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КАРАГАНДИНСКАЯ АКАДЕМИЯ
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LAW**

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Данное учебно-методическое пособие «Professional English in use Law» «**Профессиональный английский для юристов**» предназначено для изучения профессионального английского языка с уровнем «Intermediate» в институте послевузовского образования, а именно в магистратуре и докторантуре.

Учебно-методическое пособие «Professional English in use Law» обсуждено и одобрено на заседании кафедры языковой подготовки Карагандинской академии Министерства внутренних дел Республики Казахстан имени Б. Бейсенова, протокол № 20 от «20» июня 2012г.

Professional English in Use Law

A. The Legal system section consists of 8 units.

1. The Legal system unit deals with public and private law, government system and jurisdiction.
2. The Sources of law: legislation unit describes how laws are made and deals with early development of a Bill and legislative process of passing an act.
3. The Sources of law: common law unit deals with common law which consists of the substantive law and procedural rules, describes the hierarchy of the courts and represents law reports.
4. The Court system unit represents civil courts such as magistrates' courts, county courts, high court of justice, court of appeal and criminal courts.
5. The Criminal justice and criminal proceedings unit explains the meaning of crown prosecution service and criminal defence service, distinguishes among three categories of criminal offence which are summary, indictable and alleged offences and introduces into the criminal court proceedings.
6. The Civil procedure unit represents a number of civil procedure rules and deals with proceeding with a claim.
7. The Tribunal unit deals with the status of tribunal and range of tribunals such as social security appeal tribunal, employment tribunal, mental tribunal etc., and introduces into composition of tribunals (chairperson and lay representatives) and procedure.
8. In the European Union law unit you learn about the history of the European Union (EU), its communities and deals with the question how the EU impacts on member states.

B. The Legal professionals section consists of 5 units.

1. The Solicitor unit describes functions of lawyers, training programmes for graduates and gives an explanation of a partner in a law firm.
2. The Barristers unit contains a description of the training and organization of profession of a practicing barrister as well as their qualifications.
3. The Working lives unit represents duties of a company commercial lawyer and a legal secretary.
4. The Judges unit lists judicial appointments in England and Wales, discusses the training of judges and deals with powers of sentencing of judges in civil courts.
5. The Law firm's structure and practice unit describes a law firm's practice areas and expertise

C. The Legal professionals in practice section includes 5 units.

1. The Client care procedures unit explains the meaning of client care letters.
2. The Money laundering procedures unit represents extracts from statutory instrument that has implications for law firms.

3. The Client correspondents unit lists requirements specified for legal correspondents and gives standard phrases for starting and ending letters and emails.
4. The Explanations and clarification unit deals with problems of understanding in three headings: explaining a procedure, approximating and comparing, rephrasing and clarifying.
5. The Legalese unit focuses on legal language specific, latin terms, older words and modern equivalents.

D. The Law in practice section includes 10 units.

1. The Business organizations unit distinguishes among sole traders, partnerships and limited companies.
2. In the Formation of a company you learn about the regulation for incorporation as well as memorandum and articles of association.
3. The Raising capital by share sale unit emphasizes three topics: share capital, share value and rights attaching to shares.
4. The Debt financing: secured lending unit deals with granting security and terms of a charge.
5. The Company directors and company secretaries unit describes qualifications and duties required to be a company director or a company secretary.
6. The Insolvency and winding up unit introduces learners into such legal terms as renegotiating debt, realizing assets to discharge debt, secured and unsecured creditors, preferential creditors, occupational pension schemes etc., and gives an example of insolvency scenarios.
7. The Alternative dispute resolution unit gives an explanation for alternative dispute resolution, often abbreviated to ADR, and shows some frequently methods used to reach a settlement such as arbitration, mediation, mediation-arbitration and adjudication.
8. The Corporation tax unit specifies that all companies resident in the UK are subject to Corporation Tax, sets an accounting period and gives word combinations with “tax”.
9. The Mergers and acquisitions unit introduces legal terms such as target company, acquiring company, offeror, subject to the condition etc., and represents the Panel of Takeovers and Mergers and the City Code on Takeovers and Mergers.
10. The Anti-competitive behaviour unit represents the Competition Act of the European Community Treaty which regulates anti-competitive conduct, tells about anti-competitive practices and agreements and studies information gathering, hearings and remedies.

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UNITE 1 LEGAL SYSTEMS

The legal system in the United Kingdom (UK)

The study of law distinguishes between public law and private law, but in legal practice in the UK the distinction between civil law and criminal law is more important to practicing lawyers. Public law relates to the state. It is concerned with laws which govern processes in local and national government and conflicts between the individual and the state in areas such as immigration and social security. Private law is concerned with the relationships between legal persons, that is, individuals and corporations, and includes family law, contract law and property law. Criminal law deals with certain forms of conduct for which the state reserves punishment, for example murder and theft. The state prosecutes the offender. Civil law concerns relationships between private persons, their rights, and their duties. It is also concerned with conduct which may give rise to a claim by a legal person for compensation or an injunction- an order made by the court. However, each field of law tends to overlap with others. For example, a road accident case may lead to a criminal prosecution as well as a civil action for compensation. Substantive law creates, defines or regulates rights, liabilities, and duties in all areas of law and is contrasted with procedural law, which defines the procedure by which a law is to be enforced.

The constitution

The head of state is the monarch, currently the Queen in the UK, but the government carries the authority of the Crown (the monarch). The Westminster Parliament has two chambers: the House of Lords and the House of Commons, which sit separately and are constituted on different principles. The Commons is an elected body of members. Substantial reform is being carried out in the upper house, the House of Lords, where it is proposed that the majority of members be appointed, with a minority elected, replacing the hereditary peers. There is no written constitution, but constitutional law consists of statute law, common law, and constitutional conventions.

Jurisdiction

There are four countries and three distinct jurisdictions in the United Kingdom: England and Wales, Scotland, and Northern Ireland. All share a legislature in the Westminster Parliament for the making of new laws and have a common law tradition, but each has its own hierarchy of courts, legal rules and legal profession. Wales and Northern Ireland each have their own Assembly and since 1999 Scottish Members of Parliament (SMPs) have sat in their own Parliament. Under an Act of the Westminster Parliament, the Scottish Parliament has power to legislate on any subject not specifically reserved to the Westminster Parliament such as defence or foreign policy. The UK's accession to the European Communities in 1973, authorized by the European Communities Act 1972, has meant the addition of a further legislative authority in the legal system. The UK is also a signatory of the European Convention of Human Rights and this has been incorporated into UK law.

1.1 Complete the definitions. Look at A opposite to help you.

- 1is law relating to acts committed against the law which are punished by the state.
- 2is concerned with the constitution or government of the state, or the relationship between state and citizens.
- 3is rules which determine how a case is administered by the courts.
- 4.....is concerned with the rights and duties of individuals, organisations, and associations (such as companies, trade unions, and charities), as opposed to criminal law.
- 5is common law and statute law used by the courts in making decisions.

1.2 Complete the sentences. Look at B and C opposite to help you. There is more than one possibility for one of the answers.

- 1 In many systems a president rather than a monarch is.....
- 2 The UK system has a parliament with two.....
- 3 As in other countries, the courts are organised in a.....of levels.
- 4 The Scottish Parliament has the.....to legislate on subjects not reserved to Westminster.
- 5 The EC is an important legislative.....in most European countries.
- 6 A number of international.....have been incorporated into national law.

1.3 Complete the table with words from A, B and C opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you. Then complete the sentences below with words from the table.

Verb	Noun	Adjective
* constitute	constitution	constitutional
legislate		
proceed		
convene		
	regulation	
accede		
elect		
authorise		

- 1 The.....is the body which has the function of making law; normally it is the Parliament.
- 2 It is quite a lengthy process to.....to the European Community.
- 3 Sometimes a court case can be delayed while counsel argue over.....problems.

Over to you

Describe some of the distinctive features of your legal system and constitution, first as if to a foreign lawyer, then as if to a foreign lay person.

For more information on the UK Parliament and legislative processes.

UNITE 2 SOURCES OF LAW: LEGISLATION

How are laws made in the UK?

The predominant sources of law in the United Kingdom are:

- primary legislation, known as Acts of Parliament or statutes, which begin life as drafts called Bills (see B and C below);
- secondary or delegated legislation, such as statutory instruments, bye-laws, and professional regulations.

A new Act is passed in order to:

- update or amend existing legislation;
- legislate for new circumstances and enforce government policies;
- ensure UK compliance with International or European Union (EU) Law;
- consolidate laws by bringing together into one statute all the existing statutes on one topic;
- codify rules by bringing together all the case law and statutes on a particular subject where the principles are established. Parliament can enact any law it chooses or repeal obsolete laws which are no longer relevant, and the courts must enforce it. The exception to this is EU law.

Note: Act of Parliament and Bill are always capitalised in legal usage; statute is not. Statutory instruments are delegated legislation created by government ministers. Bye-laws are made by Local Government or public bodies.

Early development of a Bill

The government may proceed to initiate a consultative process by the publication of a Green Paper in which its proposals are set out at an early stage with the intention of attracting public response and comment. The government's White Papers contain their more definite proposals, although these are often published following consultation or discussion with pressure groups, professional bodies, or voluntary organisations. A Bill does not have to be preceded by a White or Green paper, although it may have been presented for public scrutiny, that is, examination, in draft form earlier.

Passing an Act

All Acts must be submitted to both Houses of Parliament in the draft form of a Bill. The legislative process involves three readings in both Houses. At the first reading, the title is read to Members of Parliament (MPs); at the second reading, MPs debate proposals. Then a standing committee will scrutinise the provisions in the Bill and may amend it to ensure that it enshrines the principles debated and approved at the second reading. This is reported back to MPs. At the third reading, the Bill is re-presented. The Bill then goes through readings in the upper house. The actual drafting of the legislation is undertaken by Parliamentary Counsel. Finally, a Bill must receive Royal Assent from the monarch before it becomes law on a specified date. In fact, this stage has been reduced to a formal reading of the short title of an Act in both Houses of Parliament and is now a formality. Government Bills are introduced by the Government; Private Members Bills are proposed by MPs. Both methods may result in Public Acts that govern the general public. Private Acts affect particular individuals or institutions.

Note: No article (a/the) is necessary in to become law.

2.1 Find verbs in A opposite that can be used to make word combinations with the words below. There is more than one possibility for three of the answers.

Parliament can

- 1Acts of Parliament.
- 2new statutes.
- 3existing legislation.
- 4obsolete law.
- 5statute law, case law, and amendments into one Act.
- 6law by repealing and re-enacting in one statute provisions of a number of statutes on the same subject.

2.2 Complete the sentences. Look at A, B and C opposite to help you. Pay attention to the grammatical context.

- 1 An order made under authority delegated to a government minister by an Act of Parliament is known as a.....
- 2 A.....is made by a local authority or a public or nationalised body and has to be approved by central government.
- 3 Charities like Oxfam and Help the Aged can act as.....,lobbying for law reform.
- 4 The Committee needs to ensure the Bill incorporates the principles agreed so they check it by.....

2.3 A visiting Russian colleague is asking an English solicitor about the legislative process. Replace the underlined words in their conversation with alternative words from C opposite. Pay attention to the grammatical context. There is more than one possibility for two of the answers.

Natasha: How is new legislation enacted?

Charles: Well, initially the (1) draft legislation has to be (2) presented to both houses. The draft is (3) discussed several times. A committee has the job of checking that the Bill (4) incorporates the fundamental elements (5) agreed at the second reading. After this, the Bill is (6) shown again to the lower house.

Natasha: Who does the (7) formal writing of the legislation?

Charles: It's (8) done by qualified barristers employed as civil servants, known as Parliamentary Counsel.

Natasha: Who can (9) put forward Bills?

Charles: The government and, less commonly, MPs.

Over to you

Describe the process of making new law in your country. What are the strengths and weaknesses of the process?

For more information on the UK Parliament and legislative processes, go to:

www.parliament.uk. For legislation around the world, go to:

www.lexadin.nl/wlg/legis/nofr/legis.htm

UNITE 3 SOURCES OF LAW: COMMON LAW

Common law in the UK

Penny Arkwright practises in the High Court. She is speaking at an international convention for young lawyers. 'The legal system in many countries, including Australia, Canada (except Quebec), Ghana, Hong Kong, India, Jamaica, Malaysia, New Zealand, Pakistan, Tanzania, the USA (except Louisiana), the Bahamas, and Zambia, is based on common law. The common law consists of the substantive law and procedural rules that are created by the judicial decisions made in the courts. Although legislation may override such decisions, the legislation itself is subject to interpretation and refinement in the courts. Essential to the common law is the hierarchy of the courts in all of the UK jurisdictions and the principle of binding precedent. In practice, this means that the decision of a higher court is binding on a lower court, that is, the decision must be followed, and in the course of a trial the judges must refer to existing precedents. They'll also consider decisions made in a lower court, although they're not bound to follow them. However, a rule set by a court of greater or equal status must be applied if it's to the point – relevant or pertinent.

During a trial, counsel will cite cases and either attempt to distinguish the case at trial from those referred to or, alternatively, argue that the rule at law reasoned and established in a previous case is applicable and should be followed. Hence the term case law. A case will inevitably involve many facts and issues of evidence. The eventual decision itself doesn't actually set the precedent. The precedent is the rule of law which the first instance judge relied on in determining the case's outcome.

Judges in a case may make other statements of law. Whilst not constituting binding precedents, these may be considered in subsequent cases and may be cited as persuasive authority, if appropriate. Since the Human Rights Act of 1988, all courts in the United Kingdom must now refer to the ultimate authority of the European Court of Human Rights, including all previous decisions made by that court.

Note: practises - qualified to work professionally

Law reports

The development and application of the common law system pivots upon the existence of a comprehensive system of reporting cases. The Law Reports, published annually by the Council of Law Reporting, are perhaps the most authoritative and frequently cited set of reports, differing from other series of law reports, such as Butterworth's All England Law Reports [All ER] or specialist reports like Lloyds Law Reports, in that they contain summaries of counsel's arguments and are revised by the judge sitting in each respective case before publication. Cases aren't always reported in the year that they are decided so a case citation will refer to the volume and year in which the case was published, for example *Meah v Roberts*, [1978] 1 All ER 97. Developments in electronic databases have increased public access to recent cases.

Note: Latin terms used for the legal principles outlined in the above texts are:

stare decisis - principles of binding precedent

ratio decidendi - the rule at law reasoned

obiter dictum - persuasive authority

In a civil case citation, for example *Meah v Roberts*, [1978] 1 All ER 97, v (Latin for versus) is said 'and'.

3.1 Penny Arkwright is talking about her experience of court cases to a Russian colleague. Replace the underlined words and phrases with alternative words and phrases from A and B opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

1. The courts are compelled to apply the precedent set by a higher court.
2. During the court case the judge will evaluate all the evidence and the legal issues.
3. Judges are required to follow the ratio, or reasoning, in relevant previous decided cases.
4. However, the judge may note a case cited as precedent by counsel as materially different from the one at trial.
5. It is, however, the role of counsel to refer to relevant previous case decisions,
6. The principle of following the decisions of higher courts is fundamental to case law.
7. The Law Reports series are the most frequently cited reports because the text is edited by the trial judge
8. New legislation may pay no attention to the decision of an earlier court judgment.

3.2 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun	Adjective
'cite	ci'tation	
apply		
precede		
	persuasion	
bind		

3.3 Penny is working with a trainee barrister. Complete her sentences with appropriate words from the table above.

1. Well, that decision of the Appeal Court is going to be.....on the case we've got at trial just now.
2. Can you check the case ...? I think the year's wrong.
3. We need to be able to convince the judge that the rule in Meah v Roberts is.....to this case.
4. Should we add to our argument that Edwards v Peck is a..... precedent given the legal issues, although the judge isn't bound to follow it?

Over to you
 Explain to a colleague from a different jurisdiction how cases are used and recorded in your legal system.
 To look at some recent UK case reports, go to: www.courtservice.gov.uk and www.lawreports.co.uk/.

UNITE 4 THE COURT SYSTEM

Civil courts

Duncan Ritchie, a barrister, is talking to a visiting group of young European lawyers. 'Both criminal and civil courts in England and Wales primarily hear evidence and aim to determine what exactly happened in a case. Broadly speaking, the lower courts decide matters of fact and the upper courts normally deal with points of law. In England, simple civil actions, for example family matters such as undefended divorce, are normally heard in either the Magistrates' Courts or the County Courts.

Judges have different titles depending on their experience, training, and level. A single stipendiary magistrate or three lay magistrates sit in the Magistrates' Court. There's no jury in a Magistrates' Court. Family cases may go on appeal from the Magistrates' Court to the County Courts. The County Court also hears complex first instance civil cases, such as contract disputes, compensation claims, consumer complaints about faulty goods or services, and bankruptcy cases. Claimants, previously referred to as plaintiffs, may seek a legal remedy for some harm or injury they have suffered. There are circuit judges and recorders who sit in the County Courts, usually without a jury. Juries are now rare in civil actions, so normally the judge considers both law and fact.

More complex civil cases, such as the administration of estates and actions for the recovery of land, are heard in the High Court of Justice, which is divided into three divisions: Family, Chancery and Queen's Bench. The court has both original, that is, first instance, and appellate jurisdiction. From the High Court cases may go on appeal to the civil division of the Court of Appeal, which can reverse or uphold a decision of the lower courts. Its decisions bind all the lower civil courts. Civil cases may leapfrog from the High Court to the House of Lords, bypassing the Court of Appeal, when points of law of general public importance are involved. Appellants must, however, apply for leave to appeal. Decisions of the House of Lords are binding on all other courts but not necessarily on itself. The court of the House of Lords consists of twelve life peers appointed from judges and barristers. The quorum, or minimum number, of law lords for an appeal hearing is normally three, but generally there is a sitting of five judges.'

Note: A stipendiary is a full-time paid magistrate who has qualified as a lawyer.

A lay magistrate is unpaid and is an established member of the local community.

A circuit is a geographical division for legal purposes; England and Wales are divided into six.

A recorder is a part-time judge with ten years standing as a barrister or solicitor.

See Unit 12 for more information about judges. See B below for more information about juries.

Criminal courts

'About 95% of all criminal cases in England and Wales are tried in the Magistrates' Courts, which deal with petty crimes, that is, less serious ones. In certain circumstances, the court may commit an accused person to the Crown Court for more severe punishment, either by way of a fine or imprisonment. Except in cases of homicide, children under 14 and young persons - that is, minors between 14 and 17 years of age - must always be tried summarily, meaning without a jury, by a Youth Court. A Youth Court is a branch of the Magistrates' Court. Indictable offences, that is, more serious ones such as theft, assault, drug dealing, and murder, are reserved for trial in the Crown Court. In almost all criminal cases, the State, in the name of the Crown, prosecutes a person alleged to have committed a crime. In England and Wales, a jury of twelve people decides whether the defendant is guilty of the crime she or he is charged with. The Crown Court may hear cases in circuit areas. From the Crown Court, appeal against conviction or sentence lies to the Criminal Division of the Court of Appeal. If leave to appeal is granted by that court, cases may go on appeal to the House of Lords.'

4.1 Complete the diagram. Look at A and B opposite to help you.

The court system in England and Wales

CRIMINAL CASES

Appeals may sometimes go to

The Court of Appeal
(Criminal Division)

The (7).....of Lords

CIVIL CASES

The Court of (6).... (Civil Division)

Appeals usually go to
or may (5).....to

Appeals go from here to

The (4).....

The Crown Court

Queen's Bench Division

The County Court
The Court of First (2).....

Appeals go from here to

Chancery Division

The (1).....

Family (3).....

4.2 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun - event or action	Noun - person
'sit	'sitting	
appeal		
hear		
try		
claim		

4.3 Match the two parts of the sentences and complete the gaps with words from the table above. Pay attention to the grammatical context. There is more than one possibility for three of the gaps.

- The.....courts can
- An appellant must get
- In a civil action, a.....who has suffered
- Magistrates generally..... cases of petty crime as
- Indictable offences are

- a court of first instance.
- normally.....in the Crown Court.
- reverse or uphold decisions of lower courts,
- harm or injury seeks a remedy.
- leave to..... before taking a case to higher court

Over +o you

Draw a diagram of your court system and explain the court structure as if to a foreign client who is pursuing an action in your courts. Use your own language for the names of the courts but use English to describe their function.

UNITE 5 CRIMINAL JUSTICE AND CRIMINAL PROCEEDINGS

Criminal justice

'The state prosecutes those charged with a crime. The police investigate a crime and may apprehend suspects and detain them in custody. If the police decide an offender should be prosecuted, a file on the case is sent to the Crown Prosecution Service (CPS) - the national prosecution service for England and Wales. The CPS must consider whether there is enough evidence for a realistic prospect of conviction, and if so, whether the public interest requires a prosecution. They can decide to either go ahead with the prosecution, send the case back to the police for a caution, or take no further action. Criminal proceedings can be initiated either by the serving of a summons setting out the offence and requiring the accused to attend court, or, in more serious cases, by a warrant of arrest issued by a Magistrates' Court. Lawyers from the CPS may act as public prosecutors. The Criminal Defence Service provides legal aid, which funds the services of an independent duty solicitor who represents the accused in the police station and in court. However, at the end of a Crown Court case the judge has the power to order the defendant to pay some or all of the defence costs.'

Note: If Green is prosecuted for a crime, the ensuing trial will be called the case of R v Green.

R is the abbreviation for the Crown (Regina for a Queen or Rex for a King); v (Latin for versus) is said 'against' in a criminal case.

Categories of criminal offence

'There are three categories of criminal offence. Summary offences, tried without a jury, are minor crimes only triable in the Magistrates' Court. Indictable offences are serious crimes, such as murder, which can only be heard in the Crown Court. The formal document containing the alleged offences, supported by facts, is called the indictment. A case which can be heard in either the Magistrates' Court or the Crown Court, such as theft or burglary, is triable either way. If the defendant pleads guilty, the Magistrates' Court can either proceed to sentence or commit to the Crown Court for sentence, where more severe penalties are available. If there is a not guilty plea, the court can decide the mode of trial. The person charged may request a trial by jury. If granted, such trials take place in the Crown Court.'

Note: indictable offences are also known as notifiable offences in the UK.

Criminal court proceedings

'The English system of justice is adversarial, which means that each side collects and presents their own evidence and attacks their opponent's by cross-examination. In a criminal trial, the burden of proof is on the prosecution to prove beyond reasonable doubt that the accused is guilty. A person accused or under arrest for an offence may be granted bail and temporarily released. However, bail may be refused, for example if there are grounds for believing that the accused would fail to appear for trial or commit an offence. In the Crown Court, there may be a preparatory hearing for a complex case before the jury is sworn in. Prior to the trial, there is a statutory requirement for disclosure by the prosecution and defence of material relevant to the case, for example details of any alibis - people who can provide proof of the accused's whereabouts at the time of the crime - or witnesses - people who may have seen something relevant to the crime. Once a trial has begun, the defendant may be advised by counsel to change his or her plea to guilty, in expectation of a reduced sentence. If, at the end of the trial, the court's verdict is not guilty, then the defendant is acquitted.'

5.1 Complete the definitions. Look at A and B opposite to help you.

- 1a.....-a court document authorizing the police to detain someone
- 2 an-a written statement with details of the crimes someone is charged with
- 3 a-a formal order to attend court

5.2 Make word combinations from A, B and C opposite using words from the box. Then use appropriate word combinations to complete the sentences below.

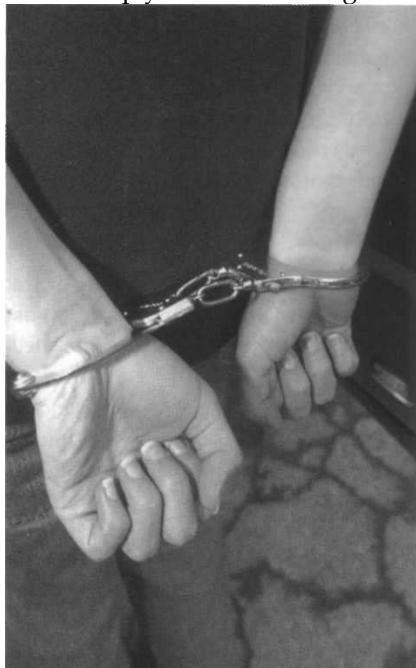
criminal doubt sentence indictable severe plea realistic guilty reasonable defence proceedings costs reduced prospect offences penalties

- 1 The Crown Prosecutor considers whether there's sufficient evidence to provide a.....
.....of conviction.
- 2 There should be no conviction without proof beyond.....
- 3 The Crown Court always hears.....such as manslaughter.
- 4 In sentencing serious crimes, courts can impose.....
- 5 At the end of a trial, a defendant may be ordered to pay a contribution towards.....

5.3 Replace the underlined words and phrases with alternative words and phrases from A, B and C opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

- a Bail may be refused and the defendant may be (1) held in police custody,
- b Alternatively, the defendant may be (2) found not guilty by the court and discharged,
- c Once proceedings have been initiated, the defendant (3) comes before the court,
- d The police formally (4) accuse the suspect in the police station,
- e If the offender pleads guilty in the Magistrates' Court, the court imposes a (5) punishment,
- f The police investigate a serious offence and (6) arrest a suspect,
- g The suspect may ask for (7) release from custody before the trial.

5.4 Put the sentences in 5.3 into the correct order chronologically. Look at A, B and C opposite to help you. The first stage is f.



Over -to you
Describe the process of a criminal trial in your legal system as if to a client from a different system.
For more information on the UK Crown Prosecution Service, go to: www.cps.gov.uk/; for the US Department of Justice, go to: www.usdoj.gov/.

UNITE 6 CIVIL PROCEDURE

Civil Procedure Rules

All cases concerning goods, property, debt, repayment, breach of contract (with some exceptions such as insolvency proceedings and non-contentious litigation), are subject to Civil Procedure Rules. The Rules, which came into force in 1999 in England and Wales, made radical changes to civil process in the County Court and the High Court.

The judge performs the role of case manager. The court sets a timetable for litigation, with the parties being under an obligation to the court to adhere to timescales which control the progress of the case. Procedure rules are supplemented by detailed instructions made by the judge which support the rules, known as practice directions.'

Proceeding with a claim

'Most claims are initiated by the use of a claim form, which functions as a summons. The claim form can be used for different types of claim, for example for specified or unspecified monetary sums, or for the claimant to ask the court to make an order. Once a claim has been issued, a copy is served on, that is, delivered to, the defendant with a response pack inviting them to either admit the claim, using a form of admission, or to defend it, using a form of defence. The response pack also contains an acknowledgement of service form to confirm receipt of the claim, and a counterclaim form for the defendant to use if they wish to claim against the claimant. A defendant must respond within 14 days of service of the particulars of the claim. If the defendant does not respond, judgment may be given in favour of the claimant. The defendant may be able to get a time extension for filing a reply on defence by using the part of the acknowledgement of service form which states an intention to defend the claim.

Cases are allocated to a regime or track by a procedural judge according to their monetary value. Claims of £5,000 or less are allocated to a small claims track while claims of up to £15,000 are allocated to a fast track. More complex claims with a greater value are allocated to a multi track regime. Fast track directions might include disclosure, where the claimant tells the defence of any relevant documents in their possession. This is followed by inspection, initiated by a written request by the claimant to look at relevant documents held by the defence, and an exchange of witness statements. The multi track regime is intended to be flexible and does not have a standard procedure. In all regimes, parties are encouraged to settle their differences and for this purpose a stay in proceedings, that is, a temporary halt, may be agreed. Case management conferences are often conducted by telephone and give parties the opportunity to review the process and make decisions. If a defendant is ordered to pay by a judge and fails to do so, the claimant can enforce the judgment in the Magistrates' Court.'

Note: The reforms to the Civil Procedure Rules led by Woolf in 1998 included the following changes in legal language:

- claim form, formerly known as a writ of summons
- specified, formerly known as a liquidated claim (a fixed monetary sum)
- claimant, formerly known as a plaintiff

6.1 Complete the definitions. Look at A and B opposite to help you.

- 1- the process by which a claimant may look at written evidence held by the defence
- 2- the document in which the defendant makes a claim against the claimant
- 3- the document in which the defendant agrees to the claim made by the claimant
- 4- the document starting a claim proceedings
- 5- the process by which the claimant is required to inform the defendant of documents they hold relevant to the claim
- 6- the document giving evidence by someone who saw or heard something critical to the case
- 7- the instructions given by a judge on how procedures should be carried out in a case

6.2 Make word combinations from A and B opposite using a word from each box. Then use appropriate word combinations and information in B opposite to answer the questions below.

admit
agree to
allocate to
enforce
file
issue
review
serve
set
settle

a timetable
a stay
a claim
the process
the judgment
a claim
a claim on
a regime
differences
a reply

- 1 How does a claim proceeding start?
- 2 What must a defendant do when he or she has been served with a claim?
- 3 If both parties want time to try to settle the dispute out of court, what should they ask the court to do?
- 4 What is the purpose of a case management conference?
- 5 If a defendant is ordered to pay a claimant's costs but does not, what action can the claimant take?



A solicitor discusses a claim

Over to you

Describe the process of a civil claim in your legal system as if to a client from a different system who wants to initiate a claim. Use an example if possible.

UNITE 7 TRIBUNALS

Tribunals in the UK

The system of courts in the United Kingdom is supplemented by a substantial number of tribunals, set up by Acts of Parliament. They are described in the guidance given to government departments as: "those bodies whose functions, like those of courts of law, are essentially judicial. Independently of the Executive, they decide the rights and obligations of private citizens towards each other and towards a government department or public authority."

Report of Council on Tribunals

The growth in the number and importance of tribunals is closely related to the development of an increasingly active welfare state with legislation covering areas previously considered private. Some examples are:

- Social Security Appeal Tribunal
- Employment Tribunal
- Mental Health Review Tribunal
- Immigration Appeal Tribunal
- Lands Tribunal

Some tribunals have a significant effect in the areas of law involved. However, they are nonetheless inferior to the courts and their decisions are subject to judicial review - examination by a higher court of the decision-making process in a lower court.

Composition of tribunals and procedure

A tribunal consists of three members. The chairperson is normally the only legally qualified member. The other two are lay representatives who usually have special expertise in the area governed by the tribunal, gained from practical experience. The tribunal will also have all the usual administrative support enjoyed by a court: hearing clerks, who are responsible for administering procedures, clerical staff, and hearing accommodation. The intention of tribunals was to provide a less formal proceeding in which claimants could lodge claims and respondents defend claims, and ultimately resolve their disputes without the need for legal representation. However, procedures have become more complicated and cases brought before tribunals are often presented by solicitors and barristers. For example, a case of unfair dismissal - where an employer appears to not be acting in a reasonable way in removing an employee - could be brought to an Employment Tribunal. Procedure at that Tribunal may include a stage where a government agency tries to broker a settlement so that a claim may be withdrawn. The costs of the hearing are borne by the public purse, that is, paid from tax revenue, but legal representation is at the cost of each party. Witness statements are normally exchanged before the hearing and at the hearing both parties may question witnesses and address the Tribunal. The Tribunal can refer to decisions of higher courts before making its decision in a specific case.



A tribunal in action

7.1 Complete this letter which a lawyer has written to his client about a case coming to an Employment Tribunal. Look at B opposite to help you.

Woods & Pankhurst Solicitors
3 The Old Forge
West Cambourne
Cambs
CB6 7AB

Mr D Johnson,
Managing Director, Force Ltd
Dear David,

Claim for Unfair Dismissal by A.J. Blackwood

Many thanks for your faxed letter of yesterday attaching the copy ET1 in respect of the above. According to my records, Force Ltd have not had an (1).....
.....claim made against it previously so I thought it would be helpful if I gave you a brief outline of the various stages of the procedure involved for you to (2).....the claim.

Following receipt of the ET1, the company, as (3)....., has 28 days to complete and return a defence on form ET3. The Tribunal will acknowledge receipt of this and will forward a copy to Miss Blackwood, the (4).....

The Tribunal appoints an officer of the (5)....., the Arbitration Conciliation and Advisory Service (ACAS), to this case. He or she will get in touch with both you and Miss Blackwood for the purpose of offering assistance to broker a Settlement Agreement so that the claim can be (6)..... Obviously, if this is possible then the costs of a Tribunal hearing will be saved. The costs of a hearing are (7).....
.....the public purse, although obviously you will be responsible for this firm's fees in representing you if required.

Usually the Tribunal allows ACAS a number of weeks in which to (8).....
.....If that doesn't happen, a date for the case to be heard will be arranged. When that date has been determined, the Tribunal will give both (9).....a simple set of directions to prepare for the hearing. I would normally expect to agree a bundle of relevant documents with the other side and to exchange written witness statements in advance of the hearing.

At the hearing, witnesses will be asked to swear or affirm that the contents of their (10).....
.....are true. Both parties and the Tribunal will have the chance to question the witnesses.

Following that, Miss Blackwood and you on behalf of the company (or your respective legal representatives) may (11).....the Tribunal with an argument about why your evidence and case should be accepted. The Tribunal may also consider points about the relevant law at this point and possibly (12).....
.....decisions made at a higher level of the Tribunal system, such as the Employment Appeal Tribunal, the Court of Appeal, the House of Lords, or even the European Court of Justice, before reaching its decision.

I hope this is helpful to you. Obviously, we will need to discuss in some detail the facts of the matter and the merit, or otherwise, of the claim when we meet on Friday. I already have a copy of Miss Blackwood's contract so will make sure I have that to hand. I look forward to seeing you then.

Kind regards,
Yours sincerely,

Paul Hedges
Partner, Woods & Pankhurst

Describe how disputes between private citizens are resolved in your legal system. What are some of the advantages and disadvantages of tribunals?

For information on UK tribunals, go to: www.council-on-tribunals.gov.uk/.

UNITE 8 EUROPEAN UNION LAW

What is the EU?

The European Union (EU) was created in 1992 by the Treaty on European Union (the TEU), generally called the Maastricht Treaty. The EU consists of three different Communities: the ECSC (European Coal and Steel Community), the European Community (the EC, formerly known as the European Economic Community Treaty, or the EEC treaty - also known as the Treaty of Rome), and EURATOM (European Atomic Energy Community Treaty). The EU has what are referred to as “the three pillars”:

The European Union

Common Foreign and
Security Policy

ECSC
EC EURATOM

Justice and Home
Affairs Policy

Put simply, the original aim of the Community was economic integration: to create a common market, later defined as a Single Internal Market, in which there could be free movement of goods, persons, services and capital. This was to be achieved by the creation of a free trade area, where Member States agreed to remove all customs duties (import taxes) and quotas (restrictions on the amount of goods imported across Member States' frontiers, or borders) between themselves, and a customs union, in which all members agreed to impose on goods coming into the area from non-member states a common level of duty (the Common Customs Tariff, or CCT). The three sources of EU law are the Treaties (EC, TEU, etc.), secondary legislation enacted by the EC (such as regulations and directives), and general principles, including fundamental human rights, subsidiarity, and citizenship of the EU for every national of a Member State.

Note: subsidiarity - the Community may only take legal action where it has exclusive competence, that is, power to govern, and where an action cannot be achieved by member states acting within their natural institutions, for example a trans-national action.

How does the EU impact on Member States?

The EC Treaty is directly applicable in every Member State. Accession to (membership of) the Community limits the power of national governments and affects national sovereignty - the power to govern. Community law has supremacy over, that is, overrides, national law. This supremacy was established in the case of *Costa v ENEL* (Case 6/64) ECR 545. The Single European Act 1986 made provisions (legal conditions) creating an obligation on the Community to take the necessary measures to achieve the Internal Market. Under Article 249 (ex Art 189) there are five types of legal act which the Community may use:

Regulations - have general application and are binding in their entirety on all Member States and have direct effect, meaning they automatically become law in Member States.

Directives - are binding on Member States as to their result but do not bind individuals until they have been transposed into national law (implemented).
Decisions of the European Court of Justice (ECJ) - are binding on those to whom they are addressed.

Recommendations and opinions – have no binding force but may be persuasive, that is, have influence.

8.1 Find five phrases in A opposite used to indicate that a term has another name, for example 'formerly known as'. Then use appropriate phrases to complete the sentences below. There is more than one possibility for one of the answers.

- 1 Under EC law, anything which can be bought or sold isgoods.
- 2 Beijing was..... Peking in the West.
- 3 Customs duty is any charge that is imposed on goods because they are imported.
- 4 The third pillar of the European Union,the Justice and Home Affairs pillar, is incorporated into the EC treaty.

8.2 Rearrange the underlined letters to make words in the extracts below. Look at A and B opposite to help you.

The (1) laennirt market shall comprise an area without internal (2) stenroirf in which the (3) reef (4) vemmnote of goods, persons, (5) essricev and capital is ensured in accordance with the (6) noopssivir of this (7) yctrat.

from Article 7a, the Single European Act 1986

Member (8) eattss shall take all appropriate (9) russeame whether general or particular, to ensure fulfilment of the (10) tooglisnabi arising out of this Treaty or resulting from an action taken by the institutions of the (11) timmouncy. They shall facilitate achievement of the Community's tasks.

from Article 5, the EC Treaty

A (12) ulegnotair shall have general (13) pintclapoia. It shall be binding in its (14) teentryi and directly (15) capbellpia in all Member States. A (16) vetcriide shall be binding, as to the result to be achieved, upon each (17) beerrmm State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

from Article 78.9, the Treaty of Rome

8.3 Are the following statements true or false? Find reasons for your answers in A and B opposite.

- 1 Member states are required to incorporate European legislation into national law and to recognise the jurisdiction of the European Court of Justice in matters of EU law.
- 2 The national legislation of Member States takes precedence over Community rules.
- 3 The Common Customs Tariff applies to all goods imported by countries like Japan and the USA from the EU.
- 4 EU law prevents Member States from charging importers for bringing goods into that State from another Member State.

Over to you

How has membership of the EU affected a jurisdiction you are familiar with?

For access to European Union legislation, including Treaties and case law (for example, Costa v ENEL), go to EUR-Lex at: <http://eur-lex.europa.eu/en/index.htm>

UNITE 9 SOLICITORS

Legal practitioners

Lawyers in the United Kingdom jurisdictions generally practise as solicitors in private firms, as legal advisers in corporations, government departments, and advice agencies, or as barristers (see Unit 10). They can each do advocacy, draft legal documents and give written advice, but solicitors, unlike barristers, cannot appear in every court.

Traditionally, solicitors undertake work such as conveyancing (see Unit 40), and drawing up contracts (see Units 31-41) and wills. Barristers spend more time in court and have a right of audience in the higher courts. Unlike solicitors, barristers cannot usually be employed directly by clients but are instructed by solicitors. Solicitors normally form partnerships with other solicitors and work in offices with support staff. The qualification and practice of solicitors are regulated by the Law Society.

Training

Sami, a 25 year-old graduate, is talking about his experience as a trainee.

'My first degree was in engineering at Manchester University. Then I did two one-year law courses. The first led to the Common Professional Examination, or CPE; the second was the Legal Practice Course. I had a vacation placement at Applewood Branston, who offered me a two-year traineeship. They have a six seat system, which is quite common. Trainees spend time attached to different law departments, which suits me as I get a basic grounding in the main departments of the firm, helping me find which area of the law I'd like to specialise in. I can work in four or more different areas of law for four months at a time and then decide on a specialism later in the training contract. In my third seat, in Corporate Finance, I've learnt a lot from being on secondment with a client and got excellent back up from my seat supervisor, that is, supervising partner. It was good to put the professional skills training into practice straight away.'

A partner in a law firm

Helene, from Monaco, is an avocat admitted to the Paris Bar - the professional association for lawyers. She graduated with a Bachelor of Law (LLB) in Paris and obtained a Master's Degree (LLM) in European Law from University College, London. She is a graduate of the Paris Institut d'Etudes Politiques.

'I joined Applewood Branston two years ago and was promoted to partner in the corporate and banking team in Paris. Before that I worked for twelve years for other leading international law firms. I've got extensive experience of privatisations, mergers and acquisitions, and I advise investment banks and corporates.'



9.1 A potential Polish client is talking to an English solicitor. Complete the solicitor's statements (1-3). Look at A opposite to help you. There is more than one possibility for one of the answers.

I'm looking for a lawyer to help me buy some land for a business.

1 My firm undertakes a lot of.....

We could advise you and help tocontracts.

We've had some trouble in the past with getting large invoices paid.

2 We can do..... If your case goes to court, we have.....
.....and I can.....in the lower courts.

Can you appear in the Appeal Court?

3 No, I'm a.....but my firm would instruct aif a case were to go to the Appeal Court.

9.2 Complete the table with words from A, B and C opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun	Noun - person
'partner	'partnership	'partner
		trainee
advise		
	practice	
specialise		

9.3 Ana Garcia is talking about her career. Complete what she says with words from the table above and B and C opposite. There is more than one possibility for one of the answers.

I'm an abogada, a lawyer in Spain. I obtained my law (1).....in Barcelona. In the summers, as a student, I did a vacation (2).....in my uncle's law (3).....I (4)..... from university six years ago. Because my English and French are good I got a (5).....to the New York office of my firm. While I was there I was (6).....by the mergers and acquisitions team. I've always enjoyed working with large companies so now I want to (7).....in (8).....



Write or talk to someone about your experience of legal education and training. For information on the work of solicitors and links to other international professional organisations, go to: www.lawsociety.org.uk/home.law and the International Bar Association: www.ibanet.org/.

UNITE 10 BARRISTERS

Organisation

Sylvia Garrison, a practising barrister, is describing the training and organisation of the profession.

There are currently around 9,000 barristers in practice in England and Wales. Unlike solicitors, barristers can't form partnerships but must act as sole traders with unlimited liability. Some barristers are in employed practice and may only represent their employer, for example as in-house counsel or in government departments like the Crown Prosecution Service. Many work independently in self-employed practice in groups called chambers or sets and practise at the Bar as a barrister. Chambers are traditionally located in the four Inns of Court in London - Gray's Inn, Lincoln's Inn, Middle Temple, and Inner Temple - and are also located in the UK regions, known as circuits. The Inns are principally non-academic societies which provide collegiate and educational resources for barristers and trainees. Members of chambers, known as tenants, share common expenses and support services, which are administered by an administrative manager known as the Clerk, along with ancillary staff such as secretaries.

A barrister's main work is to provide representation in the courts, where they are referred to as counsel, to draft documents associated with court procedure, and to give opinions, that is, specialist legal advice. They are normally instructed by solicitors or other recognized professionals, such as patent agents or Legal Advice Centres, on behalf of lay clients. As the law has become more complex, barristers increasingly specialise in particular areas, such as personal injury, crime, family or commercial law. A number of Specialist Bar Associations, also known as SBAs, support and represent members. Barristers are governed by the General Council of the Bar, known as the Bar Council, and the Inns of Court.'

BrE: chamber/set; ScotE: stable

BrE: barrister; ScotE: advocate; AmE: trial lawyer / appellate attorney

Training and qualifications of practising barristers

'Intending barristers need a qualifying law degree, for example a Bachelor of Laws, also known as an LLB. However, many students graduate in a non-law subject and undertake a one year conversion course known as a postgraduate Diploma in Law, or GDL. The student barrister then applies to join one of the Inns of Court to study for the Bar Vocational Course, or BVC. It's also mandatory for students to keep terms, which means dining at their Inn a fixed number of times, before they can be called to the Bar, that is, qualify as a barrister. Then the new barrister faces intense competition to obtain a funded pupillage in chambers for twelve months in order to get practical training. All applicants are advised first to do a mini-pupillage of one or two weeks to get some insight into what being a pupil is like. Pupillage, known as devilling in Scotland, is divided into two parts - a non-practising six months when pupils shadow their pupil master, an experienced barrister, by observing professional activities, and the second, practising six months when pupils, with their supervisor's permission, can undertake to supply legal services and exercise rights of audience, in other words, speak in court. To gain a Full Qualification Certificate pupils must learn the rules of conduct and etiquette at the Bar, learn to prepare and present a case competently, learn to draft pleadings and opinions, have advocacy training, and pass a forensic accountancy course which covers the use of financial information in litigation. If successful at the end of the twelve months, the qualified barrister applies for a tenancy in chambers. When a junior barrister has practiced at the Bar for 10 to 15 years, it's possible to apply to become a senior barrister, or Queen's Counsel (QC), whose work concentrates on court appearances, advocacy, and opinions.'

10.1 Match the two parts of the definitions. Look at A opposite to help you.

- | | |
|--|--|
| 1 Someone who works for his or herself is | a provide representation, |
| 2 If you speak on behalf of clients in court, you | b lay clients. |
| 3 Non-professional clients are known as | c self-employed / a sole trader, |
| 4 Barristers working solely for a company are called | d instructed, |
| 5 The governing authorities of barristers are | e in-house counsel, |
| 6 When a solicitor gives a barrister the details of a case, the barrister is | f practise at the Bar |
| 7 When you work as a barrister you | g the Bar Council and the Inns of Court. |

10.2 Complete the extracts from a trainee barrister describing her professional life. Look at A and B opposite to help you. There is more than one possibility for two of the answers.



I took a first degree in Modern History, then did the (1).....in law at City University, which was much harder. I then did the (2).....at the Inns of Court School of Law.

Most days I'd expect to be present in (3).....from about 8.45 am to 7.00 pm, working almost throughout in my (4).....'s room. During that time I (5).....his professional life completely.

I generally look at papers when they first come in. I'm expected to be able to suggest how the case might be approached. In a week I might draft a (6)....., prepare notes for a conference with clients, comment on draft witness statements, and research legal points.

Although all (7).....are for twelve months, if they think you have no prospect of finding a (8)..... in the chambers, after six months you would be told discreetly.

Chambers runs (9)..... training evenings to reduce the loss of opportunity to (10).....in court.

When I've practised for more than ten years, I'd be interested in being appointed as a (11)....., with a specialist area such as employment law.

Over to you

Explain the organisation of your profession as if you were speaking to a fellow legal practitioner.

For more information on barristers, go to the Bar Council: www.barcouncil.org.uk/.

UNITE 11 WORKING LIVES

A company commercial lawyer

Sophie Brettle is talking about her work at Melton Deans.

I'm a partner in a medium-sized regional law firm, working within the Company Commercial Department. I head up a team of eight, comprising six lawyers and two paralegals - legal researchers - undertaking projects work for Public Sector clients. Our main client is a Government Department. We're instructed by them to advise and act on Private Finance Initiative Projects, also known as the PFI. This involves negotiating with a number of other parties comprising the funders, the building contractors, and facilities management and ensuring that the client's aims and objectives are met and their best interests protected.

A significant proportion of my time is spent in all parties meetings. As these transactions are complex, and the meetings are attended by all sides and their legal advisers, I have to make sure comprehensive notes are taken by an assistant solicitor. Following a meeting, documents reflecting the terms agreed are prepared and circulated for approval. Within the practice, I'm a member of the Executive Committee and have responsibility for aspects of financial management within the department. I also deal with recruitment, training, and development within the department. During a working day as a fee earner, I have to combine my chargeable work



for clients with administrative duties.'

A legal secretary

An assistant solicitor is instructing Marie Lapotaire, the Commercial Department's legal secretary:

Solicitor: I've just sent you some sound files with the minutes on from yesterday's meeting. Is there any way you can type those up before anything else? I know you've got a substantial amount of work at the moment.

Marie: No problem. Do you want me to circulate them by email as soon as I've finished, get a hard copy and put it on the file?

Solicitor: Please. I'm going to be running between meetings for a large part of the day but if I get a minute, I'll have a quick look at the hard copy and mark it up with any changes. Don't wait for me to do that before getting the draft out - there are action points that the paralegals need to be getting on with.

Marie: Fine, I'll copy everyone in. Anything else? I've put all the documentation for Project Angel on your desk. I don't know if it's ready to go out yet?

Solicitor: I saw that, thanks. No, I need to make sure that the client is happy with the latest clauses the funder wants. Also, I think they may have negotiated more concessions so I'll have to get back to you on those.

Marie: OK. By the way, I think your out of office message is still on, although the date's wrong. Don't worry, I'll change it. Your calls are still coming through to my phone so I'll carry on taking messages.

11.1 Make word combinations from A opposite using words from the box. Then use appropriate word combinations to complete Sophie Brettle's sentences below.

fee	terms	interests	work	comprehensive	best
chargeable	notes	meeting	earner	agreed	all parties

1 I don't think we can accept that clause. It's not in the.....of the client.

2 Marie, can you go ahead and set up the next..... We need everyone to be there.

3 Will you check the.....match the notes taken from the meeting with the contractors and client?

4 We can't spend any more time on this. It's not.....

11.2 Find three expressions in A and B opposite which can be used in the combinations below to mean "a lot of."

.....
..... my time / my week / my workload
.....

11.3 Marie Lapotaire is talking about her working day. Replace the underlined words and phrases with alternative words and phrases from B opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.



In addition to typing up (1) recorded notes from meetings, (2) sending a copy to everyone by email, and (3) printing off emails, most days I'll be given various other tasks to carry out, such as document generation. If the solicitor (4) indicates changes on a draft text, I'll (5) word process them. I sometimes have to get addresses and contact details from the Internet and make appointments for meetings or conference calls. Obviously, I also take incoming calls when the fee earners aren't available and I let the caller know the solicitor will (6) call them back. I'll also (7) continue with any other tasks she's given me. Once a month I attend the secretarial committee as the representative for my department.

What is your function within your organisation? Talk about your responsibilities and a typical working day or week.

For information on the work of solicitors in specific law firms in the UK, go to: www.venables.co.uk/.

UNITE 12 JUDGES

Judicial appointments in England and Wales

Judicial Office	Court (see Unit 4)	Number
Lords of Appeal in Ordinary (also known as Law Lords)	House of Lords	12
Lord Justices of Appeal	Court of Appeal	37
High Court Judges	High Court of Justice	107
Circuit Judges	Crown Court and County Court	638
Recorders	Crown Court and County Court	1359
District Judges (Civil)	County Court	422
Deputy District Judges (Civil)	County Court	751
District Judges (also known as Stipendiary Magistrates)	Magistrates' Court	139
Deputy District Judges	Magistrates' Court	148

Note: Recorders generally hear less complex or serious cases than Circuit Judges and start by sitting in the Crown Court. After two years they might sit in the County Court. Number of judges listed in above table correct as of 27/11/06. See www.judiciary.gov.uk/.

An Act of Parliament lays down the mandatory requirements for most judicial offices. Candidates must have practised as a lawyer or judge for a specified time and must meet other statutory requirements for specific posts. The hierarchical structure of the courts informs the process of selection to the Judiciary. Experience gained as a judge in a lower court is one of the qualifications for appointment to a higher court. Senior appointments to the Court of Appeal and the High Court are made by the Queen following the recommendation of the Prime Minister, currently on the advice of the Lord Chancellor - a senior member of the government and head of the judicial system.

The training of judges

The Judicial Studies Board (JSB) is responsible for the training of judges, lay magistrates, and members of Tribunals in England and Wales. The JSB would normally organise the following for an appointee Recorder in the Crown Court: an induction course; visits to penal establishments, for example prison and young offender institutions; meetings with personnel from the Probation Service, which deals with criminals, often young offenders, who are not sent to prison unless they reoffend, but who are under the supervision of a probation officer. The appointee would experience a period of sitting in on the Bench - the judge's area of the Court - with a Circuit Judge. In his first week after appointment he would be supervised by a Circuit Judge. Practical guidelines for judges are set out in Bench Books.

Civil courts: sentencing and court orders

Judges in civil courts can fine, commit to imprisonment (normally between 28 days and six months) or give a suspended sentence - where imprisonment does not take place unless the offender commits another offence. An applicant can seek an injunction - an order - against a respondent. The court may grant an interim injunction, that is, a temporary one, to stop the defendant from doing something before the hearing of the application. The judge can grant or refuse an injunction against a legal person to do or not do specified acts. The judge can, alternatively, require an undertaking, or promise, from the relevant party at the hearing proceedings.

12.1 Match the judicial offices in the box with the required qualifications below (1-4). Bear in mind the hierarchical structure of the courts. Look at A opposite to help you.

Lord of Appeal in Ordinary
Circuit Judge

Lord Justice of Appeal
District Judge (Magistrates' Court)

- 1 must have been qualified as a lawyer for at least seven years
- 2 must have been qualified for ten years, although three years' service as a full-time District Judge is allowed
- 3 must have been qualified as a lawyer for at least 15 years and is usually drawn from judges in the Courts of Appeal in England, Wales, and Northern Ireland, and in the Court of Session in Scotland
- 4 the statutory qualification is at least ten years in the High Court as a lawyer and, in practice, to be a High Court Judge

12.2 Complete the definitions. Look at A and B opposite to help you.

- 1- collective word for a group of judges and the name of the place where a judge sits in court
- 2- formal collective word for all the judges in the legal system
- 3- the specific post of a judge (for example, a High Court Judge)
- 4- place where people are held as a punishment when convicted of an offence.

12.3 Complete the sentences. Look at C opposite to help you.

- 1 Judges may make a first sentence for a non-serious offence a.....sentence.
- 2 The period of.....awarded by the judge should reflect the number and seriousness of the offences and their context.
- 3 A person who seeks an injunction is generally described as the.....
- 4 Instead of ordering a specific act, the court can seek the agreement of the relevant party to an.....to do the specified act.
- 5 An applicant may seek an.....to prevent a breach of contract.
- 6 If an applicant claims that the defendant is about to do something that infringes his/her rights before there can be a hearing (for example, to dispose of disputed property), the judge may grant an.....



Over to you

Describe the appointment and training of judges in your legal system. What powers of sentencing do judges have?

For more information on judges in the UK, go to: www.jsboard.co.uk/ www.dca.gov.uk/judicial/ and www.judiciary.gov.uk/.

UNITE 13 A LAW FIRM'S STRUCTURE AND PRACTICE

A law firm's structure and practice

Anchor Robbins, a large UK law firm, is submitting a tender for the provision of legal services to a local authority. In the first section of the tender document, the firm's structure and breadth of expertise is set out. Typically, descriptions of law firms' practice areas and expertise are in strongly positive language.

1 ANCHOR ROBBINS' RESOURCES AND EXPERTISE

1.1 General Details

<p>Personnel 282 personnel including 38 partners, 62 solicitors, 12 other lawyers, 14 legal executives, and 10 trainee solicitors, in addition to clerical, secretarial, and support staff.</p> <p>Structure We have three specialist areas: Commercial Property incorporates Public Sector, Construction, Planning and Environment. Company Commercial comprises Banking, Project Finance, Procurement, Employment and Pensions. Private Client offers Wills, Trusts and Probate, Tax Planning, and Residential Conveyancing. Dedicated specialist dispute resolution services are provided within each of the respective areas.</p> <p>Services We provide all the services you require. The head of our Projects team, Jan Stephenson, will lead the team providing legal services to you.</p> <p>1.2 Professional Indemnity Insurance We have provided full details of our current professional indemnity cover in our Pre-Qualification Questionnaire (PPQ). The terms of our cover are reviewed annually.</p> <p>1.3 Resources and Specialist Knowledge <i>Expertise and Structure:</i> Each of our departments contains specialist partner-led teams ensuring that we are able to resource high quality specialist knowledge and provide a comprehensive service to our clients. Further details of our Projects Team are set out at (3) below.</p>	<p><i>Commitment:</i> We are committed to anticipating our clients' needs and meeting them. Fundamental to this is the commitment of each team leader to understand thoroughly the priorities and business of our clients.</p> <p><i>Information technology:</i> We have made significant investment in our information technology systems in order to give the support and resources that our lawyers need. Our systems enable us to transfer know-how into a searchable database using links to cases and legislation, to monitor workloads, measure outputs, and plan ahead more effectively. The stability and security of our system is of particular importance to our clients and to us.</p> <p><i>Projects at Anchor Robbins:</i> The Projects team is headed up by Jan Stephenson and brings together specialists in infrastructure, construction, energy, planning, and public sector. The team are able to draw on relevant expertise from elsewhere in the firm when required and have exclusive access to a dedicated Professional Support Lawyer. The team have had extensive experience in handling PFI (Private Finance Initiative) since its very beginning and have been involved in a considerable range of accommodation projects including schools, hospitals, courts, and light rail projects.</p>
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Note: legal executives are qualified to assist solicitors but do not practise as solicitors, procurement - procedures, which may include use of a PPQ, by which public authorities award contracts for the provision of public works, supplies, and services in accordance with rules and regulations. Private Finance Initiative (PFI) - collaboration between government and private sector companies to fund and develop major public infrastructure such as roads, schools, and hospitals.

13.1 Complete the sentences with verbs from A opposite. Pay attention to the grammatical context. There is more than one possibility for all of the answers.

- 1 The company.....a wide range of services to international corporate clients.
- 2 Rattigan's employment practice.....six partners, 14 associates and 11 other legal and support staff.
- 3 Our outstanding commercial litigation practice area.....insurance and reinsurance litigation, securities and commodities disputes, partnership law, bankruptcy, and business torts.
- 4 Our finance department.....lawyers who excel in cross-border transactions.
- 5 Our experienced mergers and acquisitions team is..... Miguel Ortiz, who graduated in law at the University Complutense in Madrid and gained his LLM from ESADE.

1 3.2 Find verbs in A opposite that can be used to make word combinations with the phrases in the box. More than one verb may sometimes be possible. Then use appropriate word combinations to complete the sentences below. Pay attention to the grammatical context.

relevant expertise	exclusive access	extensive experience
a comprehensive service	significant investment	specialist knowledge

- 1 The litigation team..... in handling complex international disputes.
- 2 Our firm has..... in knowledge management systems, enabling staff to access an extensive database.
- 3 Clients are able to..... from dedicated teams in each practice area.
- 4 Due to the expertise of our staff we can..... in commercial litigation in a number of jurisdictions.
- 5 We can..... to domestic and multinational clients, with particular expertise in corporate and finance.

1 3.3 Complete the definitions. Look at A opposite to help you.

- 1-staff
- 2 - put in a formal proposal to win a contract with an estimate of the cost
- 3..... - insurance to protect your business against compensation sought by a client for harm or damage caused by mistake or negligence by an employee of your firm
- 4- move specialist knowledge
- 5- evaluate work done

Describe the structure and practice of a law firm you are familiar with or would like to work for.
 For information on legal executives, go to: www.illex.org.uk/; for information on European Public Procurement Directives, go to: www.eel.nl/ and carry out a search.

UNITE 14 CLIENT CARE PROCEDURES

Explaining client care procedures

Greg Spenser is a South African lawyer taking part in an exchange programme with Bridgeman Banks, a sister firm in London. During his first week, John

Coleman, the partner supervising him, is explaining the firm's client care procedures. 'One of the first things you'll need to do on any new matter is a client care letter. As most of the clients you will be acting for will be existing corporate clients, you won't need to carry out any identification procedures, although you should be aware of them. They're all set out in the office manual, in the risk management section.



A client care letter should refer to the matter on which you are instructed to act and should set out the basic aims and the agreed target timescale, such as there is. In the letter you must inform the client of who will be undertaking work for them and give the name of the person with overall responsibility for conduct of the matter. In fact, the letters are normally prepared as if they're from that person. We also inform clients that we have a partner who they can contact in the event that they have a complaint which they feel cannot be dealt with by the person supervising the file, although obviously we hope that that eventuality will not arise.

The letter should provide a fee estimate for work by staff and should also give the details of any anticipated disbursements, such as court fees, search fees, and other costs. If it isn't possible to give a quote at the outset, or start, of a matter you may, for example, suggest that you obtain their approval before undertaking any work in excess of an agreed limit. You must agree to provide an estimate at the earliest opportunity and in the meantime let the client know what costs are being incurred.

There are precedent letters in the department manual that you can access via the Intranet. I would refer to those rather than the hard copies, as they're updated regularly on the system. Your secretary should be familiar with the letters so you need only give her the information specific to this matter in order for her to prepare the first draft.

As a firm we're Lexcel compliant. Basically this means we conform to a standard approved by Lexcel and have incorporated their requirements into our systems, including those for file management. As well as giving quality assurance to our clients, our accreditation does make a difference to our indemnity insurance premium. As far as the insurers are concerned, the risk of a claim is lessened by the fact that we can demonstrate to an external auditor that we have effective risk management procedures in place.'

Note: identification procedures - regulations controlling identity checks on clients (see Unit 15) Lexcel compliant - indicates that a firm has the practice management quality mark of the Law Society (England and Wales). To find out about Lexcel, go to: www.lawsociety.org.uk/professional/practicesupport/lexcel.law

14.1 Complete the definitions. Look at A opposite to help you. There is more than one possibility for one of the answers.

- 1 - a handbook of instructions in your place of work
- 2 - models of standard correspondence
- 3 - costs to be charged to the client
- 4 - fee for protection against compensation awards for damages
- 5 - outside assessor who checks procedures comply with standards and regulations

14.2 Match the highlighted clauses in this extract from a client care precedent letter (a-f) with the instructions for writing a client care precedent letter given by the supervising partner in A opposite. The first one has been done for you.

Dear []

[Ref:]

(a) I refer to [] when you confirmed our instructions to act for you in this matter. I will be pleased to do so on your behalf.

1 INSTRUCTIONS

1.1 Your instructions are [to.....].

1.2 This will involve: -

[list issues, advice, action to be taken as set out in the file note on client]

2 TIMESCALE

2.1 (b) The likely timescale of this transaction is [].

3 PERSONNEL

3.1 (c) I will deal with this matter personally and I am a solicitor with the firm.

(d) John Coleman will be the partner with overall responsibility for supervision of the matter.

If for any reason I am unavailable please ask for my secretary, Aida Munoz.

4 COSTS

4.1 (e) In a matter such as this it is difficult to estimate the probable total charges as this depends on a range of factors beyond our control such as the conduct of the other side. We have therefore agreed that

I will monitor our charges and when costs reach Θ [.....] plus VAT and disbursements no further work will be done without your prior consent.

® As soon as it becomes practicable to do so, I will provide you with an estimate as to the likely total charges and expenses.

In a client care letter you should.....

(a)refer to the matter on which you are instructed to act

14.3 There are many ways of using 'as' in English and it occurs frequently in legal texts. It can function as a preposition, as a conjunction, and it can introduce a subordinate clause. Match the underlined examples from A opposite (1-5) with the appropriate synonym for its use in the text (a-f).

- | | |
|---|---------------------------|
| 1 <u>As</u> most of the clients you will be acting for will be . | a in addition to |
| 2 ... letters are normally prepared <u>as if</u> they're from ... | b from the perspective of |
| 3 <u>As</u> a firm we're Lexcel compliant ... | c because |
| 4 <u>As well as</u> giving quality assurance to our clients ... | d on the basis that |
| 5 ... <u>as far as</u> the insurers <u>are concerned</u> , the risk ... | e in the context of being |

Talk or write about the client care procedures you are familiar with as if to a colleague working for another firm. Describe your experience of professional quality assurance schemes.

UNITE 15 MONEY LAUNDERING PROCEDURES

Money laundering procedures

Statutory Instruments 2003 No.3075 The Money Laundering Regulations 2003

PART II

OBLIGATIONS ON PERSONS WHO CARRY ON RELEVANT BUSINESS Systems and training etc. to prevent money laundering

3. - (1) Every person must in the course of relevant business carried on by him in the United Kingdom -

(a) comply with the requirements of regulations 4 (identification procedures), 6 (record keeping procedures) and 7 (internal reporting procedures);

(b) establish such other procedures of internal control and communication as may be appropriate for the purposes of forestalling and preventing money laundering; and

(c) take appropriate measures so that relevant employees are -

(i) made aware of the provisions of these Regulations, Part 7 of the Proceeds of Crime Act 2002 (money laundering) and sections 18 and 21A of the Terrorism Act 2000[24]; and

(ii) given training in how to recognise and deal with transactions which may be related to money laundering.

(2) A person who contravenes this regulation is guilty of an offence and liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, to a fine or to both;

(b) on summary conviction, to a fine not exceeding the statutory minimum.

(5) In proceedings against any person for an offence under this regulation, it is a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Identification procedures

4. — (1) In this regulation and in regulations 5 to 7 -

(a) "A" means a person who carries on relevant business in the United Kingdom; and

(b) "B" means an applicant for business.

(2) This regulation applies if-

(a) A and B form, or agree to form, a business relationship;

(b) in respect of any one-off transaction -

(i) A knows or suspects that the transaction involves money laundering; or

(ii) payment of 15,000 euro or more is to be made by or to B; or

(c) in respect of two or more one-off transactions, it appears to A (whether at the outset or subsequently) that the transactions are linked and involve, in total, the payment of 15,000 euro or more by or to B.

(3) A must maintain identification procedures which -

(a) require that as soon as is reasonably practicable after contact is first made between A and B -

(i) B must produce satisfactory evidence of his identity; or

(ii) such measures specified in the procedures must be taken in order to produce satisfactory evidence of B's identity;

(b) take into account the greater potential for money laundering which arises when B is not physically present when being identified;

(c) require that where satisfactory evidence of identity is not obtained, the business relationship or one-off transaction must not proceed any further; and

(d) require that where B acts or appears to act for another person, reasonable measures must be taken for the purpose of establishing the identity of that person.

Note: Headings in the above document appear in bold in the original statutory instrument.

1 5.1 Complete the definitions. Look at A opposite to help you.

- 1- process by which finance obtained through crime is used in such a way that it appears to originate from a legitimate source
- 2- a business activity not carried out in the course of an existing business relationship
- 3- anticipating and hindering
- 4 - as quickly as possible
- 5 - took every care and carried out required procedures
- 6- confidential information made public

1 5.2 Replace the underlined words and phrases in the memo below with alternative words and phrases from A opposite. Pay attention to the grammatical context.

BRIDGEMAN BANKS - INTERNAL MEMORANDUM

To: All Partners and Fee Earners

Date: 23 April 2007

From: Peter O'Donnell

Subject: Money laundering procedures

You will no doubt be aware of the serious implications for legal firms and their employees of failing to (1) observe the (2) Profits from Crime Act and the Money Laundering Regulations. Given that it is possible to become unintentionally involved in a money laundering transaction in the course of, for example, a property purchase, or in a situation where you (3) carry out activities on behalf of someone else, the firm is anxious to put in place systems and to provide training to ensure that there are effective procedures so that employees do not risk (4) breaking the regulation. The penalties following criminal prosecution and conviction may comprise imprisonment and a (5) money penalty. We need to be able to demonstrate that we (6) did what was possible and (7) carried out all formal requirements to avoid committing an offence. The main offences under the current legislation are:

- ▶ Not (8) hindering or preventing a money laundering arrangement
- ▶ Not making a (9) statement if you know or (10) guess money laundering
- ▶ Prejudicing an investigation, for example by tipping off a suspect

Evidence of identity

As you know, the precedent form of the Client Care letter for new clients and the firm's standard terms of business contain information to make clients (11) conscious of our obligations under the legislation. An important part of our procedures is the requirement to produce (12) sufficient proof of identity from new clients as soon as is reasonably practicable. Obviously there are different requirements (for example, appearance in person, passport, driving licence, etc.) for different types of client and the relevant guidance is set out in the Office Manual.

What to do if you are suspicious - internal reporting procedures

I am the firm's (13) named Money Laundering Reporting Officer. If you have any suspicions at all, either about a particular client or any aspect of a (14) business activity, please feel free to contact me. If I think we need to refer the matter to the National Criminal Intelligence Service, it is extremely unlikely we will be able to inform the client - this can amount to tipping off. If NCIS decides to investigate, we will have to terminate our retainer with the client.

Over to you

Explain how money laundering is dealt with in a jurisdiction you are familiar with, as if to a foreign colleague.

To see the Money Laundering Regulations 2003 and Proceeds of Crime Act 2002, go to:
www.opsi.gov.uk/acts.htm

UNITE 16 CLIENT CORRESPONDENCE

Client correspondence

Conciseness can be a feature of legal correspondence in English. This is partly achieved by using words or phrases to refer to segments of earlier text (substitution) or by not completing a phrase and omitting words (ellipsis), assuming the reader can recover the meaning from the preceding text. Another feature of legal text is the use of capitals mid-sentence for key terms which may be defined or interpreted elsewhere in the text or in another document. The letter below is from a sequence of correspondence between a solicitor and his client. It concerns the final stages of the purchase of a company.

JENKINS WATSON

Strictly Private and Confidential

Mr G Stobbard

Managing Director

Lincoln James Limited

4 India Street

Winchester

Dear Gordon

Project Ivory

aep/2122-004

Encl/.

23 February 2007

Target Company - Franklin Red Limited (FR Ltd)

Following our meeting on Monday **please find enclosed** the further **amended** Heads of Terms relating to **the above** for your approval.

As previously discussed, you will let me have further instructions **in relation to** conditions to which Completion will be subject. You will see that I have left **this aspect** as originally drafted **for the time being**.

I should be grateful if you would read **the enclosed** carefully and confirm that you are happy with **the same**, or alternatively let me know if any **further** changes are required. I will be engaged in meetings on Thursday morning but am in the office **for the rest of the week apart from that**.

I look forward to hearing from you.

Yours sincerely

Alex Paine

Note: Encl/ - an abbreviation for 'Enclosure', used to indicate that other documents are included

Heads of Terms - document setting out the principal agreement pre-contract

completion - financial closure of the deal; when it is completed

Standard phrases for starting and ending letters and emails

<i>Stating the reason for writing</i> I am writing to inform/advise you that ... Please find enclosed ... / I am pleased to enclose .. We act for / on behalf of ... We are instructed by the above-named client in relation to ...	<i>Offering further assistance</i> Please let me know if you have any particular concerns..... Please let me know if we can be of further assistance ... If you have any questions, please do not hesitate to give me a call...
<i>Referring to previous contact</i> Further to our recent correspondence ... I write further to my letter / our meeting of ... As previously discussed ...	<i>Referring to the next step</i> I should/would be grateful if you could ... Ending I look forward to hearing from you shortly /

Following our meeting on ...	as soon as possible.
Thank you for your letter/email of ...	I look forward to our meeting / your reply.

16.1 Match the words and phrases from the letter in A opposite (1-6) with the synonyms (a-f).

- | | |
|----------------------|----------------------------|
| 1 apart from | a for now |
| 2 for the rest of | b changed |
| 3 enclosed | c besides |
| 4 further | d for the remainder of |
| 5 for the time being | e additional |
| 6 amended | f together with the letter |

16.2 Decide which of the following phrases underlined in A opposite is an example of substitution and which is an example of ellipsis. In the case of substitution, make a note of the phrase in the letter which it refers back to. In the case of ellipsis, make a note of the missing word(s). The first one has been done for you.

- 1 ... for the rest of the week apart from that
Substitution of 'that' for Thursday morning'
- 2 ... relating to the above ...
- 3 ... I have left this aspect as originally drafted ...
- 4 ... read the enclosed carefully ...
- 5 ... and confirm that you are happy with the same, or ...

16.3 Read A opposite then say if these statements are true or false. Find reasons for your answers in the letter.

- 1 The Heads of Terms have been changed several times.
- 2 Alex Paine has made no changes to the conditions for Completion.
- 3 Alex Paine is not expecting his client to give him more instructions.
- 4 Alex Paine does not expect his client to reply if he is satisfied with the enclosed document.

16.4 Complete this letter from Alex Paine to his client with appropriate phrases from B opposite. There is more than one possibility for three of the answers.

6 April 2007

Dear Gordon

Project Ivory

Target Company - Franklin Red Limited (FR Ltd)

(1).....(state the reason for writing)
the Agreement in respect of the above which has now been agreed by FR Ltd's solicitors. This has not changed since the last version sent to you by email. As
(2).....{refer to previous contact}
please note in particular details concerning employees in Schedule 5.1 don't think there are any surprises there but (3).....(offer further assistance).
If you are happy with the same, (4).....(refer to the next step) arrange for the Agreement to be executed on behalf of Lincoln James Ltd where indicated. Please bring the executed Agreement along to our meeting on Monday 11 th. (5).....(ending phrase).

Kind regards,

Alex Paine

Look for examples of substitution and ellipsis in correspondence and practise decoding them. Make a note of standard phrases you notice in correspondence from English-speaking colleagues or clients.

UNITE 17 EXPLANATIONS AND CLARIFICATION

Explaining a procedure

When you list the different stages of a procedure, your listeners' comprehension of the information that you are presenting will be better if you use phrases to structure and signpost what you say. For example:

First ..., then ..., next ..., after that...., finally ...

Other phrases you might use include:

The next thing/step is to....., once that's been done...., before that happens you/we....., the last step will be to ...

Approximating and comparing

When talking to or writing to a client or colleague from another legal system, you may need to explain or describe features of your system which are different or broadly similar. The phrases below can be used to compare aspects of your system. It may be appropriate to use key terms in your own language and then offer a comparative explanation, for example:

In Scotland 'delict' arises from the law of obligations. This is comparable to 'tort' in England.

You have X, that's what we could call Y. We don't have X, instead we ... We have X but it differs

from (your) Y in the following way ... There is no comparable procedure approach institution regulation remedy

In Germany this is referred to known as similar to.... like ...
in our/your system

This is equivalent to....

Rephrasing and clarifying

When you are explaining something which is new or complex, it is important to check that your listeners understand what may be new terms or concepts. You can help their comprehension by rephrasing your words and help your own comprehension of what they say by rephrasing or summarising their words. You can use the phrases below to signal that you are rephrasing or asking for clarification.

17.1 Explain the different stages in getting proprietary rights for an invention as if to a client. Look at A opposite and use the information below to help you. The first part of the explanation has been done for you.

- consider submitting an application to the patent office in the research phase
- don't publicly disclose the invention because this might be interpreted as prior publication
- think about using the services of a registered patent agent to help prepare the specification (the legal document) required by the patent office
- complete the form 'Request for grant of patent'
- take or send the documents to the patent office
- the patent office decides whether the invention fulfils specific conditions before it grants a patent

You wanted me to give you an outline of the stages in getting proprietary rights. First, consider submitting an application to the patent office in the research phase.....

.....
.....
.....

1 7.2 Complete the sentences with words and phrases from B opposite. Use the index to look up any unfamiliar terms. There is more than one possibility for four of the answers.

- 1 A bona fide act is.....an act in good faith.
- 2 The jury system in Scotland.....that in England because there are 15 jurors on a panel in Scotland compared with 12 in England.
- 3 In the English legal profession, those with rights of audience in all the courts are barristers; in Scotland they are.....advocates.
- 4 ALADI (Latin American Integration Association) is.....APEC (Asia Pacific Economic Cooperation) because it shares the aim of strengthening the trading system between its members.
- 5 In Scotland, juries may reach one of three verdicts: guilty, not guilty or not proven. ThisEngland where only two verdicts are possible: guilty or not guilty.

1 7.3 Complete the sentences with words and phrases from C opposite. There is more than one possibility for two of the answers.

- 1 The clause excludes abnormal weather conditions,, weather which is significantly different from previous records, like a hurricane.
- 2 Towards the end of the agreement there are usually the boiler-plate clauses,, clauses such as what the applicable law will be and the way in which notices have to be served.
- 3 During negotiations, arguments can often arise in connection with when a party has to perform an obligation....., disputes can happen over the interpretation of terms like: 'immediately', 'forthwith' and 'as soon as possible'.
- 4 You referred to the term 'forthwith'.....you're saying the term is ambiguous?

Use appropriate phrases from A to talk about a complicated legal procedure you have to manage in the course of your work. Or, compare an aspect of your country's legal system or law with an equivalent in the UK or the USA or another legal system.

UNITE 18 LEGALESE

Legal language

Legal writing in English has developed over hundreds of years and is characterised by specific features, some of which can make it difficult for the non-lawyer to understand. Characteristics of legal writing include: using Latin terms (see text B below); using technical terms ('subsidiarity' - see Unit 8); using old-fashioned words not much in general use (see text C below); using pairs of words with a reciprocal relationship ('lessor'/'lessee' - see Unit 39); using legal jargon ('without prejudice to') including the use of pairs of words ('terms and conditions'), or triplets ('build, erect or construct'); having special meanings for words in ordinary use ('the judge determined the facts of the case', where 'determined' means 'decided'); using vague words ('provide a sufficient service'); using long sentences with little punctuation; inverting word order ('title absolute'); using capital letters to signal important or defined terms ('the terms of the Lease ...') avoiding personal pronouns ('you', 'we', 'I'); the specific use of the modal verb 'shall' to impose an obligation or duty on someone ('The tenant shall not sub-let the whole or part of the premises.');

There is a movement to draft legal text in standard, modern, 'plain' English but any change will be slow.

Note: Some legal drafters argue that the use of 'shall' in a directory sense is to be avoided because of confusion. Note also the general English use of 'shall' to refer to future intentions ('I shall write to him'), although this use is increasingly uncommon.

Latin terms

There are many Latin terms in written English legal text, although recent reforms in the English justice system have encouraged the use of English rather than Latin. Some Latin terms are used so frequently that they are in general English use (e.g., *ad hoc*, *bona fide*, *pro rata*, etc.). It is useful to be able to recognise their meaning and a dictionary or online glossary will help. Forms of pronunciation vary.

ad hoc - for this purpose

affidavit - witnessed, signed statement

bona fide - in good faith

caveat - warning

de facto - in fact

de jure - by right

et cetera (etc.) - and so on

exempli gratia (e.g.) - for example

ex parte (ex p.) - by a party without notice

id est (i.e.) - that is

in camera - hearing a case in private

in curia - in open court

in situ - in its original situation

inter alia - among other things

ipso facto - by the fact

per pro - on behalf of another

per se - by itself

prima facie - at first sight

pro rata - in proportion

quasi - as if it were

sub judice - in the course of trial

ultra vires - beyond the power

delicet (viz) - namely

Older words and modern equivalents

A number of linking terms are used in older written legal texts (case reports, legislation, court documentation, contracts, etc.) to refer to other parts of the same text, to different legal documents, or to related contexts.

the aforementioned / the foregoing - set out above / written above

the undermentioned - set out below / written below

hereafter - after this

hereby - in this way / by this

herein - in this (document)

hereof - of this

hereto - to this

herewith - with this

notwithstanding - despite

thereafter - after that

thereby - in that way / by that

therein - in that (document)

thereof - of that

thereto - to that

therewith - with that

18.1 Underline the characteristic features of legal writing mentioned in A opposite (for example, using old words) in the following consumer contract terms (1-3). Then complete the revised versions in plain terms (a-c) with appropriate words (or forms of words) from the original terms (1-3). Pay attention to the grammatical context.

1. This Agreement and the benefits and advantages herein contained are personal to each Member and shall not be sold, assigned or transferred by the Member.

a)is not transferable.

2 Lessor shall not be liable for loss of or damage to any property left, stored, or transported by Hirer or any other person in or upon Vehicle either before or after the return thereof to Lessor. Hirer hereby agrees to hold Lessor harmless from, and indemnify Lessor against all claims based on or arising out of such loss or damage unless caused by the negligence of Lessor.

b) We are only..... for.....or damage to.....left in theif the loss or damage.....from our.....

3 Title to property in the goods shall remain vested in the Company (notwithstanding the delivery of the same to the Customer) until the price of the Goods comprised in the contract and all other money due from the Customer to the Company on any other account has been paid in full.

c) We shall retain ownership of the.....until you have finishedfor them.

18.2 Match the sentences containing Latin terms (1-7) with the sentences which have similar meaning (a-g). Look at B opposite to help you.

1 There is a prima facie case to answer.	a. They acted in a way which was beyond their legitimate powers.
2 They have entered a caveat.	b. An application for an injunction was made to the court by one party and no notice was given to the other party.
3 Their action was ultra vires.	c. The case was heard in private, with no members of the public present.
4 The newspapers cannot report details of the case because it is sub judice.	d. They have warned us they have an interest in the case, so they will need notice before we take any further steps.
5 An ex parte application was lodged at the court.	e. A committee was set up for the particular purpose of investigating the issue.
6 The court sat in camera.	f. The action should proceed because one side has shown there seems to be sufficient evidence.
7 An ad hoc committee was formed.	g. The case cannot be mentioned in the media if it is likely to prejudice court proceedings.

What are the advantages and disadvantages of drafting legal text in 'plain' language?
 For information on the plain English movement, go to: www.plainenglish.co.uk/law.htm

UNITE 19 ORGANISATIONS

Sole trader

Jamie Anderson, a partner in the commercial department of a law firm, is commenting on the choices for different trading vehicles for business. 'A client wanting to operate a business for profit might select from a number of different trading entities. Each has different legal characteristics and is subject to different rules and regulations. The simplest and commonest form of business structure is a sole trader. This generally suits a relatively small enterprise, such as an independent software developer, a hairdresser, or a small shop. It's headed by a single individual and it differs from a company in that the ownership and management is usually vested in the same person, who is personally responsible for all the debts of the business, and may thus risk becoming bankrupt. Finances are confidential and formalities are few, aside from Value Added Tax, or VAT, regulations.'

Partnerships

'A common form of structure for certain kinds of business, for example accountants, solicitors, and architects, is a partnership. This needs to have at least two members and normally a maximum of twenty. There is an exemption on size for some types of firm, such as solicitors and accountants. All the partners may be jointly and severally liable for all the debts of the business. The relationship between the partners is usually drafted in the Partnership Agreement. This can set out the duration of the partnership, its name and business, how profits, losses, and running costs are to be shared, how much capital each partner is to contribute, what rules will apply to the capital, what grounds will lead to a partner being expelled from the company, what restrictions are imposed on partners, and so on. It's also possible to have a Limited Liability Partnership, or LLP, which has a legal identity separate from its members. In this sense it resembles a limited company (see text C). It's possible for all the partners except one, known as the general partner, to be a limited partner. A sleeping partner may have a share in the business but doesn't work in it. An individual is therefore able to invest capital in an LLP without risking any further liability. LLPs must be registered with the Registrar of Companies.'

Limited Companies

'A Private Limited Company (Ltd) is a separate legal entity which can sue, and be sued, in its own right. The Company is identified by its registered number, which will remain the same irrespective of any changes of name. A business can start life as a limited company and this may be particularly appropriate where high-risk projects are involved. In some instances, directors will be asked to guarantee the obligations of a company, for example by giving security over personal assets to guarantee company borrowing. This is particularly common in the case of new companies who are not able to demonstrate a history of profitable trading. A Public Limited Company, or PLC, is differentiated from a Private Limited Company in that the shares can be sold to the general public via the stock market to raise share capital. It's mandatory for a PLC to have at least two shareholders, two directors, and a professionally qualified Company Secretary. The minimum authorised share capital is £50,000 and 25% must be paid up. Before the company can trade or borrow money, a Trading Certificate has to be obtained from the Registrar of Companies (see Unit 20).'

19.1 Match the two parts of the sentences then replace the underlined words and phrases with alternative words and phrases from A and B opposite. There is more than one possibility for one of the underlined phrases.

1 Choosing an appropriate business medium depends on	a. the starting date and length of the partnership.
2 An individual's business will cease to trade if	b. for the firm's debts, while limited partners have restricted liability.
3 A small enterprise where one person bears the responsibility and takes the profits	c. set out in the deeds (formal documents) of the partnership.
4 In an ordinary partnership, all the partners are	d. her being forced to leave the partnership.
5 In a Limited Partnership, a specified partner bears the risk	e. because of freedom from the normal provision under the law.
6 Partners need to decide	f. responsible collectively and individually for the financial losses of the business.
7 Details such as the division of profits and losses may be	g. a court declares the businessman is incapable of paying his debts.
8 Accountancy firms may have more than twenty members	h. may be run by a single business person.
9 Misconduct by a partner might lead to	i. a number of factors, such as the size and type of business and the need to limit liability.

19.2 Make word combinations from C opposite using words from the box. Then use appropriate word combinations to answer the questions below.

Registrar of	Public	authorised capital	over personal assets	minimum
raise	guarantee	Companies	security	share capital
the obligations	entity	legal	Limited Company	

- 1 In a private limited company, what guarantee may a director have to provide in order to borrow capital?
- 2 What type of business organisation must have $\pounds 12,500$ of shares paid up?
- 3 Which official keeps a record of all incorporated companies, the details of their directors and their financial states?
- 4 It is mandatory for a PLC to have 25% of what paid up?
- 5 What is the purpose of a PLC selling shares to the public?



A sole trader



A partnership

What information would you want from a client wanting to start up a small profit-making business? What advice would you offer your client?
 For more information on UK company registration, go to: www.companieshouse.gov.uk/.

UNITE 20 FORMATION OF A COMPANY

Incorporation

Jamie Anderson, a partner in the commercial department of a law firm, is discussing the formation of a company in the UK with an overseas client.

'The regulations for incorporation, that is, forming a company, are set out in the Companies Act 1985. There are a number of steps to be followed in this procedure. We offer this service to clients, as do accountants and other private sector formation, or registration, agents. Firstly, it's necessary to choose a name for the company which is legally acceptable. The name to be registered isn't necessarily the same as the trading name. The application for registration will be rejected if the name can't be distinguished easily from a company which already exists as a registered company. The use of certain words, for example 'British', 'International' and 'European', may require prior approval before they can be used in a company name. Form 10, which gives the names of the directors and Company Secretary (see Unit 23), and form 12, are submitted to the Registrar of Companies at Companies House in the respective jurisdiction¹. On completion of registration, the new company will be given a company number, also known as a registered number, which remains constant throughout its life, and Companies House will issue a Certificate of Incorporation. In fact, it's possible to begin trading as a company by purchasing a shelf company, which is already registered, and having its shares transferred. This is a route chosen by clients where speed is a prerequisite.

A company must have an office in the jurisdiction at which it can be served with any legal process. The statutory books, or official company registers, must also be kept there and be available for inspection. Details of any registered company - its registered office, company number, accounting reference date, date of its financial year end, and history of previous names - can be found free of charge at Companies House.'

'For companies registered in England or Wales - Companies House in Cardiff. For companies registered in Scotland - Companies House in Edinburgh.

Memorandum and Articles of Association

'When a company is incorporated, it must adopt Memorandum and Articles of Association, also known as the 'Mem and Arts'. The Memorandum sets out the Company's objects, or purposes, and it's important to ensure that these properly reflect the company's intentions, for example the ability to mortgage company property for the purpose of raising finance. The Articles set out the relationship between the company and its shareholders. The requirements for directors' and shareholders' meetings are also set out here, as are restrictions on share transfer and allotment of new shares, and regulations concerning directors' powers and duties. Most companies are limited companies with the liability of members limited to the nominal value of the shares they hold or, less commonly, the amount they guarantee to contribute to the company's liability on liquidation - if the company is closed and its assets sold. A company must have a stated number of shares issued to properly identified shareholders. Any company will have a maximum amount of share capital which can be issued, known as the authorised share capital. A company need not issue all its authorised share capital.'

BrE: Articles of Association; AmE: Bylaws

BrE: Memorandum of Articles of Association; AmE: Articles of Incorporation

Note: For more information about shares, see Unit 21.

20.1 Jamie's client has sent an email asking more about shelf companies. Complete Jamie's reply. Look at A opposite to help you. There is more than one possibility for one of the answers.

Dear Michael,

You enquired about shelf companies. These are companies which are already registered at Companies House - often with a name which is linked to the (1)....., for example 'XY 1000' where XY is the initials of the solicitor's firm. The shares of the company are (2).....to the purchaser, who normally urgently requires a (3).....The (4).....is usually changed and a new Board of Directors and a (5).....are appointed to replace the initial Board and Secretary, who resign on transfer. Such companies usually have standard Articles of Association. The purchaser acquires the Certificate of (6).....

20.2 Jamie shows his client a sample Memorandum. Replace the underlined words and phrases with appropriate legal terms from A and B opposite.

No. of Company SC125543
The Companies Act 1985

PRIVATE COMPANY (1) RESTRICTED BY SHARES
MEMORANDUM AND (2) REGULATIONS OF ASSOCIATION
LANCELOT LIMITED

(Incorporated the 29th day of May 2002)

Arthur Evans Ltd, Registration Agents, 1 Tantallon Street, Edinburgh

1. The Name of the Company is "LANCELOT LIMITED".

2. The Company's (3) location is to be situated in Scotland.

3. The Company's (4) purposes are:-

(a) To carry on for profit, directly or indirectly, whether by itself or through subsidiary, associated or allied companies or firms in the United Kingdom or elsewhere in all or any of its branches any business, undertaking, project or enterprise of any description whether of a private or public character and all or any trades, processes and activities connected therewith or ancillary or complementary thereto.

(b) To carry on any other trade or business whatever which can in the opinion of the Board of Directors be advantageously carried on in connection with or ancillary to any of the businesses in the Company.

(c) To purchase or by any other means acquire and take options over any property whatever, and any rights or privileges of any kind over or in respect of property.

(f) To improve, manage, construct, repair, develop, exchange, let on lease or otherwise (5) borrow capital with property as security, charge, sell, dispose of, turn to account, grant licences, options, rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.

(y) To do all such things as may be deemed incidental or conducive to the attainment of the Company's objects or any of them.

4. The (6) responsibility of the members is limited.

5. The Company's share (7) asset value is £10.000 divided into 10.000 shares of £1 each.

What procedures are necessary to form a limited company in a jurisdiction you are familiar with?

For information on company formation in the UK, go to: www.companies-house.gov.uk/.

UNITE 21 RAISING CAPITAL BY SHARE SALE

Share capital

How companies raise capital

A company limited by shares may raise capital by borrowing money and through the sale of shares. A company's balance sheet - a statement of the financial position of a company at a specific time, for example at the end of the financial year - shows how the company is capitalised, or financed, by providing details of debt and share funding. 'Capital' refers to the liability of the company to the people who have provided it with finance on a long-term basis. A company is obliged to maintain its share capital in order to protect its creditors, and funds may only be taken from the capital following complex procedural rules. The Articles of Association provide the power to issue shares. The Memorandum sets out the nominal capital - the total of the face value, printed on each share, of all of the shares which the company is allowed to issue. When new shares are created by the company they are issued, or allotted, to shareholders - that is, they are allocated among applicants who subscribe for shares. A shareholder is a member of the company and holds a share certificate.

Share value

All shares have a nominal value, generally of £1, also known as the par value. This value is set out in the capital clause of the Memorandum. Shares can be issued at a premium - for a sum greater than their nominal value - but they cannot be issued at a discount - less than nominal value. Contracts for the sale of shares may provide for deferred payment, that is, part may be left outstanding until the company makes a call for, or requests, the unpaid amount. The market value of a share depends upon the profitability of the company and the sum of its assets. The legal nature of a share for the shareholder will depend upon the contractual rights attached to the share, which is a chose in action - a personal right which can be enforced or claimed as if it were property.

Rights attaching to shares

A company may issue different classes of shares, which have different rights attached to them. The usual rights include:

- A right to dividend, that is, a share in the profits. A company may only declare a dividend if it has made a profit.
- A right to vote on resolutions, for example proposals on matters relating to the approval of directors' contracts, at the company's annual general meeting (AGM) - a meeting of all the shareholders with the directors.
- A right to repayment of the investment in the event that the company is wound up, or closed.

Other rights are given as a matter of law by the Companies Act 1985. These rights are generally only given to shareholders with voting rights at company meetings. The Act provides that shares must first be offered to shareholders in proportion to their existing shareholding on terms at least as favourable as those offered to potential new shareholders. This is the right of pre-emption. Members of the company have 21 days in which to exercise the right. It does not apply if shares are issued for a non-cash consideration, that is, the price, not necessarily money, paid in exchange for the shares.

21.1 Match the two parts of the sentences then replace the underlined words and phrases with alternative words and phrases from A opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

- 1 Shares can only be issued
- 2 The company Articles may allow directors
- 3 If more shares are applied for than the company has to offer,
- 4 Someone who owns shares is
- 5 The ownership of shares is
 - a the company can divide out the shares,
 - b known as a shareholder.
 - c to equal the total face value of all the shares of the company, as set out in the Memorandum of Association,
 - d generally evidenced by a receipt,
 - e to raise capital by selling shares.

21.2 Make word combinations from B and C opposite using words from each box. Then use the word combinations to replace the underlined words and phrases in the sentences below.

declare	the right
defer	at a premium
exercise	a resolution
issue	a dividend
vote on	payment

- 1 The Companies Act requires 75 % of the shareholders to show their opinion about a special proposal to change the company Articles.
- 2 The company will announce publicly that shareholders are going to be paid a proportion of the company's profits.
- 3 Current holders of shares may use their entitlement to buy newly issued shares before they are offered to new shareholders.
- 4 You can postpone paying in full for the shares until the company requests the unpaid sum.
- 5 The company can offer shares for sale at a higher price than their par value.



Share certificates



Share prices

What rights do shareholders have in a legal jurisdiction you are familiar with?
 For information on shares in the UK, go to the London Stock Exchange:
www.londonstockexchange.com/en-gb/.

UNITE 22 DEBT FINANCING: SECURED LENDING

Granting security

Usha Patel, a company lawyer, is advising Patsy Nielsen, the director of her client company, Rosie Glow Cosmetics Limited. The client wishes to acquire and equip new business premises which are offered for sale, together with an adjacent unit, for a price of £280,000. W.W.Jones Bank has offered the company a loan of £300,000.

Usha: I see that the bank's facility letter makes the loan conditional upon the grant of a debenture to include a floating charge over all the company's assets, so, anything of value belonging to the company. There's also a first legal charge over the property, which is like a mortgage. I suppose that's not surprising given that there's a shortfall, you know, a gap, between the purchase price of the property and the total of the loan. Have you had a valuation yet?

Patsy: A survey has been done - we're waiting for the report. I actually suspect that the valuation will be slightly higher than the agreed price, because the seller's in financial difficulty and wants a quick sale.

Usha: Well, we'll see what the valuation comes out at. If it's really close to the £300,000, I think we should try to persuade the bank that they'll have adequate security without a floating charge over all the assets. As I recall, the company has a pretty high asset value with your existing machinery already. It may be that the bank will agree to go with a debenture which is limited to a charge over the freehold - that's your absolute right to hold the property or land without paying rent - and a fixed charge over the machinery. Now, the company hasn't granted security before. Are you familiar with the concept of charges?

Patsy: Not very.

Usha: Well, if the debenture is granted at the same time as completion - that's the final stage in the sale of the property - it'll include a mortgage over the freehold property. This is effectively a transfer of the title to the property to the bank as mortgagee, subject, of course, to an obligation to transfer it back on repayment of the loan. The fixed charge will be over other property interests and will usually include shares, goodwill, book debts, and machinery. This means that in the event of default, the charged assets can be appropriated by the charge holder, who's a secured creditor, to be sold in order to recover the sum secured.

The terms of a charge

Usha: The terms of the mortgage and fixed charge will usually contain insurance obligations and restrictions on the company's ability to deal with the charged assets without the bank's consent. For instance, if the adjacent unit is surplus to your requirements and you decide to let it to a tenant, as the lessor you'll need to obtain the bank's consent. This will usually involve them approving the form of lease. Assets which are of a more transient nature, such as stock, can't be secured by a fixed charge, so a floating charge can be used. While a floating charge is in place a company can still deal with the assets without the consent of the charge holder. A floating charge is sometimes described as being like a large cup; it hangs inverted above the assets and doesn't affect the chargor unless the charge crystallises. At this point, it descends upon the assets and becomes a fixed charge. Usually a bank gives notice of crystallisation. I imagine the debenture will contain a negative pledge, which is a type of undertaking. It means that you won't be able to create any other interest in the charged property, including those subject to the floating charge, without consent.

22.1 Complete the definitions. Look at A opposite to help you.

- 1 grant.....- agree to secure the changing assets of a company, for example stock, not any specific asset
- 2 grant.....- agree to secure a particular asset, for example equipment or property
- 3 grant.....- agree to a document in which a company acknowledges a debt in exchange for security over the company's assets specified in the document
- 4 grant.....- agree to guarantee repayment of a loan by charging assets or property in favour of the lender
- 5 grant.....- agree to a document transferring an interest in land or buildings as security for the payment of a debt

22.2 Complete this extract from a law firm's website with words from the box. Look at A opposite to help you.

secured mortgage floating charge debenture repayment insolvent
 defaults creditors charge charge holder assets fixed charge

A company may be funded by a loan, for example from a bank, on which it pays interest and for which repayment may be guaranteed by a (1).....or a (2).....on one of the company's (3)....., for example a building or land owned by the company. This is certified by a document generally called a (4)..... Debenture holders are (5).....of the company. If the company becomes (6)....., that is, unable to pay its debts, debenture holders are entitled to priority over non-secured creditors to receive (7)..... Debenture holders are normally (8).....by a (9).....over specific property. Assets which are of a more changeable nature, such as vehicles, cannot be secured by a fixed charge, so a (10).....may be used. If the company (11)....., its assets may be seized by the secured (12).....

22.3 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you. Then complete the definitions below with words from the table.

Noun - type of legal agreement	Noun - legal person who assigns (transfers) an interest or use in a property to another	Noun - legal person who has been assigned an interest in or use of a property
'mortgage	'mortgagor	mortga'gee
	chargor	
grant		
		lessee (tenant)

- 1 A.....agrees to a charge over their property as a security for a loan.
- 2 A.....lends money to the mortgagor and has a charge over the mortgagor's property.
- 3 A.....grants a lease on a property.

Over to you:
 What types of guarantee are offered as security for loans in your legal system? How can investors discover whether a company has charges over its assets?

UNITE 23 COMPANY DIRECTORS AND COMPANY SECRETARIES

Qualifications and duties of a company director

Company directors

There are no mandatory qualifications to become a director of a private or public limited company (plc), although the following persons are disqualified and are not allowed to hold the position:

- an undischarged bankrupt, who has not been released by the court from his debts, unless leave, or permission, is obtained from the court;
- a person disqualified by a court from acting as a company director. If leave is given by a court, it must be for the person to be appointed as a director for a specific company;
- in Scotland, a person under the age of 16;
- anyone over the age of 70 in the case of a plc. This age requirement may be waived, or ignored, in the case of a candidate named by a general meeting of the company.

Although incorporation limits liability, the directors retain personal responsibility to ensure the company complies with the filing of documents at Companies House on time, as required by the Companies Act. Failure to do so is a criminal offence and may result in the imposition of a fine together with a criminal record. Persistent failure to fulfil these duties may lead to disqualification from holding the office of director in the future. The directors must ensure that:

- accounts for limited companies are delivered to the Registrar of Companies within the requisite period, normally within ten months of the accounting reference date in the case of private limited companies or within seven months in the case of a plc, although the requisite period may be amended by legislation. The defaulting company may be charged a late filing penalty in addition to any other fine imposed by a court;
- annual returns are submitted as specified by the Act. In the event that these are not submitted, and the Registrar believes that the company is no longer operating, he may strike it off the register and dissolve it. Any assets of the company at that point may become the property of the Crown;
- notice of change of directors or their details is provided to the Registrar;
- notice of any change to the registered office is provided to the Registrar. If this is not done, statutory notices may be validly served on the registered office.

Qualifications and duties of a company secretary

Company secretaries

The qualifications required to be a company secretary are set out in the Companies Act 1985. As a company officer, the company secretary may be criminally liable for a default committed by the company, for example failure to file the company's annual return with Companies House in time. An employment contract will usually specify the remit of their duties, that is, the areas of responsibility, which normally include:

- maintaining the statutory registers, for example the register of members;
- filing the statutory forms, for example notifying changes among the directors;
- serving members and auditors with notice of meetings;
- supplying a copy of the accounts to every member of the company;
- keeping minutes of directors meetings and general meetings.

23.1 Find answers to the FAQs below. Look at A opposite to help you.

1 Hugh Minton-Davies has been offered an appointment as a director for Gecko plc, registered in England. He's 71, a non-EU citizen with South African nationality, and has been a director of several South African companies. He has unpaid debts and has been unable to pay his creditors.

Is he qualified to hold the office of company director for Gecko plc? Why / why not?

2 The directors of Gecko plc have filed their accounts at Company House more than nine months after the accounting reference date. They have failed to notify the Registrar of the death of a director and the appointment of Hugh Minton-Davies.

Can you advise the directors on their situation?

3 The annual returns of Monocles Ltd have not been submitted for two years and correspondence sent to their registered office in England has been returned.

What may happen to the company?

23.2 A new managing director, Simon Brown, is getting an update from the company secretary, Helen Bernard. Match Simon's questions (1-5) with Helen's responses (a-e). Then replace the underlined words and phrases with alternative words and phrases from A and B opposite. There is more than one possibility for three of the answers.

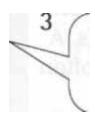
1



Helen, can I just quickly check what's been done? What's happened to the accounts?

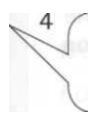


When did you do that?



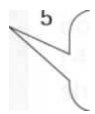
3

You remember we lost Eva Friberg as a Director?



4

And we're going to change the location of the company's registered office.



5

We've got the annual general meeting coming up soon.

a Yes, we'll follow the requirement to inform the Registrar.

b Yes, I've forwarded the details about her on the paperwork to the Registrar.

c No problem, Simon. I've sent out a notice to members and included the record of the last AGM.

d Don't worry. I sent them in good time.

e I sent them to the Registrar.

Over to you

What legal restrictions are there on the appointment of company directors in a jurisdiction you are familiar with? Are there too many or not enough?

For more information, go to the Directors and Secretaries Guide in the UK at: www.companieshouse.gov.uk/.

UNITE 24 INSOLVENCY AND WINDING UP

Insolvency

Charles Stanley, an insolvency lawyer, is advising a client.

'Insolvency describes the financial state of a company when its debts or liabilities exceed its assets and available cash. As soon as a company is insolvent, it must take action to resolve the situation. This may include renegotiating debt, realising assets to discharge debt, or even borrowing more money and increasing the liabilities. There's a wealth of legislation that imposes obligations on company officers in relation to the interests of creditors. There are secured creditors, whose lending is protected by security over the company's assets, for example banks, and there are unsecured creditors, often suppliers, who may initiate action to achieve repayment. There are also preferential creditors, such as the company's own employees, for example in cases where wages haven't been paid, and occupational pension schemes. The options available to an insolvent company will be affected by the position taken by its creditors, and the various parties may seek legal advice. My colleagues and I often work on behalf of clients with a specialist accountant, an insolvency practitioner, also known as an IP.'

Insolvency scenarios

Look at this extract from a leaflet describing possible insolvency scenarios.

1

Action initiated	Result
A charge holder (see Unit 22) - including holders of floating charges created since the Enterprise Act 2002 - or the company directors file notice at court for an administration order.	An order is made by the court appointing an administrator to take control of the company and to maintain it as a going concern. The company is then said to be 'in administration'.
A charge holder with a floating charge created before the Enterprise Act 2002 appoints an administrative receiver (an AR).	The receiver must realise the assets subject to the floating charge on behalf of the charge holder. The floating charge crystallises and is treated as a fixed charge. Certain creditors will have rights in priority to the charge holder's. A company in administrative receivership is often said to be 'in receivership'.
A creditor or company directors petition the court to make a winding up order.	The court makes a winding up order and the company is put into compulsory liquidation. A liquidator is appointed to realise the company's assets.
Shareholders decide to put the company into liquidation when the company is still solvent, that is, has sufficient assets to discharge the company's debts.	Members' voluntary liquidation
Shareholders decide to put the company into liquidation if the company is insolvent. Creditors accept the liquidator.	Creditors' voluntary liquidation
Company directors, with the assistance of an authorised insolvency practitioner, apply to the court for approval of a formal arrangement with creditors, as set out in a proposal to pay creditors under the supervision of the IP.	Company voluntary arrangement (CVA) and appointment of a supervisor

24.1 Choose the correct word in brackets to complete the sentences. Look at A opposite to help you.

- 1 A (debtor/creditor/director) is a person or body owed money by a company.
- 2 The creditors may take action in relation to a/an (bankrupt/solvent/insolvent) company that will result in the company becoming subject to one of several insolvency regimes.
- 3 Suppliers are often (unsecured/preferential/secured) creditors.
- 4 Employees and occupational pension schemes fall within the class of (solvent/preferential/secured) creditors, who are entitled to receive certain payments in priority to secured creditors.
- 5 A liquidator is appointed by the creditors or the members to (exceed/realise/discharge) assets which may then be divided up among the creditors.
- 6 If the company has insufficient assets to (discharge/realise/exceed) its debts, creditors may decide to put the company into liquidation.

24.2 Answer the questions. Look at B opposite to help you. There may be more than one possible answer.

- 1 Who can initiate
a voluntary liquidation?
b a company voluntary arrangement?
c compulsory liquidation?
d a company going into administration?
- 2 How can a charge holder obtain an administration order?
- 3 How may company directors obtain a winding up order?
- 4 What term describes the stage at which a floating charge descends upon the assets and becomes as though it were a fixed charge?
- 5 How could you describe a company that is actively trading?
- 6 What term describes the process of ending the carrying on of a company?
- 7 What term describes the state of being able to pay all debts or claims?

24.3 Complete this extract from an email about an insolvency proceeding with prepositions from A and B opposite.

Dear Peter, Further to our phone discussion, I'm writing (1).....behalf (2).....my client whose interest in J.I.T Ltd is set (3).....in a document I've sent under separate cover. The document was drawn up (4).....the assistance (5).....an in- solvency specialist and should be treated (6).....a working draft. Could you let me have your opinion (7).....relation (8).....the interests of other creditors and as soon as possible?
--

Over to you
What happens if insolvency proceedings are instituted against a company in a legal jurisdiction you are familiar with?
For more information about insolvency in the UK, go to the UK insolvency helpline at: www.insolvencyhelpline.co.uk/.

UNITE 25 ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute resolution

Anna Chapter heads the Litigation team in a large firm of solicitors. She is talking to a client about alternative dispute resolution.

'Alternative dispute resolution, often abbreviated to ADR, is well-established in a number of jurisdictions, including the USA, Canada and Australia. Over recent years, we've seen the emergence of mediation organisations and dispute resolvers, some on the Internet. In the UK, ADR is positively promoted for use in a wide range of civil disputes, including small claims, family matters, construction or building contracts, and complex international commercial disputes. It's generally proposed as a cost-effective alternative to the litigation process and entered into on a voluntary basis by disputants, or because of contractual provisions, that is, the conditions of a contract. Many commercial agreements now include dispute resolution clauses in which the contracting parties agree the method to be used if a dispute occurs during the life of the contract. However, parties may also be referred to ADR by the court during the course of litigation. A Civil Procedure Rule requires the UK civil courts, as part of the case management process, to encourage and facilitate parties to use ADR procedure if appropriate. A National Mediation Helpline has also been set up to provide advice by telephone or online.'



ADR procedures

ADR refers to a number of different procedures used to reach a settlement. Some frequently used methods are:

- Arbitration - this is a more formal and binding process where the dispute is resolved by the arbitrator nominated by both parties.
- Mediation - possibly the most popular process. An independent third party, normally with appropriate expertise in the area of contention or dispute, is appointed by the parties to act as a mediator. The mediation process begins with an all parties discussion; following this the respective parties separate to discuss the issues and, with the assistance of the mediator, seek to negotiate a settlement. If settlement is reached, it can become a legally binding contract.
- Med-Arb - the dispute is initially submitted to mediation but if mediated settlement cannot be reached, then the matter is referred to arbitration.
- Adjudication - the method most commonly used in construction disputes. A quick decision is made by the adjudicator and a time period is specified during which either party may give notice to refer the matter to arbitration or litigation. The adjudicator's decision is binding upon the parties and must be followed, unless and until a later decision is made by an arbitrator or the court.

25.1 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun - concept or object	Noun - person	Adjective
re'fer	re'ferral		
dispute			
resolve			
		contractor	

25.2 Complete the extract from a model ADR clause with words from the table above and A opposite. Pay attention to the grammatical context.

1. Dispute Resolution Procedure

1.1 **General**

1.1.1 All disputes between the (1).....arising out of or relating to this Agreement shall be referred, by either (2)....., to the project board for resolution.

1.1.2 If any dispute cannot be (3).....by the project board within a maximum of 114 days after it has been referred under Clause 1.1.1. that (4).....shall be (5).....to the [appropriate officer] of the {public sector client] and the [e.g. project manager] of the (6).....for resolution.

1.1.3 Work and activity to be carried out under this (7).....shall not cease or be delayed by this dispute (8).....procedure.

25.3 Complete the extract from an email about online ADR using words from the table above and A and B opposite. Pay attention to the grammatical context.

Tom - there's been some client interest in online ADR. Settlement websites in the US are offering a mediation service on the basis of an agreed (1).....by the parties.

Some organisations are experimenting with chat rooms, creating virtual (2)..... rooms as a way of reducing the costs of resolving disputes. Each party communicates through the online (3)..... via email, who passes responses between the parties. Some websites offer a computer-assisted method for 4).....disputes over claims. The software compares offers and counter offers, keeps offers confidential, and pronounces a (5).....at the mid-point between the defendant's offer and the claimant's demand.

25.4 Are the following statements true or false? Find reasons for your answers in B opposite and the email above.

- 1 Online mediation is a formal and binding process.
- 2 The adjudicator passes email responses between parties online.
- 3 Online mediation is commonly used to resolve construction disputes.
- 4 The defendant and the claimant are independent third parties.

Over to you
 What experience have you had of ADR? Is it supported in a jurisdiction you are familiar with? How? What are the advantages and disadvantages of online mediation?
 For more information, look at the Office of Government Commerce at: www.ogc.gov.uk/ and the Centre for Effective Dispute Resolution at: www.cedr.co.uk/.

UNITE 26 CORPORATION TAX

Corporation Tax liability in the UK

Corporation Tax is the tax payable on a company's income (for example from investment in shares) or gains (for example from the sale of assets) at the statutory rate. In this context 'company' is used to refer to the following, in addition to the more conventional meaning of the word:

- Members' clubs, societies and associations who might have trading activities or income from non-members, for example amateur sports clubs
- Trade associations, for example the Association of British Travel Agents (ABTA), the regulatory body for British travel agents
- Housing associations - in the UK, independent, not-for-profit bodies that provide low cost 'social housing' for people in housing need
- Groups of individuals carrying on a business, for example cooperatives, but not partnerships (see Unit 19)

All companies resident in the UK are subject to Corporation Tax on their profits in an accounting period. A non-UK incorporated company may also be subject to Corporation Tax, if it is managed and controlled from within the UK.

Although Companies House notifies the Inland Revenue - the UK tax authority - of the formation of a company on completion of registration, it is still the responsibility of the company to inform the Revenue of its existence and liability to pay tax. This must be done within 12 months of the end of the company's accounting period. An accounting period starts when a company first becomes chargeable to Corporation Tax or when the previous accounting period ends. It cannot exceed 12 months for the purpose of tax. The normal due date for the payment of tax is no later than nine months plus one day after the end of the accounting period, although large companies - that is, those with annual profits in excess of a stipulated amount - are obliged to pay their tax early by Quarterly Instalment Payments.



Word combinations with 'tax'

tax	avoidance	trying legally to minimise the tax to be paid, for example by using tax loopholes (gaps in the law)
	benefits	advantages
	bill	demand for money owed in taxes
	chargeable	tax that may be levied on profits
	due	tax that has to be paid by a required date
	efficiency	ways of reducing taxes owed
	evasion	illegally trying to not pay tax
	exemption	a principle permitting freedom from payment of tax. For example, non-profit-making organisations may claim tax exemption.
	point	date at which a tax begins to be applied
	relief	help, allowing a company (or individual) not to pay tax on part of their income
Tax Return		form issued by the taxation authorities for declaration of income and allowances, also known as a declaration

26.1 Replace the underlined words and phrases with alternative words from A opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

- 1 Will you formally inform the Inland Revenue?
- 2 I believe it's a business run by a group of owners who share the profits and the work.
- 3 The figure named is currently £1.5 million.
- 4 We're going to be taxed on money received from sales of goods or services after costs have been deducted.
- 5 How long have we got until the day on which payment is required?
- 6 There'll be some tax on money from sale of assets this year.
- 7 Don't forget, you'll have to pay tax by payment of part of the total sum due.
- 8 I don't think there'll be much tax on money from investments in this accounting period.
- 9 Profits aren't going to be greater than £1 million this year.

26.2 Complete this extract from an advisory email from a solicitor with word combinations from B opposite. Use each combination only once.

Dear Bertil,

In answer to your query about UK tax liability, I've set out a brief outline below. The responsibility for the calculation of the tax due lies with the company. Tax is generally (1).....on the company's total profits - including chargeable gains. A company must follow the special rules in calculating the tax due and, following this self-assessment, submit a Company Tax (2).....to the Inland Revenue together with the payment of tax (3)..... If there has been expenditure on research and development, companies may qualify for special tax (4).....on part of their income. Although there is no annual tax (5).....for capital gains, roll-over relief may be available where business assets are replaced and trading losses are normally set against income and gains of the same accounting period or even of the previous year. The rules setting out these reliefs and others are complex, and companies generally employ specialist advisers to help maximise their use of the various reliefs in order to minimise their tax (6)..... The fact that corporate tax rates in the UK are lower than income tax rates (to which individuals are subject), and that company dividends (which the owners of a company can pay to themselves) are taxed more lightly than other forms of income, means that businesses may opt to incorporate primarily to enjoy such tax (7)..... Again, specialist advice may be sought by non-incorporated businesses that wish to calculate the tax (8).....of such an option.

Over to you

How is a corporation's taxable income assessed in a jurisdiction you are familiar with?
What tax benefits are available to corporations?

For more information on Corporation Tax in the UK, go to HM Revenue and Customs at:
www.hmrc.gov.uk/

UNITE 27 MERGERS AND ACQUISITIONS

Mergers and acquisitions.

Steve Jakes is a senior partner in a law firm and specialises in He's talking to a client from Japan.

'A merger or takeover occurs when one company has acquired the majority, or even the entirety, of the shares of the target company. Statutory schemes of arrangement of companies are contained within the Companies Act. In the conventional non-statutory situation, the acquiring company, or offeror, usually makes an offer to acquire the shares of the target company, the offeree, and gives the shareholders a fixed time within which to accept the offer. The offer is made subject to the condition that it will be only be effective in the event that a specified percentage of the shareholders accept the offer. The price offered for the shares is usually more than would ordinarily be obtained at that point in time for those shares on the stock market. This constitutes the takeover bid. Of course, if the board of directors doesn't recommend the offer to its shareholders, it's regarded as a hostile takeover.

The freedom of companies to merge in this way is controlled by various statutes, European Community (EC) competition authorities (known as antitrust regulators in the US), and the courts, which regulate anti-competitive concentrations of market power. If a merger is permitted, clearance is given by the regulatory authorities.'

Dealing disclosure requirements

'The conduct of takeovers is controlled by rules set by the City Code on Takeovers and Mergers. The Code is administered by the Panel of Takeovers and Mergers, an independent body which draws its members from major financial and business institutions. UK registered and resident public companies have to abide by the Code. Disciplinary action may result from certain breaches of the Code, for example failing to disclose dealings in relevant securities of the offeree company. The guiding principles behind the Code are that shareholders are treated fairly and are not denied an opportunity to decide on the merits of a takeover, and that shareholders of the same class are afforded equivalent treatment by an offeror.'

The London Stock Exchange



27.1 Complete the table with words from A opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun	Adjective
a'cquire	acquisition	
compete		
regulate		

27.2 Complete the article with words from the table above and A opposite. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

Linde offers £138m to ease delay in BOC bid

Linde has offered to pay BOC Group shareholders up to £138.4 million in compensation if anti-trust (1)delay the German group's (2)approach. In a move designed to allay fears that regulators could block Linde's £8.2 billion (3) for BOC, the German suitor said that it would pay up to 27p per BOC share if it had not received (4).....clearance in Europe and America by July 26. The cash promise is supposed to partly cover the interim dividend that BOC shareholders would have otherwise received around July or August if their company had remained independent. Neither Linde nor BOC expect (5).....objections to their proposed (6)....., although they have given warning that the deal is unlikely to be completed until late summer. They expect regulators to sign oil on the deal by the end of May.

The Times

27.3 Steve Jakes is answering a client's enquiry about the rules on dealing disclosure. Complete this extract from his email. Look at A and B opposite to help you. Pay attention to the grammatical context.

I Dear Jan,

You asked about dealing disclosure rules in takeovers. Below is a summary of rule 8.3 of the City Code on Takeovers and Mergers, which everyone must (1)..... or risk disciplinary action.

'Under the provisions of Rule 8.3 of the City Code on Takeovers and Mergers (the "Code"), if any person is, or becomes, "interested" (directly or indirectly) in 1% or more of any class of "relevant securities" of [the offeror or of] the (2).....company, all "dealings" in any "(3)....." of that company (including by means of an option in respect of, or a derivative referenced to, any such "relevant securities") must be publicly (4).....by no later than 3.30 pm (London time) on the London business day following the date of the relevant transaction. This requirement will continue until the date on which the (5).....becomes, or is declared, unconditional as to acceptances, lapses or is otherwise withdrawn or on which the "offer period" otherwise ends. If two or more persons act together pursuant to an agreement or understanding, whether formal or informal, to acquire an "interest" in "relevant securities" of [the (6).....or] the offeree company, they will be deemed to be a single person for the purpose of Rule 8.3.'

Over to you
 How are shareholders' interests protected during takeovers in a jurisdiction you are familiar with? In your opinion, are takeovers adequately regulated, over regulated or under regulated?

For information on takeovers in the UK, go to: www.thetakeoverpanel.org.uk/.

UNITE 28 ANTI-COMPETITIVE BEHAVIOUR

Competition law

The Competition Act follows Articles 81 and 82 of the European Community (EC) Treaty and is part of a body of law known as competition law. Competition law regulates anti-competitive conduct that harms the market, such as excluding new competitors and putting up, or erecting, barriers to competition. It also covers abuse of a dominant position, for example by distorting competition or by predatory pricing - when goods are sold at less than their cost price to cut out rival businesses.

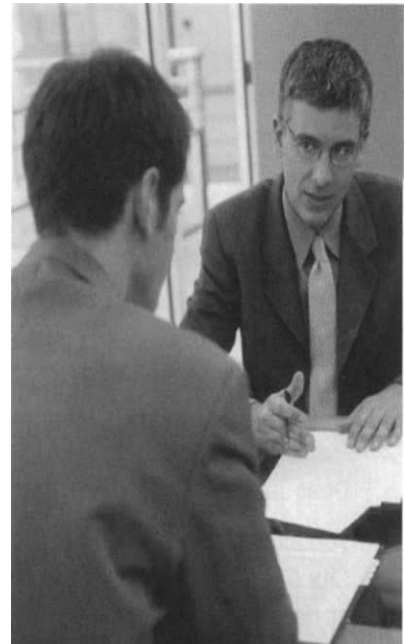
BrE: competition law; AmE: antitrust law

BrE: abuse of a dominant position; AmE: abuse of monopoly power

Competition inquiry

Steve Jakes, a UK lawyer, is talking to a client about how anti-competitive practices and agreements are dealt with.

'The Competition Commission was established by the Competition Act 1998 and its procedures are governed by provisions of the Enterprise Act 2002. Its purposes include carrying out inquiries into anticipated and completed mergers, and market investigations which other authorities, most often the government watchdog (the Office of Fair Trading, or OFT) or the Secretary of State, refer to the Commission. When a merger inquiry or market investigation reference - popularly known in the media as a referral - is made, the Chairman selects members, including appropriate specialists, to serve on the three to five-person group that will conduct the inquiry. Procedures are in place to ensure that conflicts of interest are avoided. An administrative timetable is drawn up for the inquiry and published on the Commission's website. Merger inquiries can take over six months and market investigations up to two years.'



BrE: anti-competitive practices and agreements; AmE: restraint of trade

Information gathering, hearings, and remedies

'For inquiries and investigations, information is collected from a range of sources. Parties are compelled to submit documents and the Commission can impose a monetary penalty for non-compliance with its requirements. It constitutes an offence to alter, suppress, or destroy documents, or to intentionally provide false or misleading information. Hearings are normally held privately with one party at a time, although public and joint hearings are possible.

The Commission has regulatory powers under the Act to make and implement decisions and decide on remedies. Before there can be any remedial action, however, the group must reach a two-thirds majority that there is an anti-competitive outcome, such as a substantial reduction in competition resulting from a merger or an adverse effect on a market. The final report will contain remedies for implementation through agreed undertakings - that is, binding promises - or imposed orders which are monitored by the OFT. Undertakings and orders are enforceable in the courts by civil proceedings. Appeals by an aggrieved party - one who disagrees with the decision of the Committee - may be made to the Competition Appeal Tribunal.'

28.1 Choose the correct phrase in brackets to complete the sentences. Look at B and C opposite to help you.

1 Not supplying documents requested by a competition inquiry can lead to (enforceable orders / conflicts of interest / a monetary penalty).

2 The inquiry group must reach a majority decision that there has been anti-competitive conduct which has led to (remedial action / an adverse effect / misleading information) on a market.

3 Remedies decided by the Commission can be implemented through (aggrieved parties / agreed undertakings / adverse effect).

28.2 Complete the article. Look at A, B and C opposite to help you. Pay attention to the grammatical context. There is more than one possibility for one of the answers.

Supermarket competition inquiry may break stranglehold of big four

(a) Supermarkets may be forced to sell off development sites and scale back expansion plans after the Office of Fair Trading yesterday signalled a full scale competition (1)..... into the UK's "big four" grocers.

(b)The OFT said supermarkets had driven through price cuts and seemingly improved quality and choice - but there was evidence they had also erected (2)..... to keep out new players and their move into convenience stores could (3).....competition and (4).....consumers.

(c) The (5) now intends to (6) the big four - Tesco, Asda, Sainsburys and Morrisons - for a Competition Commission inquiry which could last two years. The four chains account for nearly 75% of the £95bn UK grocery market, with Tesco speaking for more than 30%.

(d) The OFT highlighted several areas of concern, including the way supermarkets sell nearly 3,000 popular products at below cost price and use local price cuts and promotions to put pressure on smaller (7).....It also focused on the stores' increasing buying power, which they can use to drive down the prices paid to suppliers.

(e) The OFT also wants a full (8).....into the grocers' "landbanks". The supermarkets have acquired hundreds of development sites, many of which, the OFT said, may have been acquired solely to prevent a rival opening a store.

(f) The (9)to the commission is a victory for small shopkeepers, who have led the campaign for an inquiry into the big four's domination. The decision represents a U-turn from last summer, when the OFT said there were no grounds for a competition inquiry.

(g) Yesterday OFT chief executive John Fingleton said he had fresh evidence of (10)concerns, uncovered by new (11).....the Enterprise Act 2002, which (12).....the supermarkets to hand over documents.

28.3 Which paragraphs (a-g) from the article above allege evidence of:

1 predatory pricing?

2 anti-competitive conduct? (two paragraphs)

3 abuse of a dominant position? (two paragraphs)

Look at A opposite to help you.

Over to you

What procedures are in place to check anti-competitive conduct in a jurisdiction you are familiar with? How effective are they? Describe a recent case as if to a foreign colleague.

For information on UK competition law, go to: www.competition-commission.org.uk/ and www.offt.gov.uk/. For information on EU competition policy, go to: http://ec.europa.eu/comm/competition/index_en.html

UNITE 29 TORT 1: PERSONAL INJURY CLAIM

Tort

A tort is a civil, not criminal, wrong, which excludes breach of contract. A tort entitles a person injured by damage or loss resulting from the tort to claim damages in compensation. Tort law has been built upon decisions made in reported court cases. Torts include, for example:

- negligence - the breach of a duty of care which is owed to a claimant, who in consequence suffers injury or (a) loss;
- trespass - direct and forcible injury, for example if person A walks over B's land without lawful justification or A removes B's goods without permission;
- defamation - publishing a statement about someone which lowers the person in the opinion of others. This is known as libel when in a permanent form, and slander if it is in speech;
- nuisance - for example if A acts in a way which prevents B from the use and enjoyment of his land.

In the case of product defects causing damage or harm to consumers, strict liability, that is, legal responsibility for damage independent of negligence, is imposed on producers and suppliers by the Consumer Protection Act, which puts into effect a European Union Product Liability Directive.

Note: claimant - formerly known as plaintiff (England and Wales) and pursuer (Scotland)

Client briefing notes - personal injury claims

One of the clients of a large regional law firm is 'Get Fit', a chain of fitness centres. Below is an extract from draft briefing notes prepared by the law firm, intended to inform the managers of 'Get Fit' of the potential cost in the event of a successful personal injury claim in negligence following an accident at one of their centres. A person who has **sustained an injury** at the centre and who believes that they may have a **claim against** the company ('Get Fit') will usually seek advice to assess whether the likely level of damages, i.e. the financial compensation that may be awarded is sufficient to **justify the risk of pursuing a claim**. The amount of damages, known as the quantum, is usually made up of two aspects.

General Damages are paid to **compensate the claimant**, that is, the person making the claim, for the **pain and suffering** resulting from the injury and for the effect this has on their life. These damages are difficult to assess and guidelines are published by the Judicial Studies Board. You may hear these being referred to as the JSB guidelines. Reference is also made to the level of **damages awarded** by courts in similar cases.

Special Damages are calculated more objectively as these consist of claims for the past and future **financial loss** to the claimant. This typically includes **loss of earnings**, in addition to the cost of care and necessary equipment required as a result of the injury.

In some cases, when **liability is admitted**, it may be appropriate to **make interim payments** on account of the full award. For instance, the claimant may be **undergoing** a course of **medical treatment**. This will fall into the special damages category and payment can therefore be made before the **final claim is settled**.

29.1 Complete the definitions. Look at A opposite to help you. There is more than one possibility for one of the answers.

- 1 - a breach of duty towards other people generally
- 2 - financial compensation for loss or injury
- 3 - physical or economic harm or loss
- 4 - person who makes a claim
- 5 - making public a statement which harms someone's reputation
- 6 - total legal responsibility for an offence which has been committed
- 7 - an interference with private property
- 8 - spoken statement which damages someone's character

29.2 Complete the table with words from A and B opposite and related forms. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Noun	Adjective
'slander	'slanderous
defamation	
libel	
liability	
injury	

29.3 Complete this letter regarding a personal injury claim at a 'Get Fit' fitness centre. Look at A and B opposite to help you. Pay attention to the grammatical context. There is more than one possibility for three of the answers.

Dear Sirs

Our client: Ms Paula Kosmaczewski

Re: Accident at Rothbury 'Get Fit' fitness centre on 8 March 2007

We are instructed by the above-named client with regard to a personal (1).....that took place as a result of an accident in your Rothbury fitness centre on 8 March.

We are instructed that the circumstances of the accident were that our client was running on an exercise machine when the rotating track stopped abruptly and she fell forward and (2).....an injury to both her right shoulder and right knee. A member of the centre's staff was summoned by another centre user. The staff member assisted our client. Another member of staff said that the running machine had not been maintained recently. Our client was assisted by centre staff to a taxi and went home. On the 30 March our client consulted her doctor because of the pain and restricted movement in her shoulder and knee as a result of the accident. Her doctor referred her to the hospital for specialist examination and treatment. Our client is still (3).....medical treatment and has recovered 80% but is advised by medical consultants that she is unlikely to recover 100%.

Our client is self-employed as a freelance musician. As a result of the accident she was unable to fulfil ten weeks of contracted work and has (4).....a loss of (5).....

As you are aware, under section 2 of the Occupiers' Liability Act 1957 the occupier of the premises (6).....a duty of (7).....to all visitors to keep the premises and equipment reasonably safe. Our client's accident results from a failure to keep equipment safe and a member of staff (8)..... liability. Our client has a valid (9).....against you in (10).....

Describe the liability of a client who owns a leisure or sports centre to users of the centre in a jurisdiction you are familiar with, as if to a colleague from a different legal jurisdiction.

UNITE 30 CLINICAL NEGLIGENCE

Clinical negligence practice

David Jones specialises in clinical negligence at a regional firm, Jameson's. Katrina MacLellan is a 3rd year law student who is undertaking a summer work placement in the litigation department at Jameson's. David is describing his practice to Katrina.

David: At Jameson's, claimants instruct us, that is to say, individuals come to us, to get an idea of whether they have a potential claim, to find out how strong, their claim is, and what the process will involve. Depending on that advice, they may then instruct us to pursue the claim on their behalf. The likely amount of damages has to be enough to cover the cost of investigating a claim.

Katrina: How do individuals finance this legal work? Isn't it very expensive?

David: Yes, it can be. I'm always very careful to give clients a fee estimate at the outset. Initially this will just be for the cost of exploring the claim. This will involve obtaining the client's medical records from the relevant general medical practice or hospital. I usually go through these before instructing an independent expert to prepare a report. The department keeps a register of experts which we use for an impartial, that is, unbiased, opinion. Some clients may have legal expenses insurance or may qualify for Public Funding and others may have to fund themselves. In those cases we usually agree a payment schedule with the client. If we do pursue the claim this is usually on a conditional fee basis, that is, 'no win no fee', so there is an element of risk involved.

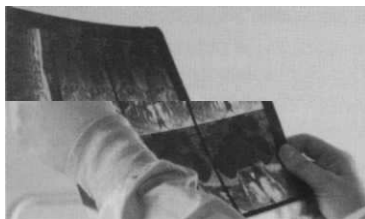
Katrina: What does the success of a claim depend on?

David: Well, obviously the basis is that the claimant has sought medical advice or treatment and believes that as a result of that advice or treatment their health has suffered. We have to show that there is a causal link between the two things - that there is causation.

The second essential leg is that there has been an element of negligence. Sometimes this involves extremely complicated evidence. Basically, we need to demonstrate that the course of action or advice given by the doctor in the case in point would not be that advised by a similarly experienced and reputable body of practitioners. As you can imagine, the role of the expert in all of this is extremely important. We rely upon them to explain how the action of the defendant has adversely affected the outcome for the patient.

The other extremely important point is that the claimant must bring the claim within the limitation period. This is usually within three years of the event, although this may be extended if the case involves a child or the claimant has a mental disability.

BrE: conditional fee basis; AmE: contingency fee basis



30.1 Replace the underlined words and phrases with alternative words and phrases from A opposite. There is more than one possibility for three of the answers.

- 1 We have to decide whether there is a possible case.
- 2 Has the treatment negatively influenced the health of the client?
- 3 We look for someone who can give an unprejudiced point of view.
- 4 It's essential that we're able to establish a connection between treatment and the negative effect upon the client.
- 5 Once the case has been explored we decide whether to start an action.
- 6 We have to estimate the probable costs of the action.
- 7 Clinical negligence cases may be charged to clients in proportion to the damages recovered.
- 8 In this instance, the claim would be within the limitation period.

30.2 Complete the sentences with verbs from A opposite. Pay attention to the grammatical context.

1. The solicitor.....the clients a fee estimate.
2. The firm.....the claim.
3. The solicitor.....the client's medical records.
4. An independent experta report.
5. The department.....a register of experts.
6. The firm.....a payment schedule with the client.
7. We.....the claim on a conditional fee basis.
8. The action of the defendant has adversely.....the outcome for the patient.
9. The claimant must..... the claim within the limitation period.

30.3 Change the spoken statements in 30.2 to passive forms more typical of formal written English, when the focus is on the actions and processes rather than the human agent. The first one has been done for you.

- 1 *The clients are given a fee estimate by the solicitor.*
- 2
- 3
- 4.....
- 5
- 6.....
- 7.....
- 8.....
- 9.....

Over +o you
How would you advise a foreign client in English who claims that their health has suffered because of medical treatment in a jurisdiction you are familiar with?

UNITE 31 FORMING A CONTACT 1

Basic principles

The basic principles of contract law in the English system arise from established custom and rules and are fundamental to all areas of law in practice. Reference is made to these principles in drafting and interpreting the provisions of any legal agreement, such as a lease, a loan agreement, a sales agreement, a consultancy agreement, a hire purchase agreement, a hire contract, or a service contract, etc. The principles of contract law will determine whether and at what point a binding agreement has been made between the parties concerned.

Note: The words contract and agreement are interchangeable in the examples above. For example, a loan agreement / loan contract.

Formation of a contract

Formation of a contract requires the presence of four essential elements:

■ Offer

The contract must contain the basic terms of the agreement and be capable of acceptance without further negotiation. This does not mean that the initial communication between parties will in itself constitute an offer. For example, in an auction situation, the seller, known as the vendor, may make an invitation to treat - invite an offer - by setting out the conditions of sale (for example when payment will be made) with the exception of the price. The offer is submitted by the purchaser, who offers to purchase at a specified price and will usually incorporate the terms of the invitation to treat into his/her offer.

■ Acceptance

There must be an unqualified agreement to proceed on the basis set out in the offer and it must be communicated to the offeror - the person making the offer - in order to be effective. If the offeree - the person receiving the offer - states that he or she accepts the offer subject to contract, that is, some variation of the terms, then no contract is formed. This would be a qualified acceptance, which constitutes a counter offer.

Issues may arise as to whether the acceptance has been communicated. Two rules determine this:

■ The reception rule applies to instantaneous forms of communication, for example telephone calls. The contract is said to be formed when the acceptance is received by the offeror.

■ The postal acceptance rule, where there is a delay between the communication being sent and received, for example by post. The contract is formed when the acceptance is sent by the offeree.

To avoid uncertainty, the offeror may specify the method and timing of acceptance. Agreement on essential terms, for example price and delivery, must be certain and not vague.

■ Consideration

For a contract to be enforceable something of value must be given, for example a price, even if it is of nominal value, say £1.

■ Intention

It is assumed that contracting parties intend to create legal relations, particularly in commercial circumstances. This is, however, a rebuttal presumption - an assumption that can be contradicted - if there is contrary evidence.

Professional English in Use Law

31.1 Complete the conversations with the correct legal agreement from A opposite.

a) We rented a car for a week in Austria.

What did the (1) cover.....

b) The office's windows are always dirty. I want them cleaned regularly by a firm of window cleaners.

You'll need a good (2).....

c) I want to buy a new car but we can't afford to pay the whole price at once. I'm going to pay in monthly instalments.

You'll need to check the interest rate on the (3).....

d) We're going to be living in London for about 18 months, so we're going to rent a flat.

Make sure you get a reasonable (4).....

e) I'm going to have to borrow a large sum of money for about three years.

Try to get the best (5)..... you can from your bank.

31.2 Make word combinations from B opposite using words from the box.

contrary	offer	conditions of	avoid	sale	qualified
parties	essential	contracting	terms	contract	acceptance
counter	uncertainty	evidence	subject to	rebuttal	presumption

31.3 Find answers to these FAQs from a law firm's website. Find reasons for your answers in B opposite.

1 Building work started on a major construction project before all the elements of the contract had been agreed. Both parties expected that reaching an agreement would not be a problem. However, final agreement was never reached and eventually the claimants stopped work and claimed for work done. The defendants counter-claimed for the breach (break) in the contract.

Under English law, was there a contract?

2 Helena applied for shares in a company. The shares were allotted to her and a notice of allotment was posted to her. It never arrived.

Under English law, had she become a shareholder or not?

3 Two women went regularly to bingo sessions together and had an arrangement to share whatever they won. One of them won a bonanza (extra) prize of £1,107. She claimed it was not covered by the sharing arrangement.

Under English law, was their agreement legally binding?

Over to you

What would be the answers to the questions above in a legal system you are familiar with? What other legal issues might arise? What are the basic elements of a contract in a jurisdiction you are familiar with?

To look at a recent law report on a contract dispute concerning offer and acceptance, see: *Pickfords Ltd v Celestica Ltd* [2003] EWCA Civ 1741 at: www.bailii.org/databases.html

UNITE 32 FORMING A CONTRACT 2

Form of contract

A binding contract must be:

- in the form required by the law;
- between parties with the capacity to contract - that is, legally capable to contract - or made by agents or representatives of the contracting parties with the authority to act.

It should be:

- enforceable in the event that one of the contracting parties fails to perform the contract.

It may be:

- made in writing;
- made orally;
- implied from conduct, that is, by the behaviour of the contracting parties.

However, the law does require that some agreements are made in writing. This is usually because registration is required for the agreement to be effective and the relevant registry requires a written agreement. Examples of agreements to be made in writing include:

- contracts for the sale of land;
- contracts of guarantee;
- contracts for transfer of shares;
- contracts which must be made by deed, for example a lease for more than three years.

A simple contract requires consideration - the price in exchange for a promise to do something - and becomes effective on execution, generally when it is signed. In contrast, a contract by deed does not require consideration. A deed has different formal execution requirements depending on the contracting parties. For example, a deed may need to be affixed with a seal - a printed company stamp - if one party is a limited company. Common law requires that a deed is delivered. This determines the date from which the parties are bound. It must be clear on the face of a deed that it is executed by the parties as a deed. Deeds may contain standard wording about execution, for example:

This document is executed as a deed and is delivered and has effect at the date written at the beginning of it.

Void or voidable or unenforceable contracts

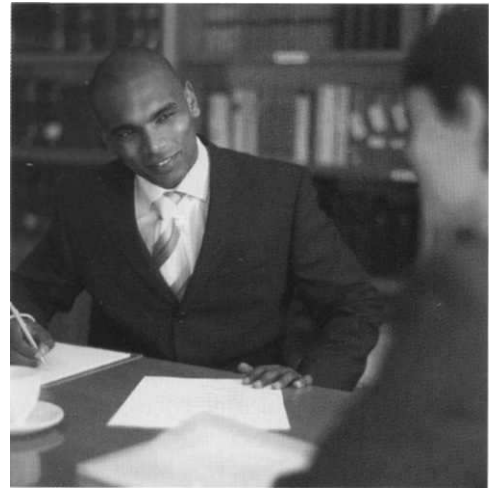
Sometimes a contract may be **defective** and may consequently be **void** or **voidable** or **unenforceable**.

A contract may be void - that is, no contract exists - if one, or both, of the parties is not **recognised in law** as having legal **capacity to consent** to a contract, for example **minors** - young people under 18 - or persons with certified mental incapacity.

A contract is **voidable**, that is, it may be **avoided**, or cancelled, by one of the parties if there is some **defect** in its formation. For example, if the contract for the sale of land is not in writing, the parties can either ignore the defect and **treat the contract as fully binding**, or one of the parties can use the defect as a means for **setting the contract aside**.

Some contracts may be neither void nor voidable but cannot be **enforced** in a court of law, for example payment of a gambling debt. **Lapse of time** may **render a contract unenforceable**. The **limitation period** for a legal **action brought under a deed** is usually 12 years from the **date of occurrence of the cause of action**. An action on a simple contract is **barred from** being raised after six years.

32.1 Replace the underlined words and phrases in a solicitor's conversation with his client with alternative words and phrases from A opposite. Pay attention to the grammatical context. There is more than one possibility for two of the answers.



Solicitor: Does she have the (1) power to act as his agent in this agreement?

Client: Yes, she's acting on his behalf.

Solicitor: You understand that you can't rely on an oral agreement. The contract needs to be (2) on paper. When do you want the contract to (3) come into operation?

Client: They want the deed (4) signed, sealed and delivered by 31 July. We've had some problems in the past with suppliers letting us down. Can you make sure this contract will be (5) binding?

Solicitor: We'll use a (6) recognised set of words stating that the provisions are legally binding in the agreement we draw up for you.

32.2 Complete the sentences with words from the box. Look at A and B opposite to help you.

barred	delivered	performed	required	bound	enforced	recognised
brought	executed	rendered	treated	consented	implied	set aside

- 1 The contract was.....unenforceable after 12 years.
- 2 The contract was technically voidable but the parties.....it as binding.
- 3 Because of the limitation period, you are.....from bringing an action.
- 4 The other party has.....to the terms of the contract.
- 5 The contract was.....by the court because it was defective.
- 6 Although there was no written agreement, the court decided the conduct of the partiesa contract.
- 7 Registration of the transfer of land is.....by the law.

32.3 Complete the definitions. Look at B opposite to help you.

- 1- time when an actionable event happened
- 2- amount of time which is available for someone to start legal proceedings
- 3- the passing of a period of years

Over to you
 What agreements must be made in writing in a jurisdiction you are familiar with? What sort of problems can arise? How are they dealt with?
 To look at recent law reports on failure to execute a formal contract, see *Bryen Et Langley Ltd v Boston* [2005] EWCA Civ 973 and *Harvey Shopfitters Ltd v ADI Ltd* [2003] EWCA Civ 1757 at: www.bailii.org/databases.html

UNITE 33 STRUCTURE OF A COMMERCIAL CONTRACT

Structure of a commercial contract

Most written contracts have a similar structure consisting of certain essential clauses, irrespective of the subject matter of the contract. The general pattern of paragraphs can be:

Heading For example, 'Distribution Agreement'.

Commencement and Date

Usually a commercial contract contains a brief introduction which describes the nature of the agreement, for example 'This Agreement for the sale of ...' or 'This Share Agreement'. The commencement clause will state the date on which the provisions, or conditions of the contract, are to come into effect. The date is usually inserted in the relevant space at completion - the last stage in the formation of a contract.

Parties

The full details of parties are set out. In the case of a company, the registered number is included. This remains unchanged during the life of the company despite any changes of name or registered office.

Recitals

Also known as Background or Preamble. These paragraphs are traditionally introduced by the word WHEREAS (conventionally, key words are in capital letters or have an initial capital). The recitals consist of a statement of background facts and the reasons why parties are to enter into the contract. Related or preceding transactions may be referred to. If a later dispute arises concerning the operative part, the recitals may be used to determine construction, that is, interpret intentions.

Operative provisions

Often introduced by the expression 'The Parties Hereby Agree as follows ...' or similar words, for example 'Whereby it is Agreed as follows These words signal the start of the operative part of the contract, containing various clauses which create rights and obligations, or create and transfer interests in property. Operative provisions in more complex agreements may refer to more detailed Schedules (see below).

Definitions

This section states the meaning to be attributed to terms essential to the contract - the defined terms. Most defined terms are conventionally given capital initial letters, for example Security Documents or Completion Date. In the absence of a definition, words within the contract will be given their ordinary and natural meaning.

Interpretation

The aim of this section is to assist in the interpretation and construction of the whole contract by referring to specific uses. There are a number of provisions included in most contracts, for example 'Words denoting the singular include the plural meaning and vice versa'.

Conditions precedent

These pre-conditions must be satisfied in order for the agreement, or the relevant parts of it, to come into effect, for example the grant of planning permission. The conditions precedent clause stipulates, or imposes, obligations on the relevant party to procure the satisfaction of the condition and provide a date by which time the condition precedent must be satisfied. It is usual for an agreement to terminate automatically if this is not achieved by the specified date.

Consideration (see Unit 31)

This sets out the consideration provided by the parties.

Other operative clauses (see Unit 35) Including, for example, warranties, limitation and exclusion clauses, and other standard clauses such as governing law.

33.1 Decide which part of a contract described in A opposite these extracts have come from.

1. "the Schedule" The Schedule in four Parts annexed and signed as relative to this Agreement.

"the Buyer" shall mean the purchaser of the goods from the Company.

2 The consideration for the sale and purchase of the Contract Shares shall be the net asset value of the Company (subject to...) plus Three hundred and fifty thousand pounds for goodwill subject to adjustment as follows...

3 WHEREAS the Vendors have agreed to sell to the Purchaser, and the Purchaser has agreed to purchase, the entire issued share capital of Green Boots Limited ("the Company") on the terms set out in this Agreement.

4 THIS AGREEMENT is made the 1st day of October 2007 BETWEEN Green Boots Limited having its registered office at 104 Warren Court, Beeston, (hereinafter referred to as "the Purchasers" of the first part) and Matching Socks Limited having its registered office at 6 Heel Street, Darnley, (hereinafter referred to as "the Vendors" of the second part).

5. The masculine includes the feminine and vice versa.

6. The sale and purchase hereby agreed is conditional upon and subject to the following conditions being satisfied on or before the Completion Date:-

(i) the Vendors exhibiting to the Purchasers' Solicitors a valid marketable lease in the name of the Company free from any encumbrances to the Property;

7. The provisions set out in the Fourth Schedule shall have effect and the parties shall undertake their respective obligations as specified therein.

8. THEREFORE the parties Have Agreed and Hereby CONTRACT AND AGREE as follows:-

33.2 Replace the underlined words and phrases with alternative words and phrases from A opposite. There is more than one possibility for one of the answers.

1 In spite of the differences between the parties at the start of negotiations, their intention was to form an agreement.

2 We, the Parties, in this way agree to purchase the Contract Shares.

3 If a dispute arises with reference to the satisfaction of the pre-conditions, the Purchasers may cancel the agreement.

4 Without the specified documents, the agreement cannot come into effect.

5 Terms denoting masculine references include female and the opposite.

Over to you

What is the typical structure of a commercial contract in a jurisdiction you are familiar with? What sort of standard wordings are used? Are these helpful?

UNITE 34 EXPRESS AND IMPLIED TERMS

Express terms

Express terms are set out and stipulated expressly in the contract. For example:

The Seller will within a period of 6 months from the date of delivery of Goods, where Goods which are proved to the reasonable satisfaction of both parties to be damaged or defective or not to comply with the agreed specification due to defects in materials or workmanship or to faulty design, repair, or at its sole discretion replace, such Goods, subject to the following conditions:

A condition is an essential term of the contract. If a condition is not performed, it may constitute a substantial breach of contract and allow the other party to repudiate the contract, that is, treat the contract as discharged or terminated. It may also give rise to a claim for damages. If all the conditions are performed, the contract is performed.

A warranty is a term which is secondary to the main purpose of the contract. A breach of warranty does not in itself permit the other party to treat the contract as discharged, although it may allow the party to sue for damages in the event that loss is suffered. When deciding whether a party is entitled to repudiate a contract, courts may try to determine the intentions of the parties with regard to the terms. For example, the courts might look at the commercial importance of a term in relation to a particular trade, and examine the seriousness of the consequences of a breach. If statements made by parties before a contract is made are not intended to be legally binding, for example the stated age of an object offered for sale, they are usually known as representations. If a representation later turns out to be false, this cannot give rise to breach of contract but instead to a possible action for misrepresentation.

Implied terms

Implied terms are not made express within the contract but may be implied into the contract in the following ways:

- by custom - a term can only be implied into a contract by custom if there is no express term to the contrary. These may be terms which are customary in the market in which the contract is made or have been in previous dealings between the parties.

- by statute - various statutes imply terms into different specific contracts. For example, the condition that employment contracts will be automatically transferred is implied under statute in the contract for the sale of a business. In a sale of goods contract there are implied conditions that the seller has the right to sell, that the goods correspond with the description, are reasonably fit for the purpose, and are of satisfactory quality. A contract for the lease of a furnished flat automatically contains a specific implied term that the flat be reasonably fit for habitation.

- by common law - by the intention of the parties, if it is a term which is necessary to make the contract work.



34.1 Replace the underlined words and phrases in the written contract term below with alternative words and phrases from A opposite. Use each word or phrase only once. There is more than one possibility for one of the answers.

8.1 (1) In the situation that the Goods have been manufactured by the Seller and are found to be (2) broken or imperfect, the Seller shall (3) mend or (4) if it chooses to do so. (5) substitute defective Goods free of charge (6) in less than 2 years from the (7) time the goods are received (8) depending on the following (9) terms:

8.1.1 the Buyer notifying the Seller in writing immediately upon the (10) faults becoming apparent;

8.1.2 the defect being (11) because of the (12) incorrect design, materials or workmanship of the Seller;

34.2 Complete the definitions. Look at A opposite to help you. There is more than one possibility for one of the answers.

- 1- breaking a contractual condition
- 2- refuse to carry out obligations under a contract because the other party has not kept to the essential terms of the contract
- 3- end a contract
- 4.....- carry out all the terms of a contract

34.3 Complete the table with the appropriate noun form of words taken from A opposite. Put a stress mark in front of the stressed syllable in each word. The first one has been done for you.

Verb	Noun
'stipulate	stipulation
perform	
repudiate	
terminate	
discharge	

34.4 All of the verbs in the box above, except one, collocate with a contract or the contract. Which verb does not? Look at A to help you. Which noun does the odd one out collocate with?

34.5 A solicitor is talking to her assistant about a phone call with a client. Replace the underlined words and phrases with alternative words and phrases from A and B opposite.

He says the terms of the (1) guarantee have been breached and his business wants to sue for (2) compensation. The contract (3) says that if the goods are found to be defective, they'll be repaired or replaced, and the seller is refusing to do either. Of course, these conditions may also be (4) set out in a law. We'll need to look at the contract to ensure there's no (5) written term (6) saying the opposite. Can you check if his company has had (7) earlier agreements with the seller?

Over +o you
 What terms may be implied into contracts in a legal system you are familiar with? How do the courts interpret written contract terms in the case of a dispute?

UNITE 35 EXCLUSION, LIMITATION AND STANDARD CLAUSES

Exclusion and limitation clauses

Commercial contracts may seek to exclude liability for specific categories of damage and to limit liability for breach of contract. For example:

10.2.5 The Company will be under no liability for any defect arising or introduced by a Buyer in the course of storage or handling of the products where that Buyer acts as agent or distributor of the Company's products.

10.3 The Company shall not be liable whatsoever for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be: loss of profits; loss of contracts; loss of goodwill; damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence).

Parties assume that the terms of an exclusion clause will be binding if they are contained within a signed written contract. However, legislation imposes limits on the use of unfair contract terms. One of the two parties may have greater bargaining power than the other or may try to bring conditions into the contract whose significance is not realised by the other party. Disputes arise around clauses which purport to, that is, intend to, limit or exclude obligations attaching to parties to the contract. Courts are generally called upon to construe, or interpret, the meaning of such clauses.

Note: damage - harm done to objects and property; damages - money claimed in compensation for harm done non-exhaustive illustrations - an incomplete list of examples

Standard clauses

Standard clauses, also known as boiler-plate clauses, are generally towards the end of most agreements and frequently include the following:

- A force majeure clause, which aims to release parties from liability for named risks outside their reasonable control. Non-exhaustive examples are: acts of God, fire, flood, earthquake, war, riot, explosion, breakdown of machinery, strikes, and lockouts.
- A time of the essence clause, which makes it clear whether or not the time limits contained in a contract are essential conditions.
- An assignment clause, which sets out the parties' rights to transfer or assign contractual rights to third parties and any need for prior written consent.
- A severance clause, which provides that the other parts of an agreement continue to be in force in the event that some of the provisions are held illegal or unenforceable.
- A choice of governing law and jurisdiction clause, which specifies the jurisdiction and law which will govern and construe the contract in the event of a dispute.
- A language clause, which specifies the language which will prevail if the contract is translated.

BrE: boiler-plate; AmE: boilerplate

35.1 Replace the underlined words and phrases in the exclusion clause below with alternative words and phrases from A opposite. There is more than one possibility for one of the answers.

9.4 Except as provided in Condition 8.3, the Seller will (1) not bear responsibility to the Buyer (2) at all (whether in contract, tort (including (3) carelessness), breach of statutory (4) obligation or otherwise) for any (5) harm or for any direct, indirect or (6) resulting loss (all three of which terms include, but are not limited to, pure economic loss, loss of profits, loss of business, loss of (7) good reputation and like loss) (8) caused by or in connection with:

9.4.1 any (9) failure of any of the express or implied terms of the Contract by the Seller;

35.2 Complete the standard clauses below. Look at B opposite to help you. Pay attention to the grammatical context.

1. The Company shall not be liable for any failure to deliver the Goods arising from circumstances

2. Time for payment shall be.....

3. The contract between the Buyer and the Seller for the sale of Goods shall not be..... transferred without the.....of the Seller.

4. This Agreement shall be governed by and.....in accordance with the law of England and the parties hereby submit to the exclusive.....of the English courts.

5. If any provision of these Conditions is held by any competent authority to be invalid orin whole or in part the validity of the other provisions of these Conditions and the remainder of the.....in question shall not be affected thereby.

6. This Agreement is drawn up in the English language. If this Agreement is translated into another, the English language text shall in any event.....

35.3 Which of the above clauses is

1 a force majeure clause?

2 a severance clause?

Over to you

How does the law regulate exclusion clauses in a jurisdiction you are familiar with? Compare the different types of contract terms in a legal system you know with those set out here.

To look at a recent law report on a contract dispute concerning an exclusion clause, see Price Waterhouse (a firm) v the University of Keele [2004] EWCA Civ 583 at: www.bailii.org/databases.html

ANSWER KEY

1.1

- 1 Criminal law
- 2 Public law
- 3 Procedural law
- 4 Civil law
- 5 Substantive law

1.2

- 1 head of state
- 2 houses/chambers
- 3 hierarchy
- 6 conventions

- 4 jurisdiction (power is also possible)
- 5 authority

1.3

Verb	Noun	Adjective
'legislate	'legislature	'legislative
pro'ceed	pro'cedure	pro'cedural
con'vene	con'vention	con'ventional
'regulate	regulation	'regulatory or regulatory
ac'cede	ac'cession	
e'lect	e'lection	elected
'authorise	authority or authori'sation	'authorised

- 1 legislature
- 2 accede
- 3 procedural

2.1

- 1 pass/enact
- 2 enact/pass
- 3 amend/update
- 4 repeal
- 5 codify
- 6 consolidate

2.2

- 1 statutory instrument
- 2 bye-law

- 3 pressure groups
- 4 scrutinising the provisions

2.3

- 1 Bill
- 2 submitted/introduced/proposed
- 3 debated

- 4 enshrines
- 5 approved
- 6 re-presented

- 7 drafting
- 8 undertaken
- 9 propose/introduce/submit

3.1

- | | |
|-------------------|---------------------|
| 1 bound | 5 cite |
| 2 consider | 6 binding precedent |
| 3 rely on / apply | 7 revised |
| 4 distinguish | 8 override |

3.2

Verb	Noun	Adjective
a'pply	appli'cation	a'pplicable
pre'cede	'precedent	pre'ceding
per'suade	per'suasion	per'suasive
'bind		'binding

3.3

- | | |
|--------------|--------------|
| 1 binding | 3 citation |
| 2 applicable | 4 persuasive |

4.1

- | | |
|-------------------------|------------|
| 1 Magistrates' Court | 5 leapfrog |
| 2 Instance | 6 Appeal |
| 3 Division | 7 House |
| 4 High Court of Justice | |

4.2

Verb	Naucx - event or action	Nquu - pexscm
a'ppeal	a'ppeal also 'appellate	a'ppellant
'hear	'hearing	
'try	'trial	
'claim	'claim	'claimant

4.3

- 1c, 2e, 3d, 4a, 5b
 1 Appeal/Appellate
 e appeal
 3 claimant
 4 hear/try
 b tried/heard

5.1

- 1 warrant of arrest 2 indictment 3 summons

5.2

- criminal proceedings; realistic prospect; defence costs; reasonable doubt; guilty plea;
 reduced sentence; severe penalties; indictable offences
 1 realistic prospect 3 indictable offences 5 defence costs
 2 reasonable doubt 4 severe penalties

5.3

1 detained	5 sentence/penalty
2 acquitted	6 apprehend
3 appears	7 bail
4 charge	

5.4

f, d, g, a, c, e, b

6.1

1 inspection	5 disclosure
2 counterclaim	6 witness statement
3 form of admission	7 practice directions
4 claim form (formerly known as a 'writ of summons' or a 'summons')	

6.2

admit a claim; agree to a stay; allocate to a regime; enforce the judgment; file a reply; issue a claim; review the process; serve a claim on; set a timetable; settle differences

1 Normally the claimant issues a claim and it is served on the defendant.

2 The defendant must file a reply, whether it is a defence, an admission, or a request for a time extension.

3 Ask the court to agree to a stay (in proceedings).

4 To give parties an opportunity to review the process and make decisions.

5 The claimant can enforce the judgment in the Magistrates' Courts.

7.1

1 unfair dismissal	7 borne by
2 defend	8 broker a settlement
3 respondent	9 parties
4 claimant	10 witness statements
5 government agency	11 address
6 withdrawn	12 refer to

8 1

formerly known as; generally called; referred to as; also known as; defined as

1 generally called 3 defined as

2 formerly known as 4 also known as / referred to as

8.2

1 internal	6 provisions	11 Community	16 directive
2 frontiers	7 Treaty	12 regulation	17 Member
3 free	8 States	13 application	
4 movement	9 measures	14 entirety	
5 services	10 obligations	15 applicable	

8.3

1 true

2 false - community rules take precedence. Community law has supremacy over national law.

3 false - the Common Customs Tariff applies to all goods imported into the EU from countries outside the Community like Japan and the USA.

4 true

9.1

- 1 conveyancing; draw up/draft
- 2 advocacy; right of audience; appear
- 3 solicitor; barrister

9.2

Verb	Noun	Noun - person
'train	trai'neeship or 'training	trai'nee
ad'vise	ad'vice	ad'viser
'practise	'practice	prac'titioner
'specialise	'specialism	'specialist

9.

3

- 2 placement
- 3 practice/firm/partnership
- 4 graduated
- 6 trained
- 7 specialise
- 8 corporates

10.1

- 1c, 2a, 3b, 4e, 5g, 6d, 7f

10.2

- 1 conversion course
- 2 Bar Vocational Course
- 3 chambers
- 4 pupil master
- 5 shadow
- 6 document/pleading/ (an) opinion
- 7 pupillages
- 8 tenancy
- 9 advocacy
- 10 exercise rights of audience ('practise' is also possible)
- 11 senior barrister

11.1

best interests; all parties meeting; chargeable work; comprehensive notes; terms agreed; fee earner

- 1 best interests
- 2 all parties meeting
- 3 terms agreed
- 4 chargeable work

11.2

a significant proportion of
a large part of
a substantial amount of

11.3

- 1 sound files with the minutes on
- 5 type them up

2 copying everyone in / circulating them by email
3 getting a hard copy of
4 marks up

6 get back to them
7 get on

12.1

1 District Judge (Magistrates' Court)
2 Circuit Judge
3 Lord of Appeal in Ordinary
4 Lord Justice of Appeal

1 2.2 1 the Bench 2 the Judiciary 3 the judicial office 4 penal establishment

12.3

1 suspended
2 imprisonment
3 applicant

4 undertaking
5 injunction
6 interim injunction

13.1

1 provides/offers
2 includes/comprises
3 incorporates/comprises
4 contains/includes/comprises
5 led by / headed up (by)

13.2

draw on / have relevant expertise; have exclusive access; have / draw on extensive experience; provide a comprehensive service; make significant investment; resource specialist knowledge

1 has extensive experience
2 made significant investment
3 draw on relevant expertise

4 resource specialist knowledge
5 provide a comprehensive service

13.3

1 personnel
2 submit a tender
3 professional indemnity cover
4 transfer know-how
5 measure outputs

14.1

1 office manual / department manual (or just 'manual')
2 precedent letters
3 disbursements

4 indemnity insurance premium
5 external auditor

14.2

... In a client care letter you should ...
a-... .refer to the matter on which you are instructed to act ...
b-... (refer to) the agreed target timescale, such as there is..
c-... inform the client of who will be undertaking work for them

- d -... give the name of the person with overall responsibility for conduct of the matter.
- e-... provide a fee estimate for work by staff and should also give the details of any anticipated disbursements, such as court fees, search fees, and other costs. If it isn't possible to give a quote at the outset of a matter you may, for example, suggest that you obtain their approval before undertaking any work in excess of an agreed limit.
- f -.. agree to provide an estimate at the earliest opportunity.

14.3

1c, 2d, 3e, 4a, 5b

15.1

- | | |
|-----------------------|--|
| 1 money laundering | 4 as soon as is reasonably practicable |
| 2 one-off transaction | 5 exercised all due diligence |
| 3 forestalling | 6 disclosures |

15.2

- 1 comply with
- 2 Proceeds of
- 3 act for another person
- 4 contravening
- 5 fine
- 6 took all reasonable steps
- 7 exercised all due diligence
- 8 forestalling
- 9 disclosure
- 11
- 12
- 13
- 14

16.1 1c, 2d, 3f, 4e, 5a, 6b

1 6.2 2 Ellipsis - ... relating to the above (Project Ivory, Target Company - Franklin Red Limited) ...

3 Substitution of 'this aspect' for 'conditions to which Completion will be subject'

4 Ellipsis - ... read the enclosed (Heads of Terms) carefully ...

5 Substitution of 'the same' for 'the enclosed' Heads of Terms

1 suspect

0

1 6.3 1 true - ... enclosed find the further amended Heads of Terms...

2 true - You will see that I have left this aspect as originally drafted for the time being.

3 false - As previously discussed, you will let me have further instructions ...

4 false - I should be grateful if you could read the enclosed carefully and confirm that you are happy with the same,

16.4 11 am pleased to enclose / Please find enclosed

2 previously discussed

3 please let me know if you have any particular concerns / please let me know if we can be of further assistance / if you have any questions, please do not hesitate to give me a call

4 I should/would be grateful if you could

5 I look forward to hearing from you (shortly / as soon as possible) / I look forward to our meeting

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Professional English in Use Law

17.1 You wanted me to give you an outline of the stages in getting proprietary rights. First, consider submitting an application to the patent office in the research phase. Before that happens, don't publicly disclose the invention because this might be interpreted as prior publication. Next, I Then, I The next step is to I After that, think about using the services of a registered patent agent to help prepare the specification (the legal document) required by the patent office. Once that's been done, I Next, I Then, I The next step is to complete the form 'Request for grant of patent'. After that, I Next, I Then, I Once that's been done, take or send the documents to the patent office. Finally, the patent office decides whether the invention fulfils specific conditions before it grants a patent.

1 7.2 1 equivalent to / the same as
2 differs from
3 referred to as / called / known as
4 comparable to / similar to / like
5 is (very) different from / differs from

1 7.3 1 in other words
2 that is

3 Let me explain further / Let me put it another way
4 Could I (just) clarify that / So, if I've understood you correctly, / So, if I may (just) check I've got this right,

18.1 1 This Agreement¹ and the benefits and advantages² herein³ contained are personal to each

Member¹ and shall⁴ not be sold, assigned or transferred² by the Member.¹

2 Lessor¹'5'6 shall⁴ not be liable for loss of or damage to any property left, stored, or transported² by Hirer¹ or any other person in or upon² Vehicle¹ either before or after the return thereof³ to Lessor¹'5. Hirer hereby³ agrees to hold² Lessor¹'5 harmless from², and indemnify⁵ Lessor¹'5 against all claims based on or arising out of² such loss or damage unless

caused by the negligence of Lessor.¹'5'7

3 Title⁵ to property in the goods shall⁴ remain vested in² the Company¹' 6 (notwithstanding³ the delivery of the same to the Customer¹'6) until the price of the Goods¹ comprised in the contract and all other money due from the Customer¹'6 to the Company¹ on any other account has been paid in full.⁷

1 using capital letters to signal important or defined terms

2 using legal jargon, including the use of pairs of words or triplets

3 using old-fashioned words not much in general use

4 the specific use of the modal verb 'shall' to impose an obligation or duty on someone

5 using technical terms

6 avoiding personal pronouns

7 using long sentences with little punctuation

a Membership

b liable; loss; property; vehicle; arises ('results' is also possible); negligence

c goods; paying

Professional English in Use Law I 03

- 18.2 1 f, 2d, 3a, 4g, 5b, 6c, 7e
 19.1 1 i, 2g, 3h, 4f, 5b, 6a, 7c, 8c, 9d
 1 trading vehicle / trading entity
 5 general
 a duration
 c Partnership Agreement
 d expelled from
 e exemption
 f jointly and severally liable
 g bankrupt
 h sole trader
 19.2 Registrar of Companies; minimum authorised capital; security over personal assets; guarantee the obligations; raise share capital; legal entity; Public Limited Company
 1 security over personal assets 4 minimum authorised (share) capital
 2 Public Limited Company 5 to raise share capital
 3 Registrar of Companies
 20.1 1 formation agent / registration agent 4 trading name
 2 transferred 5 Company Secretary
 3 registered company 6 Incorporation
 20.2 1 LIMITED 3 registered office 5 mortgage 7 capital
 2 ARTICLES 4 objects 6 liability
 21.1 1c, 2e, 3a, 4b, 5d
 a allot/allocate
 b member of the company
 c nominal capital
 d share certificate
 e issuing
 21.2 declare a dividend; defer payment; exercise the right; issue at a premium; vote on a resolution
 1 vote on; resolution 4 defer payment
 2 declare; a dividend 5 issue; at a premium
 3 exercise the right
 22.1 1 a floating charge 4 security
 2 a fixed charge 5 a mortgage
 3 a debenture
 86
 22.2 1 5 creditors 9 fixed charge
 charge/mortgage 6 insolvent 10 floating charge
 2 mort- 7 repayment 11 defaults
 gage/charge 8 secured 12 charge holder
 3 assets
 4 debenture
 2.3
- | Noun - type of legal agreement | Noun - legal person who assigns (transfers) an interest or use in a property to another | Noun - legal person who has been assigned an interest in or use of a property |
|--------------------------------|---|---|
| 'charge | char'gor | char'gee |
| 'grant | gran'tor | gran'tee |
| 'lease | le'ssor | le'ssee (also 'tenant) |

>3.1

- 1 chargor
- 2 mortgagee
- 3 lessor

1 He appears to be disqualified. Because he is over 70 a general meeting of the members would

need to agree to waive the age requirement. He may also be an undischarged bankrupt in which case the court would need to give leave.

2 The company may be charged a late filing penalty. The directors have committed a criminal offence. This may result in a fine and a criminal record. If this happens again, they may be disqualified from holding the office of director.

3 The Registrar of Companies may strike Monocles Ltd off the register and dissolve the company. The company's assets may become the property of the Crown.

23.2 1e, 2d, 3b, 4a, 5c

a comply with

b provided notice of; statutory form(s)

c served; minutes

d filed/delivered/submitted; within (... months of) the accounting reference date / within the requisite period

e delivered/submitted

24.1

1 creditor

2 insolvent

3 unsecured

4 preferential

5 realise

6 discharge

24.2

24.3

1 a shareholders or members

1 b company directors

1 c a creditor or company directors

1 d a charge holder or company directors

2 by filing a notice at court

on

of

3 out

4 with

5 of

6 as

7 in

8 to

3 by petitioning the court

4 it crystallises / crystallisation

5 it's a going concern

6 winding up or liquidation

7 solvent

Professional English in Use Law

I05

25.1

Verb	Noun - concept or object	Noun - person	Adjective
dis'pute	'dispute or dis'pute	dis'putant	
re'solve	reso'lution	re'solver	
con'tract	'contract	con'tractor	con'tractual or con'tracting

25.2

25.3

25.4

26.1

26.2

27.1

27.2

27.3

28.1

28.2

1 parties

2 party

1 referral

2 mediation

3 resolved

4 dispute

3 mediator

4 resolving

5 referred

6 Contractor

5 settlement

7 Agreement

8 resolution

1 false - arbitration is a formal and binding process.

2 false - the online mediator passes email responses between parties online.

3 false - adjudication is commonly used to resolve construction disputes.

4 false - the defendant and the claimant are respective parties. The mediator is an independent third party.

1 notify 4 profits 7 instalments

2 cooperative 5 due date 8 income

3 stipulated 6 gains 9 exceed / be in excess of

1 chargeable

2 Return (or declaration)

4 relief

5 exemption

7 benefits/efficiency

8 efficiency/benefits

3 due 6 bill

Verb	Noun	Adjective
com'pete	compe'tition	com'petitive
'regulate	'regulator	regu'latory

1 regulators

2 takeover

3 (takeover) bid
4 anti trust/competition
5 regulatory
6 merger
1 abide by
2 offeree
3 relevant securities
4 disclosed
5 offer
6 offeror
1 a monetary penalty 2 an adverse effect 3 agreed undertakings
1 inquiry 5 watchdog (the OFT)
2 barriers 6 refer
3 distort 7 rivals/competitors
4 harm 8 investigation
9 referral
10 competition
11 powers under
12 compelled
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28.3

29.1

29:2

30.1

30.2

1 d - selling popular products below cost price to put pressure on smaller competitors

2b- erecting barriers to keep out new players; e - acquiring development sites to prevent a rival opening a store

3b- move into convenience stores could distort competition; d - stores' increasing buying power, which they can use to drive down the prices paid to suppliers

1 tort

2 damages

3 damage

4 claimant/plaintiff

5 defamation

6 strict liability

7 trespass

8 slander

Noun	Adjective
defa'mation	de'famatory
'libel	'libellous
lia'bility	'liable
'injury	'injured

29.3 1 injury

2 sustained/suffered

3 undergoing

4 suffered/sustained

5 earnings

6 owes ('has' is also possible)

7 care

8 admitted

9 claim

10 negligence

1 potential claim

2 adversely

3 impartial opinion

4 a causal link / causation

5 pursue a claim / bring a claim

6 likely

7 on a conditional fee basis / on a no win no fee basis / on a contingency basis (AmE)

8 In the case in point

1 gives

2 explores

3 obtains

4 prepares

5 keeps

6 agrees

7 pursue

8 affected

9 bring

30.3 Note: The direct object (for example, 'the claim') normally comes before the agent (for example, 'the firm').

2 The claim is explored by the firm.

3 The client's medical records are obtained by the solicitor.

4 A report is prepared by an independent expert.

5 A register of experts is kept by the department.

6 A payment schedule is agreed with the client by the firm.

7 The claim is pursued on a conditional fee basis.

8 The outcome for the patient has been adversely affected by the action of the defendant.

9 The claim must be brought by the claimant within the limitation period.

Professional English in Use Law

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31.1

31.2

31.3

10 1

32.2

32.3

33.1

1 hire agreement/contract

2 service agreement/contract

3 hire purchase agreement/contract

4 lease

5 loan agreement/contract

contrary evidence; counter offer; conditions of sale; rebuttal presumption; avoid

uncertainty; essential terms; contracting parties; qualified acceptance; subject to contract

1 An English court is likely to find that no contract was formed. There had been no final unqualified agreement on all the elements of the contract, such as consideration (for example a price) or essential terms (such as delivery). The agreement was vague. There was uncertainty.

2 Helena had become a shareholder. The contract was formed at the time of posting, when acceptance was sent by the offeree, even though the letter in which acceptance was communicated was not actually received. This is the postal acceptance rule.

3 The agreement was legally binding if there was no contrary evidence. There was intention to create legal relations.

1 authority/capacity

2 (made) in writing

3 have effect / be effective

4 (formally) executed

5 enforceable

6 standard wording

1 rendered

2 treated

3 barred

4 consented

5 set aside

6 implied

7 required

1 date of occurrence of the cause of action

2 limitation period

3 lapse of time

1 Definitions

2 Consideration

3 Recitals (also known as Background or Preamble)

4 Commencement and Date; Parties

5 Interpretation

6 Conditions precedent

7 Operative provisions (referring to those "therein" the Schedules)

8 Operative provisions

33.2 1 Irrespective of / Despite

2 hereby

3 concerning

34.1 1 Where

2 defective/faulty/damaged

3 repair

4 at its sole discretion

4 In the absence of

5 vice versa

5 replace

6 within

7 date of delivery

8 subject to

9 conditions

10 defects

11 due to

12 faulty

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Professional English in Use Law

34.2 1 breach of contract 3 terminate/dischARGE the contract

2 repudiate the contract 4 perform the contract

34.3	Verb	Noun
	per'form	performance
	re'pudiate	repudiation
	'terminate	termin'ation
	dis'charge	'discharge

34.4 'stipulate' does not collocate with 'a contract' or 'the contract'; 'stipulate terms/conditions'
or 'stipulate a term/condition'

34.5 1 warranty 5 express
2 damages 6 to the contrary
3 stipulates 7 previous dealings
4 implied under statute

35.1 1 be under no liability / not be liable 4 duty 7 goodwill
2 whatsoever 5 damage 8 arising from
3 negligence 6 consequential 9 breach

35.2

35.3

36.1

36.2

36.3

1 outside their (the Company's) reasonable control

2 of the essence

3 assigned; prior written consent

4 construed; jurisdiction

5 unenforceable; provision

6 language; prevail

1 1

2 5

1 agent (on behalf of his principal)

2 third party

3 privity of contract

4 novation

5 express provision

1 released; contractual obligations

2 defective performance

3 been committed

4 substantially performed

6 enforce a term

7 confer a benefit (on someone)

8 obligations under contract

9 assignment of obligations

5 communicate acceptance of the breach (of contract)

6 repudiate

7 discharged by frustration

8 remuneration

1 rescinded

2 (their) discretion

3 suffers

4 granted

5 specific performance