Английский язык для аспирантов-юристов

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Предисловие

Настоящий учебник предназначен для аспирантов юридического профиля очной и заочной форм обучения, изучающих учебную дисциплину «Иностранный язык». Учебник подготовлен профессорско-преподавательским коллективом кафедры английского языка № 2 Московского государственного юридического университета имени О.Е. Кутафина (МГЮА) в соответствии с рабочей программой дисциплины «Иностранный язык» и ФГОС ВО по направлению подготовки 40.06.01 Юриспруденция (уровень подготовки кадров высшей квалификации).

Цель данного учебника – совершенствовать владение аспирантами юридического профиля навыками и умениями письменного и устного общения в сфере профессиональной, педагогической и научно-исследовательской деятельности. Для достижения этой цели необходимо формировать у аспирантов ***универсальные компетенции***, которые выражаются в способности и готовности участвовать в работе российских и международных исследовательских коллективов по решению научных и научно-образовательных задач, а также в готовности использовать современные методы и технологии научной коммуникации на иностранном языке.

Для реализации указанной цели необходимо обеспечить решение следующих задач обучения: освоение аспирантами профессионально ориентированного языкового материала, направленного на совершенствование лингвистических, социолингвистических, культурологических, дискурсивных знаний, а также дальнейшее расширение словарного запаса в основном за счет общегуманитарной, общенаучной, правовой и терминологической лексики; совершенствование полученных на предыдущих образовательных уровнях навыков просмотрового, ознакомительного, поискового и изучающего видов чтения для работы с оригинальной монографической и периодической

литературой на иностранном языке по тематике узкой специальности аспирантов; формирование навыков монологической и диалогической речи, а также навыков аудирования, направленных на понимание информации и выражение различных коммуникативных намерений, характерных для научно-исследовательской и педагогической деятельности аспиранта; формирование высокоорганизованных навыков трансформации профессионально ориентированной научной информации на иностранном языке в различные виды документации посредством реферирования и аннотирования; совершенствование навыков письма на иностранном языке в целях эффективного ведения научной переписки профессионального характера, написания научных статей, изложения прочитанного в форме резюме, написания доклада на иностранном языке по тематике научного исследования аспиранта; формирование навыков перевода с иностранного языка на русский, направленных на достижение смысловой эквивалентности и лингвистической адекватности при получении информации научного и профессионального характера.

Данный учебник нацелен на эффективное изучение дисциплины «Иностранный язык», которая рассматривается как обязательный компонент профессиональной подготовки аспиранта. Учебник состоит из 10 тематических разделов, содержание которых охватывает основные аспекты деятельности юриста в сфере профессиональной коммуникации. Для обеспечения единства образовательного пространства тематика унифицирована для всех форм обучения аспирантов.

Каждый тематический раздел учебника включает профессионально ориентированные аутентичные материалы на иностранном языке по специальности и направленности диссертационного исследования, которые, в зависимости от коммуникативной задачи, способствуют совершенствованию уверенных навыков в основных видах чтения, письма, говорения, аудирования и перевода с иностранного языка на русский, формируют умение вычленять опорные смысловые блоки в читаемом и определять в прочитанном тексте

структурно-семантическое ядро. В каждом тематическом разделе содержатся лексико-грамматические комментарии и упражнения, способствующие дальнейшему совершенствованию навыков устной и письменной коммуникации. Представленные упражнения помогают овладеть основными переводческими приемами, трансформациями, приемами компрессии, генерализации и дескриптивной передачи смыслов.

Представленные в учебнике лексико-грамматические задания направлены на выполнение перевода на русский язык аутентичного текстового материала профессиональной направленности, на реферирование и аннотирование научной информации на иностранном языке по тематике диссертационного исследования, на составление двуязычного глоссария по тематике научного исследования, на подготовку устных сообщений в реферативном формате. Перечисленные задания учебника способствуют выработке у аспирантов уверенных навыков для осуществления иноязычной речевой деятельности в научной профессионально ориентированной коммуникативной сфере общения с учетом отраслевой специализации юриспруденции.

Авторы учебника руководствовались нормами орфографии и пунктуации, зафиксированными в современных лексикографических источниках британского и американского вариантов английского языка.

Авторы выражают благодарность старшему преподавателю кафедры английского языка № 2 Миненко О.А. за обеспечение технической подготовки учебника к изданию.

UNIT 1

Constitutional Law

Forms of Government. Democracy

Democracy derives its superiority from two sources.

Firstly, a democratic regime is legitimate. In a real democracy, the form of the regime is, by definition, sought after by the people. It is logical that such a regime can rely on more internal support than a dictator.

Secondly, a democracy is more productive. In an authoritarian regime, the ideas of the majority of citizens have little opportunity to influence decision-making. In a democracy, there is a *much* broader base of ideas.

Moreover, the selection of ideas is more efficient in a democracy. Democracy is nothing more than the social *processing* of individual ideas. New ideas always originate with individuals, because only individuals can think. But the individual ideas have to be considered, weighed against each other and adapted to the conditions in society. People need each other to correct the imperfections in each other's ideas. The heart of democracy is *actually* this process of the social shaping of perceptions, in which the idea or proposal of a single person, often already accepted by a smaller group (a political party, action group or pressure group), has its pros and cons weighed up by society as a whole. This perception-forming process leads to a choice. But the choice always has to be examined in historical context; today's minority can be tomorrow's majority. The actual decisions in relation to the stream of image forming are like the timpani beats within an entire symphony.

In the medium to long term, democratic decisions will be socially superior to dictatorial decisions. Morally dubious goals, which do not serve the communal interest, *will* by their *very* nature *seek* their way via concealed channels that are shielded from the light of open, democratic decision-making. Under democratic conditions, the best ideas will be filtered out, *so to speak*, because we are better at recognizing others' weaknesses than our own. *The process* of *selection* that occurs along the path of democracy can feed into society that which is beneficial to it. This does not mean that the presence of democratic instruments necessarily guarantees the

quality of the moral initiatives of individual members of society. We can only trust that such initiatives will emerge. But it *does mean* that morally worthy aspirations cannot materialize without democracy. Politics can never prescribe morality. But politics can create democratic instruments that allow the moral potential that is dormant in individuals to be freed and put to work for the benefit of society.

Evolving democracy

Democracy is never complete. The rise of democracy should be seen as an organic process. Democracy cannot stop developing and deepening, just as a person cannot stop breathing. A democratic system that remains static and unchanged will degenerate and become undemocratic. *It is just* such a process of ossification *that* causes society's current malaise. We have to face up to the fact that democracy in our societies is in dire straights.

Our current, purely representative democracy is *in fact* the response to the aspirations of more than a century ago. This system was suited to that time, because the majority of people could find their political views and ideals reflected in a small number of clear-cut human and social beliefs, which were embodied in and represented by Christian, socialist or liberal groups, for example. That time is long past. People's ideas and judgements have become more individualized.

The appropriate democratic form in this context is a parliamentary system complemented with the binding citizens' initiative referendum (direct democracy), because such a system provides a direct link between individuals and the legislative and executive organs. *The greater* the degree to which citizens incline towards individual judgements, and political parties lose their monopoly as ideological rallying points, *the higher will be* the demand for tools of direct-democratic decision-making.

Indeed, a majority of people in Western countries want the referendum to be introduced. This fact *alone* should be decisive in also *actually* implementing it. Democracy literally means: 'government by the people' (Oxford English Dictionary). The first step towards authentic government by the people necessarily involves

people, being able to determine themselves how this government by the people is designed and put into practice.

Nevertheless, we see that the majority of politicians argue against the referendum. It is striking that *the higher* the level of effective power they possess, *the more vigorously do* many politicians *resist* the referendum. In doing so, they *actually* adopt the same arguments that were previously used to oppose the workers' and women's right to vote. It can also be shown that these arguments have very little merit.

In fact, *however*, a glance at direct democracy in practice is sufficient to see that the objections are groundless. In Switzerland *in particular*, a very interesting - *albeit by no means* perfect - example of direct democracy has existed for more than a century. The Swiss can launch citizens' legislative initiatives at all administrative levels. *In certain instances*, it is clear that the citizens are directly opposed to the preferences of the political and economic elite. In referendums on constitutional amendments and transferring sovereignty to international organisations, which are obligatory in Switzerland, the voters reject a quarter of the parliament's proposals; when a citizens' group collects signatures to force a referendum on ordinary laws, *as many as* half the legislative proposals are rejected. But the people have not used their democratic rights to turn Switzerland into an inhuman or authoritarian state! There is no death penalty in Switzerland and human rights are not threatened in that country. *Moreover*, Swiss citizens have no plans to surrender their superior democratic system. (The Swiss people's dislike of the European Union is also associated with the Union's undemocratic character.)

But direct democracy must not be idealized. It provides no solutions in itself. Direct democracy *does* however *make* available the essential mechanism for producing useful and useable solutions to modern problems. The introduction of direct democracy should not happen out of a mood of sudden euphoria, but in a spirit of 'active and conscious readiness to wait'.

Moreover, one should not underestimate the invigorating impact that will immediately result from a radical choice for the restoration and deepening of

democracy. The decision for more democracy is always also a decision for the right of the other to have a voice. It is a declaration of faith in the moral forces and capacities that are latent in one`s fellow citizens. In our societies, which are poisoned by mutual distrust, there is almost nothing else imaginable that can have such a healing effect. The commitment to more direct democracy is by definition a commitment to the other persons, to their freedom of speech, to their intrinsic dignity. People who are only interested in achieving their own goals have nothing to gain from democracy. They would do better to put all their energy into proclaiming and propagating their own individual point of view. Real democrats are interested in the individual points of view of others, because they know that people need each other to hone and sharpen their ideas and intuitions, to improve them and elaborate them. This social process of the forming, and shaping of opinions constitutes the real core of democratic life. *The closer* people are brought into contact with each other in a kind of federalism, *the more easily* and *effectively can shared perceptions emerge*. Direct democracy and federalism reinforce each other. Together they form a 'strong democracy (Barber 1984) or 'integrated democracy'.

Notes:

1. It is just such a process ... that causes … - именно такой процесс вызывает ...

2. The greater the degree ... the higher will be the demand – чем больше степень …, тем выше требование ...

3. But it does mean … – но это точно означает …

Grammar points

Перевод эмфатических конструкций

Эмфатические конструкции выделяют тот или иной член предложения.

К ним относятся:

1. усилительные слова или словосочетания:

as much (many) as …

The unemployment rate reached as much as 15 percent at the time.

Уровень безработицы в то время поднялся на целых 15%.

as such – как таковой

Democracy as such … – Демократия как таковая …

as early as

as early as in the end of WWII … – Уже в конце второй мировой войны …

alone

This fact alone … – Именно (исключительно) этот факт …

very (перед существительным) – самый, тот самый

The very fact that … – Сам факт, что …

much

much later – гораздо (намного) позже

do

The problem does exist. Проблема все-таки существует.

2. it is … that (who) – усилительная конструкция

It is these characteristics that are important to us.

Для нас представляют важность именно эти характеристики.

3. артикль (a, the)

It is just an option, not the option we should accept.

Это лишь один из вариантов, а вовсе не тот единственный, который нам следует принять.

The sooner you do it, the better.

Чем скорее вы сделаете это, тем лучше.

4. обратный порядок слов после ряда наречий и союзов:

hardly …. when	едва … как …
no sooner … than	не успел … как …
not only … but …	не только … но и …

only	только
never	никогда
neither nor	и не; а также не
so	а также; и
Nowhere can this phenomenon be observed better than in this area of social life.	Нигде нельзя лучше наблюдать это явление, чем в этой сфере общественной жизни.

5. двойное отрицание

The first progress was not made until the end of the year.

Первые успехи были достигнуты лишь в конце года.

Exercise 1. Translate the sentences paying attention to emphatic words, word combinations and constructions.

1. Direct democracy does however make available the essential mechanism for producing useful and usable solutions to modern problems.

2. It’s the citizens who are directly opposed to the preferences of the political and economic elite.

3. Only in 1870, after the Civil War, were people of color granted the constitutional right to vote.

4. But it does mean that morally worthy aspirations cannot materialize without democracy.

5. The closer people are brought into contact with each other in a kind of federalism, the more easily and effectively can shared perceptions emerge.

6. In a democracy, there is a much broader base of ideas.

7. It’s striking that the higher the level of effective power they possess, the more vigorously do many politicians resist the referendum.

8. Congress does have its own institutional rules, but they apply only to its members and committees.

9. These people do employ executive orders and directives in the course of their management responsibilities, but rarely, if ever, do they write rules of the type considered in the book.

10. The greater the degree to which citizens incline towards individual judgments, and political parties lose their monopoly as ideological rallying points, the higher will be the demand for tools of direct-democratic decision-making.

11. It's just such a process of ossification that causes society`s current malaise.

12. It was not until mid – 90ies that some progress was observed.

13. Nor should there be distortion in social policies of the local governments.

14. This option is not improbable in the present situation.

15. No sooner the committee started operating than the first positive results could be seen.

16. Never was greater a surplus of the U.S. budget than in 1999.

17. When a citizens` group collects signatures to force a referendum on ordinary laws, as many as half legislative proposals are rejected.

18. Democracy as such can longer be recognized in the Netherlands.

19. Morally dubious goals, which do not serve the communal interest, will by their very nature seek their way via concealed channels that are shielded from the light of open, democratic decision-making.

20. This fact alone should be decisive in also actually implementing it.

Essential vocabulary

Псевдоинтернациональные слова - это слова,

1. которые имеют сходные написание и произношение, но совершенно другое значение по сравнению с английским, например:

actual	действительный, фактический (а не актуальный)
accurate	точный (а не аккуратный)
data	данные (а не дата)

Dutch	голландский (а не датский)
familiar	известный, знакомый (а не фамильярный)
prospect	перспектива (а не проспект)

2. которые лишь в одном или двух значениях совпадают с русскими словами, например:

authority	власть (реже, авторитет)
activity	деятельность (реже, активность)
collect	взимать (а не только собирать, коллекционировать)
complex	сложный, запутанный (а не только комплексный)
control	управлять (а не только контролировать)
original	первоначальный, подлинный (а не только оригинальный)
object	цель, задача (а не только объект)
individual (a)	личный, характерный, особенный, отдельный, частный (а не только индивидуальный)
individual (n)	отдельное лицо, индивидуум, личность, физическое лицо
champion	борец, поборник, защитник (а не только чемпион)
convention	съезд (а не только конвенция)
position	должность (а не только позиция)
legal	правовой, юридический (а не только легальный)
interest	процент (в банке) (а не только интерес)
public	государственный (а не только публичный)
nation	страна, народ (реже – нация)
officer	чиновник, должностное лицо (а не только офицер)
realize	понимать, представлять себе (реже – реализовывать)

Exercise 2.

A. Translate the following word combinations.

1. banking officer
2. public debt
3. interest rate
4. convention of the Entrepreneurs Union
5. champion of peace
6. null document
7. legal matters
8. accurate data
9. title and position
10. human value

B. Translate the sentences paying attention to the words in bold type.

1. A democracy is more **productive**.
2. The **selection** of ideas is more **efficient** in a democracy.
3. Democracy is nothing more than the **social processing** of **individual** ideas.
4. New ideas always originate with **individuals**, because only **individuals** can think.
5. In the 19th century democracy was **actually** still only in its infancy.
6. But the choice always has to be **examined** in a historical context.
7. When a citizens` group **collects** signatures.
8. The citizens or voters are weak players in the **complex** and utterly dense social network of political decisions in their country.
9. **Daudt** is seen as the Nestor of **Dutch** political science.
10. The **fundamental** rights are respected.

3. вводные слова и словосочетания:

Firstly	Во-первых,
Secondly	Во-вторых,

actually	в действительности, на самом деле, фактически, даже, как ни странно
so to speak	так сказать
in fact	действительно, фактически
albeit	хотя
by no means	отнюдь не, никоим образом
moreover	более того, кроме того (very formal and not common in spoken English; use “besides” or “also” instead)
indeed	действительно, в самом деле
nevertheless, however	тем не менее, однако
in certain instances	в определенных случаях
in particular	в частности, в особенности, особенно

Exercise 3. Find and translate the sentences with introductory word combinations in the text and translate them into Russian.

Exercise 4. Use the texts and your general knowledge of law to discuss the definitions of the following word combinations.

a) dictatorial government

b) authoritarian state

c) democratic state

d) direct democracy

e) representative democracy

f) authentic government

g) referendum

h) action group

i) pressure group

Exercise 5. Make a précis of the part headlined “Evolving democracy”.

Exercise 6. Read and render the text.

Our Democracy Is a Nonsense

We are currently a long way from such an integrated democracy. Political decision-making generally takes place beyond the influence and even beyond the cognizance of the citizens. This applies to almost all European states.

Hans Herbert von Arnim is Professor of Public Law and Constitutional Theory at the University of Speyer in Germany. He has written several books on democracy and politics and has acquired a reputation for exposing the often sordid reality that lies behind the "pretty face of democracy". In his book "Das System" (The System; subtitle: 'The Machinations of Power'), published in 2001, he lifted the lid on the German political system: "If representative democracy means government by the people and for the people (Abraham Lincoln), it quickly becomes apparent that in reality all is not well with the basic principles of what is supposed to be the most liberal democratic social system that has ever existed in Germany. The state and politics are on the whole in a condition that only professional optimists or hypocrites can claim is a result of the will of the people. Every German has the freedom to obey laws to which he has never given his assent; he can admire the majesty of a constitution to which he has never granted legitimacy; he is free to honor politicians whom no citizen has ever elected, and to provide for them lavishly – with his taxes, about the use of which he has never been consulted". The political parties that take decisions in this system have become monolithic institutions, according to Von Arnim. The political identification and satisfaction of needs, which in a democracy should proceed from bottom to top - from the people to the parliament - is completely in the grip of the party leaders. Von Arnim also lays blame on the system of party funding, in which politicians can personally determine how much of the tax revenues their parties - private associations just like any other – can collect. According to Von Arnim, it is not surprising that politicians continue to ignore the ever-increasing

clamor for reform of the political system, because otherwise they would undermine their own very comfortable positions of power.

In Great Britain, the Power Inquiry, a committee set up by social organisations and consisting of both politicians and citizens, conducted a large-scale investigation into the state of British democracy, and especially into the reasons why so many citizens seem to be turning their backs on politics. They held hearings across the entire country, at which citizens were invited to put forward their opinions, and published the report 'Power to the People', which noted: "The one factor felt to cause disengagement that runs through all the strands of our investigation is the very widespread sense that citizens feel their views and interests are not taken sufficiently into account by the process of political decision-making. The depth and extent of this perception among the British public cannot be stressed enough. Many, if not all, of the other accepted explanations presented here can also be understood as variations on this theme of weak citizen influence. (...) This view comes through very strongly in the many public submissions received by the Inquiry". (Power Inquiry)

In 1992, Professor De Wachter carefully mapped out the political decision¬-making processes in Belgium. He concluded: "In Belgium, the development of formal democratic institutions has become stunted. More up-to-date designs which would allow citizens to have a lasting impact on decision-making are either denied or at best lead to the failure to take decisions at all". "The citizens or voters are weak players in the complex and utterly dense social network of political decisions in their country. They lack decisive means of access to the highest levels of the power hierarchy and to decision-making. Everything is decided for them in an extremely elitist manner. For people who are open to ideas of democratic legitimacy, this assessment is both a disappointment and an abdication".

In 2002, Dutch journalist Gerard van Westerloo interviewed Professor Daudt, a celebrated political scientist. Daudt is seen as the Nestor of Dutch political science; a complete post-war generation of political scientists was trained by him. Professor Daudt wiped the floor with the proposition that the Netherlands was a democracy, dismissing it as follows. Certainly, Daudt said, the fundamental rights are respected,

but "let's not use buzzwords to dress it up as something that it is not: a democracy with people's representatives. (...) Our democracy is a nonsense". Because van Westerloo wanted to know what Daudt's colleagues thought about his views, he made a tour of the Netherlands, visiting dozens of social administration specialists and political scientists. Daudt's view was confirmed everywhere. In Tilburg, Professor Frissen stated: "In the Netherlands, we are ruled by an arrogant elite, which has nothing to do with democracy in the direct-democratic sense of the word". In Groningen, Professor Ankersmit said: "Politics in the Netherlands has been driven to the fringe. Democracy as such can longer be recognised in it." Professor Tromp from Amsterdam: "Politics in the Netherlands is walking down a dead-end street. A crisis is looming, which cannot be avoided. Political parties are nothing more than networks of people who know and support each other". Professor De Beus from Amsterdam: "The legitimacy of Dutch democracy is a large-scale form of selfdeception and fraud". Professor Tops from Tilburg: "The political animal in the Netherlands is as good as tamed and domesticated". Director Voerman of the Documentation Centre for Dutch Political Parties: "The parliament has become nothing more than a rubber stamping machine". And according to political scientist Baakman from Maastricht: "We deceive ourselves that what we call democracy also works as democracy". (Van Westerloo, 2002)

Discussion

Exercise 7. Arrange a round-table discussion on democracy in Western countries and Russia.

UNIT 2

Criminal Law

Criminal law is the body of law that involves the prosecution by the state of a person for an act that has been classified as a crime, defines criminal offences, regulates the apprehension, charging, and trial of suspected persons, and fixes penalties and modes of treatment applicable to convicted offenders. This contrasts with civil law, which involves private individuals and organisations seeking to resolve legal disputes. Since the same act may be both a criminal offence and a civil wrong the distinction between criminal law and tort law is difficult to draw with real precision, but in general one may say that a tort is a private injury while a crime is conceived as an offence against the public, although the actual victim may be an individual.

Important differences exist between the criminal law of most English- speaking countries and that of other countries. The criminal law of England derives from the traditional English common law of crimes and has its origins in the judicial decisions embodied in reports of decided cases. It being extremely difficult to give a single definition to crime on the basis of one common distinguishable feature, England has consistently rejected all efforts toward comprehensive legislative codification of its criminal law; even now there is no statutory definition of murder in English law.

Classification of crimes

To find out what acts can be followed by criminal proceedings one must refer to the laws laid down by Parliament and to the decisions of the courts over the last few centuries. Crimes described in statutes are called *statutory crimes*, and those described in case law are known as *common-law crimes*. Originally, the common law divided crimes into *felonies* (the graver crimes generally punishable with death) and *misdemeanours* (the lesser crimes punishable with fines or imprisonment). However, already in the 19th century this classification was deemed obsolete and inconsistent. In 1967, when capital punishment in Great Britain was abolished for all crimes except treason, this classification was replaced by the division into *arrestable* and *nonarrestable* offences. An arrestable offence is one for which there is a fixed

penalty in the law, or one punishable with at least five years' imprisonment. All other crimes are termed nonarrestable offences. Nowadays the most common way to classify crimes into *summary* (minor offences considered by magistrates without a jury), *indictable* (serious crimes committed to the Crown court for trial by jury) and "*either-way*" offences is helpful to determine which court will deal with the offence.

The elements of a crime

Every crime consists of two important elements: the criminal act itself (*actus reus*) and the criminal intent to commit a crime (*mens rea*). The law does not punish for a guilty mind alone: if a person intended to commit a robbery but never even started preparations for it, he will not be punished if his intentions are revealed. Nor does the law punish for a guilty act alone, it is necessary for the prosecution to prove both elements of the crime and establish the causative link between the defendant's act or omission and the consequences it produced. This link is often referred to as the "*chain of causation*".

Criminal law as a general rule does not punish accidental or negligent behavior; it is necessary to prove that the person either intended or foresaw the consequences of his action or was aware of the circumstances that make it criminal. There is however a small number of crimes for which no mens rea or only a limited form of it should be shown. They are called *strict liability offences*: certain acts are punished as crimes even though they may have been unintentional. Strict liability offences are sometimes called "public welfare offences" involving laws concerning public health and safety. They are most commonly found in statutes dealing with the sale of alcohol, food and drugs; the prevention of pollution; offences relating to road traffic.

Principles of criminal law

In general Anglo-American law follows the principle that citizens have the right to do everything that is not expressly forbidden by the state. At the same time everyone knows that "*ignorance of the law is no defence*". Of course, we are not presumed to know all the law – that would be contrary to common sense and reason;

and genuine ignorance can be taken into account by the court when deciding how to deal with a case, but if ignorance were an answer to every charge, the entire justice system would be unworkable.

The principle "*no punishment without a law*" provides that a person can only be punished for a crime if the punishment is prescribed by law.

All legal systems generally include some restriction against prosecuting a person more than once for the same offence (protection against *double jeopardy*).

Types of punishment

Depending on the offence and the jurisdiction, various types of punishment are available to the courts to punish an offender. A court may sentence an offender to *execution*, *corporal punishment* or *loss of liberty* (imprisonment or incarceration); *suspend the sentence*; *impose a fine*; put the offender under government supervision through *parole* or *probation*; or place them on a *community service* order.

Categories of offences

Criminal law commonly proscribes – that is, it prohibits – several categories of offences: *offences against the person* (e.g. assault), *offences against property* (e.g. burglary), *public-order crimes* (e.g. prostitution) and *business*, or corporate, *crimes* (e.g. insider dealing).

Burden of proof

In criminal cases, the *burden of proof* is on the prosecutor to persuade the trier (whether the judge or jury) that the accused is guilty *beyond a reasonable doubt* of every element of the crime charged. If the prosecutor fails to prove this, the verdict of not guilty is rendered. This standard of proof contrasts with civil cases, where the claimant generally needs to show a defendant is liable on *the balance of probabilities* (more than 50% probable). In the USA, this is referred to as *the preponderance of the evidence*.

Trial with a jury

English court system placing unusually heavy reliance on its lay persons, there exist institutions of *magistrates* (justices of the peace) and *jurors* in Great Britain. Normally a jury consists of twelve members (eight in the county court). They are

selected at random from electoral rolls to achieve a fair cross section of the community. Jurors must be between the ages of 18 and 70, ordinarily resident in the UK for five years since the age of 13. The job of the jury being to decide the questions of fact, it is the judge's responsibility to guide them on points of law.

Grammar points

The nominative absolute participial construction (самостоятельный причастный оборот)

Самостоятельный причастный оборот можно определить по следующим признакам:

- наличие в предложении – **ing**-формы (Participle I).
- наличие запятой (самостоятельный причастный оборот **всегда** обособляется).
- наличие **слева** от Participle I существительного, местоимения или их сочетания.
- отсутствие в данной части предложения глагола в личной форме.

Если самостоятельный причастный оборот стоит в начале предложения, он имеет **временное/условное** или **причинное** значение. Самостоятельная причастная конструкция в препозиции переводится на русский язык соответствующим придаточным предложением, вводимым союзами *когда*; *после того, как*; *поскольку*; *так как*; *в силу того, что*; *при условии*; *теперь, когда*; *хотя* и другими.

1. *It being* extremely difficult to give a single definition to crime on the basis of one common distinguishable feature, England has consistently rejected all efforts toward comprehensive legislative codification of its criminal law; even now there is no statutory definition of murder in English law.

Поскольку чрезвычайно трудно дать единое определение преступлению на основании унифицированной характеристики, в Англии постоянно отклонялись попытки целостной кодификации уголовного права; даже в наши

дни в Английском праве не существует закрепленного законом определения предумышленного убийства.

2. *The job of the jury being* to decide the questions of fact, it is the judge's responsibility to guide them on points of law.

Так как работа присяжных сводится к принятию решений по фактическим вопросам, обязанность судьи руководить присяжными по вопросам права.

Самостоятельный причастный оборот в конце предложения выступает в функции сопутствующего обстоятельства и при переводе вводится словами *а*; *и*; *причем*; *при этом*. Этот оборот может также выделяться в самостоятельное предложение. Довольно часто самостоятельный причастный оборот присоединяется к главному составу предложения при помощи предлога **with**, который при переводе опускается.

1. Trial courts bear the main burden in the administration of justice, with *common pleas courts being* the most important courts of general jurisdiction.

Суды первой инстанции несут основное бремя по отправлению правосудия, причем суды общей юрисдикции штата являются наиболее важными из судов первой инстанции.

2. The Supreme Court of the USA is the highest judicial body in the nation, *the Chief Justice and eight associate justices being appointed* for life by the President with the advice and consent of the Senate.

Верховный суд США – высшая судебная инстанция страны, причем Председатель суда и восемь членов суда назначаются Президентом пожизненно по представлению и с согласия Сената.

Exercise 1.Translate the sentences paying attention to the use of the nominative absolute participial construction.

1. No evidence having been produced, the case was closed and the accused discharged.

2. The sentence is fixed and pronounced by the judge, the task of the jury being to bring in the verdict.

3. The district court being the primary link of the judiciary, most criminal and civil cases are tried by these courts.

4. The investigator managed to solve the case, with strong evidence having been collected.

5. The indictment having been committed to the grand jury, the accused was brought into court and asked to plead.

6. In the USA each state is served by the separate court systems, state and federal, both systems being organized into three basic levels of courts – trial courts, intermediate courts of appeal and a high court, or Supreme Court.

7. The jurors having no reasonable doubt as to the guilt of the accused, the verdict was given unanimously.

8. The level of crime in our country having increased, it is necessary to undertake preventive measures to combat шею

9. Improper material having been used by attorney, the judge instructed the jury to disregard what was said.

10. All the evidence being in, both attorneys made their closing arguments to the jury.

11. The case having been defined as a felony, magistrates committed it to the Crown court for trial with a jury.

12. The accused having been sentenced to long-term imprisonment, his lawyer appealed against the severity of the sentence to the higher court.

13. The case of burglary having been considered in outline, magistrates committed it to the Crown court for trial.

14. The verdict of guilty having been brought in, the judge imposed the sentence on the convict.

Essential vocabulary

1. to prosecute – преследовать по закону (в судебном порядке), преследовать в уголовном порядке, предъявлять обвинение;

prosecution– обвинение (как сторона в процессе);

prosecutor – обвинитель, прокурор (в РФ, США), лицо возбуждающее и осуществляющее уголовное преследование;

public prosecutor – государственный обвинитель;

to prosecute an inquiry – проводить расследование;

2. a suspect – подозреваемый;

to suspect – подозревать;

to suspect sb of doing sth – подозревать кого-либо в совершении чего-либо;

3. convicted – осужденный; заключенный; лицо, признанное виновным;

a convict – осужденный; признанный виновным;

to convict – признать подсудимого виновным; вынести обвинительный вердикт; осуждать;

conviction – факт признания вины; осуждение; признание виновным;

4. a tort– деликт, гражданское правонарушение;

5. statutory crimes – преступления по статутному праву;

6. common-law crimes – преступления по общему праву;

7. felony – фелония (*категория тяжких преступлений, по степени опасности находящаяся между государственной изменой и мисдиминором*);

8. misdemeanor – мисдиминор (*категория наименее опасных преступлений, граничащих с административными правонарушениями*);

9. summary offences – преступления, преследуемые в порядке суммарного (т.е. упрощенного, без участия присяжных) производства; суммарные преступления; наименее тяжкие (незначительные) преступления;

10. indictable offences – преступления, преследуемые по обвинительному акту; тяжкие уголовные преступления, рассматриваемые с участием присяжных;

indictable – подлежащий судебному преследованию;

to indict – предъявлять обвинение (формальное, в письменной форме);

indictment – обвинительное заключение;

11. either-way offences (*syn*. hybrid, alternative, triable either-way) – преступления двойной подсудности (гибридные, альтернативные преступления);

12. actus reus (*лат*.) – виновное действие;

13. mens rea (*лат*.) – виновная воля;

14. chain of causation – причинная связь, цепь причинности;

15. strict liability – объективная ответственность (*независимо от наличия вины*);

16. double jeopardy – риск дважды понести уголовную ответственность за одно и то же преступление;

17. to suspend the sentence – вынести приговор с отсрочкой исполнения, вынести условный приговор;

18. parole – условно-досрочное освобождение;

19. probation – пробация (разновидность наказания без заключения в тюрьму);

20. burden of proof – бремя доказывания;

21. beyond reasonable doubt – при отсутствии обоснованных сомнений;

22. balance of probabilities – соотношение вероятностей; preponderance of evidence (*амер*.) – перевес доказательств (*критерий* доказанности *по гражданским делам*);

23. trial– судебное производство, судебный процесс, слушание дела по существу;

to bring to trial – предать суду, препроводить в суд;

to face trial – предстать перед судом;

to conduct trial – вести судебный процесс;

a pre-trial stage – этап досудебного разбирательства.

Exercise 2. Fill in the blanks with proper words and word combinations. Consult essential vocabulary if necessary.

balance of probabilities; strict liability offences; probation; misdemeanors; felonies; a fine; actus reus; reasonable doubt; summary offences; the burden of proof; common-law crimes; treason; double jeopardy; mens rea; statutory offences; either-way offences; criminal law

1. In criminal cases _____is upon the prosecution.

2. In a criminal case there must not be any _____as to the guilt of the accused, the verdict must be unanimous.

3. The claimant in a civil action is required to prove his case on a_____, i.e. to show that his case is more probable than not.

4. In criminal matters common pleas courts have exclusive jurisdiction over_____.

5. _____are always dealt with by magistrates without a jury.

6. An important aspect of _____is that in most crimes the prosecution has to prove two elements: the first, _____, refers to the criminal act itself; the second, _____, refers to the intent to commit a crime.

7. The most common types of punishment in Great Britain are fines, prison and_____.

8. In Anglo-American law the most difficult problems of _____involve the question of whether the second prosecution is for the "same" or a "different" offence.

9. All advanced legal systems condemn as criminal the sorts of conduct described in Anglo-American law as_____, murder, aggravated assault, theft, robbery, burglary, arson, and rape.

10. There are many crimes known as_____, which, as the name implies, can be tried either by magistrates or at the Crown court.

11. _____are sometimes called "public welfare offences" involving laws concerning public health and safety.

12. Crimes described in statutes are called_____, and those described in case law are known as_____.

13. Common law divided crimes into felonies (the graver crimes punishable with death) and _____(the lesser crimes punishable with fines or imprisonment).

14. The usual penalty for crimes of strict liability is_____.

Exercise 3. Substitute the highlighted definitions with word combinations from above.

- summary offences (a)
- protection against double jeopardy (b)
- burglary (c)
- criminal law (d)
- actus reus (e)
- criminal prosecution (f)
- a jury (g)
- felony (h)
- parole (i)
- mens rea (j)
- criminal behavior (k)
- indictment (l)
- an appeal (m)
- the burden of proof (n)

1. The body of law that defines criminal offences, regulates the apprehension, charging, and trial of defendants.

2. Some restriction against prosecuting a person more than once for the same offence.

3. The duty of the prosecution to prove guilt of the accused person beyond reasonable doubt.

4. The supervised release of prisoners before the completion of their sentence in prison.

5. A petition for review of a case that has been decided by a court of law.

6. Less serious offences heard by magistrates without a jury.

7. Entering a building, inhabited vehicle or vessel to steal, inflict bodily harm or do unlawful damage.

8. A crime of a graver or more serious nature than those designated as misdemeanors.

9. A wrongful deed which renders the actor criminally liable if combined with mens rea.

10. An accusation in writing found and presented by a grand jury (in the USA), legally convoked and sworn, to the court in which it is impaneled, charging that a person therein named has done some act, or been guilty of some omission, which by law is a punishable public offence.

11. A guilty mind or a criminal intent as an element of criminal responsibility.

12. A certain number of men and women selected according to law, and sworn to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them.

13. Conduct which causes any social harm which is defined and made punishable by law.

14. An action of proceeding instituted in a proper court on behalf of the public, for the purpose of securing the conviction and punishment of one accused of a crime.

Exercise 4. Arrange a round-table discussion on criminal law in the USA and UK. Compare it to the one that exists in the Russian Federation.

Exercise 5. Read, translate and render the text.

Criminal procedure

The law of criminal procedure regulates how the suspected offenders are apprehended, charged with the crime and tried in the court of law; it also regulates how the convicted person is to be punished and how he can appeal against the conviction or severity of the sentence. Crime investigation is generally the responsibility of the police, although special law enforcement agencies may also be concerned with detection of particular types of crimes. In the investigation of serious crimes, law enforcement agencies are helped by forensic science with its array of techniques, such as identification by fingerprints, analysis of bloodstains, fibers, hair samples, etc.

It is essential that the police gather sufficient legally admissible evidence to indict the person before the court, that is, convince the court that the suspect is guilty. In order to secure the necessary evidence, the police employ a variety of powers and procedures. One important procedure is a search of the suspect or of his premises or vehicles. A person suspected of committing an offence may be stopped and searched, provided the police officer identifies himself and states the reasons for the search. A search of private premises usually requires a search warrant issued by a magistrate or judge. The police may enter premises without a warrant, where they have reasonable cause to believe that a serious offence is being committed, or to save life or property.

The defence lawyer has a double function in the investigation phase of the criminal process: to assist the suspect in gathering exonerating evidence and to protect him from violations of his rights. All suspects now have the right to have a solicitor present at their interview.

Prosecution

If the police institute criminal proceedings against a suspect, it is for the Crown Prosecution Service (CPS) to decide whether the case should proceed. The prosecutor has power to determine with what crime the defendant is to be charged. Normally the prosecutor charges the most serious offence that can be sustained by the evidence. However, since the cooperation of the defendant, especially in offering a plea of guilty, shortens and simplifies the trial, prosecutors reduce charges on condition that

the defendant does not contest the accusation in court – the practice known as "plea bargaining".

Trial

All criminal cases start in the magistrates' courts. The minor cases stay there, with the magistrates deciding on guilt or innocence and then sentencing the criminal. Serious cases are referred by the magistrates to the Crown court – this is called "committal". In committals, all the magistrates do is hear the outline evidence and decide whether there is a case to answer. Crown court judges have power to sentence more heavily than magistrates.

On committal the accused is either released (bailed") by the magistrates, or – if the police think there is a danger he or she might disappear or threaten prosecution witnesses – held in prison until the trial.

Whether the case is committed to the Crown court depends on the seriousness of the crime. The most minor crimes, such as most motoring offences, are known as summary offences, and they are always dealt with by magistrates. The most serious crimes such as murder and armed robbery are called indictable offences, and are always committed to the Crown court. In a case to be tried on indictment, a judge may hold a preliminary hearing, where pleas of guilty or not guilty are taken. Only if the defendant contests the accusation by pleading not guilty a trial is held. Otherwise the judge will proceed to sentence.

There are many crimes known as "either way" offences, which, as the name implies, may be tried by magistrates or in the Crown court. Sometimes the decision is up to the accused himself, but he should listen carefully to the advice of his lawyer: he may decide that he stands a better chance of being acquitted by a sympathetic jury than by a panel of stern magistrates, but he runs the risk of a higher sentence from a Crown court judge if the jury do find him guilty.

An English trial follows the adversarial procedure where presentation of evidence is left to the parties, and strict rules of evidence govern how matters may be proved.

Sentencing

The most common sentences are fines, imprisonment and probation. Probation is used with more minor offences. A person on probation must report to a local police station at regular intervals, which restricts his or her movement. Magistrates and judges may also pass suspended sentences, in which case the person will not serve the sentence unless he or she commits another crime, when it will be implemented without more ado. A sentence of community service means that the convicted person has to spend several hours a week doing useful work in his locality.

Almost all criminal offences are created by statute. Statutes also prescribe what the maximum penalty for the offence should be, but the judge may reduce it to the length he thinks appropriate.

Appealing

People who have been convicted can appeal if their lawyer can either show that the trial was wrongly conducted or produce new evidence. Appeal can also be made against the severity of the sentence. Appeals from a magistrates' court are referred to the Crown court and then up through the courts system to the Supreme Court (before October 2009 the Judicial Chamber of the House of Lords was considered to be the highest court in the land). From there appeals are referred to the European Court of Justice.

Exercise 6. Make a précis of the part headlined “Trial”.

UNIT 3

Civil law

Family Law – an area of law covering family-related issues

Civil law is a body of rules that defines and protects the private rights of citizens, offers legal remedies that may be sought in a dispute, and covers areas of law such as contracts, torts, property and family law. Civil law is derived from the laws of ancient Rome which used doctrines to develop a code that determined how legal issues would be decided. Civil law is used in most nations in Europe and Latin America, as well as in some countries in Asia and Africa.

Family law is the body of law regulating family relationships, including marriage and divorce, the treatment of children, and related economic matters and is a very popular area of law for contemporary lawyers.

In the past, family law was closely connected with the law of property and succession and, judging from the records available, it must have originated principally in the economic and property questions created by the transfer of a female from her father's family to the power and guardianship of her husband. Even with regard to the relationship between parent and child, legal concepts such as guardianship, custody, and legitimacy were associated with family power structures and family economic interests. Family law also traditionally has to do with matters of personal status—for example, the question of whether a person is to be considered married or single, legitimate or illegitimate—though the incidents and importance of these distinctions often derive from the law of property.

Family law shares an interest in certain social issues with other areas of law, including criminal law. For example, one issue that has received considerable attention since the late 20th century is the very difficult problem of violence within the family, which may take the form of physical violence by one adult member on another or by an adult on a child or some other violent or abusive conduct within a family circle. In serious cases the court may order cohabitation to be terminated or an abused child to be removed from the family unit into some form of public or foster custody.

Now let's consider some common legal problems associated with the family.

Family groups

A family group has a certain internal structure as well as relationships between itself and third parties. Family groups in some societies have tended to be complex, as, for example, the Roman paterfamilial group, the Chinese upper-class family, the Indian joint family, the samurai family in Japan, and many customary family structures in Africa. The family may be a part of a larger group such as the tribe or clan.

Legal consequences of marriage

Two persons might produce the economic incidents of marriage by executing appropriate contracts or settlements. In some legal systems, a contract in conventional form is the core of the constitution of marriage. The contract may be complex, with a variety of clauses, as in Islamic law (Shariah). In most countries today, however, the legal documentation of a marriage is mainly a registration of the event. Basically, then, marriage in the legal sense is the implied creation of certain rights or obligations such as maintenance, marital property and succession rights, and the custody of minor children.

In modern systems, the parties to a marriage can usually create the economic incidents of the marriage by a separate agreement. In some early legal systems and in present systems in which customary family law pertains, there is little choice as to the economic incidents of marriage because these are fixed by custom. In legal systems that allow substantial scope for personal independence, the spouses can take up a position of their own as to the economic basis of their family group by means of a marriage contract or a will.

One feature that distinguishes marriage from a simple contract is that, in many countries, the parties cannot release themselves by mutual agreement. But some legislation in North America and Western Europe permits the parties to do this; the grounds of divorce have been so widened that the marriage can be terminated, for example, after a period of separation.

Children

It is almost universally the rule that natural or adopting parents (parent) have a primary duty to maintain their minor children. In the great majority of cases, the care and upbringing of a child belongs to its biological parents automatically, without regard to their qualification or suitability. No doubt this arrangement was due originally to its convenience and lack of alternatives, though examples may be found of groups rearing their children in common (usually in tribal societies). The parental system also has been justified on religious grounds.

Legitimacy

By the common law of England, an “illegitimate” child was a filius nullius (without relatives). There may have been two main reasons for this former, discriminatory attitude. First, certain unions between the sexes were designated as lawful marriages, and a man of importance, agreeing to his daughter's marriage, would like her to get the status of legal wife. Second, paternity, in the legal sense, was easier to establish in the case of a lawful marriage than in its absence. The common law of England, for example, presumes in favor of legitimacy when the child is born in lawful wedlock, even if the biological facts may be otherwise. Civil law systems - those derived from Roman law—have been less absolute than the common law; they provide ways of legitimating a child, such as through subsequent marriage of the parents or through an act of recognition by the father. Modern statute law has brought the positions in different systems closer together and removed some of the worst features of the doctrine of legitimacy. Legitimacy is a concept of diminishing importance in modern law, and even countries that still retain it have usually modified it. They have done so by basing support obligations on parentage rather than on a legally valid marriage and by giving rights of intestate succession to children born out of wedlock. By the legal devices of legitimation and adoption and by other means, the difference between the legal status of a legitimate and that of an illegitimate child has been narrowed.

Adoption

The ordinary legal principle is that the consent of a natural parent (or guardian) is required for an adoption order by a court. This consent may be dispensed with if the natural parent or guardian cannot be found or has proved to be uninterested or cruel.

Adoption in the older legal systems (as in Roman law) was treated mainly in terms of the law of inheritance and succession. It provided a way of introducing an outsider into a family group and so bringing him within the scope of the succession rules. In modern systems, succession rights and other obligations and rights in cases of adoption are usually treated by analogy with those of unadopted children, and in some systems there is an explicit equation with such children.

Notes:

1. There *may have been* two main reasons for… Возможно, были две основные причины…

2. …and a man of importance… would like *her to get* the status of legal wife. …и почтенный человек … хотел, чтобы она получила статус законной жены.

Essential vocabulary

1. abuse (to abuse) – злоупотребление; оскорбление; дурное обращение (злоупотреблять; оскорблять; дурно обращаться)

- abusive conduct – оскорбительное, дурное поведение

2. to terminate cohabitation – прекратить совместное проживание, сожительство

3. foster custody – опека приемных родителей

4. upbringing of a child – воспитание ребенка

5. to rear a child – растить и воспитывать ребенка

6. a child born in (out of) lawful wedlock – законнорожденный (внебрачный) ребенок

7. right of intestate succession – право наследования при отсутствии завещания

8. to dispense with – пренебрегать, обходиться без

Grammar points

The Infinitive

1. Forms of the Infinitive

Indefinite Infinitive to do (active) to be done (passive)	Употребляется для обозначения действия, одновременного или будущего по отношению к действию, обозначенному глаголом – сказуемым	Traditionally, according to English law, a husband had to support his wife. По традиции, в соответствии с англий-ским правом, муж должен был содержать свою жену.
Continuous Infinitive to be doing	Употребляется для обозначения действия, одновременного с глаголом – сказуемым.	The judge supposes the victim of domestic violence to be giving false evidence. Судья предполагает, что жертва домашнего насилия дает ложные показания.
Perfect Infinitive to have done (active) to have been done (passive) Perfect Continuous	Употребляется для обозначения действия, предшествующего глаголу – сказуемому.	He was happy to have adopted the child. Он был счастлив, что усыновил ребенка.

Infinitive to have been doing		

2. … might have been violated … возможно, были нарушены

Сочетание модального глагола с Perfect Infinitive переводится на русский язык модальными словами: возможно, не исключено (may, might); вероятно, очевидно (must).

The trial must have been adjourned.

Вероятно, судебное заседание было отложено.

3. Complex Object

Инфинитивная конструкция, состоящая из существительного в общем падеже или местоимения в объектном падеже + инфинитив.

Употребляется после переходных глаголов определенной семантики.

К ним относятся:

а) глаголы, выражающие желание: wish, want, would like etc.

She wants *him to adopt* her child. Она хочет, чтобы он усыновил ее ребенка.

б) глаголы физического восприятия: see, watch, notice, hear (инфинитив употребляется без “to”).

I saw the *attorney advise* a spouse about his (her) rights and obligations. Я слышал, что адвокат консультировал одного из супругов о его правах и обязанностях.

в) глаголы, выражающие просьбу, разрешение, побуждение к действию: ask, allow, tell, order, make, let, have. После let, have, make инфинитив употребляется без “to”.

The court ordered *the marriage to be annulled*. Суд постановил, что брак следует считать аннулированным.

г) глаголы, выражающие предположение: expect, believe, suppose etc.

The defence counsel didn’t expect *the woman to have testified* against her husband. Адвокат не ожидал, что женщина дала показания против своего мужа.

Exercise 1. Translate the sentences paying attention to the forms of the Infinitive and Complex Object.

1. The court presumes a marriage to be voidable if it has been induced by misrepresentation or fraud.

2. The law considers a void marriage to have never existed legally because it was invalid from the beginning.

3. The question of who owns what usually arises only if the couple is splitting up and trying to divide their property, or if one person is writing a will and wants his property to be left to a person other than the spouse.

4. Some states will also require a parent to continue supporting a child over eighteen if the child would otherwise have to go on welfare and become a "public charge".

5. Although children usually may also be disinherited, most states suppose children who are born after the making of a will but before the death of the testator to inherit as though there were no will, unless the testator appears to intend otherwise.

6. The abuser wished the victim to be denied access to the money and goods necessary to support basic needs.

7. The Violence Against Women Act (VAWA) allows undocumented immigrants who are the victims of domestic violence to apply for special visas designed to provide them with legal status in exchange for their cooperation in prosecuting their abusers.

8. Bigamy prosecutions are relatively rare these days because the police do not prosecute if the sole purpose was to allow the couple to live respectably as man and wife.

9. At the time of the divorce a judge must order the property to be distributed so that the distribution should be fair and equitable.

10. Some states require it for the prenuptial agreement to be enforceable.

11. The policeman noticed a juvenile (be) hiding drugs.

Exercise 2. Find the sentences with the Infinitive Perfect and Complex Object in the text and translate them into Russian.

Exercise 3. Read and render the text.

Domestic Violence/Domestic Abuse
(The USA)

Domestic abuse is a type of violent crime that deals with abuse within the family structure. Almost 95 percent of domestic violence victims are women, although individuals of either gender can be perpetrators of domestic violence. In many states, domestic abuse is categorized as a distinct crime. Accordingly, if a husband strikes his wife or otherwise causes her harm, he could be charged with both domestic abuse and assault and battery.

Forms of Violence

Although domestic abuse is often perceived as resulting in physical harm, such as a man punching or hitting a woman, it has many other insidious forms. Domestic abuse may be psychological or emotional, arising out of continued threats, constant criticism, humiliation, or repeated efforts to undermine another individual's sense of self-worth. It may also arise in the context of imposed isolation, when a family member is forcefully isolated from others and made psychologically dependent on his or her abuser.

Another common form of domestic abuse is economic abuse. This form of abuse is particularly common in relationships where one family member may not have the authorization to work legally in the United States. The abuser thus places the victim in a position where he or she is entirely financially dependent on the abuser and subject to the abuser's complete control. If the victim upsets or disobeys the abuser, he or she may be denied access to the money or goods necessary to support basic needs.

Finally, domestic abuse may also take the form of sexual abuse, including control over reproductive strategies and forced sexual contact, such as rape.

Violence Against Women Act

In addition to state laws addressing domestic abuse, in 1994, the federal government passed the Violence Against Women Act (VAWA), which makes it a crime for an intimate partner, parent, or guardian to use or attempt to use physical force against a victim, or to threaten the use of physical force. The VAWA provides for the implementation of domestic violence units throughout the country and provides training to law enforcement on how to address incidents of domestic violence. It also sets forth a framework for victims to seek domestic restraining orders against their abusers and requires the recognition and enforcement of these orders in all states.

The VAWA also addresses the unique vulnerabilities of immigrant victims who may face threats or intimidation by their abusers based on their lack of legal status in the United States. Under VAWA, these women may apply for special visas specifically designed to provide undocumented immigrants who are the victims of domestic violence with legal status in exchange for their cooperation in prosecuting their abusers.

Exercise 4. Make a precis of the text "Domestic Violence/Domestic Abuse"

Discussion

Exercise 5. Arrange a round-table discussion on the problem of domestic violence in the USA. Speak on the measures to curb domestic violence in the Russian Federation.

UNIT 4

Contract law

Principles of contract law

The basic principles of contract law in the USA, the UK and in those countries formerly under British colonial influence derive from English common law. Naturally, contract law has evolved to deal with specific national issues in each of the countries in which the common law system is used.

Contract law is the body of rules governing the formation, performance, and enforcement of contracts. Its major purpose is to protect the reasonable expectations of individuals, businesses, and governments, that contract will be binding on and enforceable by the parties. When a contract is formed? How to determine obligations assumed by the parties to a contract? What are the consequences of the breach of these contractual obligations? What remedies are available to an injured party? When a party in breach can be exempted from his/her liability? The law of contract is called upon to answer all these questions.

Types of contracts

The content of contracts vary enormously: there are contracts for sale of goods, contracts for sale of land and real estate, credit sale contracts, hire-purchase contracts, agency contracts, employment contracts, mortgages and leasehold agreements, marriage contracts, contracts of insurance, service contracts, etc. Contracts may be unilateral, bilateral or multilateral; some contracts require compliance with certain formalities (e.g. writing), others may be concluded by word of mouth (oral contracts); there are *executed* (completed) contracts and *executory* (still to be executed or completed) contracts, *express* (actually made) contracts and *implied* contracts. In actual fact, contracts come in different shape and size, and each of them shall require a separate definition. This prompted some English lawyers to argue that there is no such thing as a typical contract at all and it is, perhaps, more correct to speak of the *law of contracts* rather than of the law of contract.

Nevertheless there is the most common definition of a contract singled out by contemporary jurists. Thus a contract is frequently defined as a legally enforceable,

binding in law agreement, express or implied, which is made between two or more parties and which creates an obligation to do or not to do a particular thing.

Essentials of a contract

The parties must have a *legal intention* to be legally bound before making a contract. They must agree to enter into a contract on certain terms; they must know what they are agreeing to, and these agreements should be respected, upheld, and enforced in courts.

An agreement is formed when one party (the *offeror*) makes an *offer* and the other party (the *offeree*) accepts that offer. In every valid contract there must be an exchange of consideration. A *valuable consideration* is something a person has given, or done, or agreed not to do when making a contract. For example, when you buy an item at a store, your consideration is the money you pay, and the seller's consideration is the item you buy.

In common law, a contract need not be in any particular form. A contract made in spoken words (known as an oral contract) is just as enforceable as a written contract. The only advantage of a written contract over an oral contract is that there is clear evidence of its terms in permanent form. However, certain kinds of contracts must be in writing to be enforceable in court of law. These include contracts for sale of land and real estate, contracts of insurance and hire-purchase.

Remedies for breach of contract

Contracts give both parties rights and obligations. Rights are something positive which a party wants to get from a contract (e.g. the right to payment of money). Obligations are something which a party has to do or give up to get those rights (e.g. obligation to do work).

In a valid contract each person is legally bound to do what is promised. If one party to a contract does not carry out the promise, the other party can bring the breaching party into court and be entitled to damages.

The court will decide if a contract has been made. The judge will also consider if the contract has all the essential elements: an offer, an acceptance, a valuable

consideration and intention to create legal relations. It is very important for a judge to consider the capacity of contractors, which is whether they are legally competent to make a contract.

When one party refuses to perform or fails to perform the obligations under the contract, it is called a breach of contract. The party in breach must compensate the other party. Accordingly, the injured party may seek any of several remedies for the breach in court. A remedy is the means to enforce a right or to compensate for injury, the most common remedy being damages – monetary compensation. In addition to financial loss a claimant sometimes tries to claim damages for mental distress caused by the breach of contract. A court will award damages only for the loss closely connected with the defendant's breach. Sometimes a claimant asks the court to force the other contractor to carry out the contract. In English law it is called "specific performance" and is considered to be an equitable remedy.

Assignment of rights and delegation of duties

A party may want to transfer its rights under a contract to another party. Contracts made for the benefit of a third party (*third-party beneficiary contracts*) are to be enforceable by the third party. An original party to a contract may also subsequently transfer his rights/duties under the contract to a third party by way of an *assignment of rights* or *delegation of duties*. This third party is called the *assignee* in an assignment of rights and the *delegate* in a delegation of duties.

Grammar points

I. **shall**– эквивалент модальному глаголу**"must".**

1. In actual fact, contracts come in different shape and size, and each of them **shall require** a separate definition.

В действительности, договоры очень разнообразны по формальным признакам, и каждый из них **требует** отдельного определения.

2. This agreement **shall be governed** by the laws of the Russian Federation.

К настоящему договору **применяется** право Российской Федерации.

3. The Surety **shall be liable** to the Bank for the performance by the Debtor of all its obligations owing thereby to the Bank under the Agreement on Opening Letter of Credit.

Поручитель **обязуется отвечать** перед Банком за исполнение Должником всех его обязательств перед Банком, принятых на себя Должником по Договору об открытии аккредитива.

4. The Debtor **shall receive** a copy of this Agreement.

Должник **получает** копию настоящего Договора.

5. This Agreement **shall not impose** any restriction on sales by the Company to purchasers outside the Territory.

Настоящий договор **не налагает** никаких ограничений на реализацию продукции Компанией покупателям, базирующимся за пределами Территории.

Exercise 1. Complete the following sentences by translating the words and word combinations in brackets. Pay attention to the use of "shall".

1. The present Agreement (*вступает в силу*) from the date the "Parties" duly signed the Agreement and (*действует*) till complete fulfillment of all duties under this Agreement.

2. Payment (*производится*) in US Dollars by bank transfer to Executor's bank account.

3. "Term" (*означает*) the period of time as defined in Section 4.1 of this Agreement.

4. Either Party (*имеет право*) to terminate this Agreement by notice in writing to the other Party upon happening of any of the following events.

5. Members of the International Court of Justice (*избираются*) by the General Assembly and by the Security Council from a list of persons nominated by national groups in the Permanent Court of Arbitration.

6. The Secretary-General of the United Nations (*передает*) all such reports received to the States Parties.

II. **to be to…** – эквивалент модальному глаголу**“must”**.

1. There are *executed* (completed) contracts and *executory* (still **to be executed** or **completed**) contracts. Существуют договоры с исполнением в момент заключения и договоры с исполнением в будущем (которые **должны быть исполнены** или **завершены** с течением времени).

2. Contracts made for the benefit of a third party (*third-party beneficiary contracts*) **are to be enforceable** by the third party. Договоры, заключенные в пользу третьего лица, **должны принудительно осуществляться в исковом порядке** от имени бенефициара.

3. All documents and annual reports **are to be signed** by the Surety’s authorized signatories and **to be delivered** to the Bank immediately upon their execution and/or approval, but in any event within 180 days from the end of each financial year.

Все документы и годовые отчеты **должны быть подписаны** лицами, уполномоченными подписывать документы Поручителя, и незамедлительно после составления и/или утверждения **представлены** Банку, в любом случае не позднее 180 дней по окончании финансового года.

4. When the functioning of the System is normalized Executor **is to render the services** in full in compliance with Addendum 1 hereto.

После восстановления нормальной работы Системы **Исполнитель обязан оказать услуги** согласно Приложению 1 к настоящему Договору в полном объеме.

Exercise 2. Complete the following sentences by translating the words and word combinations in brackets. Use “to be to …” if necessary.

1. In the event of the Agreement termination prior to its expiration, Executor (*обязуется выплатить*) the cost of under delivered impressions for each Electronic Media Campaign.

2. The Buyer (*должен обеспечить*) timely acquisition of the import license for the goods under Contract.

3. The Sellers (*должны получить*) an export license at their own expense.

4. All expenses and duties, namely: customs duties, taxes and also fees relating to the conclusion and execution of the present contract collected on the territory of Russia, (*должны быть оплачены продавцом*) and those outside the above mentioned territory (должны быть оплачены покупателем).

5. A list with the detailed description of the detected defects (*должен быть*) enclosed with the notification.

III. **The Nominative Absolute Participial Construction – самостоятельный причастный оборот** (см. Unit 2)

1. A remedy is the means to enforce a right or to compensate for injury, **the most common remedy being** damages – monetary compensation.

Средство судебной защиты обеспечивает соблюдение прав потерпевшей стороны или компенсацию за причиненный ущерб, **причем наиболее распространенным средством судебной защиты является материальное возмещение вреда.**

2. Payments for goods sold hereunder shall be effected based on the irrevocable letter-on-credit to be opened by the Buyer in the Seller's favor for the full cost of each goods consignment, **L/C period being 15 (fifteen) days.**

Платежи за товары, реализованные по настоящему контракту, производятся на основе безотзывного аккредитива, который открывает Покупатель в пользу Продавца на полную стоимость каждой партии товара, **при этом срок действия аккредитива составляет 15 (пятнадцать) дней.**

3. **There being a severe storm at sea**, the steamer could not leave the port.

Поскольку на море был сильный шторм, пароход не смог выйти из порта.

4. **With agricultural surpluses in the USA rapidly increasing and exports declining**, the agricultural situation in that country is becoming extremely tense.

Так как излишки сельскохозяйственных продуктов в США быстро увеличиваются, а экспорт падает, положение сельского хозяйства в этой стране становится чрезвычайно напряженным.

Exercise 3. Complete the following English sentences by translating the word combinations in brackets. Use the corresponding versions given below and the Nominative Absolute Participial Construction where necessary.

1. The wool was placed in the warehouse, (*в то время как хлопок был отправлен на фабрику*).

2. The total value of China's export increased in 2016 as compared with 2015, (*причем промышленные изделия и продовольственные товары занимали большое место в экспорте страны*).

3. According to article 58 of the Statute of International Court of Justice the judgment shall be signed by the President and by the Registrar. It shall be read in open court, (*причем представители сторон должны быть заранее уведомлены об этом*).

4. (*После того как уведомление передается Генеральному Секретарю и представителям членов Организации Объединенных Наций*), the International Court of Justice shall deliver its advisory opinions in open court.

to give notice to the Secretary-General and to the representatives of the UN members; to forward the cotton to the factory; foodstuffs; manufactured goods; to occupy an important place in the export of the country; to give due notice to the agents of the parties.

Essential vocabulary

1. to form a contract – заключить договор / контракт

e.g. A contract is formed at the moment when an acceptance reaches the offeror.

Контракт считается заключенным, когда оферент получает акцепт.

formation of contract– заключение контракта

formation process – процесс заключения контракта

scope and formation of contract– предмет контракта (договора) и его заключение

to be within the scope of the agreement – охватываться соглашением

2. to become effective (*syn*.: to take effect, to become valid, to enter into force) – вступать в силу;

3. invitation to treat – предложение делать оферты, вступать в деловые отношения;

4. performance of a contract – исполнение контракта;

part performance – частичное исполнение контракта;

substantial performance – исполнение существенных условий контракта, исполнение во всем существенном;

specific performance – исполнение договора в натуре;

e.g. The contract was specifically performed.

Было вынесено постановление об исполнении договора в натуре.

5. promise – обязательство;

6. offer– оферта;

offeror– оферент;

offeree – адресат оферты;

e.g. An offer may be addressed to public at large.

Оферта может быть адресована неопределенному кругу лиц.

counter offer – встречная оферта;

e.g. This offer is subject to prior sale (to goods being unsold).

Данная оферта действительна, если до получения Вашего акцепта товар не будет продан.

7. breach of contract (NOT violation!) – нарушение контракта;

a party in breach – сторона, нарушившая контракт; виновная сторона

syn. a party in default, defaulting party

injured party – пострадавшая сторона

syn. innocent party, aggrieved party, a party harmed

8. essential elements / ingredients, essentials – существенные составные элементы контракта;

9. executed contracts – договоры с исполнением в момент заключения;

10. executory contracts – договоры с исполнением в будущем;

11. express contracts – положительно выраженные договоры;

12. implied contracts– подразумеваемые договоры, договоры на основе конклюдентных действий, квази-договоры;

13. void contracts– ничтожные (изначально недействительные) контракты;

14. voidable contracts - оспоримые договоры / контракты;

15. enforceable contract – договор, имеющий исковую силу;

unenforceable contract – контракт, не имеющий исковой силы; договор, который не может быть принудительно осуществлен в исковом порядке;

NB: *поскольку такое понятие как "unenforceable contract" в русском гражданском законодательстве отсутствует, то не существует и термина. Так как прием переводческой транскрипции в данном случае неприемлем, применяется описательный перевод.*

16. remedy – средство правовой (судебной) защиты; средство защиты прав потерпевшей стороны;

17. speciality contracts (deeds) – договоры за печатью;

contract of agency – агентский договор, договор поручения;

hire-purchase contract (HP) –договор о купле-продаже в рассрочку;

contract for the sale of goods (sale contract) – договор купли-продажи;

contract of employment– трудовой контракт / договор;

leasing contract – договор об имущественном найме;

insurance contract – договор страхования;

service contract – договор об оказании услуг;

contracts in restraint of trade – контракты с целью ограничения предпринимательской деятельности;

18. capacity – *юр*. правоспособность;

contractual capacity – договорная правоспособность;

procedural capacity – процессуальная правоспособность;

active capacity – дееспособность;

paying capacity – платежеспособность;

19. damage (loss, detriment, injury, harm) – убытки, ущерб, урон, вред;

damage to property – имущественный ущерб;

claimed damage – заявленный ущерб;

damage done – причиненный ущерб;

irreparable damage – невозместимый ущерб;

damages (only plural) – возмещение вреда;

to pay damages – выплатить убытки;

to claim / plead damages – требовать возмещения убытков;

an action for damages – иск о возмещении убытков;

an award of damages – постановление суда о возмещении убытков;

actual damages – фактический ущерб;

general damages – генеральные убытки (*являющиеся необходимым прямым следствием вреда безотносительно к особым обстоятельствам дела*);

special damages – реальные, фактические убытки, определяемые особыми обстоятельствами дела;

consequential damages – косвенные убытки;

stipulated damages – заранее оцененные убытки;

liquidated damages– ликвидные убытки (определяемые посредством арифметического подсчета);

NB: *часто“stipulated damages” и “liquidated damages”выступают в качестве синонимов*;

punitive/ exemplary/ penal / vindictive damages– штрафные убытки, убытки, присуждаемые в качестве наказания;

compensatory damages – компенсаторные, реальные, фактические убытки;

money / pecuniary damages – денежная компенсация ущерба;

20. privity of contract – договорные отношения, договорная причастность;

e.g. There is no privity of contract between them.

Между ними нет договорных отношений.

21. liability– ответственность;

to incur liability – нести ответственность;

to impose liability – возложить ответственность;

to exempt from liability – освободить от ответственности;

contractual liability – договорная ответственность, ответственность из договора;

liabilities (only plural) – обязательства, долги или денежные обязательства;

NB: *liability and responsibility переводятся одинаково, «ответственность», однако "responsibility" – более общий термин, тогда как "liability" имеет оттенок «материальная ответственность». "Responsibility" часто используется в уголовном праве и международном праве. "Liability" употребляется почти исключительно в гражданском праве.*

assets and liabilities – активы и пассивы;

22. express (implied) terms – прямо выраженные (подразумеваемые) условия;

to imply a term into a contract – включить в контракт подразумеваемое условие, имплицировать условие в контракт;

23. clause – клаузула, положение, статья, оговорка.

Exercise 4. Substitute the highlighted definitions with word combinations from above.

- offer and acceptance (a)
- a counter offer (b)
- implied contract (c)
- an Act of God (d)
- consideration (e)
- duress (f)
- a covenant (g)
- acceptance (h)

- assignment (i)
- contract (j)
- damages (k)
- express contract (l)

1. **Transferring the rights of the contract to another person**.

2. **A response to an offer, offering new terms; as such, it is a rejection of the original offer**.

3. **Amount of money that a claimant may be awarded in a lawsuit**.

4. **The legal term for natural disasters such as floods, earthquakes, etc**.

5. **A legally binding agreement; it typically requires an owner of real property to do (or refrain from doing) something**.

6. **In a bilateral contract, the two elements which constitute mutual assent, a requirement of the contract**.

7. **The reason of material cause of a contract**.

8. **The act of a person to whom a thing is offered or tendered by another, whereby he receives the thing with the intention of retaining it, such intention being evidenced by a sufficient act**.

9. **Any unlawful threat or coercion used by a person to induce another to act (or to refrain from acting) in a manner he or she otherwise would not (or would)**.

10. **An agreement between two or more persons which creates an obligation to do or not to do a particular thing**.

11. **An actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing**.

12. **A contract not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or conduct**.

Exercise 5. Insert the words and phrases given below. Translate the text

into Russian.

Contract Formation

Under the common law, a promise becomes an (1)_____ _____ when there is an (2) _____ by one party (offeror) that is accepted by the other party (offeree) with the exchange of legally sufficient (3)_____ (a gift or donation does not generally count as consideration); hence the equation learned by law students: (4)_____ (5)_____ (6)_____ = contract. The law regards a counter offer as a (7)_____ of the offer. Therefore, a counter offer does not serve to form a (8)_____ unless, of course, the counter offer (9)_____ _____ by the original offeror.

For a (10)_____ to become an enforceable contract, the (11)_____ must also agree on the (12) _____ _____ of the contract, such as price and subject matter. Nevertheless, courts will enforce a vague or (13)_____ contract under certain circumstances, such as when the conduct of the parties, as opposed to the written instrument, manifests sufficient certainty as to the terms of the (14) _____.

An enforceable agreement may be manifested in either (15) _____ or oral words (an express contract) or by conduct or some combination of conduct and words (an implied contract). There are exceptions to this (16)_____ _____. For example, the Statute of Frauds requires that all contracts involving the sale of real property be in writing.

In a contractual dispute, certain defenses to the formation of a contract may permit a party to escape his/her (17)_____ under the contract. For example, illegality of the subject matter, fraud in the inducement, (18) _____, and the lack of legal (19)_____to contract all enable a party to attack the (20)_____ of a contract.

In some cases, individuals/companies who are not a party to a particular contract may nevertheless have enforceable rights under contract. For example, contracts made for the benefit of the third party (third-party beneficiary contracts)

may be enforceable by the third party. An original party to a contract may also subsequently transfer his rights/duties under the contract to a (21)_____ _____ by way of an assignment of rights or delegation of duties. This third party is called the assignee in an assignment of rights and the delegate in a delegation of duties.

capacity; indefinite; enforceable contract; consideration (2); promise; rejection; written; essential terms; offer (2); contract; parties; acceptance; validity; agreement; is accepted; obligations; third party; duress; general rules

Exercise 6. Match these defenses (1-4) with their definitions (a-d):

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

a) when one party does not have the ability to enter into a legal contract, i.e. is not of legal age, or insane or is a convict or enemy alien

b) when one party induces another into entering into a contract by use or threat of force, violence, economic pressure or other similar means

c) when either the subject matter (e.g. the sale of illegal drugs) or the consideration of a contract is illegal

d) when one party is intentionally misled about the terms, quality or other aspect of the contractual relationship that leads the party to enter into the transaction

Exercise 7. Decide which word in each group is the odd one out. You may

need to consult a dictionary to distinguish the differences in meaning.

1. agreement franchise covenant contract
2. should in the event if whereas
3. consent authorization injunction permission
4. withdraw breach cancel rescind
5. deleted taken out unwarranted removed
6. contention proposition proposal suggestion
7. valid efficacious enforceable in effect

Exercise 8. Complete the contract clause below using the appropriate prepositions.

between by (2) for hereby herein in

This agreement constitutes the entire agreement _____ the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed _____ both parties. Such waiver, consent, modification or change, if made, shall be effective only _____ the specific instance and _____the specific purpose given. There are no understandings, agreements or representations, oral or written, not specified _____ regarding this agreement. Contractor, by the signature below of its authorized representative,_____ acknowledges that the Contractor has read this agreement, understands it and agrees to be bound _____ its terms and conditions.

Exercise 9. Write the opposite of each of the adjectives used to describe a contract.

1. enforceable / _____ contract
2. implied / _____contract

3. binding / _____contract

4. valid / _____contract

Exercise 10. Complete the sentences below using the correct form of the given verbs.

breach enter into modify renew sign terminate

1. Minors and the mentally incompetent lack the legal capacity to_____ contracts.

2. Courts generally rule that if the parties have a meeting of the minds and act as though there was a formal, written and _____ contract, then a contract exists.

3. The lawsuit claimed that the defendant _____ a confidentiality contract by attempting to sell trade secrets as his own inventions.

4. "Evergreen clauses" are those clauses which cause automatic renewal unless the contract _____.

5. While fixed-term contracts involve an agreement that the job will last for a specified period of time, provisions are often included to enable the contract _____ if so desired.

6. The committee shall have no authority to change or otherwise _____ contract language.

Discussion

Exercise 11. Arrange a round table discussion on contract formation in English-speaking countries. Compare it to the rules of contract formation in the RF.

Exercise 12. Read, translate and render the text.

Contracts: remedies

Contracts can be thought of as a two-way promise. Unlike most promises, however, the promises in contracts are backed up by the threat of legal action if one of the parties fails to fulfill its obligations (i.e. if there is a breach of contract).

The collective name for the various ways of dealing with a breach of contract is remedies. When there has been a breach of contract, the non-breaching party will often seek remedies available under the law. This area of law, known as remedies, is a broad area, but can be summarized generally.

Most remedies involve money damages, but non-monetary relief (also known as equitable remedies) is also available in some cases. For example, a court may order the breaching party to perform some action (specific performance).

The basic remedy for breach of contract in Anglo-American legal system is pecuniary compensation to an injured party for the loss of the benefits that party would have received had the contract been performed. Some examples of this kind of remedy include expectation damages or "benefit of the bargain" damages. Certain damages are recoverable regardless of whether the loss was foreseeable, while the recovery of other damages hinges on foreseeability. Where the damage is direct and natural result of the breach, the breaching party will be held liable to pay damages for such without regard to the issue of foreseeability. When lawyers plead these damages in court, they commonly refer to general damages. However, where the damage arises due to the special circumstances related to the transaction in question, damages are limited by the foreseeability rule, which states that they are only recoverable when it can be established that the damage was foreseeable to the breaching party at the time the contract was entered into. When lawyers plead these damages in court, they commonly refer to special or consequential damages.

Where it is not possible to prove expectation damages, the non-breaching party can seek reliance damages, where the compensation is the amount of money

necessary to compensate him for any expenses incurred in reasonable reliance on the contract. The non-breaching party is thus returned to the *status quo ante* with no profit or benefit from the contract.

Another measure of damages is restitution damages, which compel the breaching party to give up any money benefit it obtained under the breached contract. Restitution damages are, for example, awarded when one party (the breaching party) completely fails to perform its obligations under the contract.

The parties to a contract may, however, agree at the time they enter into the contract that a fixed sum of money shall be awarded in the event of a breach or to a formula for ascertaining the damages or for certain other remedies, e.g. right of repair. This type of damages is known as liquidated damages or stipulated damages.

In some cases, a party will be able to obtain punitive or exemplary damages through the court which are designed to punish the breaching party for conduct which is judged to be particularly reprehensible, e.g. fraud. This type of damages is normally only awarded where specifically provided by statute and where a tort in some way accompanies the breach of contract.

Where monetary damages would not be an adequate remedy, such as in a case where two parties enter into a real-estate contract and the seller decides to sell to a third party, the court may order specific performance. Specific performance involves an order by the court compelling the breaching party to perform the contract.

Finally, there are other remedies available; for example, if there has been a default by one party, the other party may rescind or cancel the contract. This constitutes an undoing of the contract from the very beginning. In addition, legislation such as sale of goods legislation also allows for various remedies, including a right to reject goods in certain cases and a right to return or demand repair or replacement.

UNIT 5

Tax law

(The USA)

Tax law covers the rules, policies and laws that oversee the tax process, which involves charges on estates, transactions, property, income, licenses and more by the government. Taxation also includes duties on imports from foreign countries and all compulsory levies imposed by the government upon individuals for benefit of the state.

The intricate body of tax law covers payment of taxes to a minimum of four levels of government, either directly or indirectly. Indirect taxes are assessed against products and services that are meant to be consumed, but are paid to an intermediary. Direct taxes are those paid directly to the government and are imposed against things like land or real property, personal property, and income. There is a seemingly endless list of entities that create and enforce tax laws and collect tax revenues. They range from the local government level, such as cities and other municipalities, townships, districts and counties to regional, state and federal levels. They include agencies, transit districts, utility companies, and schools, just to name a few.

The area of tax law is exceedingly complex and in constant flux largely due to two reasons. The first is that the tax code has been used increasingly more often for objectives other than raising revenue, such as meeting political, economic and social agendas. The second reason is the manner in which the tax code is amended.

The Federal tax law is administered primarily by the Internal Revenue Service (IRS), a bureau of the U.S. Treasury. The U.S. tax code is known as the Internal Revenue Code of 1986 as amended (Title 26 of the U.S. Code). Other federal tax laws are found in Title 26 of the Code of Federal Regulations; proposed regulations issued by the IRS; temporary regulations issued by the IRS; revenue rulings issued by the IRS; private letter rulings issued by the IRS; revenue procedures, policy statements, and technical information releases issued by the IRS; and federal tax court decisions. Tax law for state and local government is also contained in codes

sections, regulations, administrative codes, procedures and statements issued by the respective government authorities, as well as state court decisions.

There is a special trial court which hears disputes between the IRS and taxpayers regarding federal income, estate and gift tax underpayments - the U.S. Tax Court. This federal court is based out of Washington, but its 19 presidentially appointed judges travel to preside over trials in courts located in several designated major cities. The Tax Courts' decisions may be appealed to the Federal District Court of Appeals and final review is retained by the highest court in the land, the U.S. Supreme Court.

Tax attorneys serve many important functions in the complicated arena of tax law. They may represent taxpayers throughout the various stages of tax disputes, from an initial audit to IRS administrative appeals, Tax Court and final review by the Court of Appeals, or even the U.S. Supreme Court. They are also invaluable in helping people navigate the intricate laws in this area of practice.

Taxation may be defined as a governmental assessment upon property value, transactions, estates of the deceased, licenses granting a right and/or income, and duties on imports from foreign countries. It includes all contributions imposed by the government upon individuals for the service of the state. Taxes are usually divided into two main classes: direct and indirect. Generally speaking, direct taxes are those assessed against income, land or real property, and personal property, which are paid directly to the government; whereas indirect taxes are assessed against articles of consumption, such as products or services, but collected by an intermediary, such as a retailer.

Federal tax codes

The Internal Revenue Code is the basis of federal tax law in the United States. The 11 subtitles of the Code cover the different types of federal taxes including income, estate, gift and excise taxes. These code sections are the ultimate authority on federal taxes and all tax forms and instructions are based on it. The IRC also sets out the procedural and administrative rules that both taxpayers and the IRS must follow.

Federal tax regulations

Federal tax law is more than just the IRC. In fact, Congress allows the Department of Treasury to issue regulations that interpret each code section with longer explanations and examples. As far as federal tax law is concerned, these regulations have substantial authority and the IRS has no choice but to enforce the tax law in accordance with these regulations.

Oftentimes the tax laws that Congress passes are extremely short and provide only general principles. For example, a code section may only be two sentences long; whereas, the corresponding Treasury regulation will include a number of pages explaining various scenarios on how to apply the code section in different situations.

State and local tax laws

Although not every state imposes an income tax, each one certainly assesses other types of taxes such as property, inheritance and sales taxes. These too are the creation of the state governments; separate and distinct from the federal laws. As a result, state governments have their own tax codes that serve the same purpose as the IRC does to the federal government.

Tax laws can even be created at the county and city level too. For example, those who live in New York City *are subject to* federal income tax, New York State income tax and New York City income tax.

Changing tax laws

Tax laws are not set in stone. Although *it's unnecessary* that taxpayers *should* read the laws when preparing their tax returns, the forms and instructions will certainly change each year to reflect new tax laws. In recent years, for example, the federal government has imposed temporary income tax cuts and other business tax incentives to stimulate the economy. At the local level, states, cities and counties adjust property tax rates from year to year based on different factors such as budget deficits and the cost of providing government services.

Regardless of the reason, tax laws are created and updated through the same process. Generally, the U.S. Congress or legislature first proposes a tax law and then a vote is taken on whether to pass it.

Notes:

1. … *are subject to* federal income tax - … облагаются федеральным подоходным налогом.

2. Although *it's unnecessary* that taxpayers *should* read the laws … - Хотя нет необходимости в том, чтобы налогоплательщики изучали законы …

Grammar points

Subject to

1. subject to – предлог – при условии соблюдения, с учетом

Judges are appointed by the President subject to approval by the Senate.

Судьи назначаются Президентом при условии одобрения Сенатом.

2. be subject to – прилагательное – подлежать, подпадать под действие

For a bill to become a law it is subject to approval by the monarch.

Чтобы стать законом, законопроект подлежит одобрению монархом.

3. subject – существительное:

1) предмет обсуждения, тема

Brexit is a subject of debate in both Britain and abroad.

«Брексит» остается предметом дискуссии как внутри Британии, так и за рубежом.

2) предмет изучения, дисциплина

The bachelor's course taught at MSAL includes all the core legal subjects.

В МГЮА в программу бакалавров включены все основные правовые дисциплины.

3) подданный

A subject is someone who lives in a monarchical state.

Подданным называется лицо, живущее в стране, являющейся монархией.

4. subject to – глагол – подвергать

The ISIS terrorists subject prisoners to cruel, inhuman treatment and tortures.

Террористы ИГИЛ подвергают пленных жестокому, бесчеловечному обращению и пыткам.

Exercise 1. Translate the sentences paying attention to different functions of "subject".

1. Most corporations are only subject to the jurisdiction of the law of the state of incorporation or the law of the states where they do business.

2. The three subjects – jurisdiction, choice of law and the recognition and enforcement of foreign judgments comprise the Conflict of Laws.

3. All assets of the decedent that pass to his or her surviving spouse will not be subject to tax at the time the surviving spouse dies.

4. A manufacturer who fails to exercise reasonable care in the manufacture of merchandise may be subject to liability for bodily harm resulting from his negligence.

5. Sometimes a property is sold subject to or by assuming an existing mortgage.

6. There are many rules governing the subject of offers and acceptances.

7. The Fifth Amendment to the Constitution of the United States reads that no person "shall be subject for the same offence to be twice put in jeopardy of life or limb".

8. Fabric designs, if of sufficient originality, are entitled to protection under copyright law as artistic works, although in their industrial application they become the subject of wide multiplication.

9. Liberty of the subject is the right of the citizen to be free unless convicted of a crime which is punishable by imprisonment.

10. British subjects do not need visas to enter EU countries.

Should

1. Сослагательное наклонение:

1) Before applying to the ECHR it is necessary that all available domestic remedies (should) be exhausted.

Перед подачей жалобы в Европейский суд по правам человека необходимо, чтобы были исчерпаны все средства внутренней правовой защиты.

2) In Britain there are some cases closed to the public that is a judge may order that no members of the public (should) be present at the trial.

В Британии существуют судебные дела, закрытые для публики, т.е. судья может потребовать, чтобы на судебном разбирательстве не присутствовал никто из посторонних.

2. Придаточное предложение условия:

1) If an MP should die or be forced to give up his seat the voters will have to vote again in a by-election to replace him.

В том случае, если депутат умрет или будет вынужден покинуть своё место в Парламенте, избирателям придется голосовать вновь на дополнительных выборах, чтобы заменить его.

2) Should the goods turn out to be defective within the warranty period, the Seller is obliged to replace them.

Если в течение гарантийного срока товар окажется дефектным, Продавец обязан заменить его.

Exercise 2. Translate the sentences.

1. In the USA lawyers and the courts of law have become part of daily life, whereas in Japan lawyers are few and people tend to rely on informal ways of solving disagreements; it's interesting that two highly industrialized societies should be so different in this respect.

2. Company directors, partners and sole traders alike have to consider the legal implications of the torts they may face should their products injure a customer.

3. The Supply of Goods and Services Act implies that services be provided with reasonable care, at a reasonable cost and within reasonable time.

4. The laws of certain countries require that parties to contracts should expressly accept arbitration clauses.

5. It is highly advisable that a negotiating lawyer should keep notes of all discussions and emails regarding the matter under negotiation.

6. We should have less delinquency if people married more wisely, if parents knew better how to deal with their children`s personal problems.

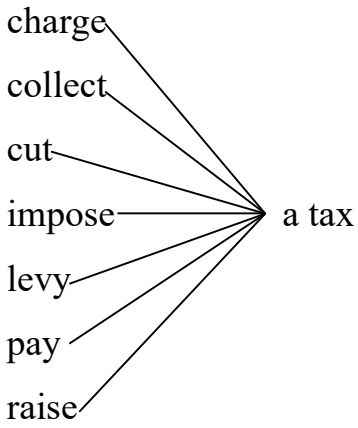
7. It is necessary that methods should be changed if a police investigation does not produce any result.

8. Should the parents die interstate, the legitimated child will succeed to their property.

9. The Lord Chancellor may require that any judge should seat in any division of the High Court.

10. Should you wish to make a claim, you may seek advice from a solicitor or an agency such as Community Legal Service.

Essential vocabulary



Note:

charge – облагать

levy – облагать и собирать

Exercise 3. Fill in the blanks with proper verbs.

1. The Government ... taxes.
2. Individuals and businesses ... taxes to the government.
3. Governments ... many kinds of taxes.
4. Every year the government has to ... taxes for the budget.
5. Taxagents or certain tax bodies ... taxes.
6. Taxpayers have to ... taxes.
7. Companies usually ... taxes due to pay.
8. Company accountants ... some taxes from your income.
9. The tax administration ... taxes on your property and gifts.

tax

- evasion - незаконное уклонение от уплаты налогов
- base - база налогообложения
- benefit - налоговая льгота
- code – налоговый кодекс
- deduction - вычет определенных сумм из налога
- exemption – налоговая льгота
- holiday – временное освобождение от налогов, налоговые каникулы
- incentive – налоговый стимул
- law – налоговое законодательство
- minimization - уменьшение суммы налога без нарушения закона
- payment - уплата налогов, налоговый платеж
- rate - ставка налогообложения
- return - налоговая декларация
- revenue – доход государства от сбора налогов
- year - финансовый год

Exercise 4. Substitute the highlighted definitions with word combinations from above.

1. Tax authorities operate under **the legislation that provides rules and regulations** presented in **the written collection of such rules and regulations related to taxation**.

2. The rules define **the charge or payment of taxes fixed according to a standard rule and the amount of income, goods on which one must pay taxes** for individuals and legal entities, and the certain dates of **the period of a year which the government uses to calculate how much tax a person or business must pay**.

3. In this period a taxpayer has to file **a statement which they make once a year showing his/her income during the year**.

4. Some categories of population are given **freedom from payment of taxes allowed by law,** some may make **a reduction in the gross amount on which the tax is calculated.**

5. Certain businesses enjoy the privilege of **a reduction made to encourage some types of commercial activity** or are even given **a period when a new business is allowed not to pay taxes**.

6. It is possible to make schemes **of legal ways of paying less taxes** in order to minimize **the sum of money paid as taxes** for a period of time.

7. For example, organizations find **a country where the tax rates are low**, and place their money there. This mitigates **the responsibility to pay taxes** but doesn't increase **the income received by the state from taxation** of the countries they are operating in.

8. But it's illegal to resort to **illegal ways of paying less or no taxes**, which is considered to be a serious crime.

Discussion

Exercise 5. Arrange a round-table discussion on taxation in the USA. Compare it to the one that exists in the Russian Federation.

Exercise 6. Read, translate and render the text.

EU Tax Policy Strategy

Main principles

The European Commission's tax policy strategy was explained in a Communication of 23 May 2001 on "Tax policy in the European Union - Priorities for the years ahead".

In this Communication, the Commission reiterated its belief that there is **no need for an across the board harmonization** of Member States' tax systems. Provided that they respect EU rules, **Member States are free to choose the tax systems** that they consider most appropriate and according to their preferences. In addition, any proposal for EU action in the tax field needs to take account of the principles of subsidiarity and proportionality. There should only be action at EU level where action by individual Member States could not provide an effective solution. In fact, many tax problems simply require better **co-ordination** of national policies.

Within this framework, this Communication established as a main priority for tax policy that of addressing the concerns of individuals and businesses operating within the Internal Market by focusing on the **elimination of tax obstacles to all forms of cross-border economic activity**, in addition to continuing the fight against harmful tax competition and promoting greater cooperation between tax administrations in assuring control and combating fraud.

Removing obstacles for citizens

On 20 December 2010, the European Commission, as part of the objective under the Europe 2020 strategy of empowering EU citizens to play a full part in the single market, announced plans to ensure that tax rules do not discourage individuals from benefiting from the internal market. The Communication "Removing cross-border tax obstacles for EU citizens" outlines the most serious tax problems that EU citizens face in cross-border situations, such as discrimination, double taxation, difficulties in claiming tax refunds and difficulties in obtaining information on foreign tax rules, and announces plans for solutions.

Other policy actions

Some co-ordinated action to tackle tax obstacles and inefficiencies has been achieved in the company tax, VAT, excise duties, and car tax areas. Measures have also been taken to tackle tax evasion via the savings tax Directive and via Directives providing mutual assistance between tax administrations. The Commission has also become more pro-active in taking legal action where Member States' national tax rules or practices do not comply with the Treaty.

Another area for action is Research and Development (R&D), given its impact on growth and jobs. In its Communication of 22 November 2006 the Commission examines a more effective use of tax incentives for R&D. The Communication clarifies the legal conditions arising from EU case law and sets out some basic principles and good practices for the design of such incentives. Member States are encouraged to improve the use and coordination of those tax measures. The Communication also offers Member States guidance on the main design options.

The Commission, in its opinion to the Convention on the future of Europe, expressed the belief that retaining **unanimity for all taxation decisions** makes it difficult to achieve the level of tax co-ordination necessary for Europe and made proposals for a move to **qualified majority voting** in certain tax areas. However, Member States did not agree to these qualified majority voting proposals.

In addition, the Commission has started to make more use of **non-binding approaches** such as recommendations instead of legislative proposals where appropriate, as a way of making progress in the tax field. The route of closer co-operation between sub-groups of like-minded Member States is also being explored.

The Commission has published regular statistical and economic **analysis of the tax systems of the EU Member States** with a view to providing information to Member States and the public on taxation trends in recent years.

The Commission has also taken several steps in order to promote good governance in the tax area, i.e. transparency, exchange of information and fair tax competition, as outlined most recently in its Communication of 28 April 2009. This Communication is designed to identify the particular EU contribution to good governance in the area of direct taxation, both within the EU and beyond.

Agreements with as many third countries as possible on common principles of good governance in tax matters should help EU Member States and their partners to balance the need to protect their revenues and their social and public spending policies with the need to open up their economies so as to promote growth and jobs.

The removal of tax obstacles in the area of **financial services** has gained importance as part of the development and implementation of the Commission's Financial Services Policy. The European Commission adopted a recommendation on 19 October 2009 that outlines how EU Member States could make it easier for investors resident in EU Member States to claim withholding tax relief on dividends, interest and other securities income received from other Member States. The recommendation also suggests measures to eliminate the tax barriers that financial institutions face in their securities investment activities while at the same time protecting tax revenues against errors or fraud. The recommendation is designed to provide guidance to Member States in how to ensure that procedures to verify entitlement to tax relief do not hinder the functioning of the Single Market.

Exercise 7. Make a precis of the part headlined “Other policy actions”.

UNIT 6

Company law

Company law (also "corporate" or "corporations" law) is the practice or study of how shareholders, directors, employees, creditors, and other stakeholders such as consumers, the community, and the environment interact with one another. Corporate law is a part of a broader companies law (or law of business associations). Other types of business associations can include partnerships (in the UK governed by the Partnership Act 1890), or trusts (like a pension fund), or companies limited by guarantee (like some community organizations or charities). Under corporate law, corporations of all sizes have separate legal personality, with limited or unlimited liability for its shareholders. Shareholders control the company through a board of directors which, in turn, typically delegates control of the corporation's day-to-day operations to a full-time executive. Corporate law deals with firms that are incorporated or registered under the corporate or company law of a sovereign state or their subnational states. The four defining characteristics of the modern corporation are:

- Separate legal personality of the corporation
- Limited liability of the shareholders (a shareholder's personal liability is limited to the value of their shares in the corporation)
- Shares (if the corporation is a public company, the shares are traded on a stock exchange)
- Delegated management; the board of directors delegates day-to-day management of the company to executives.

In many developed countries outside of the English speaking world, company boards are appointed as representatives of both shareholders and employees to "co-determine" company strategy. Corporate law is often divided into corporate governance (which concerns the various power relations within a corporation) and corporate finance (which concerns the rules on how capital is used).

Definition

The word "corporation" is generally synonymous with large publicly owned companies in the United States. In the United Kingdom, "company" is more frequently used as the legal term for any business incorporated under the Companies Act 2006. Large scale companies ("corporations" in business terminology in the US sense) will be plcs in the United Kingdom and will usually have shares listed on a stock market. In British legal usage any registered company, created under the Companies Act 2006 and previous equivalent legislation, is, strictly, a particular subcategory of the wider category, "corporation". Such a company is created by the administrative process of registration under the Companies Act as a general piece of legislation. A corporation, in this British sense, can be a corporation sole which consists of a single office occupied by one person e.g. the monarch or certain bishops in England and Wales. Here, the office is recognized as separate from the individual who holds it. Other corporations are within the category of "corporation aggregate" which includes corporate bodies created directly by legislation such as the Local Government Act 1972; Universities and certain professional bodies created by Royal Charter; corporations such as industrial and provident societies created by registration under other general pieces of legislation and registered companies which are the subject matter of this article.

In the United States, a company may or may not be a separate legal entity, and is often used synonymously with "firm" or "business." A corporation may accurately be called a company; however, a company should not necessarily be called a corporation, which has distinct characteristics. According to Black's Law Dictionary, in America a company means "a corporation — or, less commonly, an association, partnership or union — that carries on industrial enterprise".

The defining feature of a corporation is its legal independence from the people who create it. If a corporation fails, its shareholders will lose their money, and employees will lose their jobs, though disproportionately affecting its workers as opposed to its upper executives. Shareholders are not liable for any remaining debts owed to the corporation's creditors. This rule is called limited liability, and it is why

corporations end with "Ltd." (or some variant like "Inc." and "plc"). In the words of British judge, Walton J, a company is "...only a juristic figment of the imagination, lacking both a body to be kicked and a soul to be damned".

But despite this, under just about every legal system in existence and as per international norms, corporations have the same legal rights and obligations as actual humans. Corporations can exercise human rights against real individuals and the state, and they may be responsible for human rights violations. Just as they are "born" into existence through its members obtaining a certificate of incorporation, they can "die" when they lose money into insolvency. Corporations can even be convicted of criminal offences, such as fraud and manslaughter.

History

Although some forms of companies are thought to have existed during Ancient Rome and Ancient Greece, the closest recognizable ancestors of the modern company did not appear until the 16th century. With increasing international trade, Royal charters were granted in Europe (notably in England and Holland) to merchant adventurers. The Royal charters usually conferred special privileges on the trading company (including, usually, some form of monopoly). Originally, traders in these entities traded stock on their own account, but later the members came to operate on joint account and with joint stock, and the new Joint stock company was born.

Early companies were purely economic ventures; it was only a belatedly established benefit of holding joint stock that the company's stock could not be seized for the debts of any individual member. The development of company law in Europe was hampered by two notorious "bubbles" (the South Sea Bubble in England and the Tulip Bulb Bubble in the Dutch Republic) in the 17th century, which set the development of companies in the two leading jurisdictions back by over a century in popular estimation.

Modern company law

But companies, almost inevitably, returned to the forefront of commerce, although in England to circumvent the Bubble Act 1720 investors had reverted to

trading the stock of unincorporated associations, until it was repealed in 1825. However, the cumbersome process of obtaining Royal charters was simply insufficient to keep up with demand. In England there was a lively trade in the charters of defunct companies. However, procrastination amongst the legislature meant that in the United Kingdom it was not until the Joint Stock Companies Act 1844 that the first equivalent of modern companies, formed by registration, appeared. Soon after came the Limited Liability Act 1855, which in the event of a company's bankruptcy limited the liability of all shareholders to the amount of capital they had invested.

The beginning of modern company law came when the two pieces of legislation were codified under the Joint Stock Companies Act 1856 at the behest of the then Vice President of the Board of Trade, Mr Robert Lowe. That legislation shortly gave way to the railway boom, and from there the numbers of companies formed soared. In the later nineteenth century depression took hold, and just as company numbers had boomed, many began to implode and fall into insolvency. Much strong academic, legislative and judicial opinion was opposed to the notion that businessmen could escape accountability for their role in the failing businesses. The last significant development in the history of companies was the decision of the House of Lords in *Salomon v. Salomon & Co.* where the House of Lords confirmed the separate legal personality of the company, and that the liabilities of the company were separate and distinct from those of its owners.

In a December 2006 article, *The Economist* identified the development of the joint stock company as one of the key reasons why Western commerce moved ahead of its rivals in the Middle East in post-renaissance era.

Corporate legal personality

One of the key legal features of corporations are their separate legal personality, also known as "personhood" or being "artificial persons". However, the separate legal personality was not confirmed under English law until 1895 by the House of Lords in *Salomon v. Salomon & Co.* Separate legal personality often has unintended consequences, particularly in relation to smaller, family companies. In *B*

v. B [1978] Fam 181 it was held that a discovery order obtained by a wife against her husband was not effective against the husband's company as it was not named in the order and was separate and distinct from him. And in *Macaura v. Northern Assurance Co Ltd* a claim under an insurance policy failed where the insured had transferred timber from his name into the name of a company wholly owned by him, and it was subsequently destroyed in a fire; as the property now belonged to the company and not to him, he no longer had an "insurable interest" in it and his claim failed.

However, separate legal personality does allow corporate groups a great deal of flexibility in relation to tax planning, and also enables multinational corporations to manage the liability of their overseas operations. For instance in *Adams v. Cape Industries plc* it was held that victims of asbestos poisoning at the hands of an American subsidiary could not sue the English parent in tort.

Corporate governance

Corporate governance is primarily the study of the power relations among a corporation's senior executives, its board of directors and those who elect them (shareholders in the "general meeting" and employees). It also concerns other stakeholders, such as creditors, consumers, the environment and the community at large. One of the main differences between different countries in the internal form of companies is between a two-tier and a one tier board. The United Kingdom, the United States, and most Commonwealth countries have single unified boards of directors. In Germany, companies have two tiers, so that shareholders (and employees) elect a "supervisory board", and then the supervisory board chooses the "management board". There is the option to use two tiers in France, and in the new European Companies (Societas Europaea).

Balance of power

The most important rules for corporate governance are those concerning the balance of power between the board of directors and the members of the company. Authority is given or "delegated" to the board to manage the company for the success of the investors. Certain specific decision rights are often reserved for shareholders,

where their interests could be fundamentally affected. There are necessarily rules on when directors can be removed from office and replaced. To do that, meetings need to be called to vote on the issues.

It is a principle of corporate law that the directors of a company have the right to manage. This is expressed in statute in the Delaware General Corporation Law (DGCL), where §141(a) states, "The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation".

In the US, Delaware lets directors enjoy considerable autonomy. §141(k) DGCL states that directors can be removed without any cause, ***unless*** the board is "classified", meaning that directors only come up for re-appointment on different years. If the board is classified, then directors cannot be removed ***unless*** there is gross misconduct.

Grammar points

Unless

1. Союз «**unless**» обычно переводится на русский язык словами, «если … не», «если только … не»:

… directors can be removed without any cause, *unless* the board is "classified", meaning that directors only come up for re-appointment on different years.

… члены совета директоров могут выводиться из состава без всякой на то причины, если только совет не «классифицирован», что означает, что члены совета директоров подлежат переизбранию в разные годы.

2. Если в главном предложении содержится слово с отрицательным значением (слова с отрицательными приставками «in-», «un-», отрицательная форма глагола, частица «no», отрицательные местоимения «no one», «nothing», отрицательные наречия «never», «nowhere» и т. д.), при переводе главное предложение следует трансформировать так, чтобы глагол-сказуемое в нем не был в отрицательной форме, а слово «unless», вводящее придаточное

предложение, будет в таком случае переводиться на русский язык словами «за исключением тех случаев, когда»:

If the board is classified, then directors cannot be removed ***unless*** there is gross misconduct.

Если же совет директоров классифицирован, то членов совета нельзя смещать, за исключением случаев серьезных нарушений.

Exercise 1. Translate the sentences paying attention to “unless”.

1. A debtor in a liquidation case may be discharged or released from all debts unless guilty of misconduct.

2. No deed or mortgage should ever be accepted unless the title to the property has been properly examined.

3. Unless the other partners consent, a partner cannot sell his interest in the firm in order to give the transferee the right to become a member of the firm.

4. Errors concerning the admission of evidence should not be reviewed in the appellate court unless proper objections were made in the trial court.

5. Ordinarily the obligation to support children continues until they reach the age of majority.

6. When appropriate, the clerk or a deputy clerk may announce that the court will not meet until there is a quorum.

7. Death or bankruptcy of any partner automatically dissolves the entire partnership, unless otherwise provided.

8. Unless there are compelling circumstances, anyone who is accused is entitled to have an attorney present when a witness is asked to identify the accused as the one who committed a crime.

9. A lease for more than seven years may be invalid unless recorded in the Registry of Deeds.

10. Unless otherwise agreed, the goods remain at the seller’s risk until the property therein is transferred to the buyer.

Essential vocabulary

sole trader – индивидуальный предприниматель

partnership - партнерство

limited liability company – общество с ограниченной ответственностью

private limited company (Ltd.) – закрытая акционерная компания

public limited company (plc) – открытая компания с ограниченной ответственностью

natural person / individual – физическое лицо

“artificial” person / legal entity / legal person / legal personality – юридическое лицо

Articles of Incorporation – Устав корпорации (США)

equity – основной капитал, активы предприятия за вычетом задолженности

capital stock – основной капитал

share - акция

shareholder - акционер

to transfer the interest – передавать акции

Board of Directors – Совет директоров

insolvency – неплатежеспособность, несостоятельность

Exercise 2. Finish the sentences.

1. A limited liability organization is a company created ...
2. A private limited company restricts the right ...
3. A sole trader bears the burden of losses, so in case of bankruptcy …
4. Shareholders may lose the money they have invested but ...
5. A public limited company can offer ...
6. In a partnership the partners distribute their profits, and they are also ...
7. A limited liability company is a legal entity, so ...

8. Legally partners are natural persons, so, they can be ...

Exercise 3. Fill in the blanks with the words given below.

Corporate law (corporations law, … …) deals with the formation and operations of corporations and is related to commercial and contract law. A corporation is a … … created under the laws of the state it's incorporated within. State laws, which vary from state to state, regulate the creation, organization and dissolution of their corporations. A corporation creates a legal or "… …" or entity that has standing to sue and be sued, enter into contracts, and perform other duties necessary to maintain a business, separate from its … .

Corporations are taxable entities, which shields the individual owners or shareholders from … … for the liabilities and debts of the corporation, with some limited exceptions – such as unpaid taxes.

Corporations are often used in tax structuring, as they are taxed at a lower rate than individuals. Until formally dissolved, a corporation has perpetual life; the termination or deaths of officials or stockholders does not alter the corporate structure. States have registration laws requiring corporations that incorporate in other states to request permission to do in-state business.

There are also federal laws relevant to corporations. Corporations in certain industries … … … federal regulation and licensing, such as communications and public transportation. The Securities Act of 1933, which is federal law, regulates how corporate … (stocks, bonds, etc.) are issued and sold.

Corporate law professionals are trained in the legal formation of corporations. These attorneys also construct joint ventures, licensing arrangements, … … …, and the countless other transactions entered into by corporations. Other areas of practice include business formations, securities law, venture capital financing, business agreements, internal forms and business tax consultations.

personal liability, stockholders, mergers and acquisitions, "artificial" person, securities, company law, are subject to, legal entity

Exercise 4. Render the text from exercise 3.

Exercise 5. Read the text and make a summary.

Corporate finance

Shares and share capital

Companies generally raise capital for their business ventures either by debt or equity. Capital raised by way of equity is usually raised by issued shares (sometimes called "stock" (not to be confused with stock-in-trade)) or warrants.

A share is an item of property, and can be sold or transferred. Holding a share makes the holder a member of the company, and entitles them to enforce the provisions of the company's constitution against the company and against other members. Shares also normally have a nominal or par value, which is the limit of the shareholder's liability to contribute to the debts of the company on an insolvent liquidation.

Shares usually confer a number of rights on the holder. These will normally include:

- voting rights
- rights to dividends (or payments made by companies to their shareholders) declared by the company
- rights to any return of capital either upon redemption of the share, or upon the liquidation of the company
- in some countries, shareholders have preemption rights, whereby they have a preferential right to participate in future share issues by the company.

Many companies have different classes of shares, offering different rights to the shareholders. For example, a company might issue both ordinary shares and preference shares, with the two types having different voting and/or economic rights. For example, a company might provide that preference shareholders shall each

receive a cumulative preferred dividend of a certain amount per annum, but the ordinary shareholders shall receive everything else.

The total number of issued shares in a company is said to represent its capital. Many jurisdictions regulate the minimum amount of capital which a company may have, although some countries only prescribe minimum amounts of capital for companies engaging in certain types of business (e.g. banking, insurance etc.).

Similarly, most jurisdictions regulate the maintenance of capital, and prevent companies returning funds to shareholders by way of distribution when this might leave the company financially exposed. In some jurisdictions this extends to prohibiting a company from providing financial assistance for the purchase of its own shares.

Exercise 6. Read about basic antitrust laws enforced in the USA and compare them with antitrust legislation in the RF.

Four Basic Antitrust Laws

Sherman Act - the Sherman Act was passed in 1890 and is the most important of the antitrust laws. Section I of the Act prohibits every contract, combination or conspiracy between two or more companies which conspiracy leads to an unreasonable restraint on trade or commerce. Section 2 prohibits the monopolization, any attempted monopolization, or any agreement or conspiracy to monopolize any market for a particular product or service.

Over the years, these broad principles have been applied by the courts thereby making the above said commercial conduct unlawful.

Clayton Act - passed in 1914 prohibits a supplier of products to utilize certain restraints which keep customers from buying from the supplier's competitors. The provisions also concern acquisitions and mergers that may substantially lessen competition.

Robinson - Patman Act - enacted in 1936, the Robinson - Patman Act principally deals with discrimination in prices. It prohibits a supplier to charge

different prices from competing customers because such practices substantially lessen the competition. Its purpose is to protect smaller businesses by limiting the large company's ability to command discriminatory discounts.

Antitrust laws are enforced by both federal and state governmental authorities. Further, the Clayton Act enables anyone - a private person, business or charitable organization - to bring a civil lawsuit against any company or other entity that allegedly is violating the federal antitrust laws and thus damaging the suing party.

Federal Trade Commission Act, 1914 (amended in 1996) - this law in effect authorizes the Federal Trade Commission to enforce the other three antitrust laws. Section 5 of this Act prohibits "unfair methods of competition" and "deceptive practices." Conduct which does not violate the other federal antitrust laws may nevertheless be unlawful under the FTC Act. The reason - the law is designed to stop anticompetitive practices in their primary stage.

Unit 7

Employment Law

Personal Nature of the Contract of Employment

It has already been seen that the courts have power to impose terms on the parties where the contract is silent. The power previously discussed applies on a contract-specific basis and as such the courts are implying terms into an individual contract only, not every contract of employment. By contrast, over the years, the courts have decided that some terms are so important that they should be in every contract, and if the parties have omitted them the courts will insert the relevant provision. These terms have been called implied duties. The nature and the content of the duties have changed over the years as the law has moved away from the attitude that the relationship is one of master and servant and towards the idea that it is a relationship between two equals. The law, however, will not go too far down the equality line. While the law has recognised *an inequality of bargaining* power between the parties it has only gone some way *towards balancing* that inequality. It will be seen that statute law has moved in to give employees minimum rights which cannot normally be contracted out of. For example, women generally have a right to equal pay with men, and certain employees have a right not to be unfairly dismissed and a right to redundancy pay. In addition to statute, the common law has developed the implied duties to protect employees during the performance of the contract. It would be unwise, however, to imagine that the courts have created a charter of employment rights. While there are duties imposed upon the employer, likewise the law imposes duties upon the individual employee. Breach of these duties on either side will create a potential claim for a breach of contract.

The duties discussed below are duties imposed during the performance of the contract and which limit how either side exercises its rights. To some extent, this is an unusual function of the law and demonstrates the unique nature of a contract of employment. On its most basic interpretation, a contract of employment is a personal contract. Both parties agree to provide personal services for each other. This aspect has already been seen in *Ready Mixed Concrete* v. *MPNI* where McKenna J refused

to hold that lorry drivers were employees because they could delegate their driving duties under the contract. Given the fact that an employment contract is one where each party is chosen for individual attributes, such a term in the lorry drivers' contracts demonstrated that the relationship could not be one of employment. It has also been seen in *Express Echo Publications* v. *Tanton* where the Court of Appeal regarded personal service as the irreducible minimum in a contract of employment.

Given that the contract is unique to the two parties within it, it follows that, from basic contractual principles, the courts cannot force the parties to continue the contract should they no longer wish to do so. This has been recognised by statute and is at present s.236 of the Trade Union and Labour Relations (Consolidation) Act 1992, which provides that no court by an order of specific performance shall compel the parties to continue the contract, or, likewise, no court shall order an injunction to prevent a breach or threatened breach of a contract by an individual employee, if either order would have *the effect of compelling an employee* to work or attend a place *for the purpose of doing work*. In *Whitwood Chemical Co.* v. *Hardman* [1891] Ch 416 a manager's contract contained a clause that he agreed to devote the whole of his time to company business. He intended to work for a rival in his spare time and the employer sought specific performance of the clause. It was held that the action did not lie. Likewise if an injunction would have the effect of specific performance, in that it would compel the parties to continue the contract, it will not be granted. In *City & Hackney Health Authority* v. *National Union of Public Employees* [1985] IRLR 252 a shop steward obtained an injunction to restrain *his employers from preventing him entering* the premises when he was suspended. The employers appealed to the Court of Appeal who lifted the injunction. To allow it to stand would have forced the employer to allow the employee to attend the place of work and would therefore have the effect of an order of specific performance.

There is, however, one situation where the court will compel the parties to continue the contract. This is where the employer is blatantly ignoring the employee's contractual rights and preventing him *from pursuing* a remedy provided by the contract itself. The court will only exercise its power in exceptional circumstances,

and in the majority of situations will decide that a better remedy is damages for a breach of contract. In *Hill* v. *C.A. Parsons & Co. Ltd* [1972] Ch 305 an employee refused to join the union when there was a closed shop in existence. The employers gave him one month's notice of dismissal. The court felt that, given the employee's position as a senior engineer, he was entitled to six months' notice and granted an injunction *restraining the employers from treating* the contract as terminated until after that date. The court conceded, however, that there were exceptional circumstances in that there was no loss of confidence between the parties and the employers had dismissed him because of union pressure. In *Jones* v. *Lee and Guilding* an injunction was granted *to prevent a dismissal taking place until the contractual disciplinary procedures* had been observed. In *Irani v. Southampton & South West Hampshire Health Authority* [1985] IRLR 203 a similar decision was reached. Here the employer had not lost confidence in the employee, the procedures were contractual and damages would have been an inadequate remedy. Given this decision, it can be seen that the normal remedy will be damages and only if that is inadequate will an order to continue the contract be granted. It should be noted, moreover, that in most cases where an injunction has been granted, this has only been to continue the contract for a relatively short space of time. One exception to this is the case of *Powell* v. *Brent London Borough Council* [1988] ICR 176. In this case an employee was promoted. The council then feared that the appointment was in breach of their equal opportunities policy and rescinded the promotion and readvertised the post. Meanwhile the plaintiff continued to do the job and sought an injunction to restrain the council *from treating her as* demoted. There was nothing to show that she was unable to do the new fob, or that the council did not have confidence in her. The injunction was granted. The later case of *Hughes* v. *London Borough of Southwark* [1988] IRLR 55 supports this decision. In that case the court granted an injunction to prevent the employers *from requiring* the employees to temporarily staff community areas and so stop their normal hospital work. All of these cases show that the court will compel the employer to continue the contract if there has been no loss of confidence in the employee.

Notes:

1. … the effect of compelling an employee to work … - … результат принуждения работника выполнять работу …

2. … for the purpose of doing work – с целью выполнения работы.

3. … preventing him from entering the premises … - препятствовать тому, чтобы он входил в помещение…

Grammar points

Способы перевода герундия (ing-формы глагола):

1) именем существительным;

2) неопределенной формой глагола;

3) деепричастием;

4) придаточным предложением в составе сложноподчиненного предложения.

Only *interviewing* one or two witnesses of the employer will be insufficient. – Только *опроса* одного или двух свидетелей работодателя будет недостаточно (Будет недостаточно только *опросить* одного или двух свидетелей работодателя).

The employee is unlikely to have accepted the job *without knowing* his salary. – Маловероятно, что работник согласился на эту работу, *не зная* размера своей заработной платы.

Dangerous practices by one employee can lead to *others being injured*. – Неосторожные действия одного работника могут привести к тому, *что пострадают другие* (герундиальный оборот).

The employee's having committed the torts during the course of the employment could make their employers vicariously liable (герундиальный оборот). – То, *что работники совершили правонарушения* в процессе исполнения своих служебных обязанностей, могло привлечь их работодателей к ответственности за действия других лиц.

Essential vocabulary

to promote	повышать в должности
to demote	понижать в должности
notice of dismissal	уведомление об увольнении
to rescind promotion	аннулировать повышение в должности
to readvertise the post	вновь (повторно) объявить о замещении (вакантной) должности
pay net or gross	заработная плата без вычетов налогов или с вычетами
illegal deduction	незаконные вычеты
redundancy pay	выходное пособие (в случае увольнения или сокращения штата)

Exercise 1. Translate the sentences paying attention to the ing-forms.

1. While the law has recognized an inequality of bargaining power between the parties it has only gone some way towards balancing that inequality.

2. No court shall order an injunction to prevent a breach or threatened breach of a contract by an individual employee, if either order would have the effect of compelling an employee to work or attend a place for the purpose of doing work.

3. He was entitled to six months` notice and granted an injunction restraining the employers from treating the contract as terminated until after that date.

4. A person cannot exclude or restrict liability for death or personal injury resulting from negligence.

5. The employer must weigh up the risk (in terms of the likelyhood of the injury occurring) against the cost of taking precautions and the effectiveness of these precautions.

6. The employee cannot insist on working his notice and refuse to accept payment in lieu.

7. Provisions in the contract are consistent with its being a contract of service.

8. The appellants were students of the university who were employed by the union after having been elected to the posts.

9. In determining what is reasonable regard must be had to the gravity of the harm, the size of the risk and the cost of the employer in rectifying the situation.

10. The ECJ ruled that the Working Time Directive did not permit restrictions to be imposed on granting annual leave.

11. The seriousness of the potential injury and the risk of it occurring would not be obvious to the employee.

12. Conduct such as telling an experienced employee before his subordinates that he is incapable of doing the job has been found to be a breach.

13. How far can the employer balance the cost of protecting his employees against the likelihood of injury occurring?

14. Four out of five judges in the House of Lords held that his employer was liable for failing to check the premises to see if the hazard had been removed before sending his employee back there.

15. One aspect of ensuring a safe place of work which has come to the fore recently is that of smoking and the effects of passive smoking on employees.

16. They applied the test for establishing a duty of care.

17. If there was an illegal deduction within s. 13, the employee could complain to an employment tribunal, normally within three months of the deduction being made.

18. In City & Hackley v. Health Authority National Union of Public Employees a shop steward obtained an injunction to restrain his employees from preventing him entering the promises when he was suspended.

19. Furthermore, the employee should have pursued the company`s internal procedures before resigning and presenting a claim to an employment tribunal.

20. Without pursuing the company grievance procedure, the employee claimed unfair dismissal.

21. He was still bound by the procedure in relation to his employees because his leaving the association did not affect the employment contract.

22. If the employee continued working once the collective agreement had been negotiated, this indicated acceptance on his part of the relevant provisions.

23. In Jennings v. Westwood Engineering a person was given an option of receiving his pay net or gross.

24. By collective agreement they had the right to improve their pension entitlement by buying added years.

25. This is the most complex way of incorporating the terms of a collective agreement into the individual contract.

Exercise 2. Read and translate the text.

Exercise 3. Make a précis of the text.

Exercise 4. Read and render the text.

Distinction between Employees and Independent Contractors

It may seem a fairly obvious statement, but the two parties who make up an employment relationship are an employee and an employer. Such a distinction may not be so obvious, however, if the word 'worker' is used instead of 'employee'. Often lay people use the words interchangeably, but for a student of employment law the definition of employee is vitally important and must be distinguished from that of a

self-employed person or an independent contractor. This is because a variety of legal and economic consequences flow from the distinction. An employee works under a contract of service whereas an independent contractor works under a contract for services. The major differences between the two types of contract are as follows.

Insurance and Welfare Benefits

Employees are entitled to unemployment benefit, statutory sick pay, industrial injury benefit and a state retirement pension as long as they have paid Class 1 National Insurance contributions. Such contributions are assessed on the employee's earnings and should be deducted at source by the employer. In addition the employer also makes a contribution. By contrast independent contractors are responsible for their own contributions and pay the lower-rate Class 2 payments. These payments only give limited rights to certain welfare benefits and do not entitle the contributor to jobseeker's allowance or statutory sick pay.

Paye

Employers must deduct tax at source from the wages of those of their employees who are so liable. It is very often because of tax liability that problems occur in this area. To take an example a taxi driver may be given the option of having tax deducted at source or being responsible for his own payments and receiving his wages gross. He decides to take the latter option. At first sight this choice may seem perfectly reasonable, but it will be seen below that the law decides on the status of a person and not the parties themselves and should the law decide that our taxi driver is an employee, despite being paid gross, that leads to a variety of legal complications, not least that the employer may be committing a criminal offence for failing to deduct tax at source.

In *Jennings v. Westwood Engineering* [1975] IRLR 245 a person was given the option of receiving his pay net or gross. He chose the latter. Some time later he was dismissed. He sued for an unfair dismissal, arguing that despite the situation he was in fact an employee. (Independent contractors have no protection against unfair dismissal as will be seen below.) The court held, looking at the realities of the relationship, that Mr Jennings was indeed an employee. However, as Mr Jennings had

not had tax deducted at source and had not paid any tax, the purpose of his contract had been illegal because there was an intention to defraud the Inland Revenue. As all students of contract will be aware, a contract set up for an illegal purpose is void and no rights can arise from it. As such Mr Jennings could not rely on his rights not to be unfairly dismissed. *Jennings*, however, should be distinguished from *Newcastle Catering v. Ahmed* [1992] ICR 626 where the Court of Appeal distinguished between contracts which were formed for an illegal purpose and contracts which were legal at their inception but which were performed illegally. The Court held that in the latter case, the innocence of the employee would be a defence and the contract would be saved. Thus in the case, waiters who were dismissed and where it was later discovered that the employer was committing VAT fraud, could still sue for unfair dismissal.

Vicarious Liability

Employers can be made vicariously liable for the torts of their employees committed during the course of their employment. As a general principle there is no such liability for independent contractors.

Safety

The standard of care employers must exercise in relation to their employees' safety, both at common law and under statute, is generally higher than that owed to independent contractors.

Terms in the contract

In addition to the terms the parties themselves have negotiated the law implies a host of terms into the employment relationship. The law will rarely interfere in a contract between an employer and an independent contractor.

Employment Protection Rights

An employee enjoys a large number of employment protection rights. These include the right not to be unfairly dismissed, the right to redundancy payment, statutory maternity pay, statutory sick pay, security of employment after maternity leave, protection of the right to belong or not to belong to a trade union and time-off rights. Independent contractors have no such protection with one notable exception.

Everyone is protected under the Sex Discrimination Act 1975 and the Race Relations Act 1976 where they are providing personal services.

Tests for determining status

It can be seen from the discussion above that it is important for both parties to know at the outset whether the relationship is that of employer/employee. It has also been noted that it is the courts who determine, that status and the name the parties give to the relationship is, normally, irrelevant. The courts over the years have devised a series of tests to apply to a relationship to determine the status of the parties within it.

Notes:

PAYE [pi: ei wai `i:] = *pay as you earn* a system for paying tax in which tax is taken from workers` wages and paid directly to the government.

Exercise 5. Discuss the problem of employment protection rights in Great Britain and the Russian Federation.

UNIT 8

Intellectual Property Law

The Concept of Intellectual Property

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

Generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. *Intellectual property* is traditionally known *to be divided* into two branches, “industrial property” and “copyright.”

The Convention Establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Article 2) provides that “intellectual property shall include rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

The areas mentioned as literary, artistic and scientific works belong to the copyright branch of intellectual property. The areas mentioned as performances of performing artists, phonograms and broadcasts are usually called "related rights," that is, rights related to copyright. The areas mentioned as inventions, industrial designs, trademarks, service marks and commercial names and designations constitute the industrial property branch of intellectual property. *The area* mentioned as protection against unfair competition may also be considered *to belong to* that branch, the more so as Article 1(2) of the Paris Convention for the Protection of Industrial Property (Stockholm Act of 1967) (the "Paris Convention") includes "the repression of unfair competition" among the areas of "the protection of industrial property"; the said Convention states that "any act of competition contrary to honest practices in industrial and commercial matters constitutes an act of unfair competition" (Article 10).

The expression "industrial property" covers inventions and industrial designs. *Inventions* are stated *to be* new solutions to technical problems and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and protection against unfair competition. Industrial property typically consists of signs transmitting information to consumers, in particular as regards products and services offered on the market, and that the protection is directed against unauthorized use of such signs *which* is likely *to mislead* consumers, and misleading practices in general.

Scientific discoveries, the remaining area mentioned in the WIPO Convention, are not the same as inventions. The Geneva Treaty on the International Recording of Scientific Discoveries (1978) defines a scientific discovery as "the recognition of phenomena, properties or laws of the material universe not hitherto recognized and capable of verification" (Article 1). Inventions are new solutions to specific technical problems. Such solutions must, naturally, rely on the properties or laws of the material universe (otherwise they could not be materially or "technically" applied), but those properties or laws need not be properties or laws "not hitherto recognized."

An invention puts to new use, to new technical use, the said properties or laws, whether they are recognized ("discovered") simultaneously with the making of the invention or whether they were already recognized ("discovered") before, and independently of, the invention.

Notes:

1. …*which* is likely *to mislead* consumers - …что, вероятно, вводит покупателей в заблуждение…

Vocabulary

1. to result
- from – следовать, проистекать, происходить
- in – иметь результатом, кончаться

2. to promote
- creativity - поощрять творчество
- dissemination - содействовать распространению
- application - активизировать применение

3. to encourage fair trading – поощрять (способствовать) честную (законную) торговлю.

4. unfair competition
- protection against ~ - защита от недобросовестной конкуренции
- repression of ~ - пресечение недобросовестной конкуренции

5. appearance of industrial products – вид (внешний вид) промышленных изделий.

6. to mislead consumers – вводить покупателей в заблуждение.

Exercise 1. Make five sentences using words and word combinations from the Vocabulary.

Grammar points

Complex Subject

Инфинитивная конструкция, состоящая из подлежащего в общем падеже или местоимения в именительном падеже + инфинитив.

Complex Subject употребляется:

1. с глаголами в форме страдательного залога, обозначающими:

физическое восприятие – see, hear, notice

принуждение – make, order

предположение, ожидание, осведомленность – know, consider, suppose

Intangible assets are known *to be protected* when they are registered as patents, copyrights, trademarks and trade secrets.

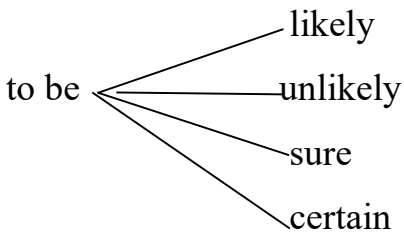
Известно, что нематериальные ценности приобретают защиту, когда они регистрируются в качестве патентов, авторских прав, торговых знаков и коммерческой тайны.

2. с глаголами to appear, to happen, to seem, to prove, to turn out в активном залоге.

Patents appear *to be* very expensive to obtain and enforce.

Оказывается, что приобрести и обеспечить патенты правовой защитой - очень дорого.

3. с такими словосочетаниями, как:



All firms are likely *to optimize* trademarks protection.

Вероятно, что все фирмы оптимизируют защиту торговой марки.

Exercise 2. Translate the sentences paying attention to the Complex Subject.

1. A copyright is known to last for the life of the author or artist, plus 70 years, whether or not it is registered.

2. In Re Coca-Cola, the Coca-Cola appeared to attempt to register as a trade mark the well-known and distinctive shape of the bottle in which the beverage is contained when protection under the registered design legislation had run out.

3. A term of only 25 years is said to put British film producers at a serious disadvantage as against producers in those countries affording protection to films for the term of 50 years.

4. The absence of copyright in a title is known to be a basic principle of the law of copyright in Britain.

5. New drawings produced in an attempt to get another term of protection were held to be not original.

6. The author of a work is generally considered to be the first owner of any copyright in it.

7. Fabric designs, if of sufficient originality, are supposed to be protected under copyright.

8. In 1900 the then copyright legislation, based on the Act of 1842, was held to furnish no protection for composers of musical works.

9. IP was recently reported by the New York Times to "have assumed an enormous role in economy".

10. Some general counsels are more likely to be integrating key IP decisions into firm objectives.

Exercise 3. Read and render the text.

Overview of Options for Protecting Work Products
(The USA)

All firms must optimize trademark protection, but margins generated by brand-name recognition rarely support much R&D. The ability of trademark and trade dress protection to prevent copying of work products is also very limited. Designed to prevent source confusion, it cannot be used to block others from copying service and product innovations.

In contrast, patents are highly effective in protecting a wide spectrum of innovative activities. Firms should not give away what can be sold. Conversely, they

need not lock up things unlikely to be stolen, much less buy expensive locks and patents are expensive to obtain and enforce.

Copyrights

Although copyrights are indispensable in some industries, they have value across the board. Copyrights do not generally protect ideas or processes, software aside, but firms should take advantage of all they offer for, e.g., ads, manuals and webpages. Costs are low, and remedies are essentially unmatched.

Copyright protection arises automatically in most countries, but works generated in the U.S. must generally be registered before suit can be filed here. The government fee is only $30.00, and the registration process is straight-forward. The term of protection, 95 years from the date of publication, exceeds most needs. Owners can obtain profits, actual damages, costs and injunctions. If applications are filed within three months of publication, egregious infringers may also be liable for attorney fees and statutory damages up to $150,000.

However, independent contractors usually retain copyrights. While rights in employees' work belongs to their employers, firms that have, e.g., web sites created by outsiders should get assignments. Otherwise, expensive work may have to be redone when changing contractors.

Trade Secrets

Trade secret protection is useful and available in all industries for any kind of information that need not be published to fully exploit its commercial value. If reasonable measures are taken to preserve secrecy, rights in customer lists and a full range of other competitively useful information arise upon initial creation.

Unlike patent and copyright law, which is federal, trade secret rights are mostly determined by state law. Industrial espionage and breaches of duties of confidentially are forbidden, but reverse engineering (working backward from products obtained in the marketplace) is not. Also, some states take a dim view of asserted rights that interfere with employee mobility.

Damages, profits and injunctions for trade secret misappropriation are automatically available, but protection is not free. Obvious costs include employee

education and security (restricting access to premises and documents). Less obvious costs include monitoring publications, trade show presentations and government inspectors.

Patents

The main advantage of patents is explained in a leading Supreme Court opinion:

While trade secret law does not forbid the discovery of the trade secret by fair and honest means..., patent law operates "against the world," forbidding any use of the invention for whatever purpose for a significant length of time. The holder of a trade secret also takes a substantial risk that the secret will be passed on to his competitors... in a manner not easily susceptible of discovery or proof. Where patent law acts as a barrier, trade secret law functions relatively as a sieve.

When technology is covered by patents, firms have less need to worry about security or departing employees - much less, exposing it to potential licensees.

The worth of patents (in contrast with the value of protected technologies) is determined by the scope of their claims. Like deeds, claims set the metes and bounds of protected territory. Claim scope is negotiated with the U.S. Patent and Trademark Office (PTO) in a process called "prosecution."

Failing to secure adequate patent protection when it is needed is penny-wise and pound-foolish. Conversely, claims of inadequate scope are a waste of money, as are patents secured in the wrong countries.

Exercise 4. Make a precis of the text “Overview of Options for Protecting Work Products”.

Discussion

Exercise 5. Arrange a round-table discussion on IP protection.

UNIT 9

Environmental Law

North American Flora and Fauna

It is in the field of international regulation for the utilization and conservation of flora and fauna, that the three continental States of North America have established the most significant schemes of regulation cooperation. This scheme is composed of conventional commitments, not only through their participation in some multilateral instruments with extra regional States, but also through several trilateral agreements, and other important, albeit fragmented, bilateral instruments concluded between Mexico and the United States or between the United States and Canada. These bilateral agreements have in the past served as examples for initiating trilateral actions. However, the challenge of effectively protecting North American wildlife and plant resources is much bigger than the action taken so far by the countries of the region.

The world's coniferous forests, which are the source of most of the planet's industrial wood production, cover 1.1 billion hectares, or 27 percent of the world's total forest area, and some 83 percent of these forests are in North America and Russia. The total forested area in North America increased steadily in the early twentieth century, after centuries of decline. More recently, however, the total gain has dropped slightly. Data suggests that air pollution, including acid deposition, is severely hampering growth rates and survival of trees over vast areas. Global warming and ozone layer depletion are two other widespread atmospheric phenomenon certain to have perilous effects on flora resources and their distribution.

Damage to forests from acidic deposition occurs both above and below ground. Foliar damage and plant mortality are common symptoms of acidic deposition in certain high-elevation forests of Europe and North America, perhaps because clouds, mist, and fog are considerably more acidic than rain. According to the World Resources Institute, North America's higher elevation eastern coniferous forests have experienced a rapid and severe deterioration since 1983 or 1984. The most affected

areas are in the Appalachian Mountains from Georgia to New England. Canada's forests are also threatened by acid deposition, heavy metals, and ozone. Of Canada's 161 million hectares of productive and accessible forests, 46 million hectares, or 28 percent of the total, receive wet acid sulfate depositions greater than 20 kilograms per hectare per year, the threshold at which sensitive lakes are known to become acidified.

Global climate change will certainly affect flora resources. There is wide agreement that significant warming will occur in high latitudes, but there is little agreement on the potential change in precipitation. In the highlands there are temperate forests of oak, pine, and fir. The total number of species of vascular plants native to Mexico is not known with certainty, but is probably around 25,000. The potentially most vulnerable ecosystems are probably the high elevation alpine grassland or "paramo". In northwestern Mexico, small populations of Abies Concolor would be vulnerable to extinction. A mean annual warming of only two degrees Celsius might also have significant effects on the extent of permanent ice on Mexico's higher peaks, notably the Citlaltepetl, the Popocatepetl and the Iztacihuatl.

The potential effects of climate change, acid rain, ozone layer depletion, and other environmental interferences on North American fauna, give no less reason for concern, especially in a region where devastation of natural resources has a long history. By the mid-twentieth century alone, the United States had killed about four-fifths of that nation's wildlife, cut over half its timber, and used up two-fifths of its iron ore.

What is at stake is the biodiversity of the region, that is, of the variety of living things within it. It is widely accepted that the biosphere comprises extremely complex and interrelated systems and that a change in even one element of a system creates impacts on other elements and could affect, to some degree, the entire planet. This interrelatedness is, therefore, a very important factor to be taken into account in the management of various ecosystems, including any regional ecosystem. The warming of the earth's climate would lead to changes in precipitation distribution, winds, ice cover, ocean currents, and other climate variables. It would also lead to a rise in sea

level and greater extinction of species, both flora and fauna. Even catastrophic natural events could be altered, such as heat waves and floods. Uncontrolled deforestation would create rapid salinization of water reservoirs, reduction of water supply for human and agricultural activities, flooding, soil erosion, and loss of biological resources. In the case of trees, even a one degree Celsius rise would replace boreal species, such as aspen and firs, with hardwoods. Global warming may alter migratory paths of fish due to the anticipated increase in water temperatures because they rely on specific food at specific points in their journey, and they depend on a specific climate when they reach their destination. The greenhouse effect could leave the entire Arctic Ocean free of ice each summer within a century since, if the ice melts, the reflectivity of the area will be reduced and the water will absorb more heat. This has implications for marine mammals, most of whom are dependent in some way on the ice for survival. Ice melting will lead to higher seas, which will affect both marine life, such as coral, and terrestrial life as well, because it will inundate coastal areas. Currents will be altered, and it has been suggested that the Gulf Stream may «switch off», which would threaten the ability of Europe to keep warm in winter. The likely chain reaction from a relatively small increase in temperature could be devastating.

In the view of such an incredible array of present and future environmental interferences affecting the immense biodiversity in North America, the apparently impressive list of international actions already taken by the countries of the region will surely look quite humble.

Essential vocabulary

acid deposition - кислотные отложения, кислотные осадки

ozone layer depletion - истощение, разрушение озонового слоя

coniferous forests - хвойные леса

changes in precipitation distribution - изменения в распределении осадков

vascular plants - сосудистые растения

acid rain - кислотный дождь

uncontrolled deforestation - не поддающаяся контролю вырубка лесов

salinization of water reservoirs - засоление водохранилищ

soil erosion - эрозия почвы

boreal species - бореальные виды

to alter migratory paths of fish - изменить миграционные пути рыб

greenhouse effect - парниковый эффект

Grammar points

I. *Функции* ***«one»****:*

1. Формальное подлежащее. В этой функции “one” на русский язык не переводится.

One may (must) consider… – Можно (нужно) рассмотреть …

2. Слово-заменитель. В этой функции переводится существительным, вместо которого стоит, или не переводится вовсе.

The new Committee shows dramatic change from the old one. – Новый комитет значительно отличается от старого.

3. Числительное «один».

One of the most important issues of today is the fight against terrorism. – Сегодня одной из важнейших проблем является борьба с терроризмом.

II. «It» в функции формального дополнения.

В функции формального дополнения местоимение it употребляется после глаголов to consider, to feel, to find, to learn, to make, to put, to think, to understand, to believe, to insist on, to object to, to depend on, to count on.

We count on it that the talks will be a success. – Мы рассчитываем на то, что переговоры будут успешными.

The parties objected to it that any steps increasing international tension be taken. – Стороны возражали против того, чтобы предпринимались шаги, усиливающие международную напряженность.

Exercise 1. Translate the sentences paying attention to the functions of "one" and "it".

1. One should bear in mind that similar actions are expected on the part of the US administration.

2. Head of the International Atomic Energy Agency whose nuclear inspectors were evicted from North Korea said Washington didn't want to treat the crisis as a bilateral one.

3. People continue to rely on written agreements for years but if a serious disagreement arises they may decide it necessary to take a legal action.

4. Most countries find it convenient to set up separate systems of criminal and civil courts.

5. The vagrancy laws, some judges observe, make it a crime to be poor, downtrodden and unemployed.

6. In the United States the district courts are the lowest ones in the federal court system.

7. In the English legal system a practicing lawyer must hold one of two professions.

8. One of the distinctive features of the American system of Government is the power of judicial review, which enables the federal courts to rule on the constitutionality of legislative and executive acts.

9. To qualify as a barrister one must take a one-year Bar Vocational Course followed by the Bar Final Examination.

10. The police regarded it suspicious that the dead woman's husband had recently taken out a life insurance policy in her name.

Exercise 2. Read and translate the text.

Exercise 3. Make a précis of the text.

Exercise 4. Read and render the text.

Ecological Cooperation in North America. Bilateral Cooperation

Mexico, the United States, and Canada are parties to the 1984 Vienna Convention on the Protection of the Ozone Layer as well as to its 1986 Montreal Protocol. Mexico was the first country to ratify the Montreal Protocol and has committed itself to reducing the use of controlled substances by 1993, in the case of chlorofluorocarbons, and by 1996 in the case of halons. Mexico's deadlines are 17 and 14 years ahead of the schedule set by the Protocol, which is significant since Mexico contributes one percent of the global production and consumption of ozone depleting substances. Both Mexico and Canada were quite active in negotiations leading to the adoption of the Montreal Protocol amendments to address ozone depletion. Mexico's participation was instrumental in securing the establishment of a Multilateral Fund to finance the incremental costs to developing countries for reducing of banning the use of the halons, carbon tetrachloride, methylchloroform, and HCFCs. The latter was accomplished despite lack of enthusiasm on the part of the United States, especially on the rules for the operation of the Fund. The same was the case for the provisions agreed to on the transfer of required technologies to the developing countries. Both achievements will have a significant effect on the ongoing United Nations negotiations for climate change.

While there is not a lot of concrete evidence on the extent or impacts of global warming, what is known has been sufficient to trigger an unprecedented amount of international consultations, mostly through the IPCC process. The alarming risks facing present and future generations are the result of human activities and may provoke disastrous consequences, not only to the atmosphere but to the planet as a whole. Since 1984, a lot of time, effort, and financial resources have been devoted internationally to taking precautionary measures to handle this formidable challenge. Significant progress has been made in international negotiations despite prevailing disagreement, ignorance, or lack of full comprehension, as to all of the causes and potential effects of the greenhouse phenomenon.

The three North American countries have been quite active and played leading roles in the IPCC global warming negotiations, albeit not necessarily in the same direction. Dismay has been the response of the international community, mostly by the Europeans and some developing countries, at the attitude adopted in the negotiations by the United States government. In contrast with an announced intention to be the «President of the Environment», George Bush and his administration have consistently opposed immediate adoption of concrete national and international actions to respond effectively to climate change sources and consequences. The United States has delayed any immediate action, calling instead for more research and information prior to undertaking any specific legal commitments.

Canada has played a more moderate role in the negotiations, but perhaps not sufficiently adequate given the potential consequences of global warming on its territory, natural resources, and environment. This may be the price that Canada has paid for attempting to play an intermediary role among the various competing interests.

Mexico, on the other hand, has become one of the most active and constructive developing countries in the IPCC process and is outstanding for its detailed proposals to dealing with the problem. It has championed the so-called «precautionary principle», the establishment of an international trust fund to cover the incremental costs to be incurred by developing countries in substituting environmentally friendly technologies that do not produce greenhouse gases for cheaper but more destructive technologies, and the transfer of such technologies on a preferential and noncommercial basis. Mexico's position may come from its increasing awareness and concern regarding potential effects on the quality of its environment, on the protection of its natural resources, and on the health of its nationals. There also seem to be a growing understanding of the need to cope with the anthropogenic sources of greenhouse gases originating within its jurisdiction. At stake are more than 10,000 kilometers of shoreline, the resources of one of the largest exclusive economic zones, the fourth richest biological diversity, and the well-being of present and future

generations. In addition, there may be serious threats to its water resources in the northern border region.

The positions taken by the three North American countries in the international conferences on global climate change and on global biodiversity may very well indicate the positions they will take in the face of any proposal for the formal establishment of a North American region of ecological cooperation.

UNIT 10

International Law

The Nature of Human Rights

The preamble to the Universal Declaration of Human Rights adopted on 10 December 1948 emphasizes that ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world: While there is widespread acceptance of the importance of human rights in the international structure, there is considerable confusion as to their precise nature and role in international law.

The cornerstone of UN activity has been without doubt the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948. It was intended not as a legally binding document as such but, as its preamble proclaims, ‘a common standard of achievement for all peoples and nations’. Its thirty articles cover a wide range of rights, from liberty and security of the person (article 3), equality before the law (article 7), effective remedies (article 8), due process (articles 9 and 10), prohibitions on torture (article 5) and arbitrary interference with privacy (article 12) to rights protecting freedom of movement (article 13), asylum (article 14), expression (article 19), conscience and religion (article 18) and assembly (article 20). One should also note that included in the Declaration are social and economic rights such as the right to work and equal pay (article 23), the right to social security (article 25) and the right to education (article 26).

Although clearly not a legally enforceable instrument as such, the question arises as to whether the Declaration has subsequently become binding either by way of custom or general principles of law, or indeed by virtue of interpretation of the UN Charter itself by subsequent practice. The Declaration has had a marked influence upon the constitutions of many states and upon the formulation of subsequent human rights treaties and resolutions. It is also to be noted that in 1968, the Proclamation of Tehran at the conclusion of the UN-sponsored International Conference on Human Rights stressed that the Declaration constituted ‘an obligation for members of the international community’. The Declaration has also been referred to in many cases,

and its importance within the context of United Nations human rights law should not be disregarded. The intention had been that the Declaration would be followed immediately by a binding universal convention on human rights, but this process took considerably longer than anticipated. In the meantime, a number of important international conventions dealing with selective human rights issues were adopted, including the Genocide Convention and the Convention on the Elimination of Racial Discrimination.

The Vienna Declaration and Programme of Action, adopted in 1993, emphasized that all human rights were universal, indivisible and interdependent and interrelated. The protection of human rights was seen as a priority objective of the UN and the interrelationship of democracy, development and respect for human rights and fundamental freedoms underlined. Additional facilities for the UN Centre for Human Rights were called for as well as the establishment of a UN High Commissioner for Human Rights. The declaration made particular reference inter alia to the problems of racial discrimination, minorities, indigenous peoples, migrant workers, the rights of women, the rights of the child, freedom from torture, the rights of disabled persons and human rights education.

The post of UN High Commissioner for Human Rights was indeed established several months later and filled in April 1994. In General Assembly resolution 481141, it is provided that the UN High Commissioner for Human Rights would be the UN official with principal responsibility for UN human rights activities. The High Commissioner is responsible for promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights, providing through the UN Centre for Human Rights and other appropriate institutions, advisory services and other assistance including education and engaging in dialogue with all governments with a view to securing respect for human rights. The High Commissioner may also make recommendations to competent bodies of the UN system with a view to improving the promotion and protection of all human rights. He has engaged in a series of visits to member states of the UN and has become involved in coordination activities.

International law since 1945 has focused primarily upon the protection of individual human rights, as can be seen from the Universal Declaration of Human Rights. In recent years, however, more attention has been given to various expressions of the concept of collective rights, although it is often difficult to maintain a strict differentiation between individual and collective rights. Some rights are purely individual, such as the right to life or freedom of expression, others are individual rights that are necessarily expressed collectively, such as freedom of assembly or the right to manifest one's own religion. Some rights are purely collective, such as the right to self-determination or the physical protection of the group as such through the prohibition of genocide, others constitute collective manifestations of individual rights, such as the right of persons belonging to minorities to enjoy their own culture and practice their own religion or use their own language. In addition, the question of the balancing of the legitimate rights of the state, groups and individuals is in practice crucial and sometimes not sufficiently considered. States, groups and individuals have legitimate rights and interests that should not be ignored. All within a state have an interest in ensuring the efficient functioning of that state in a manner consistent with respect for the rights of groups and individuals, while the balancing of the rights of groups and individuals may itself prove difficult and complex.

Essential vocabulary

inalienable right - неотъемлемое право

indigenous peoples - коренные народы

freedom of assembly - свобода собраний

Grammar points

Обобщающее "which"

The world is changing and new legal rules have to be created quickly*, which* is done through Parliament. – Мир меняется, и новые правовые нормы должны приниматься быстро*, что осуществляется парламентом*.

Exercise 1. Translate the sentences.

1. If we had a world currency we'd have no exchange rates, which presumably would be good for trade.

2. In many countries, professional people such as lawyers, doctors and architects are not allowed to form limited companies, which makes them serve their clients better because they have unlimited liability.

3. In nations with democratic systems of government, most court cases are open to public, which means that any member of the public may witness a court case.

4. When parties are joined in an action, they are called either co-plaintiffs or co-defendants, which simply means that more than one party is involved on either side of an action.

5. Both arbitration proceedings and decisions are kept confidential, which is a great advantage in disputes which relate to sensitive matters.

6. The Department of Trade and Industry tries to ensure that British markets are open and competitive, which includes ensuring that mergers and takeovers do not prevent competition among firms.

7. Every state has the right to equality in law with every other state, which means that states have equal rights in court if they become parties to a dispute and receive equal treatment in international organizations.

Перевод "whether".

Союз "whether" употребляется в английском языке для ввода косвенного вопроса; определительных придаточных предложений, выражающих сомнение; условных предложений, предполагающих выбор, и переводится частицей «ли», стоящей после глагола – сказуемого.

The question of *whether* excessive force may be used in self-defense frequently arises. – Вопрос о том, можно ли превышать пределы необходимой обороны, возникает часто.

Exercise 2. Translate the sentences.

1. A universal standard judges apply is whether it is in the child's best interest to be adopted by the petitioners.

2. A principal which seems to be basic is that the power to perform acts is derived from the constitution of an organization, whether such power is explicit or implied.

3. Some organs are constitutionally established, whether they are principal (e.g., the General Assembly and the Security Council of the United Nations) or subsidiary (e.g., the Military Staff Committee); others are created by an organ of the organization.

4. Whether someone was given a hearing is easily established by the evidence of witnesses, but the question of whether the judge was biased is ultimately unanswerable.

5. Imposing responsibility or legal liability on the owner, whether imposed by the state legislature or through case law, is a growing trend.

6. Whether or not it is registered, a copyright lasts for the life of the author or artist, plus seventy years.

7. Whether a particular requirement is mandatory or directory will have to be decided by the court.

8. If the will and the probate proceedings are contested, the court conducts a hearing and decides whether or not there are valid objections to the will.

Exercise 3. Read and translate the text.

Exercise 4. Make a précis of the text.

Exercise 5. Read and render the text.

The Protection of Minorities

Various attempts were made in the post-First World War settlements, following the collapse of the German, Ottoman, Russian and Austro-Hungarian Empires and the rise of a number of independent nation-based states in Eastern and Central Europe, to protect those groups to whim sovereignty and statehood could not be granted. Persons belonging to racial, religious or linguistic minorities were to be given the same treatment and the same civil and political rights and security as other nationals in the state in question. Such provisions constituted obligations of international concern and could not be altered without the assent of a majority of the League of Nations Council. The Council was to take action in the event of any infraction of minorities' obligations. There also existed a petition procedure by minorities to the League, although they had no standing as such before the Council or the Permanent Court of International Justice. However, the schemes of protection did not work well, ultimately for a variety of reasons ranging from the sensitivities of newly independent states to international supervision of minority issues to overt exploitation of minority issues by Nazi Germany in order to subvert neighboring countries. After the Second World War, the focus shifted to the international protection of universal individual human rights, although several instruments dealing with specific situations incorporated provisions concerning the protection of minorities, and in 1947 the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was established. It was not, however, until the adoption of the International Covenant on Civil and Political Rights in 1996 that the question of minority rights came back onto the international agenda. Article 27 of this Covenant provides that 'in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

This modest and rather negative provision as formulated centers upon 'persons belonging' to minorities rather than upon minorities as such and does not define the concept of minorities. Nevertheless, the UN Human Rights Committee has taken the

opportunity to consider the issue in discussing states' reports, individual petitions and in a General Comment. In commenting upon states' reports made pursuant to the International Covenant, the Committee has made clear, for example, that the rights under article 27 apply to all members of minorities within a state party's territory and not just nationals, and it has expressed concern with regard to the treatment of minorities within particular states.

UNIT 11

CYBER LAW

Computers and the Internet – cyberspace – together comprise one of the great technological developments of modern times and its importance and impact continue to grow. Beginning in December 2010, the world watched the "Arab Spring" – popular uprisings throughout the Middle East that brought down governments in Tunisia, Egypt, and Libya, and challenged leaders throughout the area. These movements were organized and fueled by the Internet. In response, threatened governments fought back by trying to limit access to the Internet generally and social media sites in particular.

Cyberspace is a disruptive technology which, depending on your perspective, can fight repression or undermine legitimate laws. It has brought change to every aspect of our lives – how we make friends, buy things, obtain news, campaign for election, start revolutions, challenge the status quo.

Inevitably, new technologies create the need for new law. In the 13th century, England was one of the first countries to develop passable roads. Like the Internet, these roadways greatly enhanced communication, creating social and business opportunities, but also enabled new crimes. Good roads meant that bad guys could sneak out of town without paying their bills. Parliament responded with laws to facilitate the collection of out-of-town debts. Similarly, while the Internet has opened up enormous opportunities in both our business and personal lives, it has also created the need for new laws, both to pave the way for these opportunities and to limit their dangers.

The process of lawmaking never stops. Judges sit and legislatures meet – all in an effort to create better rules and a better society. However, in an established area of law, such as contracts, the basic structure changes little. Cyber law is different because it is still very much in its infancy. Not only are new laws being created almost daily, but whole areas of regulation are, as yet, unpaved roads. Although the process of rulemaking has progressed well, much debate still surrounds cyberspace

law and much work remains to be done. The areas of regulation are still incomplete and being debated.

Cyber law affects many areas of our lives. The issues that are unique to the cyber world are online privacy, spam, and cybercrimes.

Privacy

The Internet has vastly increased our ability to communicate quickly and widely. In the pre-Internet era, setting up a meeting required days of phone tag. Intra office memos were typed, photocopied, and then hand-delivered by messengers. Catalog orders were sent via regular mail, a slow, inefficient, and costly method. As wonderful as cyber communication can be, though, it is not without its dangers.

Tracking Tools

Consumers enter the most personal data—credit card numbers, bank accounts, lists of friends, medical information, product preferences – on the Internet. Because our interactions with a computer often take place in isolation (sitting alone at home, at work or in a cafe), the experience feels private. It is anything but. In effect, the Internet provides a very large window through which the government, employers, businesses, and criminals can find out more than they should about you and your money, habits, beliefs, and health. Even email has its dangers: who has not been embarrassed by an email that ended up in the wrong mailbox?

The most troubling aspect of these Internet privacy issues is that consumers are often unaware of who has access to what personal information, how it is being used, and with what consequences. As a result, a privacy discussion seems abstract. But the reality is that the Internet provides many opportunities for good guys and bad to secretly gather information for their own purposes, both good and bad.

It used to be that marketers geared their ads to specific websites, but now they target individual consumers. The 50 most popular websites in America (which account for 40 percent of all page views) install thousands of tracking tools on the computers of people who visit their sites. Called “behavioral targeting,” these tools not only collect data on all the websites someone visits, they also record keystrokes to keep track of whatever information the consumer has entered online. These tools are

placed on computers without notice or warning to the consumer. In a recent report, Dictionary.com was the worst offender, placing over 200 tools on the computers of unaware visitors. On the other hand, Wikipedia.org is one highly popular site that installs none. To take another example of privacy issues, as part of its Street View program that provides photographs of streets around the world, Google captured data from home Wi-Fi networks.

Once the trackers have gathered financial, health, and other personal information, they sell it to data-gathering companies that build profiles which, while technically anonymous, can include so much personal information that it is possible to identify individuals. How many times have you revealed your ZIP code, birth date, and gender on the Internet? Those three pieces of information are usually enough to identify an individual's name and address. The profiles are then sold to advertisers on stock market-like exchanges. Now that cell phones have GPS tracking devices and readers use electronic books, where you have been and what you are reading is also available.

In short, Internet users are inadvertently providing intensely personal data to unknown people for unknown uses. The problem is likely to grow. The newest web language, HTML5, permits tracking software to store larger amounts of data. Also, software developers have created tracking tools that are harder to delete. Every browser uses a different deletion system, which makes life even more complicated for the concerned consumer.

Many commentators argue that without significant changes in the law, our privacy will be obliterated. But, so far, consumers have been relatively unconcerned. They tend to be unaware of the dangers, and they appreciate the benefits – for example, this tracking software can be used to store passwords so that when you log on to Amazon.com, the site recognizes you and lets you in without your having to enter your email address and password. Consumers can also benefit from targeted advertisements. Industry representatives argue that without the revenue from ads, many Internet sites would not be free to consumers. As a result, privacy on the Internet is very much like the weather – everyone talks about it, but (so far) no one

has done much about it. But this you should believe: highly personal information about you has been collected without your knowledge or approval.

Regulation of Online Privacy

There is a wide range of possible sources of laws and regulations to protect online privacy, but they are in an early, and relatively ineffective, stage of development.

Self-Regulation

In an effort to forestall government regulation, several marketing trade groups issued their own report, "Self-Regulatory Principles for Online Behavioral Advertising." These principles require websites that use tracking tools to provide notice of data collection that is "clear, prominent, and conveniently located." In addition, the websites must permit consumers to opt out of tracking with only a few clicks. However, we have been unable to find a single website that complies with these principles, even among the companies that sponsored the report.

Members of Congress have filed many bills to regulate online privacy. So intense, however, is the debate between industry and consumer advocates that no consensus—and little law—has emerged. There is, however, some applicable government regulation.

European Law

The European Convention on Human Rights declares, "Everyone has the right to respect for his private and family life, his home, and his correspondence." The European Union's e-Privacy Directive requires an opt-in system, under which tracking tools cannot be used unless the consumer is told how the tools will be used and then specifically grants permission for their use. However, this directive may be interpreted to mean that consumers have granted permission for tracking tools if they fail to change the default privacy settings on their web browsers. At this writing, European nations are just beginning to implement the e-Privacy Directive, so it may be some time before the impact of these rules is clear.

In theory, even companies outside Europe will have to comply with European rules if they interact with European customers. Recently, European agencies insisted

that Google, Microsoft, and Yahoo! enhance their protection of users' search histories; and a court in Italy held that Google had violated that country's privacy laws by posting a video of students bullying an autistic boy.

Spyware

Is your computer running sluggishly? Does it crash frequently? Has the home page on your web browser suddenly changed without your consent? Is there a program in your systems tray that you do not recognize? You might have spyware on your computer.

Congress has considered legislation to control spyware but has not taken final action. California, however, has enacted the Consumer Protection Against Computer Spyware Act, which makes spyware illegal.

Notes:

1. Not only are new laws being created almost daily, …. – *зд.* И хотя новые законы принимаются почти каждый день, …

2. It used to be that … - Раньше …

3. … these tools not only collect data … they also record … - эти средства не только собирают данные …, но также фиксируют …

4. As wonderful as cyber communication can be … – *зд*. И хотя общение в киберпространстве может быть замечательным …

5. The problem is likely to grow. – Проблема, по всей вероятности, будет усугубляться.

6. At this writing… – В то время, когда пишутся эти строки …

Essential vocabulary

1. a password – пароль

2. to build a profile – создавать профайл

3. software developers – разработчики программного обеспечения

4. tracking - отслеживание

tracking tools – средства отслеживания

to opt out of tracking – отказаться от отслеживания

5. to enter on the Internet – вводить в Интернет

6. “behavioral targeting” – отслеживание поисковых запросов

7. to obliterate privacy – уничтожить право на неприкосновенность частной жизни

8. to log on to – войти на сайт

9. to collect data – собирать информацию

Grammar points

1. Парный союз. The Correlative Conjunction.

Both … and на русский язык переводится “**как … так и**”, “**и … и**”:

The reality is that the Internet provides many opportunities for good guys and bad to secretly gather information for their own purposes, **both** good **and** bad.

Но действительность такова, что Интернет предоставляет много возможностей для хороших парней и плохих собирать информацию в своих целях, **как** хороших, **так и** плохих.

2. Бессоюзное подчинение. Asyndetic Subordination.

Два типа придаточных предложений могут присоединяться к главному предложению без союза: дополнительные и определительные. При переводе на русский язык таких придаточных, вводятся соответствующие союзы **что** и **который:**

The article **you gave me yesterday** is very interesting.

Статья, **которую ты дал мне вчера**, очень интересная.

The lawyer tried to prove **capital punishment was not a deterrent to murderers.**

Адвокат пытался доказать, **что смертная казнь не является препятствием для убийц.**

3. Самостоятельный герундиальный оборот (СГО). Predicative Construction with the Gerund.

Самостоятельный герундиальный оборот состоит из **существительного** (в общем или притяжательном падеже) **или местоимения** (личного в объектном падеже или притяжательного) **в сочетании с герундием.**

На русский язык герундиальные обороты, как правило, переводятся придаточными предложениями, реже - существительными:

The barrister for the defence insisted on **the eye-witness testifying** at the trial.
Адвокат защиты настоял на том, **чтобы очевидец давал показания** в суде**.**

Exercise 1. **Read and translate the sentences. Pay attention to:**

A. the correlative conjunction "both … and":

1. While the Internet has opened up enormous opportunities in both our business and personal lives, it has also created the need for new laws, both to pave the way for these opportunities and to limit their dangers.

2. The term "criminology" is used both in general and special sense.

3. Both liquidation and bankruptcy may be a bit hard on some of the creditors, who will not be paid if the liabilities of the company exceed its assets, but they do enable an efficient business to cut down its losses and close down instead of being forced to continue without any hope of ever making a profit.

4. Whatever the actual loss due to computer misuse, both Congress and the state legislatures have passed statutes to deal specifically with cybercrime.

B. asyndetic subordinate sentences:

1. The defendant says he cannot pay the amount the court has awarded.

2. The prisoner hoped he would be remanded on bail.

3. The judge said the person was charged with treason.

4. Certain discretionary powers the monarch has are known as the Royal prerogative.

5. The attorney at law was sure his client wouldn't plead guilty.

6. One should know the job of a juror is to listen to evidence and to decide upon guilt or innocence of the accused.

7. The Company engaged the best commercial lawyer they could find to represent them but they still lost the case.

8. Setting up, running, and winding up a company are not the only legal matters businessmen have to deal with.

9. Company directors, partners and sole traders have to consider the legal implications of making contracts, and the torts they may face if a product injures a consumer.

10. Called "behavioral targeting," these tools not only collect data on all the websites someone visits, they also record keystrokes to keep track of whatever information the consumer has entered online.

C. Predicative Construction with the Gerund:

1. The House of Commons saw no reason for the Queen not signing the bill.

2. The authorities do mind other people breaking the rules.

3. Taking into account the possibility of a convict becoming reformed before his term of imprisonment is completed, criminal law provides for conditional release.

4. Preserving good order results simply from the police being in existence.

5. The witnesses informed the police of the juvenile having committed an offence.

6. The detective insisted on the perpetrator returning the stolen property.

7. History has many examples of the achievements of the human brain being used against mankind.

8. There is no such thing as "trial by jury" in the sense of a case being heard by the jury alone, without the guidance of a professional judge.

9. Randal Morgan, the deputy sheriff, knew about the suit being filed by the customer against the store owner.

10. To achieve consistency in decisions, the courts developed the practice of decisions of higher courts binding to lower courts.

11. The registrar in a county court can hear cases where the claim does not exceed $ 200; he may take cases beyond this figure if parties consent to his doing it.

12. Consumers tend to be unaware of the dangers, and they appreciate the benefits—for example, this tracking software can be used to store passwords so that when you log on to Amazon.com, the site recognizes you and lets you in without your having to enter your email address and password.

13. Another public dispute concerned the attempt of the Defence department to insist on an allowance being made in the SALT agreement for the cruise missile that is under development.

14. No sign exists of the president having concerned himself with the substance of these two important questions.

Exercise 2. Substitute the highlighted definitions with words from above.

Internet, cyberspace, spam, cybercrime, software, website, passwords, spyware, shilling, phishing, hacking.

1. Computer misuse.

2. A computer program that enters a user's computer without permission and monitors and reports the user's activities.

3. A fraudster sends a message directing the recipient to enter personal information on a website that is an illegal imitation of a legitimate site.

4. A seller at auction either bids on his own goods or agrees to cross-bid with a group of other sellers.

5. Gaining unauthorized access to a computer system.

6. Unsolicited e-mail that is objectionable.

7. The international computer network.

8. A word or string of characters used for user authentication to prove identity or access approval to gain access to a resource (example: an access code is a type of password), which is to be kept secret from those not allowed access.

9. The notional environment in which communication over computer networks occurs.

10. A collection of related web pages, including multimedia content, typically identified with a common domain name, and published on at least one web server. A

website may be accessible via a public Internet Protocol (IP) network, such as the Internet, or a private local area network (LAN), by referencing a uniform resource locator (URL) that identifies the site.

11. A part of a computer system that consists of data or computer instructions, in contrast to the physical hardware from which the system is built. In computer science and software engineering, computer software is all information processed by computer systems, programs and data. Computer software includes computer programs, libraries and related non-executable data, such as online documentation or digital media. Computer hardware and software require each other and neither can be realistically used on its own.

Exercise 3. Read the text and say why spam is called so.

Why Do They Call It Spam?

There is some debate about the exact source of the term "spam". There are two widely accepted versions of how unsolicited bulk e-mails became known as "spam". First, many believe the term "spam" comes from the Monty Python song, "Spam spam spam spam, spam spam spam spam, lovely spam, wonderful spam". Just like the lyrics of the song, spam is an endless repetition of worthless text.

The second version is that the term "spam" comes from a computer lab group at the University of Southern California who gave unsolicited bulk e-mails the name "spam" because it has many of the same characteristics as the lunchmeat Spam (i.e. nobody wants it or ever asks for it; no one ever eats it; and it is the first item to be pushed to the side when eating the entrée).

Exercise 4. Fill in the blanks with proper prepositions where necessary.

A. The term "Internet" means "the international computer network ….. both Federal and non-Federal interoperable packet switched data networks," according ….. 47 U.S. Section 230 (f)(1). It began ….. the 1960s as a project to link military

contractors and universities. Now, it is a giant network that connects smaller groups ….. linked computer networks. The World Wide Web was created ….. 1991 ….. Tim Berners-Lee as a subnetwork ….. the Internet. It is a decentralized collection ….. documents containing text, pictures, and sound. Users can move from document ….. document using links that form a "web" ….. information.

B. The explosive growth ….. the use ….. computers ….. the business world ….. the past few years has brought ….. it a corresponding increase ….. computer misuse. Traditional (precomputer) state and federal laws applicable ….. such crimes as trespass and larceny are not necessarily appropriate …..prosecution ….. cases ….. computer fraud and computer theft. ….. example, one court held that a city employee's use ….. the city's computer facilities ….. his private sales venture could not support a theft conviction absent (in the absence of) any evidence that the city was deprived ….. any part ….. value or use ….. the computer. ….. some cases, use ….. a computer has not been deemed "property" ….. traditional theft statutes.

Computer crimes fall mainly ….. three broad categories: simple unauthorized access, theft ….. information, and theft ….. funds. Among schemes that have been subjects ….. litigations are (1) stealing ….. a competitor's computer program; (2) paying an accomplice to delete adverse information and insert favorable false information ….. the defendant's credit file; (3) a bank's president having his account computer coded so that his checks would be removed and held rather than posted so he could later remove the actual checks ….. their being debited; and (4) a disgruntled ex-employee's inserting a "virus" ….. his former employer's computer to destroy its records.

Exercise 5. Insert the words and word combinations given below. Translate the text into Russian.

Cyber crime (3); prosecutions; computer trespass; computer services; damage; computer; comprehensively; computer misuse; software; losses of computer programs and data; computer hardware; computer controles.

Some estimate that losses due to ….. may be as high as $ 35 to $ 40 billion per year (including thefts of funds, ….., losses of trade secrets, and damage done to …..). These estimates may not be reliable, but it is clear that a substantial amount of ….. is never discovered and a high percentage of that is discovered is never reported because (1) companies do not want publicity about the inadequacy of their ….. and (2) financial institutions, such as banks, fear that reports of large losses of funds, even when insured, are likely to cause depositors to withdraw their funds in the interest of safety.

At least 45 states have passed laws dealing with ….. . Most of the statutes ….. address the problem, outlawing (1) ….. (unauthorized access); (2) ….. to computer hardware or ….. (e.g. use of "viruses"); (3) theft or misappropriation of ….. , and (4) unauthorized obtaining or disseminating of information via ….. . There have been relatively few ….. under these state laws or the federal acts, leading some experts to suggest that the problem of ….. has been overestimated.

Exercise 6. Read and translate the text.

Exercise 7. Make a précis of the text.

Exercise 8. Arrange a round-table discussion on the issues that are unique to the cyber world: online privacy, spam and cybercrimes.

Exercise 9. Read, translate and render the text "Crime on the Internet"

CRIME ON THE INTERNET

Despite its great benefits, the Internet has also opened new frontiers in crime for the dishonest and unscrupulous.

Hacking

During the 2008 presidential campaign, college student David Kernell guessed Sarah Palin's email password, accessed her personal Yahoo! account, and published the content of some of her emails. To many, his actions seemed like an amusing prank. The joke turned out not to be so funny when Kernell was sentenced to one year in prison.

Gaining unauthorized access to a computer system is called **hacking**. It is a major crime. The Federal Bureau of Investigation ranks cybercrime as its third-highest priority, right behind terrorism and spying. The Pentagon reports that hackers make more than 250,000 attempts annually on its computers. The goal of hackers is varied; some do it for little more than the thrill of the challenge. The objective for other hackers may be industrial espionage, extortion, theft of credit card information, or revenge for perceived slights. Kernell hoped to prevent Palin from being elected vice president.

Hacking is a crime under the federal Computer Fraud and Abuse Act of 1986 (CFAA). This statute applies to any computer, cell phone, iPod, or other gadget attached to the Internet.

The CFAA prohibits:

• Accessing a computer without authorization and obtaining information from it,
• Computer espionage,
• Theft of financial information,
• Theft of information from the U.S. government,
• Theft from a computer,
• Computer fraud,
• Intentional, reckless, and negligent damage to a computer,
• Trafficking in computer passwords, and
• Computer extortion.

The CFAA also provides for civil remedies so that someone who has been harmed by a hacker can personally recover damages from the wrongdoer. Employers have begun to use the CFAA to bring civil cases against former employees who take company information with them when they go to work for a competitor. At this

writing, the courts are inconsistent on the issue of whether such an activity constitutes "unauthorized access" and is, therefore, a violation of the CFAA. Also, database owners sometimes claim that an unauthorized user who "shares" the login credentials of a legitimate purchaser has violated the CFAA. Because the courts have split on these issues, the outcome of such a case depends on geography.

There are two problems with the CFAA. First, while the statute prohibits the use of a virus to harm a computer, it does not ban the creation of viruses that someone else could use for hacking. Thus, it is legal for websites to sell source code for viruses—codes that even beginners can use destructively.

Second, the CFAA applies only to U.S. criminals. Because the Internet is truly international, cybercriminals do not always fall within the jurisdiction of American laws. For example, a computer virus called ILOVEYOU caused an estimated $7 billion worth of damage worldwide. Although the perpetrator would have been subject to prosecution under the CFAA in the United States, he lived in the Philippines, which did not have laws prohibiting cybercrime.

Nor could the suspect be extradited automatically to the United States because the extradition treaty only applied if both nations had the same law. The Philippines ultimately dropped all charges against the suspect.

Fraud

Fraud is a growth business on the Internet. The Internet's anonymity and speed facilitate fraud, and computers help criminals identify and contact victims. Common scams include:

a) advance fee scams (as in, "If you are willing to pay a fee in advance, then you will have access to (pick your choice) favorable financing, lottery winnings from overseas, attractive investment opportunities that will make you rich.");

b) the sale of merchandise that is either defective or nonexistent;

c) the so-called Nigerian letter scam (For example, victims receive an email from someone alleging to be a Nigerian government official who has stolen money from the government. He needs some place safe to park the money for a short time. The

official promises that, if the victim will permit her account to be used for this purpose, she will be allowed to keep a percentage of the stolen money. Instead, of course, once the "official" has the victim's bank information, he cleans out the account.);

d) billing for services that are touted as "free";

e) fake scholarship search services;

f) romance fraud (you meet someone online who wants to visit you but needs money for travel expenses);

g) credit card scams (for a fee, you can get a credit card, even with a poor credit rating).

One of the new scams involves overpayment. You are renting out a house, selling a pet, or accepting a job, and "by accident," you are sent too much money. You wire the excess back, only to find out that the initial check or funds transfer was no good.

Fraud is the deception of another person for the purpose of obtaining money or property from him. It can be prosecuted under state law or the Computer Fraud and Abuse Act. In addition, federal mail and wire fraud statutes prohibit the use of mail or wire communication in furtherance of a fraudulent scheme. The Federal Trade Commission (the FTC can bring civil cases under Section 5 of the FTC Act.

Auctions

Internet auctions are the number one source of consumer complaints about online fraud. Wrongdoers either sell goods they do not own, provide defective goods, or offer fakes. In a recent case — which will not reduce the amount of auction fraud — a court held that eBay, the Internet auction site, was not liable to Tiffany & Company for the counterfeit Tiffany products sold on the site. The jewelry company had sued after discovering that most items advertised on eBay as Tiffany products were, in fact, fakes. The court held that eBay's only legal obligation was to remove products once told that they were counterfeit.

Shilling is an increasingly popular online auction fraud. Shilling means that a seller either bids on his own goods or agrees to cross-bid with a group of other

sellers. Shilling is prohibited because the owner drives up the price of his own item by bidding on it. Thus, for example, Kenneth Walton, a San Francisco lawyer, put up for auction on eBay an abstract painting purportedly by famous artist Richard Diebenkorn. A bidder offered $135,805 before eBay withdrew the item in response to charges that Walton had placed a bid on the painting himself and had also engaged in cross-bidding with a group of other eBay users. Although Walton claimed that he had placed the bids for friends, he ultimately pleaded guilty to charges of federal wire and mail fraud. He was sentenced to almost four years in prison and paid almost $100,000 in restitution to those who overpaid for the items he bid on.

To date, eBay has generally responded to shillers by suspending them. Shillers are also subject to suit under general anti-fraud statutes. In addition, some states explicitly prohibit shilling. For example, New Mexico law provides that "It shall be unlawful to employ shills or puffers at any such auction sale or to offer or to make or to procure to be offered or made any false bid or offer any false bid to buy or pretend to buy any article sold or offered for sale." N.M. Stat. Section 61-16-14. 19 18 U.S. Section 1028.

Identity Theft

Identity theft is one of the scariest crimes against property. Thieves steal the victim's social security number and other personal information such as bank account numbers and mother's maiden name, which they use to obtain loans and credit cards. The money owed is never repaid, leaving victims to prove that they were not responsible for the debts. The thieves may even commit (additional) crimes under their new identities. Meanwhile, the victim may find himself unable to obtain a credit card, loan, or job. One victim spent several nights in jail after he was arrested for a crime that his alter ego had committed.

Although identity fraud existed before computers, the Internet has made it much easier. For example, consumer activists were able to purchase the social security numbers of the director of the CIA, the Attorney General of the United

States, and other top administration officials. The cost? Only $26 each. No surprise then that 8 million Americans are victims of this crime each year.

A number of federal statutes deal with identity theft or its consequences. The Identity Theft and Assumption Deterrence Act of 1998 prohibits the use of false identification to commit fraud or other crime and it also permits the victim to seek restitution in court. 19 The Truth in Lending Act limits liability on a stolen credit card to $50. The Social Security Protection Act of 2010 prohibits government agencies from printing social security numbers on checks.

A number of states have also passed identity theft statutes. Almost every state now requires companies to notify consumers when their personal information has been stolen. Many states also restrict the use and disclosure of social security numbers.

What can you do to prevent the theft of your identity?

1. Check your credit reports at least once a year. (Consumers are entitled by law to one free credit report every year from each of the three major reporting agencies. You can order these reports at https://www.annualcreditreport.com.)

2. Place a freeze on your credit report so that anyone who is about to issue a loan or credit card will double-check with you first.

3. If you suspect that your identity has been stolen, contact the FTC at 877-IDTHEFT, 877-438-4338, or google “ftc identity theft” to get to the FTC’s identity theft site. Also, file a police report immediately and keep a copy to show creditors. Notify the three credit agencies.

Phishing

Have you ever received an instant message from a Facebook friend saying, “Hey, what’s up?” with a link to an IQ test? This instant message is not from a friend, but rather from a fraudster hoping to lure the recipient into revealing her personal information. In this case, people who clicked on the link were told that they had to provide their cell phone number to get the test results. Next thing they knew, they had been signed up for some expensive cell phone service. This scam is part of one of the most rapidly growing areas of Internet fraud: phishing. In this crime, a fraudster

sends a message directing the recipient to enter personal information on a website that is an illegal imitation of a legitimate site.

In a traditional phishing scam, large numbers of generic emails are sprayed over the Internet asking millions of people to log on to, say, a fake bank site. But the latest development—called spear phishing—involves personalized messages sent from someone the victim knows. For example, your sister asks for your social security number so she can add you as a beneficiary to her life insurance policy. In reality, this email has come from a fraudster who hacked into her Facebook account to gain access to her lists of friends and family. Even "Like" buttons can be "click jacked" to take unwary users to bogus sites.

Prosecutors can bring criminal charges against phishers for fraud. The companies whose websites have been copied can sue these criminals for fraud, trademark infringement, false advertising, and cybersquatting. No reputable company will ask customers to respond to an email with personal information. When in doubt, close the suspicious email, relaunch your web browser, and then go to the company's main website. If the legitimate company needs information from you, it will so indicate on the site.

Supplement 1

Helpful phrases for rendering a text

1. The title of the text (article, book) is …

The text (article, chapter, book) is titled (headlined) …

2. The author of the text (article, chapter, book)

a) gives a brief survey of the problem …

b) studies (examines, analyses, considers, describes) the nature and origin of the problem …

c) provides useful information regarding …

The text (article, chapter, book)

a) concerns the most up-to-date information on …

b) presents a detailed analysis of …

c) provides useful information regarding …

3. The main (principal, chief, primary) idea of the text (article, book, chapter, publication) is …

The author intends to determine … (to examine …, to describe …, to explain …).

4. The text (article, chapter, book) can be divided into (consists of) three parts: an introduction, the main part … and a conclusion … .

a) In the first part (chapter, section) of the text (article, chapter, book) the emphasis is given to …

The next section (part) is based on …

The major part deals with … (is devoted to …).

The section is followed by a set of examples showing that …

b) Chapter (part) 1 begins (starts) with …

Chapter (part) 2 introduces …

Chapter (part) 3 examines …

Chapter (part) 4 shows …

5. In conclusion the author sums up saying that …

The author comes to the conclusion that …

The author suggests a solution to the problem …

The text (article, chapter, book) is of considerable value in providing information on …

The text (article, chapter, book) illustrates in the best way the vital problems …

The problems raised in the text (article, chapter, book) seem (prove, appear) to be most useful for …

Having read this text (article, chapter, book) I learnt a lot about …

Helpful phrases for the topic "My research work"

1. I am a first-year post-graduate (student).
2. I study at the Department of …. (Criminal Law, Civil Law, Theory of State and Law, etc.)
3. My scientific supervisor is Professor (Associate Professor) …
4. I have chosen … (Criminal Law, Civil Law, Theory of State and Law, etc.) for my research because …
5. My future thesis will be titled "……. ."
6. It will consist of ……. (three, four…) chapters.
7. The first chapter will be devoted to …
8. The second chapter will deal with …
9. The third one will touch upon the problem of …
10. The fourth chapter will cover …
11. I hope to finish my scientific research on time.

Supplement 2

Sample topic “My research work”

Let me introduce myself. My name is Oleg Smirnov. I graduated Moscow State Academy of Law with honors. Now I’m a post-graduate student and I major in business law. My scientific supervisor is Professor N.

But business law has not always been my major. When I was a student of the fourth year I took up legal regulation in show-business, sports and advertising. My diploma paper was devoted to sport sanctions. But after two years of research I realized that business law is more interesting to me.

Today I’m going to study the problem of investment policy in the Russian Federation. This problem is vital because business can’t exist without capital investment in construction, reconstruction and technical equipment of enterprises. The rate of investment in the RF is growing rapidly. At the international economic forum in Saint-Petersburg last year it was stressed that the Russian government would take all measures necessary to make the RF investment field most attractive to foreign investors.

But this could only be possible on condition that changes in investment legislation are introduced. So far we’ve had three separate laws regulating investment policy in the RF, they are - the law regulating investment policy in RSFSR, the law regulating capital investment in the RF and the law regulating international investment policy.

As a result of my research I’m going to suggest a draft unified law covering all spheres of investment policy in the RF.

I have already written a synopsis on scientific and technical progress, its social and legal aspects. I chose this subject because it is closely linked with investment policy.

Also I’m going to write an article dealing with legal regulation of investment, international investment policy and innovation policy in the Russian Federation.

I hope my research will contribute to the improvement of investment legislation in the RF and promote further development of economy.

Supplement 3

Latin expressions most commonly used in legal texts

ab initio - сначала

actus reus – виновное деяние

ad hoc – для данного случая, специально

bona fide – по доброй воле, чистосердечно

compos mentis - вменяемый

corpus delicti – состав преступления

de facto - фактически

de jure - юридически

dictum (dicta) – неофициальное мнение судьи

ex officio – по должности

habeas corpus – неприкосновенность личности

ibidem – там же

inter alia – между прочим

inter se – между собой

intra vires – в пределах полномочий, действительный

ipso facto – в силу самого факта

mens rea - вина

obiter dictum (dicta) – неофициальное мнение судьи

per se – по сути

prima facie – с первого взгляда

status quo – существующее положение

sui generis – в своем роде, своеобразный

ultra vires – вне компетенции

versus (v.) – против

Supplement 4

Subjects of Higher Education – Субъекты высшего образования

Administration - руководство вуза

- Ректор – President (rector)
- Проректор – Vice-President (pro-rector, provost)
- Проректор по административно-хозяйственной деятельности – Vice-Rector for Economics
- Декан – dean
- Заведующий кафедрой – head of department

Teaching staff - профессорско-преподавательский состав

- Профессор – professor (visiting, full-time)
- Доцент – associate professor
- Старший преподаватель – lecturer
- Ассистент – assistant
- Репетитор или консультант, оказывающий безвозмездную помощь в учебе – tutor
- Научный руководитель – (scientific) supervisor

Students – обучающиеся (part-time, full-time, transfer, international)

- Абитуриент – applicant

(приемная комиссия – admission board)

- Первокурсник – freshman
- Второкурсник – sophomore
- Третьекурсник – junior
- Студент четвертого курса – undergraduate
- Студент пятого курса – senior
- Выпускник –alumnus
- Бакалавр – bachelor

- Магистр – graduate student
- Аспирант – post-graduate student
- Докторант – doctoral student

Doctoral studies – третья ступень (третий цикл, завершающий цикл) высшего образования, подготовка к защите докторской диссертации; в русскоязычной академической терминосистеме соответствует терминам аспирантура и докторантура, ввиду наличия двух ученых степеней в российской системе высшего образования (кандидат наук и доктор наук)

Education process – организация учебного процесса

- Учебный курс – course
- Программа – program
- Циклы – cycles
- Лекции – lectures
- Семинары – seminars
- Тесты, контрольные – tests
- Система зачетных единиц – credit system
- Система оценки достигнутых результатов обучения – grading system
- Дополнительные учебные занятия – extracurricular activities
- Внеаудиторные занятия – after class/recreational activities

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ELECTRONIC RESOURCES and USEFUL WEBSITES[i]

1. http://www.bbc.co.uk/
2. http://www.bis.gov.uk/
3. htpps://www.clickdocks.co.uk
4. http://www.cpc.gov.uk/index.html
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13. http://www.venables.co.uk/caselaw.htm

[i] All Internet sites referenced in this list were active at the time this text book was being written.