

CAMBRIDGE

Professional English

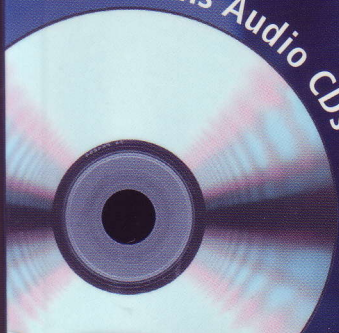
# Introduction to International Legal English

A course for classroom or self-study use

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and

**TransLegal®**

contains Audio CDs





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## THE STUDY OF LAW

### Lead-in

The study of law differs from country to country, but most law degree programmes<sup>1</sup> include **core** (compulsory) subjects which all students must take. Which core courses are typical in your country? How long does it take to complete a law degree?

### Reading 1: A career in law

1 Read the text below and answer these questions.

- 1 Which courses do law students in the UK have to take?
- 2 Which optional courses might a student who wants to work in a big law firm take?

The study of law is intellectually stimulating and challenging, and can lead to a variety of interesting careers.

In the UK and the USA, law degree programmes usually take three years to complete. In the UK, these programmes typically include core subjects such as **criminal law**, contract law, tort law, **land law**, **equity and trusts**, **administrative law** and **constitutional law**. In addition, students are often required to take courses covering skills such as legal writing and legal research.

There is also a variety of optional (elective) courses available. Since many law students go on to become lawyers, students often take courses that will be useful to them during their future careers. Someone wishing to run a small **partnership** or to work alone as a **sole practitioner** in a small town may decide to take subjects such as **family law**, **employment law** and **housing law**. Those wishing to work in a large **law practice** will consider subjects such as **company law**, **commercial law** and **litigation and arbitration**.

Many universities also offer courses on legal practice. Courses like this give students the opportunity to experience the work of a lawyer before deciding on a career in the law. Another way of finding out more about law in practice is to get involved with a voluntary advice centre or **law clinic**. These clinics offer free **legal assistance** to the local community and provide a useful introduction to some of the day-to-day work of a lawyer.

For students wishing to work in a commercial practice, knowledge of foreign languages is essential. When **law firms** hire new recruits, they generally look at four things: education, personality, work experience and language ability. Since English is the language of the international legal community, law firms increasingly expect graduates to have a good command of English.

<sup>1</sup> (US) programs



- 2 Read the text again and decide whether these statements are true (T) or false (F). If the statement is false, correct it.
- 1 A course in family law is usually included among the core subjects at law schools in the UK.
  - 2 Some law degree programmes offer courses in some of the important skills that lawyers need in order to do their work, such as legal writing or legal English.
  - 3 Law clinics give law students the opportunity to learn about the legal problems of the medical profession.
  - 4 Today, commercial law firms expect recruits to be completely fluent in English.
- 3 When you record vocabulary, you should try to write down as many collocations as you can, and not only single words.  
How many collocations with the words *legal* (e.g. *legal writing*) and *law* (e.g. *law firm*) can you find in the text?

## Speaking 1: Law firms and courses

- 4 Discuss these questions with a partner. Look at the sample responses.
- 1 What type of law firm do you (think you would like to) work in?  
I'd like to work as a sole practitioner, as I'd prefer to be my own boss.  
I think a big law firm would be exciting.
  - 2 Which optional courses are you taking / did you take during your studies?  
This semester, I'm taking an elective course in environmental law.  
I took a course on human rights law when I was in law school.

## Reading 2: Course descriptions

- 5 Reading texts in a foreign language often means encountering unfamiliar words. Discuss these questions with a partner.
- 1 What is the best way to deal with unfamiliar words in a text?
  - 2 Read the following list of strategies and discuss how useful they are. What factors might affect the strategy you use?
- ☐ Try to understand the new word with the help of surrounding words.
  - ☐ Look up every unknown word in a dictionary.
  - ☐ Ignore the unknown word and read on.
  - ☐ Look up some new words, ignore others.
  - ☐ Analyse the unknown word: ask what part of speech it is (a noun or an adjective, for example); if it has a root or a prefix (Latin or French, for example) that may help you understand it; if it has a positive or negative meaning, etc.

Keep these strategies in mind when reading the text on page 10.



- 6 Quickly read the law course descriptions taken from a university website. Ignore the gaps for now. Do you think this university is in the UK? Why (not)?

## Course descriptions

### First-year course descriptions

**Introduction to Law:** This course aims to familiarize the student with the study of law; to begin the development of certain basic skills, such as reading, analysis and synthesis of legal decisions, and interpretation of statutes; to discuss fundamental aspects of the legal process, e.g. how courts “make law” and the function of the courts with respect to statutory law.

1) ..... : This course covers the fundamental principles governing the formation, interpretation, performance, and enforcement of contracts. In addition, special attention is given to the requirements of offer and acceptance, consideration, formal requirements, public policy, and the problems of choosing a remedy in case of a breach. Some attention will also be given to the Uniform Commercial Code.

2) ..... : Topics covered include liability for intentional and negligently caused injuries to person and property; strict liability; vicarious liability; ultra-hazardous activities; products liability; nuisance; invasion of privacy; defamation; the impact of insurance and risk distribution upon liability; accident compensation plans; damages; losses.

3) ..... : This course presents the basic concepts of criminal law. Crimes against persons, property, and public administration are covered, with special emphasis placed upon the law of homicide.

### Second-year course descriptions

**Evidence:** This course will explore the rules of evidence and their rationale, including relevancy, hearsay, impeachment, cross-examination, opinions and experts, documents, and privileges.

**Criminal Procedure:** This course will cover regulation of law enforcement conduct during the investigation of crimes, with special emphasis on constitutional and statutory limitations. Topics include search and seizure, confessions and incriminating statements, electronic surveillance, entrapment, identification procedures, and remedies for improper police conduct.

4) ..... : This course covers the general principles of federal constitutional law, including government authority and its distribution under the constitution; the judicial function in constitutional cases; powers delegated to the national government and the reserved powers of the states in areas of federal authority; intergovernmental relations; rights, privileges, and immunities under the constitution; national citizenship; the contract clause; the federal constitution and the amendments thereto.

5) ..... : This course is designed to acquaint students with the nature of legal research. Students will analyze judicial opinions; apply legal concepts and rules; and learn correct legal citation and use of correct precedent. Special attention is given to the mechanics of legal research, the techniques of writing memoranda, and briefs.



7 Choose the correct title for each course in the catalogue excerpt on page 10.

- 1 Criminal law / Crime law
- 2 Law of the constitution / Constitutional law
- 3 Contract law / Contracting law
- 4 Legal research and writing / Legal investigation and writing
- 5 Liability law / Tort law

8 Read the excerpt again and answer these questions.

- 1 Which course covers basic skills that students will need during their studies?
- 2 Which course deals with research and writing skills needed in professional life?
- 3 Which course teaches students how to cross-examine a witness?

9 Underline three words you do not know. Try to guess their meaning by looking at surrounding words and analysing the words.

10 Which of the courses in the excerpt are/were you required to take in the law degree programme you are/were enrolled in?

## Listening 1: Law courses

Most universities now offer language courses for lawyers, and in some countries these courses are compulsory. Some courses in legal English focus on the study of Anglo-American legal systems and associated terminology. Others offer a more practical introduction to the language skills lawyers will need during their future careers.

You are going to hear a discussion between two law students, Heidi from Germany and Pavel from Russia. They are each spending a semester studying law in England and are discussing the English courses they were required to take as part of the law degree programmes in their respective countries.

11 ▶ 1.1 Listen to the discussion and tick (✓) what each speaker says he/she did on his/her legal English course.

	Heidi's course (Speaker 1)	Pavel's course (Speaker 2)
1 worked on writing skills for lawyers	<input type="checkbox"/>	<input type="checkbox"/>
2 practised legal research skills	<input type="checkbox"/>	<input type="checkbox"/>
3 learned about other legal systems	<input type="checkbox"/>	<input type="checkbox"/>
4 studied terminology	<input type="checkbox"/>	<input type="checkbox"/>
5 gave presentations	<input type="checkbox"/>	<input type="checkbox"/>
6 practised speaking about own legal system	<input type="checkbox"/>	<input type="checkbox"/>

12 ▶ 1.1 Listen to the conversation again and then discuss with a partner which course (Heidi's or Pavel's) most resembles your experience of legal English so far.



## Language use: Comparative and superlative forms

- 13** The two law students in Listening 1, Heidi and Marc, compared the legal English courses they took at their universities. Look at these sentences from the dialogue (1–9) and match them with the rules regarding the use of comparative and superlative forms (a–h). Some examples may match with more than one rule.

- 1** People here speak very quickly, which makes it *harder* to understand.
- 2** But now it's much *easier* – I can understand almost everything.
- 3** That's *more difficult for me than* understanding what people say.
- 4** Yes, I think writing's *the hardest* thing to do in English.
- 5** Our course was *more practical* – we worked on the language skills that lawyers need.
- 6** We didn't really work on speaking skills, though; it was *more important* to present the terminology.
- 7** That was definitely *the most useful* thing we did.
- 8** It sounds like your course was *better than* mine.
- 9** I don't know if it was better, but it was certainly *more language-based* and *more skills-based*.

- a** Adjectives with one syllable form their superlative by adding *-est*.
- b** Adjectives with one syllable form their comparative by adding *-er*.
- c** Short adjectives ending in *-y* form their comparative by removing *-y* and adding *-ier*.
- d** Multi-syllable adjectives form their comparative with *more*.
- e** Compound adjectives form their comparative with *more*.
- f** Multi-syllable adjectives form their superlative with *most*.
- g** Some very frequent adjectives have irregular comparative forms.
- h** *Than* is used to introduce the second element in a comparative structure.

- 14** Complete this excerpt from an introductory talk given in the first session of a legal English course. Use the correct comparative or superlative form of the adjectives given.

You might be expecting to learn a lot of detail about Anglo-American legal systems and their foundations, but our focus this semester will be **1)** ..... (practical) than theoretical. We will mainly be working on language skills, such as writing letters or speaking with clients. I am convinced this is the **2)** ..... (good) way to prepare for using English for law. You may find this course **3)** ..... (challenging) and **4)** ..... (time-consuming) than you expected, but you may also find it one of the **5)** ..... (useful) courses you take at university, as many students have told me in the past. To make it **6)** ..... (easy) for you to plan your time, I'll be handing out a list of the readings and the assignments you'll be working on this term.

## Speaking 2: Learning approaches

- 15** Discuss these questions with a partner.

- 1** Which of the four skills – reading, writing, listening or speaking – do you find the most difficult?
- 2** When it comes to learning legal English, which of the two courses discussed by Heidi and Marc do you think offers the better approach? Explain the reasons for your choice, using comparatives and superlatives if possible.



# LAW IN PRACTICE

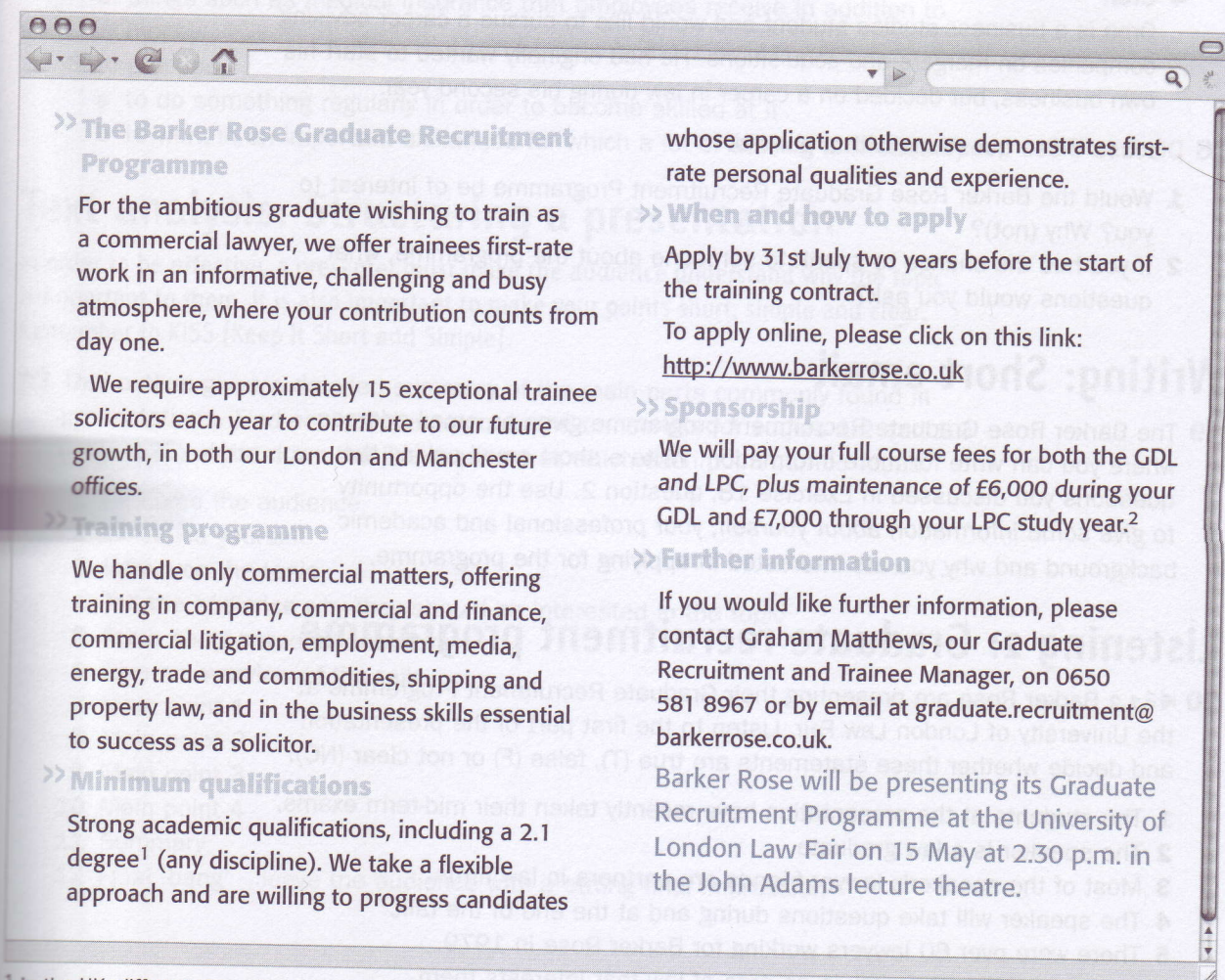
## Lead-in

Lawyers in smaller firms often advise clients on general legal issues, contacting colleagues for assistance when necessary. Lawyers in larger firms tend to specialise in specific areas, such as advising on tax matters, dealing with commercial transactions or registering patents. Which areas of law do you find most interesting and why?

## Reading 3: Graduate recruitment programme

**16** Read the advertisement for the Barker Rose Graduate Recruitment Programme and answer these questions.

- 1 Do you need to have a law degree to qualify for the programme?
- 2 How will Barker Rose help graduate students qualify to become solicitors?



**>> The Barker Rose Graduate Recruitment Programme**

For the ambitious graduate wishing to train as a commercial lawyer, we offer trainees first-rate work in an informative, challenging and busy atmosphere, where your contribution counts from day one.

We require approximately 15 exceptional trainee solicitors each year to contribute to our future growth, in both our London and Manchester offices.

**>> Training programme**

We handle only commercial matters, offering training in company, commercial and finance, commercial litigation, employment, media, energy, trade and commodities, shipping and property law, and in the business skills essential to success as a solicitor.

**>> Minimum qualifications**

Strong academic qualifications, including a 2.1 degree<sup>1</sup> (any discipline). We take a flexible approach and are willing to progress candidates whose application otherwise demonstrates first-rate personal qualities and experience.

**>> When and how to apply**

Apply by 31st July two years before the start of the training contract.

To apply online, please click on this link:  
<http://www.barkerrose.co.uk>

**>> Sponsorship**

We will pay your full course fees for both the GDL and LPC, plus maintenance of £6,000 during your GDL and £7,000 through your LPC study year.<sup>2</sup>

**>> Further information**

If you would like further information, please contact Graham Matthews, our Graduate Recruitment and Trainee Manager, on 0650 581 8967 or by email at [graduate.recruitment@barkerrose.co.uk](mailto:graduate.recruitment@barkerrose.co.uk).

Barker Rose will be presenting its Graduate Recruitment Programme at the University of London Law Fair on 15 May at 2.30 p.m. in the John Adams lecture theatre.

<sup>1</sup> In the UK, different-class degrees are awarded as follows: 1 (a first), 2.1 (a two-one), 2.2 (a two-two), 3 (a third).

<sup>2</sup> The Graduate Diploma in Law (GDL) is a conversion course allowing those holding non-law degrees in any subject to convert to a career in law. After completing the GDL, students who want to become barristers take the Bar Vocational Course (BVC) before entering the profession as pupil barristers. Students who want to become solicitors take the Legal Practice Course (LPC) before becoming trainee solicitors.



- 17** Read these four descriptions of students and decide if they would be suitable for the Barker Rose Graduate Recruitment Programme. Give reasons for your answers.

**1 Andrea**

Andrea is most interested in criminal law and has helped advise defendants of their rights at her university law clinic. She is very studious and is aiming for a first-class law degree.

**2 Sandip**

Sandip founded his own e-commerce business following a disappointing 2.2 law degree. He is now in great demand as a gifted dotcom consultant, but would like to pursue a career in commercial law.

**3 Meral**

Meral is interested in company law and is very ambitious. Her aim is to become a partner in a law firm by the age of 30. She would like to begin her training contract next year in order to get ahead as soon as possible.

**4 Oren**

Oren is a business-studies student and would like to pursue a career advising companies on mergers and acquisitions. He had originally wanted to start his own business, but decided on a career in law during his second year.

- 18** Discuss these questions with a partner.

- 1 Would the Barker Rose Graduate Recruitment Programme be of interest to you? Why (not)?
- 2 If you had the chance to speak to someone about the programme, what questions would you ask?

## Writing: Short email

- 19** The Barker Rose Graduate Recruitment programme gives an email address where you can write for more information. Write a short email asking the questions you discussed in Exercise 18, question 2. Use the opportunity to give some information about yourself, your professional and academic background and why you are interested in applying for the programme.

## Listening 2: Graduate recruitment programme

- 20** **1.2** Barker Rose are presenting their Graduate Recruitment Programme at the University of London Law Fair. Listen to the first part of the presentation and decide whether these statements are true (T), false (F) or not clear (NC).

- 1 The students at the presentation have recently taken their mid-term exams.
- 2 The speaker is a law graduate.
- 3 Most of the speaker's lawyer friends are partners in law firms.
- 4 The speaker will take questions during and at the end of the talk.
- 5 There were over 60 lawyers working for Barker Rose in 1979.
- 6 New associates can work in an area of law that interests them.

- 21** **1.3** Listen to the second part of the presentation and answer these questions.

- 1 How much do graduate trainees earn during their second year at Barker Rose?
- 2 How are year-end bonuses awarded?
- 3 What other benefits are paid for by the firm?
- 4 How many hours are associates expected to bill per year?
- 5 After how many years are some associates considered for partnership?



**22** Some words can have several meanings. Choose the best explanation (**a** or **b**) for each of these words or phrases as they are used in the presentation.

- 1** a partner
  - a** one of the owners of a partnership (e.g. a law firm)
  - b** someone's boyfriend, girlfriend, husband or wife
- 2** an associate
  - a** a person whose position at work is slightly lower or less complete than the full official position described (e.g. an associate director)
  - b** a person who is closely connected to another person as a companion, friend or business partner
- 3** a bonus
  - a** a pleasant, additional thing
  - b** an extra amount of money given as a reward in addition to the money you were expecting
- 4** benefits
  - a** a helpful or good effect, or something intended to help
  - b** things such as medical insurance that employees receive in addition to money
- 5** to practise<sup>1</sup>
  - a** to do something regularly in order to become skilled at it
  - b** to work in an important skilled job for which a lot of training is necessary

## Text analysis: Structuring a presentation


In order to be effective, a presenter must make the audience understand why the topic is important to them. It is also important to make your points short, simple and clear. Remember to KISS [Keep It Short and Simple].

**23** This outline gives a detailed summary of the main parts commonly found in presentations. Find each of the points in the transcripts for audios 1.2 and 1.3 (page 125). Write down the line numbers at which each point can be found.

- 1** Welcome the audience
- 2** Introduce yourself
- 3** Introduce the topic
- 4** Tell the audience why they should be interested in the topic
- 5** Tell a short personal anecdote
- 6** Give an overview of the talk
- 7** Main point 1
- 8** Main point 2
- 9** Main point 3
- 10** Main point 4
- 11** Summary
- 12** Final 'bang' – leave the audience with a strong final impression

<sup>1</sup> (US) to practice



- 24**  **1.2, 1.3** Listen again to the whole presentation and complete this table of useful phrases.

Language function	Phrase
Welcoming the audience	<b>1</b> Hello, everyone, ..... along. <b>2</b> It's great that so many of you were ..... this morning.
Introducing yourself	<b>3</b> OK, let me just ..... myself.
Introducing the topic	<b>4</b> I've been asked along ..... the ...
Telling the audience why they should be interested in the topic.	<b>5</b> ... (a programme) I'm sure will be of ..... as ... <b>6</b> It's right ..... to ...
Telling a short personal anecdote	<b>7</b> I ..... when I ... <b>8</b> I know from ..... that ...
Giving an overview of the talk	<b>9</b> There are ..... I'd like to cover today. <b>10</b> First, ..... giving you a little information about Barker Rose. I'll then go on to ..... what we have to offer to new associates. ...., I'll also ..... what we expect from our potential graduate recruits.
Introducing the next point	<b>11</b> So, to ..... , who are Barker Rose? <b>12</b> This brings ..... point: what ... <b>13</b> This leads ..... what ... <b>14</b> Let's now ..... what we ...
Concluding the presentation	<b>15</b> To ..... , Barker Rose ... <b>16</b> Finally, I'd like to ..... about what I said at the beginning of my talk today.

- 25** How formal was the style of the presentation? Support your answer with examples from the table above.

## Speaking 3: Presentation

- 26** Prepare a short presentation on one of these subjects. Use the guidelines above to help you.

- ☐ What your university has to offer potential new undergraduates
- ☐ What your law firm has to offer graduate recruits



# Language Focus

**1 Vocabulary: types of law firm** Match the halves of these sentences about the different types of law firm mentioned in Reading 1.

1 A **commercial practice**

2 A **large law firm**

3 A **law clinic**

4 A **partnership**

5 A **sole practitioner**

**a** is managed by partners who share profits and responsibility equally.

**b** works on his or her own, has no partners and usually handles smaller cases.

**c** advises clients on corporate and commercial matters and may also negotiate transactions and solve business problems.

**d** can have 50 or more lawyers working on complex matters for large organisations.

**e** gives students an opportunity to deal with real clients and to develop their legal skills.

**2 Vocabulary: law vs legal** Complete these sentences by inserting either *law* or *legal*.

1 Instruction in legal English is becoming compulsory in a growing number of law faculties all over the world.

2 After university, my work as a trainee solicitor gave me useful experience in commercial litigation, and I was offered a good position in a large law firm.

3 During my studies, I volunteered at a local law clinic, where I provided free legal assistance to people who could not afford to pay for a lawyer.

4 Some of the most important courses a student completes during his or her studies of the law are skills courses, such as courses in legal writing and legal research.

**3 Prepositions** Complete these phrases from the lawyer's talk in Listening 2 with the prepositions in the box.

about about about at by by for for from of on to to to to with

**a** First, I'll start by giving you a little information about Barker Rose.

**b** Our Graduate Recruitment Programme includes an excellent set of benefits for students prepared to commit themselves fully.

**c** I'll then go on to outline what we have to offer to new associates.

**d** OK, let me just start by introducing myself.

**e** Finally, I'll also talk a little about what we expect of our potential graduate recruits.

**f** Hello, everyone, and thanks for coming along.

**g** Finally, I'd like to remind you of what I said at the beginning of my talk today.

**h** So, to start with, who are Barker Rose?

**i** This brings me to my next point: what benefits can successful applicants expect our Graduate Recruitment Programme expect?

**4 Ordering** Number the statements in Exercise 3 in the order in which they most likely occurred. You may want to listen to the talk again to check if your answers are correct.

1 f ...



## THE STUDY OF LAW

### Lead-in

It is difficult to imagine going very long before making some kind of agreement enforceable by law. Whenever we buy goods and services, we enter into a contractual relationship.

- 1 What kinds of contract have you entered into recently? Make a list of some of the goods and services you have bought or used over the past 48 hours. Compare your list with a partner. Is it always clear whether the above are goods or services? How would you classify the electricity you consume every day?

### Reading 1: Contract law

This text deals with some of the main features of contract law.

- 2 Read the first paragraph. What is necessary for a valid contract to be formed?
- 3 Now read the whole text. Which two remedies following a breach of contract are mentioned? Are any other options available in your own jurisdiction?
- 4 Read the text again and decide whether these statements are true (T) or false (F).
  - 1 In all legal systems, parties must give something of value in order for a contract to be formed.
  - 2 An offer must be met with a counter-offer before a contract is agreed.
  - 3 Oral contracts are not always valid.
  - 4 If in breach, the court will always force the party to perform the contract.
  - 5 Assignment occurs when one party gives its contractual rights to another party.

Contract law deals with promises which create legal rights. In most legal systems, a contract is formed when one **party** makes an offer that is accepted by the other party. Some legal systems require more, for example that the parties give each other, or promise to give each other, something of value. In common-law systems, this promise is known as **consideration**. In those systems, a one-sided promise to do something (e.g. a promise to make a gift) does not lead to the **formation** of an enforceable contract, as it lacks consideration.

When the contract is negotiated, the offer and acceptance must match each other in order for the contract to be binding. This means that one party must accept exactly what the other party has offered. If the offer and acceptance do not match each other, then the law says that the second party has made a **counter-offer** (that is, a new offer to the first party which then may be accepted or rejected).

For there to be a valid contract, the parties must agree on the **essential terms**. These include the price and the subject matter of the contract.



Contracts may be made in writing or by spoken words. If the parties make a contract by spoken words, it is called an **oral contract**. In some jurisdictions, certain special types of contracts must be in writing or they are not valid (e.g. the sale of land).

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. the obligation to do work).

When a party does not do what it is required to do under a contract, that party is said to have breached the contract. The other party may file a lawsuit against the **breaching party** for **breach of contract**. The **non-breaching party** (sometimes called the **injured party**) may try to get a court to award damages for the breach. **Damages** refers to money which the court orders the breaching party to pay to the non-breaching party in compensation. Other remedies include **specific performance**, where a court orders the breaching party to perform the contract (that is, to do what it promised to do).

A party may want to transfer its rights under a contract to another party. This is called an **assignment**. When a party assigns ('gives') its rights under the contract to another party, the assigning party is called the **assignor** and the party who gets the rights is called the **assignee**.

5 Complete these sentences using the words in the box.

breach counter-offer damages formation obligations oral  
contract terms

- 1 Usually, contract ..... occurs when an offer is accepted.
  - 2 A new offer made by one party to another party is called a .....
  - 3 The price and the subject matter of a contract are the essential ..... of a contract.
  - 4 A contract which is not in written form but has been expressed in spoken words is called an .....
  - 5 Under a contract, a party has ..... (that is, certain things it has to do).
  - 6 When a party does not do what it has promised to do under a contract, it can be sued for ..... of contract.
  - 7 A court can award ..... to the non-breaching party.
- 6 Match the verbs in the box with the nouns they go with in the text.

accept award breach enforce file form make negotiate perform  
reject

- 1 an offer
  - 2 a contract
  - 3 damages
  - 4 a lawsuit
- 7 Which other verb-noun collocations are possible with the words in Exercise 6?



- 8 With a partner, take turns to look at each of the verbs in the box in Exercise 6 and discuss whether the following subjects can carry out the action in question:

1 a party    2 the parties    3 the court    4 a lawyer

EXAMPLE: Well, a party accepts an offer, and a lawyer can accept an offer, too. But I don't think you can say that a court accepts an offer.

## Reading 2: Remedies for breach of contract

- 9 Read this excerpt from a law textbook. What does the word *remedy* in the text mean?

### REMEDIES FOR BREACH OF CONTRACT

If a contract is broken, the injured party might be expected to demand any of the following:

- to have what they gave returned to them ('restitution')
- compensation for their loss ('damages')
- the other party to be forced to perform the contract ('specific performance')

In the common-law tradition, damages is the usual remedy that a court awards for a broken contract. Restitution and specific performance are available only in certain circumstances.

- 10 According to the text, what is the most common remedy for breach of contract in the legal systems of English-speaking countries? What is the most common remedy in your jurisdiction?

## Listening 1: Asking for clarification and giving explanations

- 11 ▶ 2.1 Listen to the first part of a short conversation between two law students, who are discussing the law textbook excerpt in Exercise 9. What is the first student confused about?

- 12 ▶ 2.1 Listen again and tick (✓) the expressions the student uses to ask for clarification.

- |                                      |                          |
|--------------------------------------|--------------------------|
| 1 What does that mean?               | <input type="checkbox"/> |
| 2 Sorry, I don't follow you.         | <input type="checkbox"/> |
| 3 I don't understand that.           | <input type="checkbox"/> |
| 4 I don't know what that word means. | <input type="checkbox"/> |
| 5 That doesn't make sense to me.     | <input type="checkbox"/> |
| 6 I don't get it.                    | <input type="checkbox"/> |

- 13 How would you explain to the student what the term *damages* means and how it differs from the word *damage*? Discuss this with a partner.

- 14 ▶ 2.2 Listen to the second part of the dialogue and compare your answer with what the second student in the dialogue says.



15 ▶ 2.2 Listen again and tick (✓) the expressions the second student uses for giving an explanation.

- 1 Well, it's quite straightforward.

2 Allow me to clarify.

3 Let me explain.

4 What this word means is ...

5 It's like this.

6 In other words, ...
- ☐

☐

☐

☐

☐

☐

16 Which of the expressions in Exercise 15 is the most formal? When would you use this more formal way of giving an explanation?

Speaking 1: Terminology

17 With a partner, take turns choosing and explaining one of these terms in your own words. Can you guess which word your partner is defining?

- ☐ damages

☐ specific performance

☐ restitution
- ☐ assignor

☐ assignee

☐ the breaching party
- ☐ the non-breaching party

☐ the injured party

☐ remedy

Listening 2: Contract law lecture

18 ▶ 2.3 Listen to the beginning of a lecture on contract law. What is the general subject of the lecture?

19 ▶ 2.4 Listen to the whole lecture and answer these questions.

- 1 Which of these terms does the speaker mention?

agreement

consideration

negotiation

offer

☐

☐

☐

☐

counter-offer

acceptance

remedy

☐

☐

☐

2 What topic will the lecturer talk about next time?

20 ▶ 2.4 Listen again and complete this excerpt from a student's lecture notes by writing one word in each space.

Introductory lecture on Contract Formation

- Three requirements for formation:
  - 1) .....
  - 2) .....
  - 3) intention to create ..... relations
- Agreement: when 4) ..... become a settled deal
- When an offer is made and 5) ....., there is agreement.
- Questions about offers: e.g. who makes an offer in an auction? Is a 6) ..... list an offer? Is an advertisement an offer? ...
- Questions about acceptance: does acceptance have to be 7) ..... ? Accept by 8) ..... ?
- Consideration basically means the 9) ..... . If there is no consideration, the contract is not legally 10) .....
- Next week's lecture will cover rules of 11) .....



## Speaking 2: Summarising the lecture

**21** A fellow student missed the introductory lecture on contract formation and has asked you to explain the most important points to him. Taking turns with a partner, explain in your own words what the lecturer said about the following topics. If you don't understand something, ask for clarification. When your partner has finished explaining, say whether your partner has left something out or whether you understand it differently.

- ☐ agreement: what it is and when it occurs
- ☐ questions about acceptance
- ☐ questions about offers
- ☐ consideration: what it is

## LAW IN PRACTICE

### Lead-in

Lawyers are often consulted by clients who need advice in contract disputes. What kinds of things could lead to such disputes?

When meeting with a client to discuss a dispute, a lawyer will generally explain how the law relates to the contract in question. This may mean helping the client to understand technical terms and important legal concepts. It will often be necessary to examine a particular **clause**, or section of the contract, carefully.

### Reading 3: Contract clause

**22** Read the clause from a contract and answer these questions.

- 1 Which word means *ship* or *boat*?
- 2 What does the clause deal with?
- 3 What words are used to refer to each party to the contract?
- 4 What do you think *probable readiness* means?
- 5 What does the word *shall* mean in the context of this clause?

- 2 a The buyer shall nominate the date of shipment. The buyer shall give the seller at least two weeks' notice of probable readiness of vessel(s) and of the approximate quantity to be loaded.
- b Upon notification of probable readiness of vessel(s), the seller shall nominate a port for the loading of goods.
- c Shipment is required no later than 22 May 2008.

**23** Complete these lists of obligations using your own words. How are the obligations expressed in the actual contract clause?

Buyer must:

- 1 .....
- 2 .....
- 3 .....

Seller must:

- 4 .....

**24** Discuss with a partner what can go wrong in connection with a clause like the one in Exercise 22. What might the consequences be?



## Listening 3: Conditions and warranties

25 ▶ 2.5 You are going to hear a conversation between a lawyer (Mr Dawe) and his client (Mr McKendrick, Director of Export Threads, the seller referred to in the contract extract in Exercise 22). Listen to them discussing the case and answer these questions.

- 1 What is the name of the buyer in this dispute?
- 2 Why does Export Threads want to terminate the contract?
- 3 Does a breach of contract automatically allow one party to terminate the agreement?
- 4 Does the lawyer think that Export Threads has a strong case?
- 5 What *legal* grounds might Export Threads have for terminating the contract?

26 Read the audio transcript of the dialogue on pages 125–126. Underline the phrases which mean *I don't understand* and those used for giving an explanation.

27 a In the dialogue, the lawyer says that his client *relied* on the seller to notify him of the date of shipment. The term **reliance** refers to depending on someone's promises. Read these definitions of reliance (1–3) and match each with its source (a–c).

1

### reliance

- 1 The act of relying on someone or something; trust.
- 2 The condition of being reliant or dependent.
- 3 A person or thing which relies on another.

2

**reliance** *n.* the act of relying; taking action as a result of another person's promises or assurances. Compensation may be available for losses incurred by a claimant resulting from such reliance (*reliance damages*).

3

**reliance** /rɪ'laɪəns/ noun [U]  
when you depend on or trust in something or someone:  
*The region's **reliance** on tourism is unwise.*  
*You place too much **reliance** on her ideas and expertise.*

- a *The Cambridge Advanced Learner's Dictionary*
- b an online legal dictionary
- c *The Wiktionary* (an online dictionary created by its users)

- b Which of the dictionaries did you find most useful? Why?
- c What role do you think reliance plays in this contract?



## Language use: *can / could / may / might*

In his conversation with his client, Mr Dawe talks about a number of possibilities, for example the possibility that Drexler might sue him for breach of contract.

There are several ways to talk about possibilities in English:

- *can / could* (but not *may / might*) are used to say something is generally possible:

*I really don't see how they **can / could** sue us.* (= I don't see how it is / would be possible for them to sue us.)

~~*I really don't see how they **may / might** sue us.*~~

- *may / might / could* (but not *can*) are used to talk about the chance that something will happen or is happening:

*They **may / might / could** sue you.* (= It is possible they will sue you.)

~~*They **can** sue you.*~~

- *may not / might not* (but not *could not*) are used to talk about a negative possibility in the future:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **might not** take any action against us?*  
(= It is possible they won't take action.)

- In the above example, using *could not* would change the meaning from possibility to ability:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **couldn't** take any action against us?* (= They would not be able to take action.)

### 28 Rewrite these sentences using a suitable form of *can, could, may or might*.

- 1 I don't see how it is possible for them to sue us.

*I don't see how they **can / could** sue us.*

- 2 If we offer a generous out-of-court settlement, it is possible that they will not sue us.

If .....

- 3 You shouldn't breach the contract. It is possible they will sue you.

They .....

- 4 If you can assure us that such a breach will not happen again, then it is possible that we won't take any further action.

If .....

- 5 I think it is possible for us to work together again in the future.

I .....

- 6 If you raised your prices, it would not be possible for us to work together.

If .....



## Text analysis: Email of advice

29 This email summarises the discussion between the lawyer, Mr Dawe, and his client. It contains four errors of fact. Find and correct the errors.

**Subject:** The termination of your contract with Drexler Inc.

Dear Mr McKendrick

1 Thank you for coming to see me on 30 May when we discussed the termination of your contract with Drexler Inc. I am writing to summarise our discussion and to confirm your instructions.

2 You told me that Drexler Inc. agreed to purchase a large quantity of goods (exact amount unspecified) from your firm, Export Threads. Under clause 2a of the contract, Drexler were to give you two days' notice of the date of shipment so that you could arrange a lorry for the transportation of the goods. You were unable to arrange this because Drexler failed to let you know by the agreed date. You now wish to terminate the contract.

3 The legal issue here is whether or not Drexler's breach is enough to allow Export Threads to terminate the contract without being liable for damages. If the contract term in question can be shown to be a condition, you will be able to terminate the contract without fear of damages being awarded against you. If the term is simply a warranty, you will be able to claim damages to cover any costs you have incurred as a result of this breach, but may not actually terminate the contract.

4 Recent case law suggests that if you do choose to terminate the contract, and if Drexler subsequently decide to sue you, the courts would rule against you. Your contract involves a chain of sales, and in such cases, the need for certainty is very important. You were unable to arrange the loading of the goods as a direct consequence of Drexler's breach of clause 2a, and this term would be interpreted as a condition.

5 I will write a letter to Drexler Inc. outlining the above and notifying them of your intention to renegotiate the contract. I will request confirmation from Drexler that they accept our interpretation both of the events and of the relevant law, and that your termination of the contract will not lead to any unnecessary legal action on their part. I will be in touch again shortly. Please do not hesitate to contact me if you have any questions.

With kind regards

Charles Dawe

30 The email in Exercise 29 follows a standard pattern for an email of advice from a lawyer to a client. Match each paragraph (1–5) with its correct label (a–e).

- a Opening paragraph
- b The lawyer's proposed action
- c The lawyer's advice
- d Summary of the facts
- e The legal issue(s)



- 31** During this course, you will be asked to write several letters and emails of advice. Read through the email in Exercise 29 and highlight any phrases that would be useful in your own legal correspondence.

EXAMPLES: Thank you for coming to see me on 30 May when we discussed ...

## Writing: Email of advice

- 32** Use these notes of an interview with a client to write an email of advice. Use the email in Exercise 29 as a model.

SAMPLE  
ANSWER  
»p.142

7 November

**Client – Berlingua Language School (Joanna Staines)**

**Other party – Simon Burnett, Burnett TV Supplies**

### *Facts*

Ms Staines (Director of Studies, Berlingua) bought a new satellite system (including built-in hard drive) at 50% of the normal price from Burnett TV Supplies for educational use. She mainly wanted to use it to record foreign-language TV programmes for use during lessons.

When she first set it up and tried to record, she realised that the timer function was broken. This means someone has to physically press 'record' and 'stop' whenever they want to record something.

Ms Staines has asked for a replacement, but was told that she couldn't expect it to work perfectly at such a cheap price. They have refused to replace it, but have offered to repair it at a cost of £130.

### *Legal issues*

Defect not pointed out at time of purchase; if reduction due to imperfections, seller **MUST** inform client (Sale of Goods Act).

### *Advice/Action*

Ms Staines is entitled to either a full refund or a replacement system (her choice). I outlined the options, Ms Staines is considering which to go for. I'm pretty sure that it will only take one letter from us before Burnett backs down – he'd have no chance in the small claims court!

➡ Now turn to **Case Study 1: Contract law** on page 118.



# Language Focus

**1 Word formation** Complete this table.

Verb	Abstract noun	Personal noun	Adjective
assign	assignment		
			(non-)breaching
negotiate			
		offeror/offeree	
			reliable

**2 Prepositions** Complete the following sentences about contract law using the prepositions in the box.

against for for in into to to under

- 1 An individual or a business may enter into a contract.
- 2 Anyone who is not a party to the contract is considered a third party and cannot be obligated to do anything required by the contract.
- 3 If one of the parties breaches a contractual obligation, the non-breaching party may file a lawsuit against the breaching party.
- 4 Furthermore, a party will not be required to perform its contractual obligations if another party is in breach.
- 5 Damages are awarded to a party for any loss that the party has suffered as a result of a breach of contract.
- 6 However, a party will not always be able to recover all losses when suing for damages.

**3 Language functions** Unscramble the following phrases for asking for clarification.

- 1 that What mean? does    *What does that mean?*
- 2 I you follow don't
- 3 that I understand don't
- 4 I means don't what that know word
- 5 make That sense to doesn't me

**4 Verb-noun collocations** Choose the correct verbs.

- 1 My client has requested me to *make* / file / *award* a lawsuit against you for breach of contract.
- 2 You *accepted* / *awarded* / *admitted* the offer my client made to you.
- 3 When you signed the contract, legal rights were *called* / *claimed* / *created* which are enforceable under the law.
- 4 Since you have not carried out your obligations under the contract, you have clearly *assigned* / *rejected* / *breached* the contract.
- 5 My client intends to *claim* / *accept* / *enforce* damages for all of the losses incurred as a result of the breach.



## THE STUDY OF LAW

### Lead-in

The word *tort* is usually unfamiliar to learners of English. As with other legal English terms, many native speakers of English who do not work in the law would not know the word either. What do you think it means?

- 1 a** The area of tort law covers a wide range of cases. Match these case descriptions (1–3) with the case names (a–c).
- 1** A civil case for wrongful death which followed an unsuccessful criminal prosecution for murder
  - 2** An urban legend about a woman who sued a company for damages because the instruction manual for her microwave oven gave no warning against the way she used it
  - 3** A 1994 case in which \$2.7m in damages were awarded
- a** Liebeck v. McDonald's Restaurants  
**b** The People v. OJ Simpson  
**c** Hubbard v. Speedicook
- b** What do these cases have in common?
- 2** Complete the definition below using the words in the box.

act   damages   harm   party

**Tort:** a wrongful **1)** ..... that causes **2)** ..... to another person for which the injured **3)** ..... may request **4)** .....

### Reading 1: Tort law

- 3** Read the text on page 29 on tort law and answer these questions.
- 1** According to the text, what are the two main objectives of tort law?
  - 2** An injured party can *sue for damages* or *for an injunction*. According to the text, what types of loss can be compensated by an award for damages?
  - 3** What does the term *injunction* mean? Use the Glossary if necessary.
  - 4** A manufacturer produces a dangerous toy train. What category of tort is this?
- 4** Match the adjectives (1–6) with the nouns (a–f) they collocate with in the text.
- |                      |                            |
|----------------------|----------------------------|
| <b>1</b> civil       | <b>a</b> damages           |
| <b>2</b> contractual | <b>b</b> wrong             |
| <b>3</b> injured     | <b>c</b> misrepresentation |
| <b>4</b> fraudulent  | <b>d</b> party             |
| <b>5</b> medical     | <b>e</b> relations         |
| <b>6</b> monetary    | <b>f</b> expenses          |



A **tort** is a **civil wrong** that can be **remedied** by awarding damages (other remedies may also be available). These civil wrongs result in harm to a person or property that forms the basis of a claim by the injured party. The harm can be physical, emotional or financial. Examples of torts include medical negligence, negligent damage to private property and negligent **misstatements** causing financial loss.

There are many specific torts, such as **trespass**, **assault** and **negligence**. Business torts include **fraudulent misrepresentation**, **interference in contractual relations** and **unfair business practices**.

Torts fall into three general categories: **intentional torts** (e.g. unfair competition), **negligent torts** (e.g. causing an accident by failing to obey traffic rules) and **strict liability torts** (e.g. liability for making and selling defective products).

Why some wrongs are dealt with by tort law (or the law of torts) and others considered criminal offences is the subject of some debate. However, there are certainly overlaps between tort law and criminal law. For example, a defendant can be **liable** to compensate for assault and battery in tort and also be punished for the criminal law offence of assault.

Differences between tort law and criminal law include: the parties involved (the state brings an action in crime, a private individual brings an action in tort); the **standard of proof** (higher in criminal law); and the outcomes (a criminal action may result in a **conviction** and punishment, whereas an action in tort may result in **liability** on the part of the defendant and damages awarded to the claimant<sup>1</sup>).

The primary aims of tort law are to provide relief for the harm suffered and deter other potential **tortfeasors** from committing the same harms. The injured person may **sue for** both an **injunction** to stop the **tortious conduct** and for monetary damages.

Depending on the jurisdiction, the damages awarded will be either compensatory or punitive. **Compensatory damages** are intended, as far as it is possible, to put the victim in the position he or she would have been in had the tort not occurred. **Punitive damages** are awarded to punish a wrongdoer. As well as compensation for damage to property, damages may also be awarded for: **loss of earnings capacity**, **future expected losses**, **pain and suffering** and **reasonable medical expenses**.

<sup>1</sup> (US) plaintiff

5 Use the collocations you formed in Exercise 4 to complete these sentences.

- 1 While a crime such as murder or shoplifting is a wrong committed against society, a tort is a ..... committed against an individual.
- 2 Torts are handled in the civil courts, where the ..... brings an action against the wrongdoer.
- 3 In most cases, the injured party is entitled to remedies under the law, such as .....
- 4 In medical malpractice cases, the damages awarded to the injured party may include lost wages and .....



- 5 The tort of ..... occurs when one of the parties to a contract makes a false statement about a fact and knows it is not true, and this fact is acted upon.
- 6 When a person stops parties from entering into a contract, for example, this person is said to interfere in .....
- 6 What do you think these types of tort mentioned in the text mean: *assault*, *negligence*, *trespass*? What kinds of acts do they cover? Give examples of what someone has to do to be liable for each of these torts in your country.

## Reading 2: Case note

Law students often read or write case notes<sup>1</sup> to prepare for classroom discussion at university. A case note is a short summary of the most important information about a case. As such, it is a useful study tool. The format and contents of a case note can vary, but usually it includes the following sections: case, facts, procedural history, legal issue, ruling and reasoning.

- 7 Quickly read through the case note below of an important tort law case and match the headings (1–6) in the brief with these descriptions (a–f).

- a relevant point of law
- b information about the parties and the case
- c what the court decided
- d what happened
- e why the court came to that decision
- f how the lower courts decided

- 1 **CASE:** *Palsgraf v. The Long Island Railroad Company*, 248 N.Y. 339; 162 n.e. 99; Court of Appeals of New York [1928]
- 2 **FACTS:** Plaintiff<sup>2</sup> was standing on a platform of defendant's railroad when a train moved off from the platform. Even though it was already moving, a passenger ran to catch the train. The man, who was carrying a package wrapped in paper, appeared to lose his balance while trying to board the moving train. An employee of the railroad reached out to help him. This act caused the package in the man's arm to fall onto the rails. Unknown to the employee, the package contained fireworks. When it fell, the fireworks exploded, causing some large equipment on the platform to strike and injure the plaintiff. The plaintiff sued the railroad, claiming that her injury resulted from the negligence of the employee.
- 3 **PROCEDURAL HISTORY:** The trial court found for the plaintiff. Defendants appealed, and the appellate court affirmed the judgment. The railroad then appealed to this court.
- 4 **LEGAL ISSUE:** Did the railroad's negligence proximately cause plaintiff's injuries?
- 5 **RULING:** No. The Court of Appeals of New York reversed the decision.
- 6 **REASONING:** Negligence is not a tort unless it results in the commission of a wrong. If the harm was not deliberate, it must be shown that the act could have been dangerous. Since in this case the harm to the plaintiff was not wilful on the part of defendant, it had to be shown that the act of dropping a package had the apparent possibility of danger. As there was nothing on the outside of the package which would cause the reasonable person to believe it contained explosives, there was no negligence. It was the explosion that was the proximate cause of plaintiff's injuries, an act which could not have been foreseen. Therefore the railroad was neither negligent nor the proximate cause of plaintiff's injuries. The judgment of the appellate court was reversed.

<sup>1</sup> (US) case briefs <sup>2</sup> (UK) claimant (The word *plaintiff* was also used in English law until the new Civil Procedure Rules (CPR) came into force in April 1999.)



8 Read sections 1 and 2 of the case note and answer these questions.

- 1 What is the name of the case?
- 2 Who is the defendant?
- 3 Who is the claimant?
- 4 What is the defendant alleged to have caused?

9 Read the rest of the note and answer these questions.

- 1 What was the lower court ruling?
- 2 What happened when the case was appealed?
- 3 The word *proximate* means 'direct' or 'immediate'. What did the court determine is the *proximate cause* of the injury?

## Key terms 1: Reporting procedural history

10 The procedural history section tells what happened when the case was tried in the lower courts. Other sections of a case note give information about the decision of the highest court at which the case was tried. Which sections of the case note above contain this information?

11 Find words in the case note above to complete these definitions. You may need to change the verb forms.

- 1 The person who brings an action in a court of law is called the .....
- 2 The person against whom an action is brought in a court of law is known as the .....
- 3 When a case is decided in favour of a certain party, the court ..... that party.
- 4 To bring a case before a higher court so that it can review the decision of a lower court is to ..... a case.
- 5 A court which hears appeals from lower courts is called an ..... or a .....
- 6 When a court states that a judgment of a lower court is true, it ..... that judgment.
- 7 When a court changes the judgment of a lower court to its opposite, it ..... that judgment.

## Speaking 1: Case discussion

12 With a partner, discuss the phases in the procedural history of the *Palsgraf v. The Long Island Railroad Company* case and agree on a simple account of what happened in the courts.

13 Discuss what you think might have happened if this case had been brought to court in your jurisdiction.



## Listening 1: Frivolous lawsuits

Law students are expected to know the most important facts of a large number of cases, as well as the legal issues involved and the procedural history of these cases.

**14** You are going to hear a discussion between two law students, Maria and Fabio, about a well-known product liability case. Maria mentions compensatory damages and punitive damages. What is the difference between these types of damages? Which should be the highest in a case involving serious negligence?

**15** ▶ 3.1 Listen to the discussion and answer these questions.

- 1 What does Fabio mean by the words *frivolous lawsuit*?
- 2 What injury did the plaintiff suffer?
- 3 Why did McDonald's refuse to settle out of court?
- 4 How much did the court award Liebeck in compensatory damages? How much in punitive damages?
- 5 How much did Liebeck finally receive in damages?

**16** ▶ 3.1 Complete the procedural history section of this excerpt from a case note using words you have studied so far in this unit. Listen to the discussion again if necessary.

**CASE:** *Liebeck v. McDonald's Restaurants, P.T.S., Inc.*, No. D-202 CV-93-02419, 1995 WL 360309 (Bernalillo County, N.M. Dist. Ct. Aug. 18, 1994)

**FACTS:** In 1992, Stella Liebeck, a 79-year-old woman from Albuquerque, New Mexico, bought a cup of coffee from the drive-through of a McDonald's restaurant. Liebeck placed the coffee cup between her legs and opened it. She spilled the entire cup of coffee on her lap. Liebeck was wearing cotton sweatpants which held the hot liquid against her skin, burning her lower body severely. At the hospital, it was determined that she had suffered third-degree burns on six per cent of her skin. She stayed in the hospital for eight days. Two years of treatment followed.

**PROCEDURAL HISTORY:** After several attempts to reach a **1)** ..... failed, the claimant sued the **2)** ..... for gross negligence. The jury **3)** ..... the claimant, determining that the defendant was 80% responsible and the claimant 20%. Claimant was **4)** ..... \$200,000 in compensatory **5)** ..... , which was then reduced by 20% to \$160,000. \$2.7 million in **6)** ..... damages were also awarded. These damages were then reduced to \$480,000.

The decision was **7)** ..... by both claimant and defendant. However, an out-of-court settlement for less than \$600,000 was finally reached.

## Speaking 2: Frivolous lawsuits

**17** Discuss these questions.

- 1 The *Liebeck v. McDonald's* case inspired a journalist to create the Stella Awards, which are awarded to 'frivolous lawsuits'. They are meant to be amusing, but they also have a serious purpose. What do you think it might be?
- 2 Can you name any examples of cases from your jurisdiction which you think might be awarded a Stella?
- 3 What do you think of the *Liebeck v. McDonald's* case? Do you think it deserves its reputation as a frivolous case?



# LAW IN PRACTICE

## Lead-in

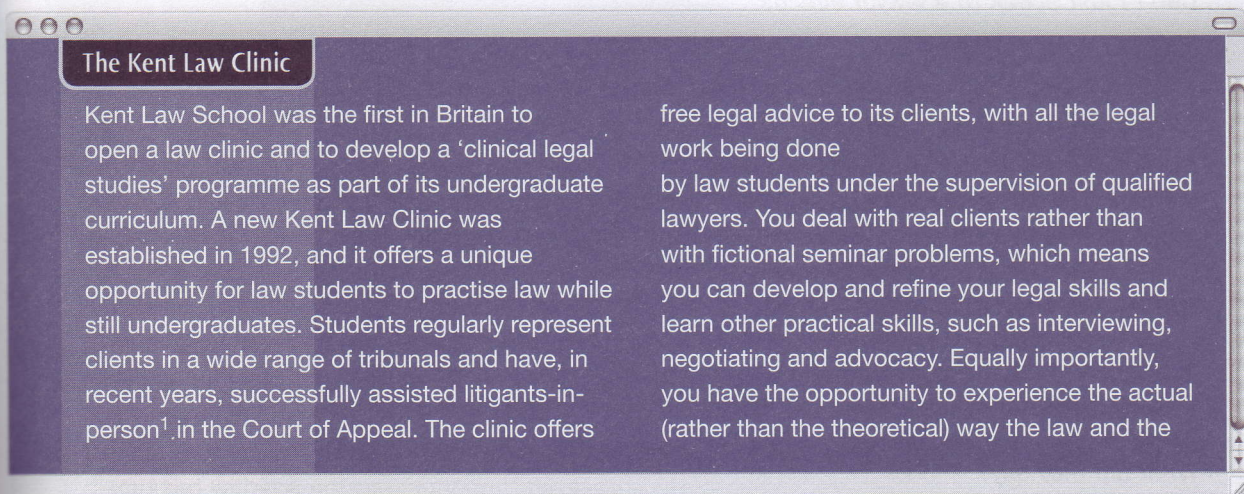
Tort law covers many legal problems, from everyday accidents to deliberate attempts to harm a person's reputation or business interests. Because of this, tort is one of the most litigated areas of law.

Seeking the advice of a lawyer, taking a case to court or defending yourself in a lawsuit can be very expensive. Law clinics can provide a free alternative to consulting a lawyer in a private firm.

## Reading 3: The Kent Law Clinic

**18** Read the online introduction to the Kent Law Clinic and answer these questions.

- 1 Who does the legal work at the Kent Law Clinic?
- 2 Do clients have to pay for the advice given?
- 3 What kinds of practical skills can be learned at the law clinic?



The screenshot shows a web browser window with the title 'The Kent Law Clinic'. The page has a dark blue header with the title in white. The main content area is white with a dark blue sidebar on the left. The text on the page describes the Kent Law School's 'clinical legal studies' programme, established in 1992, which offers law students the opportunity to practise law while still undergraduates. It mentions that students regularly represent clients in a wide range of tribunals and have, in recent years, successfully assisted litigants-in-person<sup>1</sup> in the Court of Appeal. The clinic offers free legal advice to its clients, with all the legal work being done by law students under the supervision of qualified lawyers. It states that you deal with real clients rather than with fictional seminar problems, which means you can develop and refine your legal skills and learn other practical skills, such as interviewing, negotiating and advocacy. Equally importantly, you have the opportunity to experience the actual (rather than the theoretical) way the law and the

<sup>1</sup> (US) *pro se*

**19** Find words or phrases in the text to match these definitions.

- 1 A court or assembly with judicial (or quasi-judicial) functions
- 2 Someone who represents himself or herself without a lawyer in a court
- 3 When a lawyer acts on someone's behalf during proceedings

**20** Would you be interested in working as a student lawyer in such a law clinic? Why (not)?


## Listening 2: Student lawyer–client interview

Nick, a student lawyer, has decided to join his university's law clinic, and is about to conduct his first lawyer–client interview.

**21** ▶ 3.2 Listen to the first part of the interview and answer these questions.

- 1 What kind of product is at the centre of this dispute?
- 2 What was wrong with the product?
- 3 Why did Carmecom refuse to replace the product?
- 4 What options do you think Charles had after Carmecom had refused to replace the product? What would you have done in this situation?



**22**  **3.3** Listen to the second part of the interview and answer these questions.

- 1 What did Charles threaten to do?
- 2 What did Charles do when he left the shop?
- 3 What did the letter that Charles received say?

## Language use: Asking for information

**23** Read the audio transcripts for audios 3.2 and 3.3 (pages 126–127) and highlight all of the questions that Nick and Charles ask each other.

**24** Match the descriptions of the three main ways of asking for information (a–c) with the headings (1–3).

- 1 Open questions
- 2 Negative questions
- 3 Closed questions (asking for a *yes* or *no* response)

**a** .....

We use these questions if we think the answer will be *no*:  
*Can't I just speak to a lawyer directly?*

**b** .....

These questions use an auxiliary verb as the first word in the question. They require either a positive or a negative answer:

*Did you leave the shop without the laptop?*

We can also ask these kinds of question by making a statement and adding a question mark at the end (in writing) or using rising intonation (in speech). They require either a positive or a negative answer.

*You left the shop without the laptop?*

**c** .....

We use these questions to find out more information, rather than a simple *yes* or *no*:

*What did they say?*

We do not need an auxiliary verb when *who*, *what* or *which* is the subject of the sentence:

*What happened next?* (Not: ~~What did happen next?~~)

**25** Put these words in the correct order to form questions that Charles might ask Nick.

- 1 If / to / retraction, / have / I / sign / go / the / court? / don't / will / to / I
- 2 How / think / long / do / last? / would / you / a / trial
- 3 What / winning? / chances / would / of / my / be
- 4 Would / anything / have / defence? / to / pay / I / for / my
- 5 What / consequences / are / the / case? / lose / if / I / the
- 6 Do / computer? / me / chance / getting / think / you / is / a / of / there /  
a / new



# Text analysis: Initial lawyer–client interview

To conduct an effective initial lawyer–client interview, a lawyer must:

- put a client at ease
- listen to what the client has to say
- explain things clearly
- find out what action the client wants to take, not take decisions for the client
- tell the client what has to be done next.

A lawyer should not assume that he or she has all of the information needed from a first meeting. The WASP approach to planning, structuring and carrying out an interview helps ensure that nothing is left out. WASP is an acronym for:

- Welcome the client
- Acquire information
- Supply information and advise
- Part

26 This table gives some advice about conducting a WASP interview. Complete it using the points below (a–l).

1 Welcome	2 Acquire information	3 Supply information and advise	4 Part
<ul style="list-style-type: none"><li>• Meet, greet and seat your client.</li></ul>	<ul style="list-style-type: none"><li>• Use open questions to encourage your client to tell you everything in his/her own words.</li></ul>	<ul style="list-style-type: none"><li>• Consider the merits of the case.</li></ul>	<ul style="list-style-type: none"><li>• Confirm that your client wishes you to act for him/her.</li></ul>

- a Explain what action must be taken.
- b Only use closed questions to confirm your understanding of what your client has already told you.
- c Explain that you will write to your client summarising what has been discussed within a certain number of days.
- d Use sympathetic body language and active listening techniques (for example, *go on, uh-huh, I'm listening*) to encourage your client to go on speaking.
- e Consider the legal and non-legal options.
- f Check that your client has no further matters or questions to discuss.
- g Avoid questions which only allow a restricted range of answers and leading questions which expect a particular answer (e.g. *I imagine simply replacing your computer would no longer be acceptable?*).
- h Explain the risks involved in taking legal action.
- i Explain the purpose of your meeting: to get details of the situation from your client, give legal advice, discuss options and give information on costs.
- j Periodically summarise and confirm what your client has said so far.
- k Explain what your client has to do.
- l Confirm that your client understands the costs and risks involved.

27 What else is important for an effective lawyer–client interview?

28 Consider the points made in Exercises 26 and 27. How effective was Nick's first interview? Is there anything that he could have done differently?



## Reading 4: Letter threatening legal action

29 Read the letter that Charles received from Carmecom and answer these questions.

- 1 What do you think *defamatory* means?
- 2 What must Charles do in order to avoid legal action?

Dear Mr Tholthorpe

**Our client: George Hardy, Carmecom Ltd.**  
**Your defamatory action of 25 November 2008**

We represent George Hardy of Carmecom Ltd. in relation to an incident that took place at their store on 25 November 2008.

According to our client, you visited his store in a state of some excitement and went directly to the front of a queue of shoppers. You then demanded a refund for a laptop computer you had bought earlier that day.

Mr Hardy asked if you would mind waiting your turn. You then dropped a bag containing the computer onto the cash desk and threatened to send libellous postings to a number of Internet mailing lists. Following this, you left the store shouting various defamatory comments about our client.

You remained outside the front entrance of Carmecom and harassed Mr Hardy's potential customers in an effort to convince them not to enter the store. Based on what our client has learned from some of these customers, it is our understanding that these efforts involved the repetition of a series of slanderous statements concerning both the quality of Carmecom's products and their business practices.

At this point, our client noticed that you were carrying a second bag of similar size and shape to the one containing the computer you had recently bought from Carmecom. The bag was from one of our client's competitors, who we have learned was selling the same laptop for £150 less than the price you paid for it.

Our client believes that he has lost a significant amount of business as a result of your actions. We have advised him that he would be successful in any action against you. In order to avoid such action, please sign and return the enclosed retraction by 15 December 2008. If you choose not to sign the retraction, we will be forced to commence proceedings immediately.

We look forward to hearing from you.

Yours sincerely

*J. Lott*

**Eastwood, Lott and McCarthy Solicitors**

30 Read the letter again and find any information that Charles did not give Nick during the interview.

31 Once Nick has read the letter, what questions would he need to ask to find out:

- 1 exactly what happened?
- 2 what action Charles now wants to take?



## Key terms 2: Defamation

- 32** If Charles does not sign the retraction, there is a chance that Carmecom might sue him for defamation. Complete the explanation of the tort of defamation using the words in the box.

libel slander statement tort

Defamation is the term used to describe the **1)** ..... of making a false **2)** ..... of fact that injures someone's reputation. Common-law systems distinguish two forms of defamation. **3)** ..... describes the publication of false and malicious statements or pictures that cause injury to another person. **4)** ..... describes the use of spoken words to harm someone's reputation.

## Speaking 3: Lawyer–client interview

- 33** After discussing the case with Charles, Nick decides to refer it to one of the volunteer lawyers. Work with a partner to conduct an initial lawyer–client interview.

**Student A:** You are Charles. Consider what you said during the initial lawyer–client interview, as well as the contents of the letter from Carmecom's lawyers. What really happened? Prepare yourself for an interview with the volunteer lawyer.

**Student B:** You are the volunteer lawyer. Consider what you have already been told about the case and prepare for your first interview with Charles. Use the WASP approach illustrated in Exercise 26.

- 34** Discuss in groups. What should the lawyer advise Charles to do?

## Writing: Reply to a demand letter defending or denying the allegations made

- 35** Put the elements of a reply to a demand letter (a–e) into the order in which you would expect to see them. Note that this letter also includes a *counter-demand*.

- a Reference to the claims made by the other side:  
*alleged ... / allegations made by ...*
- b What you want the other side to do and the consequences if these demands are ignored (this would only be included if you decide to make a counter-demand, e.g. for your client to be refunded the money for his laptop):  
*We look forward to receiving ... by ...*  
*... failing which, we will ...*
- c Explanation of your role in the case:  
*We write to advise that we ...*  
*... has been referred to us.*
- d Reference to the case or client in question:  
*Re: ...*
- e Your client's defence to the claim or denial of the allegations made:  
*Our client denies / accepts / refutes / contends ...*

- 36** Decide on the best defence for Charles and write a reply to Carmecom's demand letter using the guidelines in Exercise 35.



# Language Focus

- 1 Word formation** Complete these tables by filling in the correct noun and adjective forms of the verbs listed.

verb	noun
misrepresent	misrepresentation
interfere	
settle	
injure	
sue	
award	
rule	

noun	adjective
negligence	
liability	
intention	
compensation	
procedure	
reason	
appeal	

- 2 Legal verbs** Complete the excerpt below from a case brief using the verbs in the box.

affirmed   appealed   awarded   found for   found that   reversed   **sued**

**CASE:** *Ventricelli v. Kinney System Rent a Car, Inc.*

**FACTS:** Kinney rented a car that had a defective trunk<sup>1</sup>. He and a friend were standing on the street, trying to get the parked car's trunk shut, when someone named Maldonado crashed his car into Ventricelli.

**PROCEDURAL HISTORY:** Ventricelli **1)** ..... **sued** ..... Kinney for negligence. The Trial Court **2)** ..... Ventricelli and **3)** ..... him \$550K. Kinney **4)** ..... . The Appellate Court **5)** ..... and dismissed the case. Ventricelli appealed. The New York Supreme Court **6)** ..... the Appellate Court and dismissed the case. The New York Supreme Court **7)** ..... , while Kinney's negligence was a cause of the accident, it was not the proximate cause.

<sup>1</sup> (UK) boot

- 3 Interview questions** Respond to these statements made by a client with an appropriate question that a lawyer might ask in an interview. Try to use the three question types you learned – open question, negative question, asking for a yes or no response – at least once each.

- The facts of the case are very simple.
- I rented a car with a broken trunk from Kinney System Rent a Car.
- The trunk of the car wouldn't close.
- I tried to close the trunk, and my friend helped me.
- Then we heard a crashing noise.