence are classified 1, 2, 3 or 4. Murder is a class 1 offence

Indictment

The court document that formally lists the offences with which the accused in a criminal trial is charged.

Infant

Also known as a minor: A person under 18 years of age which prevents them from acting on their own behalf in legal proceedings (see Next Friend)

Injunction

A court order which either restrains a person from a course of action or behaviour, or which requires a person to follow another course of action.

Inquiries

Formal investigations set up on an *ad hoc* basis to investigate specific incidents. Their role is fact-finding.

Inquisitorial

A system of criminal justice that operates in some European countries but not in England and Wales. Unlike the adversarial system, the judge acts as ‘inquisitor’, playing an active role in the proceedings and, for example, examining witnesses.

Insolvency

see Bankrupt

Inspection of Documents

(see Disclosure of documents) Arrangements made by the parties to allow mutual exchange and copying of documents

Instalments

A method of paying a debt in several parts at intervals. Payment by instalments is agreed to make the burden of repayment lighter

Interest

A charge for borrowed money, a percentage of the sum borrowed

Interests of justice test

The first stage of a process used to establish eligibility for criminal legal aid; a test to determine whether it will be in the interests of justice to grant the applicant legal representation. This stage is also known as the ‘merits test’.

Interlocutory

Interim, pending a full order/decision, e.g. interlocutory judgment for damages pending further hearing to assess amount to be awarded and entered as final judgment

Interpleader

A claim by a third party to ownership of goods levied upon under a warrant of execution which is disputed by a creditor. The Court then issues an interpleader summons for the parties to attend Court to adjudicate on rightful ownership

Intestate

Without leaving a will

Interim order

An order made during proceedings which is not a final order

Issue / issuing

To initiate legal proceedings in pursuit of a claim

J

Judge

An officer appointed to administer the law and who has authority to hear and try cases in a court of law.

Judgment

The decision of a judge, which usually sets out his or her legal reasoning. If more than one judge is sitting, there may be a number of judgments.

Judgment set aside

A judgment or order can be set aside (made void) at the request of a party to the case in certain circumstances, for example if they were too ill to attend court on the day of the judgment

Judgment on liability

See Default judgment

Judicial/Judiciary

i) Relating to the Administration of justice or to the judgment of a Court ii) A judge or other officer empowered to act as a judge

Judicial directions

See directions

Judicial discretion (civil)

Judges have the power to decide how best to manage the case on the individual facts. They do not necessarily have to look at how similar cases are managed. The judge has very wide case management powers under Rule 3 of the civil procedure rules to decide on the evidence parties produce how best to manage their case

Judicial independence

The principle that the judiciary should be permitted to act independently of the other main organs of government, namely the executive and the legislature.

Judicial precedent

The principle that courts are bound by the previous decisions of the same, or superior, courts. A decision can be binding, which means that the court must follow it, or (if it is a decision of, for example, the Privy Council) it can be persuasive, in which case it should be considered, but need not necessarily be followed.

Judicial review

The High Court can review decisions of inferior (lower) courts, public bodies and other bodies to ensure that the decision making process has been lawful

Judicial Studies Board (JSB)

The body responsible for training judges and lay magistrates. The JSB is independent of the government.

Judiciary

The collective term for the judges who adjudicate on cases before the courts. It represents one of the powers of the British constitution.

Junior Counsel

(see Counsel; Silk) A member of the bar: the branch of the legal profession which has rights of audience before all Courts

Jurat

A statement contained at the conclusion of an affidavit which states the name of the person giving the evidence, the name of the person before whom and the place where the oath or affirmation was taken

Jurisdiction

The area and matters over which a court has legal authority

Juror

(see Jury) A person who has been summoned by a Court to be a member of the jury

Jury

Body of jurors sworn to reach a verdict according to the evidence in a Court

Jury vetting

Investigations carried out on jurors in order to establish whether they are suitable for jury service.

Justice of the Peace

A lay magistrate - person appointed to administer judicial business in a Magistrates Court. Also sits in the Crown Court with a judge or recorder to hear appeals and committals for sentence

Juvenile

Person under 17 years of age

L

Landlord

A person or organisation which owns land and / or buildings which are leased to tenants

Landlord and Tenant Act

Act which empowers applications (seeking extension of a lease or some other action concerning tenancy

Law

The system made up of rules established by an act of parliament, custom or practice enjoining or prohibiting certain action (see also Common Law)

Law Lords

Describes the judges of the House of Lords who are known as the Lords of Appeal in ordinary

Law Officer

The main legal advisors to the Government, There are two Lord Officers in England and Wales, the Attorney General and his or her deputy, the Solicitor General. Also known as Law Officers of the Crown.

Lawyer

The legal profession in the UK is divided into two branches. Barristers have the right to represent clients in higher courts whereas most solicitors are restricted to represent their clients in the lower courts

Lay representative

A person, not legally qualified, who accompanies another during a court hearing. The person may be a colleague, friend or spouse.

Leading junior counsel

A senior barrister who deals with more serious cases, but not a QC.

Lease

The letting of land or tenements, e.g. rent etc, for property for a prescribed period

Leave

Leave means 'permission'. Some steps in legal action require the permission of the court. For example a losing party may be granted leave to appeal.

Legal advice

Advice about the law and your options from a qualified legal representative or advice centre

Legal Aid / Public Funding

State funded assistance, for those on low incomes, to cover legal fees.

Legal counsel

See Counsel, Barrister, Solicitor

Legal executive

A member or fellow of the Institute of Legal Executives (ILEX). Some legal executives carry out similar work to solicitors and have some equivalent rights. This is a branch of the legal profession that can be joined upon leaving school rather than following a degree, and qualifications are gained whilst employed.

Legal Practice Course (LPC)

A post-graduate vocational course to train law students, or those students who have converted to law via the Common Professional Examination/Graduate Diploma in Law, to become solicitors. Following the LPC, students must complete a training contract in order to practice as a solicitor.

Legal representation

See Counsel, Barrister, Solicitor

Legal Personal Representative

The person to whom a grant of probate or letters of ADMINISTRATION has been issued

Legatee

Person to whom personal estate is given by will

Legislation

Any form of written law. In the English legal system, it can be divided into primary legislation, in the form of Acts of Parliament (statute law), and secondary legislation, in the form of delegated legislation (mainly statutory instruments).

Legislature

The primary law-making body in the constitution. In English law, the legislature refers to the Parliament at Westminster. It is one of the three organs of government, the others being the executive and the judiciary. The legislature makes primary legislation.

Literal rule

A common law rule of statutory interpretation. If the wording in a statute is clear, it may be applied literally, which means that it must be given its ordinary meaning.

Letters of Administration

Authority granted by a Probate Registry to someone interested in the estate of a person who has died without leaving a will. The order allows the 'administrator' to carry out the duties relating to the estate

Levy

(see Execution and Fi-Fa) A duty carried out by a bailiff or sheriff under the authority of a warrant or writ of fi-fa, for a sum of money whereby goods of value belonging to the debtor are claimed with a view to removal and sale at a public auction in an attempt to obtain payment

Liability

Responsibility or obligation. For example, a debt is a liability or responsibility.

Libel

A written and published statement/article which infers damaging remarks on a persons reputation

Licence

Permission to carry out an act that would otherwise be considered illegal

Lien

A legal right to withhold the goods/property of another until payment is made

Listing Questionnaire

This form is used to ensure that all issues are resolved and that the parties are ready for trial. Used for Fast track and Multi track claims only

Litigant in person

A person who starts or defends a case without legal representation. Such a person is entitled to be accompanied by another person who may advise them, but may not address the court

Litigation

Legal proceedings or court action. Litigation can be either civil or criminal proceedings.

Litigation friend

A person who conducts legal proceedings on behalf of a child or a mentally incapacitated person

Lodging

The process of filing (delivering) documents to a court. See also filing

Long Vacation

Period between 1 August and 30 September in each year during which there are only restricted High Court sittings for urgent matters

Lord Chancellor

The cabinet minister who acts as speaker of the House of Lords and oversees the hearings of the Law Lords. Additional responsibilities include supervising the procedure of Courts other than Magistrates or Coroners Courts and selection of judges, magistrates, queens counsel and members of tribunals

Lord Chief Justice

Senior judge of the Court of Appeal (Criminal Division) who also heads the Queens Bench Division of the High Court of Justice)

Lord Justice of Appeal

Title given to certain judges sitting in the Court of Appeal

Lords of Appeal in Ordinary

The 12 senior appeal court judges in the House of Lords who hear the most important civil and criminal appeals. Following full implementation of the Constitutional Reform Act 2005 they will become Justices of the Supreme Court. They are popularly referred to as Law Lords.

M

Magistrate

Lay justice who sits in the magistrates' court. Magistrates have no formal legal qualifications, are not paid for their services and have limited sentencing powers. Also known as a Justice of the Peace.

Magistrates Court

A Court where criminal proceedings are commenced before justices of the peace who examine the evidence/statements and either deal with the case themselves or commit to the Crown Court for trial or sentence. Also has jurisdiction in a range of civil matters (see also Stipendiary Magistrate)

Maintenance Pending Suit

A temporary order for financial provision made within divorce proceedings until such time as the proceedings are finalised (i.e. by issue of the Decree Absolute)

Maladministration

Maladministration is administration that leads to injustice because of such factors as excessive delay, bias or arbitrary decision-making.

Master

(see Registrar) Judicial officer of the High Court in the Royal Courts of Justice who normally deals with preliminary matters before trial

Master of the Rolls

Senior judge of the Court of Appeal (Civil Division)

Matter

(see Originating Application) Proceedings commenced by way of originating application

Mediation

A process for resolving disagreements in which an impartial third party (the mediator) helps people in dispute to find a mutually acceptable resolution. If mediation fails court proceedings can be initiated or re-activated

Mesne Profits

Sum of money claimed by the owner of property against someone not legally entitled to be in possession. Calculated from the date the notice to quit expires until the date possession is given up

Minor

Someone below 18 years of age and unable to sue or be sued without representation, other than for wages. A minor sues by a next friend and defends by a guardian

Mischief rule

One of the common law rules of statutory interpretation. It requires the judge to take into account the 'mischief' or problem the Act was aimed at remedying, which helps him or her to interpret the meaning of the statute.

Mitigation

Reasons submitted on behalf of a guilty party in order to excuse or partly excuse the offence committed in an attempt to minimise the sentence

Money Claim

A claim for money only in the county court. The claim can be for a fixed or unspecified amount. See also unspecified amount of money

Money Claim Online (MCOL)

An online Service that allows claimants to start legal proceedings which relate to money. Defendants can use the service to respond to a claim against them also

Mortgage

A loan of money advanced to purchase property. The transfer of the property is withheld as security for payment

Mortgagor

The party obtaining the loan

Mortgagee

The party that advances the loan

Motion

An application by one party to the High Court for an order in their favour

Multi Track

The path that defended claims over £15000 are allocated to

N

Natural justice

The rules of justice inherent in reaching any decision, whether made by a court or an administrative body. It implies a sense of 'fair play' in proceedings. Bias in proceedings would breach the rules of natural justice, as would a decision made without first hearing both sides of a case.

Negotiation

A resolution process whereby a compromise is made and an agreement reached between parties. An ability to negotiate is a key skill for a lawyer, as effective negotiations before litigation may mean that the parties resolve their differences and do not have to resort to going to court.

Next Friend

(see GUARDIAN) A person representing a minor or mental patient who is involved in legal proceedings

Non-Molestation

An order within an injunction to prevent one person physically attacking another

Non-Suit

Proceedings where the plaintiff has failed to establish to the Court's satisfaction that there is a case for the defendant to answer

Northampton Bulk Centre

Bulk users in court actions are businesses and local authorities. Their claims are issued by this centre in the name of Northampton County Court. This centre deals with administrative casework on a larger scale than most courts. For example, they will issue debt recovery and hire purchase claims in multiples for businesses

Notary Public

Someone who is authorised to swear oaths and certify the execution of deeds

Notice of Issue

Notice sent by a Court to the claimant giving notification of the case number allocated to their action and details of fees paid. Confirms date of service

Notice to Quit

Gives prior notice, when served in possession proceedings, of termination of a tenancy

Nullity

Application to the Court for a declaration that a marriage be declared 'void' or be annulled i.e. declared never to have existed or to have subsisted until the Court dissolved it

O

Oath

To call upon God to witness that what you say at the hearing is the truth or binding. (see affirmation)

Objection

Disagreement with an argument or set out by another at the hearing

Official Receiver

A civil servant who works for the Department of trade and Industry and is appointed by the Court to act as:-

- i) a liquidator when a company is being wound up;
- ii) a trustee when an individual is made bankrupt. The duties of an official receiver will include examining the company/bankrupt's property which is available to pay the debts and distributing the money amongst the creditors

Official Solicitor

A solicitor or barrister appointed by the Lord Chancellor and working in the Lord Chancellor's Department. The duties include representing, in legal proceedings, people who are incapable of looking after their own affairs i.e. children/persons suffering from mental illness

Ombudsman

Independent 'referees' who consider complaints against public and private organisations in a wide range of fields including housing, health and banking. They are often used as a last resort when complaints cannot be resolved through an organisation's own complaints procedure. Ombudsman services are free to use. Recommendations made by ombudsmen

are not binding on the person making the complaint (complainant). They can still go to court even if the ombudsman decided against them

Oral evidence

Evidence given to a court, verbally rather than in writing

Oral Examination

A method of questioning a person under oath before an officer of the Court to obtain details of their financial affairs

Order

A direction by a Court

Oral evidence

Evidence given to a court, verbally rather than in writing

Originating Application

(see MATTER) A method of commencing proceedings under the authority of a specific act of parliament, e.g. Landlord and Tenant Act, whereby the applicant asks the Court to grant an order in their favour

Ouster

An order within an injunction to force a person to leave a property

Overriding objective

The primary aim of the court, which is to deal with cases justly. This includes ensuring that cases are dealt with expeditiously and with proportionality.

Overruling

This relates to the doctrine of precedent. When a judge exercises the power to depart from a previous decision and expressly overturns that previous decision, he or she is said to have 'overruled' the decision, meaning that it is no longer good law.

P

Paralegals

General term for those working in a clerical and support capacity in a legal firm. Many students, after completing their Legal Practice or Bar Vocational Courses will work as a paralegal, before finding a training contract or pupillage.

Parliament

Where primary legislation is made in the English legal system. It is the institution that represents the legislature in the constitution. Parliament consists of two chambers: the House of Commons and the House of Lords.

Parliamentary sovereignty

The view that Parliament is the supreme law making body in the constitution.

Part 8 Claim

An alternative procedure for issuing a claim to the court

Part admission

See admission

Particulars of claim

This document contains details of the claimant's claim which must be contained in the claim form or served shortly after the claim form has been served. The particulars should be a concise statement of the facts of the claim

Party / parties

People involved in court proceedings either as the defendant(s) or claimant(s)

Party and Party

Costs that one party must pay to another

Patient

A person who is deemed incapable of handling his/her own affairs by reason of mental incapacity and who is under the jurisdiction of the Court of Protection

Penal Notice

Directions attached to an order of a Court stating the penalty for disobedience may result in imprisonment

Permission

See leave

Personal Application

Application made to the Court without legal representation

Personal injury claim

A civil claim, which relates to physical or mental harm suffered by a claimant, due to the defendant's alleged negligence

Personal Service

Personal delivery (i.e. not by mail) of a claim, summons or notice

Personal Support Unit (PSU) Royal Courts of Justice and Wandsworth County Court

A charity based at the Royal Courts of Justice and Wandsworth County Court. They give guidance and support for litigants in person, but not legal advice

Persuasive authority

Decisions which a lower court may not need to apply under the doctrine of precedent. Courts are bound to follow the decisions of higher courts, and sometimes of courts of equal standing. However, decisions of the Privy Council, for example, although authoritative, are not binding. This means that the lower court should consider the decision, but is not necessarily bound to follow it.

Petition

A method of commencing proceedings whereby the order required by the petitioner from the Court is expressed as a prayer, e.g. the petitioner therefore prays that the marriage be dissolved (divorce proceedings)

Petitioner

A person who presents the petition

Plaintiff

see CLAIMANT

Plaint Note

see NOTICE OF ISSUE

Plaint Number

Old-fashioned term for Claim Number

Plea

A defendant's reply to a charge put to him by a court; i.e. guilty or not guilty

Pleading

Documents setting out claim/defence of parties involved in civil proceedings

Possession Claim Online (PCOL)

An online Service which allows claimants to start legal proceedings related to property online. Defendants can use the service to respond to a claim against them also

Possession Proceedings

Legal proceedings by a landlord to recover land or property such as a house or flat.

Power of Arrest

An order attached to some injunctions to allow the police to arrest a person who has broken the terms of the order

Practice Directions

These are steps to be followed by parties to a dispute prior to legal action. The aim of the to increase co-operation between parties and therefore the chances of an early settlement

Pre-action protocols

These are steps to be followed by parties to a dispute prior to legal action. The aim is to increase co-operation between parties and therefore the chances of an early settlement

Precedent

The decision of a case which established principles of law that act as an authority for future cases of a similar nature

Preliminary hearing

A hearing in which the Judge ensures that the parties understand what they must do to comply with any directions and offers guidance on such matters as the use of an expert witness. This hearing is before the final hearing

President of the Family Division

Senior judge and head of the family Division of the High Court of Justice

Pre-trial checklist

A pre-trial checklist is completed before the trial. The checklist is for the parties and the Judge, as a reminder of the issues to be considered. The checklist will then be reviewed at a pre-trial review just before the final hearing.

Pre-trial Review

A meeting at which the Judge considers the issues before the timetable for the trial /final hearing date is finalised

Private law

Law relating to the relationships between private individuals, rather than an individual and the State: for example, contract law, the law of torts, property law and family law.

Probate

The legal recognition of the validity of a will

Process

The document commencing a claim or subsequent action

Prosecution

The institution or conduct of criminal proceedings against a person

Prosecutor

Person who prosecutes (see PROSECUTION)

Public law

Law relating to the functions of the State, and the relationship between an individual and the State, rather than between private individuals. For example, constitutional law and administrative law.

Public trustee

A person (usually a barrister or solicitor) appointed by the Lord Chancellor as

- i) trustee for trusts managed by the Public trust Office;
- ii) Accountant General for Court Funds;
- iii) Receiver (of last resort) for Court of Protection patients

Puisne Judge

(Pronounced Puny) High Court judge. Any judge of the High Court other than the heads of each division. The word puisne means junior and is used to distinguish High Court judges from senior judges sitting at the Court of Appeal

Pupillage

The year long period when trainee barristers, referred to as pupils, work with an experienced barrister. This training takes place prior to qualification as a barrister.

Putative Father

The alleged or supposed father of an illegitimate child

Q**QC**

See Queen's Counsel

Quash

To annul; i.e. to declare no longer valid

Quasi-judicial functions

A quasi-judicial function is an executive function that involves the exercise of discretion (judgment). Court staff perform quasi-judicial executive functions such as managing the issuing of claims, serving court documents and deciding what would be reasonable for the defendant to pay – for example, see determination.

Quantum

In a damages claim the amount to be determined by the court

Queens Bench Division

A division of the High Court. The QBD has jurisdiction (reasonably for) civil disputes involving the recovery of money, including breach of contract; personal injuries; libel and slander

Queen's Counsel

Barristers of at least ten years standing may apply to become queen's counsel. QCs undertake work of an important nature and are referred to as 'silks' which is derived from the Courts gown that is worn. Will be known as king's counsel if a king assumes the throne

R

Re-allocation

Transferring the case from one allocated track to another. This can happen if the value of the case increases

Receiver

Person appointed by the Court of Protection to act on behalf of a patient

Recognisance

An undertaking before the Court by which a person agrees to comply with a certain condition, e.g. keep the peace/appear in court. A sum of money is normally pledged to ensure compliance

Recorder

(also Assistant Recorder) Members of the legal profession (barristers or solicitors) who are appointed to act in a judicial capacity on a part time bases. They may progress to become a full time judge

Redetermination (civil)

If the defendant or claimant objects to the rate of repayment set by a court officer, the judge will decide on the matter. See Determination.

Redetermination (criminal)

An application by a solicitor or counsel for amounts assessed by determination to be reconsidered

Register of judgments, orders and fines

A public register containing details of county court and High Court judgments, fines enforced by magistrates' courts and county court administration orders

Registrar

(see DISTRICT JUDGE) Registrars and deputy registrars were renamed DISTRICT Judges and Deputy DISTRICT Judges respectively in the Courts and Legal Services Act 1990

Registry Trust Limited (RTL)

The company contracted to the Ministry of Justice to maintain the Register of Judgments Orders and Fines. You can find out if an individual or a company at a particular address has unsatisfied (unpaid) court judgments against them by searching the Register of Judgments, Orders and Fines. There is a small fee for this. You can get further information about searching the Register from: Registry Trust Ltd, 73-75 Cleveland Street, London, WT 6QR

Released

A witness is released (freed from an obligation or duty) by the court, when he or she has given evidence in a case

Remand

To order an accused person to be kept in custody or placed on bail pending further Court appearance

Representation

See Legal representation

Respondent (Family)

The person on whom a petition or originating application is served

Respondent (Civil & Crime)

The defending party (person) in an appeal or in a petition to the courts. See also Appellant

Response pack

A response pack is sent to the defendant in a civil claim with the claim form or with the particulars of claim (if they were served separately). The pack contains all the forms needed to reply to the claim

Restitution

Where a defendant who has been evicted by a bailiff illegally re-enters the property the claimant must issue a warrant of restitution with the court in order to regain possession

Right of Audience

Entitlement to appear before a Court in a legal capacity and conduct proceedings on behalf of a party to the proceedings. Solicitors, however, must undertake further training if they wish to appear in the higher courts.

Royal Assent

The final stage required for a Bill to become an Act. The Queen gives her approval by convention.

S

Sanction

A penalty imposed on a person involved in a case if he or she, for example, fails to comply with directions or refuses to consider an alternative to court. Even though a person wins a case, the judge may order them to pay the other party's costs

Satisfaction

Paying a debt or settling an obligation by an act or deed

Secondary legislation

Legislation passed under powers delegated by Parliament, rather than by Parliament itself. Secondary legislation is generally much quicker to produce than primary legislation. It is often used to fill in the detail of an Act of Parliament.

Security of tenure

A period in which something is held

Separation of powers

A constitutional theory which requires that the three principal powers in the constitution (the executive, judiciary and legislature) are kept separate so that they may exercise checks and balances on each other. In the UK, unlike the USA with its written constitution, there is a degree of 'fusion' rather than clear separation (for example, the executive can be found within the legislature).

Service

Delivery by post, or in person, of the claim form, or other court documents

Set aside judgment

See judgment set aside

Settlement

A voluntarily agreement by the claimant and defendant to settle their civil case.

Sheriff

An officer of the Crown whose duties, amongst other things, consist of the enforcement of High Court writs of execution

Skeleton argument

A written summary of the main points of a case to be heard by an appeal court.

SILK

Queens Counsel, a senior barrister sometimes referred to as a leader or leading counsel

SLANDER

Spoken words which have a damaging effect on a person's reputation

Small Claims Track

The path that defended claims of no more than £5,000 (and personal injury and housing disrepair claims of no more than £1,000) are allocated to

Solicitor

Member of the legal profession chiefly concerned with advising clients and preparing their cases and representing them in some Courts. May also act as advocates before certain Courts or tribunals

Solicitor-advocate

A solicitor who has undertaken additional training in order to gain full rights of audience in court.

Solicitor General

A government legal officer who acts as a deputy to the Attorney General.

Specified amounts of money

A specific and easily calculable amount of money, such as a debt owed to a claimant

Specified Claim

A type of claim which is issued for a fixed amount of money allegedly owing. Previously known as a liquidated claim

Squatter

A person occupying land or property without the owners consent

Squatting

The occupation of land or property without the owner's consent

Standard directions

See directions

Statement

A written account by a witness of the facts of details of a matter

Statement of case

The statement of case contains the outline of the claimant's case and includes: (i) a claim form, (ii) the particulars of claim – where these are not included in the claim form; (iii) the defence and (iv) a reply to the defence (v) any counterclaim

Statement of truth

Every statement of case must be verified by a statement of truth, signed by the parties involved. A statement of truth is a statement that says that a party believes the facts they have written down are true

Statute

Another term for an Act of Parliament.

Statutory Instrument

A document issued by the delegated authority (usually a Government Minister or committee) named within an act of parliament which affects the workings of the original Act, e.g. The County Courts Act 1984 confers authority on to the County Court Rule Committee to make rules relating to the operation of the County Courts act

Statutory interpretation

The interpretation by the courts of Acts of Parliament. A number of common law rules have developed to assist judges in interpreting statutes (such as the **literal rule**, **golden rule** and **mischief rule**). Intrinsic and extrinsic aids can also sometimes be used.

Stay

A suspension of court proceedings. This remains in effect until an order has been followed. No action may be taken in the case other than an application to have the stay lifted. A case can also be stayed when an offer of payment is accepted or if the court feels it is necessary

Stay of Execution

An order following which judgment cannot be enforced without leave of the court

Striking a case out (striking out)

The court can strike out a case (prevent all further proceedings) if a party fails to comply with a rule, practice direction or court order. It can also happen if it appears there are no reasonable grounds for bringing or defending a claim. Either party (the defendant or the claimant) can ask the court to strike a case out

Subpoena

A summons issued to a person directing their attendance in Court to give evidence

Suit

Legal proceedings commenced by petition

Suitor

Person bringing a suit before the Courts

Summary Assessment (of costs)

When a court makes a cost order it may make a summary assessment of costs immediately after it has made the order. The court will usually make a summary assessment

Summary Judgment

A judgment obtained by a claimant where there is no defence to the case or the defence contains no valid grounds. A summary judgment can be obtained without a trial or hearing. A defendant can also obtain summary judgment if he or she can establish that the claimant has no real prospect of succeeding on the claim. You have to apply to the court for a summary judgement hearing to take place

Summary Offence

(see INDICTABLE, EITHER WAY OFFENCE) A criminal offence which is triable only by a Magistrates Court

Summary procedure

A procedure by which the court when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment

Summing-up

A review of the evidence and directions as to the law by a judge immediately before a jury retires to consider its verdict

Summons

Order to appear or to produce evidence to a court

Summons (Jury)

Order to attend for jury service

Summons (Witness)

Order to appear as a witness at a hearing

Supreme Court of Judicature

Collective name encompassing - High Court of Justice, Crown Court and Court of Appeal

Surety

A person's undertaking to be liable for another's default or non-attendance at Court

Suspended Sentence

A custodial sentence which will not take effect unless there is a subsequent offence within a specified period

T**Taxation of Costs**

(see SUMMARY ASSESSMENT and DETAILED ASSESSMENT) An examination of a solicitor's bill in civil proceedings by a Court to ensure that all charges against the legal aid fund are fair and reasonable (see also PARTY AND PARTY COSTS which are also examined by a Court)

Technology and Construction Court

A specialist court which deals with disputes in the construction industry. It is part of the Queen's Bench Division of the High Court.

Telephone hearing

Hearings which can be conducted by telephone unless otherwise ordered are:

- all allocation hearings
- listing hearings
- case management hearings
- and interim applications.

They are under an hour. Any other application, requires the consent of all the parties and the agreement of the court

Tenant

A person which holds land or property under a lease

Testor

A person who makes a will

Third party

Person who is not party to a legal case, but may be relevant because he or she owes the defendant money. In that case the defendant can issue a third party notice against such a party

Third party debt order

An order issued by a Claimant, against a third party, to seize money or other assets in their keeping, but belonging to the debtor. Orders can be granted preventing a defendant from withdrawing money from their bank or building society account. The money is paid to the claimant from the account. A third party debt order can also be sent to anyone who owes the defendant money

Tipstaff

An officer of the Supreme Court whose duties involve the enforcement of High Court arrest warrants

Tort

An action in tort is a claim for damages to compensate the claimant for harm suffered. Such claims arise from cases of personal injury, breach of contract and damage to

personal reputation. As well as damages, remedies include an injunction to prevent harm occurring again

Track allocation

See Allocation Case management tracks Allocation questionnaire

Treasury Solicitor

A senior lawyer who advises the Government on a variety of legal matters. He or she heads the Treasury Solicitor's Department, the largest department of the Government Legal Service.

Treaty

An international agreement. In European Community law, treaties are examples of primary legislation and provide broad statements of law in the form of Articles. Treaty provisions give rise to vertical and horizontal direct effect.

Trial

A public hearing in which the evidence in a case, and the law which applies, are examined

Trial (civil)

Civil trials are generally held before one or more judges without a jury. The form and length of a civil trial will depend on the track to which the case has been allocated

Trial bundles

These are the documents that are likely to be referred to in a trial or tribunal hearing. Identical bundles are prepared for the judge and the parties to the case

Trial contents

The contents of the trial include any written statements and documents in trial bundles

Trial Window

A period of time within which the case must be listed for trial

Tribunal

A tribunal is a body outside of the court structure. They hear disputes relating to specific areas such as immigration, employment and some tax matters and adjudicate on them. Tribunals are thought to be cheap and fast and allow expert knowledge to be applied

Trust

Property legally entrusted to a person with instructions to use it for another person (or persons benefit)

Trustee

A person who holds or administers property in a trust for another (or others)

U

Undertaking

A promise, which can be enforced by law, made by a party (person) or their legal representative during legal proceedings

Unspecified amount of money

An unspecified amount of money is one which is not precise. For example, if you are claiming damages (compensation) for loss or injury, you might not be able to work out exactly what those damages are

Unspecified Claim

A claim where the amount to be awarded is left to the Court to determine, e.g. damages to be assessed for personal injuries. Previously known as an unliquidated claim

V

Varied order

If a defendant has been ordered to pay an amount in full or by instalments, which they cannot afford, they can ask the court to vary the order to allow payment by instalments or by reduced instalments

Verdict

The finding of guilty or not guilty by a jury

Vexatious litigant

A person who regularly brings court cases which have little chance of succeeding. The Attorney General can apply to the High Court for an order to prevent such as person from starting legal proceedings without permission.

Vice Chancellor

Senior judge and head of the Chancery Division of the High Court of Justice (although the Lord Chancellor is the nominal head)

Voluntary

Something is voluntary when it is entered into without compulsion, as a result of the free choice of the person(s) concerned

W

Walking Possession

A signed agreement by a debtor not to remove goods levied by a bailiff under the authority of a warrant of execution and to allow the bailiff access at any time to inspect the goods, in consideration of which the bailiff leaves the goods in the possession of the debtor

Ward of Court

The title given to a minor who is the subject of a wardship order. The order ensures that custody of the minor is held by the Court with day to day care of the minor being carried out by an individual(s) or local authority. As long as the minor remains a ward of Court, all decisions regarding the minors upbringing must be approved by the Court, e.g. transfer to a different school, medical treatment etc

Wardship

High Court action making a minor a ward of court

Warrant of Committal

Method of enforcing an order of the Court whereby the penalty for failing to comply with its terms is imprisonment; the bailiff is authorised to carry out the arrest and deliver the person to prison (or in some instances the Court)

Warrant of Delivery

Method of enforcing a judgment for the return of goods (or value of the goods) whereby a bailiff is authorised to recover the goods (or their value) from the debtor and return them to the creditor

Warrant of Execution

A method of enforcing a judgment, The bailiff is authorised to remove goods belonging to a defendant from their home or business for sale at public auction.

Warrant of Possession

This gives court bailiffs the authority to take possession of a property and evict the defendant in cases, where an order for possession has been granted by a court.

Warrant of Restitution

A remedy available following illegal re-entry of premises by persons evicted under a warrant of possession. The bailiff is authorised to evict all occupants found on the premises and re-deliver the premises to the plaintiff

Will

A declaration of a person's intentions to distribute his/her estate and assets

Winding up

The voluntary or compulsory closure of a company and the subsequent realisation of assets and payment to creditors

Witness

A person who gives evidence in Court, called to give evidence because they witness an event (see also Expert witness)

Witness summons

A document issued by a court which requires a person to give evidence in court or to produce a report or other documentation for the court

Writ of Summons

(see CLAIM)

Written evidence / statement

A written statement of relevant facts which is submitted to the court.

(Sources:

<http://www.justice.gov.uk/courts/glossary-of-terms/glossary-of-terms-legal>

<http://cw.routledge.com/textbooks/9780415566957/glossary.asp>)