

МИНИСТЕРСТВО ОБРАЗОВАНИЯ И НАУКИ РОССИЙСКОЙ ФЕДЕРАЦИИ

Нижегородский государственный университет им. Н.И. Лобачевского

Право в Великобритании: сравним с Россией

Практикум

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Целью данного методического пособия является совершенствование коммуникативной компетенции студентов юридических специальностей для осуществления профессионально-деловой деятельности.

Представленные тексты юридической тематики, описывающие особенности права в Великобритании, призваны развить умение читать и переводить тексты профессиональной направленности (Task 1). Комплекс упражнений, сопровождающий тексты каждой главы, дает возможность усвоения юридической терминологии (Task 2), приобретения навыков говорения (Tasks 3, 4). Упражнения Case study (Task 5) с использованием аутентичных текстовых материалов мотивируют обучающихся к овладению навыками профессионального общения на иностранном языке.

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UNIT 1 A CAREER IN LAW

Task 1: Reading

Exercise 1. Read the text “A Career in Law” and translate it.

Text 1

A CAREER IN LAW

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**, **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.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Право, образовательные программы по юриспруденции, основные учебные предметы, уголовное право, договорное право, деликтное право,

земельное право, право справедливости, административное право, конституционное право, курсы по выбору, небольшая компания, семейное право, трудовое право, жилищное право, торговое право, судебный процесс, арбитраж, правовая защита, личные свойства и особенности характера, умение говорить на иностранном языке, международное правовое сообщество, выпускник университета, свободное владение английским языком.

Exercise 3. Match the sentences about the different types of law firm mentioned in Text 1.

A commercial practice	...is managed by partners who share profits and responsibility equally.
A large law firm	...works on his or her own, has no partners and usually handles smaller cases.
A law clinic	...advises clients on corporate and commercial matters and may also negotiate transactions and solve business problems.
A partnership	...can have 50 or more lawyers working on complex matters for large organisations.
A sole practitioner	...gives students an opportunity to deal with real clients and to develop their legal skills.

Exercise 4. Match the terms (marked in bold type in Text 1 “A Career in Law”) on the left with the definitions on the right:

1. trusts	a. is a set of rules that have been established to regulate situations where one person places trust in another person to look after their affairs
2. law practice	b. is a technique for the resolution of disputes outside the courts
3. litigation	c. essentially means fairness, this area of law gave birth to the law of trusts
4. arbitration	d. involves giving legal advice to clients, drafting legal documents for clients, and representing clients in legal negotiations and court proceedings such as lawsuits, and is applied to the professional services of a lawyer or attorney at law, barrister, solicitor, or civil law notary
5. equity	e. refers to the rules and practices involved in resolving disputes in the court system, is often associated with tort cases, but can come about in all kinds of cases, from contested divorces, to eviction proceedings

Exercise 5. Find the definitions.

Criminal law, contract law, tort law, land law, administrative law, constitutional law, family law, employment law, company law, commercial law.

a. is a body of rights, obligations, and remedies that is applied by courts in civil proceedings to provide relief for persons who have suffered harm from the wrongful acts of others

b. is the body of law which defines the relationship of different entities within a state, namely, the executive, the legislature, and the judiciary

c. governs the rights and duties between employers and workers, also referred to as labor law

d. is a body of law regulating contracts

e. is a branch of law governing the creation and operation of administrative agencies

f. is the study of how shareholders, directors, employees, creditors, and other stakeholders such as consumers, the community and the environment interact with one another

g. is a system of laws concerned with punishment of individuals who commit crimes

h. provides the rules that merchants and others involved in commerce must follow as they conduct business amongst themselves and with consumers

i. is the form of law that deals with the rights to use, alienate, or exclude others from land

j. (also called matrimonial law) is an area of the law that deals with family matters and domestic relations

Task 3: Comprehension

Exercise 6. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

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.

Exercise 7. Answer the questions.

1. Why do students choose to study law?

2. How long does it take to get a law degree in the UK and the USA?

3. Which core courses are typical in the UK?

4. Which courses are often required in addition?

5. Which courses do law students prefer for working in a small partnership or as a sole practitioner?
6. Which subjects do students choose for working in a large law practice?
7. Which opportunity do courses on legal practice give students?
8. What is another way of finding out more about law in practice?
9. What is essential for students wishing to work in a commercial practice?
10. Which four things are important for new recruits looking for a job in law firms?
11. Why do law firms expect graduates with a good command of English?

Task 4: Speaking

Exercise 8. Make a summary of the text “A Career in Law”.

Exercise 9. Discuss in pairs or speak on the following:

- Which core courses are typical in Russia?
- How long does it take to get a law degree at Lobachevsky State University of Nizhni Novgorod?

Task 5: Case study

Exercise 10. Read the advertisement for the Barker Rose Graduate Recruitment Programme and translate it.

Text 2

“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.

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.

Strong academic qualifications, including a 2.1 degree¹ (any discipline).

We take a flexible approach and are willing to progress candidates whose application otherwise demonstrates first-rate personal qualities and experience.

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>

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.²

¹in the UK, different-class degrees are awarded as follows: 1 (a first), 2.1 (a two-one), 2.2 (a two-two), 1 (a third).

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.

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.

Exercise 11. Find more information about the professions of *Barrister*, *Solicitor* and be ready to present your reports to the class.

Exercise 12. In small groups discuss the questions:

- 1) How will Barker Rose help graduate students qualify to become solicitors?
- 2) Would the Barker Rose Graduate Recruitment Programme be of interest to you? Why (not)?
- 3) Do you need to have a law degree to qualify for the programme?
- 4) If you had the chance to speak to someone about the programme, what questions would you ask?

Exercise 13. Write an email to Barker Rose. Ask the questions you discussed in Exercise 11. Use the opportunity to give some information about yourself, your professional and academic background and why you are interested in applying for the programme.

² 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.

UNIT 2 CONTRACT LAW

Task 1: Reading

Exercise 1. Read the text “Contract Law” and translate it.

Text 1

CONTRACT LAW

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.

Task 2: Vocabulary:

Exercise 2. Find in the text the English equivalents to the following words:

Сторона, правовая система, заключить договор, оферта, акцепт, встречное предложение, отклонять предложение, действующий контракт, условия договора, предмет договора, устное соглашение, права, обязанности, нарушать условия контракта, потерпевшая сторона, возмещать убытки, исполнять договор, подавать иск, передавать права, цессия, цедент, правопреемник.

Exercise 3. Match the terms in bold type in Text 1 “Contract Law” on the left with the definitions on the right:

1. acceptance	a. is seen as a qualified acceptance of an offer while imposing your own standard terms and conditions
2. formation of an enforceable contract	b. the party in a legal case that has suffered injury or loss as a result of the defendant's breach of contract
3. consideration	c. is an order of a court which requires a party to perform a specific act, what is stated in a contract; it is an alternative to awarding damages and is classed as an equitable remedy commonly used in the form of injunctive relief concerning confidential information or real property
4. offer	d. unconditional assent, communicated by the offeree to the offeror, to all terms of the offer, made with the intention of accepting
5. counter-offer	e. payment in one form or another; is the most common remedy for a breach of contract
6. breach of contract	f. is the transfer of rights held by one party - the assignor - to another party - the assignee; if there is an option for one party to transfer their contractual rights and responsibilities to another party this should be set out in the contract along with the procedure to be followed
7. specific performance	g. an agreement reached between two or more parties which is legally enforceable when executed in accordance with specific requirements
8. damages	h. is deemed to be accepted when the offeree posts their acceptance
9. non-breaching party	i. is the requirement of reciprocal obligations on the parties to a contract; both parties must receive valuable consideration for performance of their side of the contract
10. assignment	j. is known as one party's failure to fulfill any of its contractual obligations; depending on the specifics, it can occur when a party fails to perform on time, does not perform in accordance with the terms of the agreement, or does not perform at all

Exercise 4. Complete the sentences using the words:

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.

Task 3: Comprehension

Exercise 5. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

- 1 In most legal systems, a contract is formed when one party makes an offer that is not accepted by the other party.
- 2 If the offer and acceptance do not match each other, the second party has to reject a counter-offer.
- 3 The parties must agree on the essential terms to negotiate a contract.
- 4 In some jurisdictions, oral contracts must be in writing or they are not valid.
- 5 When a party does not do what it is required to do under a contract, the other party may file a lawsuit for breach of contract.

Exercise 6. Answer the questions.

1. What is necessary for a valid contract to be formed?
2. Must the offer and acceptance match each other to negotiate a contract?
3. Must parties give something of value in order for a contract to be formed?
4. Must an offer be met with a counter-offer before a contract is agreed?
5. What do “rights” mean for both parties under a contract?
6. What does the term “obligations” mean in a contract?
7. Will the court always force the party to perform the contract in the case of breach?
8. Which two remedies following a breach of contract are mentioned?
9. Does assignment occur when one party gives its contractual rights to another party?

Task 4: Speaking

Exercise 7. Make a summary of the text “Contract Law”.

Exercise 8. Discuss in pairs or speak on the following:

- 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. 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?

Task 5: Case study

Exercise 9. Read the email of advice from the lawyer, Mr Dawe, to his client.

Translate the e-mail.

Text 2

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

Exercise 10. The email in Exercise 9 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).

Exercise 11. Read through the email in Exercise 9 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 ...

Exercise 12. Use these notes of an interview with a client to write an email of advice. Use the email in Exercise 9 as a model.

FACT FILE

Date: 7 November, 20...

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!

UNIT 3 TORT LAW

Task1: Reading

Exercise 1. Read the text “Tort Law” and translate it.

Text 1

TORT LAW

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).

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.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Деликт, гражданское правонарушение, урегулировать, частное имущество, материальный ущерб, моральный вред, физический ущерб, намеренное введение в заблуждение, недобросовестная деловая практика, умышленное гражданское правонарушение, недобросовестная конкуренция, правила дорожного движения, некачественная продукция, уголовные преступления, обвиняемый, требуемая степень доказанности, правонарушитель, судебный приказ, деликтное поведение, компенсаторные убытки, штрафные убытки.

Exercise 3. Match the adjectives (1-6) with the nouns (a-f) using the text:

1. civil	a. damages
2. contractual	b. wrong
3. injured	c. misrepresentation
4. fraudulent	d. party
5. medical	e. relations
6. monetary	f. expenses

Exercise 4. Use the collocations you formed in Exercise 3 to complete the 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

Exercise 5. Match the terms (marked in bold type in Text 1 “Tort Law”) on the left with the definitions on the right:

1. misstatement	a. unlawful invasion of the person, property or rights of another
2. assault	b. amount of evidence needed in a certain type of case
3. negligence	c. failure to be as careful as the law demands
4. trespass	d. acts by businesses against consumers which are misleading or fraudulent
5. fraudulent misrepresentation	e. non-criminal, non-contractual injury in which the person who caused it intended to cause injury
6. interference in contractual relations	f. statement that is false, misleading, or contains a mistake
7. unfair business practices	g. the act of misleading someone so as to entice them to enter into an agreement
8. intentional torts	h. to lose one’s ability to make a living
9. standard of proof	i. intentional attempt or threat to injure another person that causes them to reasonably expect to be harmed
10. loss of earnings capacity	j. tort of intentionally causing a breach of a valid contract

Task 3:Comprehension

Exercise 6. Are the statements true (T) or false (F)? Prove your point.

- 1 A tort result in harm to a person or property that forms a claim by the injured party.
- 2 There are not overlaps between tort law and criminal law.
- 3 Difference between tort law and criminal law include only the standard of proof.
- 4 The aims of tort law are to provide relief and deter tort feasors.
- 5 The damages awarded are only compensatory.

Exercise 7. Answer the questions.

1. How can be remedied a civil wrong?
2. What kinds of harm are there?
3. What are examples of torts
4. Are there specific torts?
5. What do business torts include?
6. What are general categories of torts?
7. What is the connection between tort law and criminal law?
8. What are the two main objectives of tort law?
9. What types of loss can be compensated by an award for damages?

Task 4: Speaking

Exercise 8. Make a summary of the text “Tort Law”.

Exercise 9. Discuss in pairs or speak on the following:

- 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. How can you explain in some words this term after reading the text?

- What do you think the 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.

Task 5: Case study

Exercise 10. Read through the case note of an important tort law case. Translate it and match the headings (1-6) in the brief with the 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

Text 2

(1) *CASE*: Palsgrafv. The Long Island Railroad Company, 248 N.Y. 339; 162 n.e. 99; Court of Appeals of New York [1928]

(2) *FACTS*: Plaintiff 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.

Exercise 11. Find more information about *The Long Island Railroad Company, Court of Appeals of New York* and be ready to present your reports to the class.

Exercise 12. In small groups discuss the questions about the text:

- 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?
- 5) What was the lower court ruling?
- 6) What happened when the case was appealed?

Exercise 13. Discuss the phases in the procedural history of the *Palsgraf, The Long Island Railroad Company* case and agree on a simple account of what happened in the courts.

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

UNIT 4 CRIMINAL LAW

Task 1: Reading

Exercise 1. Read the text “Criminal Law” and translate it.

Text 1

CRIMINAL LAW

Criminal law, sometimes (although rarely) called penal law, involves the **prosecution** by the state of a person for an act that has been classified as a crime. This contrasts with civil law, which involves private individuals and organisations seeking to resolve legal disputes. Prosecutions are initiated by the state through a prosecutor, while in a civil case the victim brings the suit. Some jurisdictions also allow private criminal prosecutions.



Depending on the offence and the jurisdiction, various punishments 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**.

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**).

Most crimes (with the exception of **strict liability crimes** such as statutory rape and certain traffic offences) are characterised by two elements: a criminal act (actus reus) and criminal intent (mens rea). To secure a conviction, prosecutors must prove that both actus reus and mens rea were present when a particular crime was committed.

In criminal cases, the **burden of proof** is often on the prosecutor to persuade the trier (whether 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, a 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.

Some jurisdictions distinguish between **felonies** (more serious offences, such as rape) and misdemeanours (less serious offences, such as petty theft). It is also worth noting that the same incident may sometimes lead to both a criminal prosecution and an action in tort.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Уголовное право, обвинение, преступление, гражданское право, правовые споры, потерпевший, юрисдикция, преступник, наказывать, приговаривать, тюремное заключение, налагать штраф, объявлять вне закона, кража со взломом, инсайдерская торговля, изнасилование, добиться осуждения, бремя доказательства, судья, присяжные, подсудимый, вердикт о невиновности, равная вероятность, фелония, мисдиминор, мелкая кража, деликтный иск.

Exercise 3. Match the terms (marked in bold type in Text 1 “Criminal Law”) on the left with the definitions on the right:

1. prosecution	a. early release from prison after serving part of the sentence, usually under supervision and upon certain conditions
2. corporal punishment	b. death penalty, capital punishment
3. execution	c. punishment inflicted on the body, such as whipping
4. parole	d. bringing a criminal case before a court
5. probation	e. sentence which allows the convicted offender to be released into the community under supervision instead of going to prison
6. community service order	f. behaviour that is criminalised because it is not compatible with society’s shared values; there is usually no direct victim but the community, as a whole, suffers; drug crimes, public drunkenness and gambling are some of such crimes
7. burglary	g. alternative to prison, a criminal sentence that requires the offender to do unpaid work in the community
8. public-order crimes	h. crime that does not require intent to break the law; among these crimes are parking violations and acts that endanger public welfare, like dumping of toxic wastes
9. insider dealing	i. unlawful entering of a building with the intent to commit a crime
10. strict liability crimes	j. requirement of presenting enough evidence to support a claim
11. burden of proof	k. grave crime punishable by a harsher sentence than a misdemeanour, which is a less serious crime
12. felonie	l. use of confidential, price- sensitive information when trading in stocks and other securities

Exercise 4. Complete:

prosecutor

offender

judge

jury

is a person who...

Exercise 5. Give your own definition to the following terms:

Victim, jurisdiction, crime, imprisonment.

Task 3: Comprehension

Exercise 6. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

1. A crime is a wrong which is committed against society.
2. The wrongdoer is punished: he or she is brought in prison or is fined a sum of money.
3. Criminal sanctions exist to make society safer and to keep people from committing certain acts.
4. A key difference between criminal law and tort law is that a crime requires a criminal intent (mens rea), whereas a tort can result without intent to cause harm.
5. Crimes are tried in the criminal courts.

Exercise 7. Answer the questions.

1. How do criminal law cases and civil law cases differ in the way they are initiated?
2. How can the courts punish an offender?
3. Name the four most common categories of criminal offence.
4. How are most crimes characterised?
5. What must prosecutors prove to secure a conviction?
6. In what way is the standard of proof different for criminal and civil cases?
7. When is a verdict of not guilty rendered?
8. What is the difference between a felony and a misdemeanor?
9. What are differences between torts and crimes?

Task 4: Speaking

Exercise 8. Make a summary of the text “Criminal Law”.

Exercise 9. Discuss in pairs: How many of the offences in the box do you know?

armed robbery, arson, assault, battery, bribery, burglary, domestic violence, drug, trafficking, drunk driving, embezzlement, extortion, forgery, fraud, homicide, insider, dealing, joyriding, kidnapping, larceny, manslaughter, money laundering, obstruction of justice, rape, shoplifting, stalking, tax evasion, theft, vandalism.
--

- Choose four and tell a partner what you think they are. Then look up any words you don't know in a dictionary.
- Does your jurisdiction make a distinction between a felony and a misdemeanor?

Task 5: Case study

Exercise 10. Read the article below and translate it.

Text 2

“FSA FINES AUDITOR FOR MARKET ABUSE”

The Financial Services and Markets Tribunal has upheld a Financial Services Authority (FSA) case against Mr Arif Mohammed, a former Pricewaterhouse Coopers (PwC) audit manager, who was fined £10,000 for committing market abuse.

This is the first time the market abuse provisions in the Financial Services and Markets Act 2000 (FSMA) have been the subject of a Tribunal decision.

Mr Mohammed bought shares in Delta plc, a London Stock Exchange listed electrical and engineering services company, based on his knowledge that the company intended to sell its electrical division. Mr Mohammed became aware of this confidential information because Delta's electrical division was an audit client of PwC, and Mr Mohammed worked on the company's audit.

In July 2002, Mr Mohammed first became aware of the proposed sale of Delta's electrical division.

He was told that this information was confidential and not to be discussed with company officials. Although Mr Mohammed began handing over the responsibility for elements of Delta's audit in September 2002, he remained on the audit team assigned to Delta throughout the period leading up to the disposal announcement. In particular, Mr Mohammed remained responsible for planning staff to work on Delta and had reason to know about the sale's progress because of its impact on resource planning.

At the end of November 2002, Mr Mohammed was aware that the sale process was ongoing and was getting close to agreement. Based on this information, he purchased 15,000 shares in Delta on 29 November 2002 at 80p each. Delta announced the disposal on 9 December 2002, and Mr Mohammed sold his shares the following day at 105p each, making a profit of £3,750.

The Tribunal held that the information Mr Mohammed had about the proposed deal was sufficient and precise enough to be considered as relevant information according to the market abuse provisions.

Exercise 11. Find more information about *the Financial Services and Markets Act, a UK Act of Parliament* and be ready to present your reports to the class.

Exercise 12. In small groups discuss the questions:

- 1) What is the profession of the appellant?
- 2) Which crime was he found guilty of?
- 3) What did he know about the company in question?
- 4) How much profit did the appellant make on the sale of the shares?
- 5) What do you think can be done to prevent cases of market abuse (like the one described above) from occurring?
- 6) How serious do you think white-collar crime is? What do you think are the most important effects of white-collar crime on society?
- 7) Should people who commit business crimes be punished in the same way as people who commit other crimes?
- 8) Have there been any well-publicised cases of corporate crime in your jurisdiction?

UNIT 5 COMPANY LAW



Company Law Legal Environment of Business

Task 1: Reading

Exercise 1. Read the text “Company Law” and translate it.

Text 1

COMPANY LAW

Company law is the law which deals with the creation and regulation of business entities. The most common forms of **business entity** are companies and partnerships.

A company is a group of people which is treated as a **legal person**, with a separate identity from its **shareholding members**. It can own property, enter into contracts, sue others and be sued. This contrasts with a partnership, which is not considered to be a legal person and is not able to own property in its own name.

Because of the **limited liability** of the members of a company for its debts, as well as its separate **personality** and tax treatment, the company has become the most popular form of business entity in most countries in the world.

Companies have an inherent flexibility which can let them grow; there is no legal reason why a company initially formed by a **sole proprietor** cannot eventually grow to be a **publicly listed company**, but a partnership will generally have a limited number of partners.

A company has shareholders (those who invest money in it and get shares in return), a board of directors (people who manage the affairs of the company) and creditors (those to whom the company owes money). Company law deals with the

relationships between companies and their shareholders, creditors, **regulators** and **third parties**.

The process of registering a company is known as company formation. Companies can be created by individuals, specialised agents, attorneys or accountants. Today, the majority of companies formed in the UK and the USA are formed electronically. In the UK, a certificate of incorporation is issued once the company's **constitutional documents** and **statutory forms** have been **filed**.

The constitution of a company consists of two documents. The memorandum of association states the principal object of the company. The second document, the articles of association, regulates the company's internal management and administrative affairs, including matters such as the rights and obligations of shareholders and directors, conduct of meetings and corporate contracts.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Компания, товарищество, юридическое лицо, субъект права, предъявлять иск, ограниченная ответственность, самостоятельная правосубъектность, налоговый режим, правовое обоснование, единоличный собственник, зарегистрированная на бирже компания, акционер, совет директоров, кредитор, третья сторона, образование юридического лица, доверенное лицо, сертификат о регистрации, установленная законом отчетная форма.

Exercise 3. Complete the sentences below dealing with company law using the verbs in the box:

Enter, into, has, invests, is, makes, manages, monitor, owes, own, owns, serves, on, sue
--

1. A legal person ... rights and duties under the law just like a natural person.
2. The board of directors ... the affairs of the company and ... company policy.
3. A company can ... property, ... contracts and ... other persons.
4. A shareholder ... money by buying shares in a company.
5. A company director ... the governing board of a corporation.
6. A creditor of a company is a person or entity to whom the company ... a debt.
7. Regulators ... the activities of companies to ensure that they comply with the law.
8. A sole proprietor ... a company and ... personally liable for its debts.

Exercise 4. Match the terms (marked in bold type in Text 1 “Company Law”) on the left with the definitions on the right:

1. file	a. sometimes called an artificial person or legal entity/person; it is legal fiction of identity in law which allows natural persons to act as if they were a single composite individual for certain purposes such as creating a business entity or structure; it has legal rights, duties and obligations
2. business entity	b. artificial entity created by law and given legal rights and duties, for example a corporation
3. constitutional documents	c. official responsible for the control and supervision of a particular activity or area of public interest, who ensures compliance with laws and established rules and regulations
4. legal person	d. to deliver a document to the custody or records of a court or proper authorities for the purpose of being kept as a matter of record and reference
5. shareholding members	e. single person who earns all the profits and is personally liable for all the debts or losses of the business structure
6. limited liability	f. standardised documents of basic corporate constitution requirements, which a company may adopt in the creation of a company; these help define the existence of the company, regulate the legal and financial structure and control of the company, and organise the company’s internal affairs and management
7. personality	g. person who is not party to an agreement or an action but who may have an interest in it
8. sole proprietor	h. documents which define the existence of a legal entity and regulate the structure and control of the entity and its members; the exact form depends upon the type of entity
9. publicly listed company	i. those who invest money in a business entity and receive shares in return representing a proportional ownership
10. regulators	j. legally recognised organisational structure designed to provide and sell goods and services
11. third party	k. limitation of an owner/ investor’s financial losses or responsibility, usually limited to the value of a person’s investment in a company or partnership with limited liability
12. statutory forms	l. business structure which is permitted to offer its shares for sale to the general public and traded on a public stock exchange

Exercise 5. Consult Wikipedia, encyclopedias and complete:

certificate of incorporation

memorandum of association

articles of association

is a document that...

Task 3: Comprehension

Exercise 6. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

1 Under the law, a company and its members are distinct legal personalities.

2 Company members are generally not personally responsible for the money owed by the company.

3 A certificate of incorporation is issued when the proper documents for company formation have been filed.

4 The memorandum of association of a company contains regulations relating to the internal affairs of a company.

Exercise 7. Answer the questions.

1. How can you define the term *company law*?
2. What are the most common forms of business entity?
3. What is a company?
4. What can it do?
5. What is the difference between a company and a partnership?
6. Why has a company become the most popular form of business entity in most countries in the world?
7. Can a company formed by a sole proprietor grow to be a publicly listed company?
8. What about a partnership?
9. What are members of a company?
10. How can you define a creditor?
11. How is called the process of registering a company?
12. What are the main documents for a company registration?
13. What documents does the constitution of a company consist of?
14. What are their objectives?

Task 4: Speaking

Exercise 8. Make a summary of the text “Company Law”.

Exercise 9. As business becomes increasingly globalised, company lawyers in one jurisdiction have to be more aware of the company laws of other

jurisdictions as well as international regulations. Discuss in pairs or speak on the following:

- What types of business entity are you familiar with? Describe the organisation of one type of business entity in your jurisdiction to your partner.
- What experience do you have of forming, running or working for a business entity? What kind of business entity was it?
- What aspects of company law have you studied?

Task 5: Case study

Exercise 10. The directors of Baggers plc, an independent supermarket, have received a letter concerning their potential breach of the Companies Act 2006. Read the letter and translate it. Who might Pippa Solloway be?

Text 2

Dear Directors/Chief Executive

Re: Your possible breach of the Companies Act 2006

I am writing to you concerning your company's sourcing of palm oil. As you may or may not be aware, the activities of many palm-oil suppliers have been causing environmental degradation in South-East Asia. The establishment of palm-oil plantations has resulted in deforestation, the destruction of the habitat of orang-utans, human rights abuses and violent conflict. Palm oil is used in approximately 10% of all of your food products.

The Companies Act 2006 (the Act) stipulates (in sections 172 and 417 respectively) that you have a duty to take such issues into consideration and to report on them.

I do not believe that your company is doing enough to ensure that your palm oil comes from sustainable, non-destructive sources. I am therefore concerned about whether this may consequently be a breach of the Act. This letter has been copied to the Secretary of State for Business, Enterprise and Regulatory Reform, who has responsibility to enforce the Act.

I look forward to hearing from you as soon as possible as to how you plan to manage these significant issues and ensure that your shareholders are made aware of them.

Yours faithfully
Pippa Solloway

Exercise 11. In small groups discuss the questions:

1. What environmental issue is Pippa Solloway concerned about in her letter?

2. Which sections of the Companies Act 2006 might Baggers plc be in breach of?
3. Who else has been sent a copy of the letter?
4. Discuss the directors' possible responses to the letter. What would you advise them to do?

Exercise 12. Read section 172 of the Companies Act 2006 (Baggers' Executive Committee is responsible for formulating and implementing company strategy. It has called a meeting with Baggers' corporate counsel to discuss the company's response to Pippa Solloway's letter. During the meeting, the CEO of Baggers distributed copies of sections 172 and 417 of the Companies Act 2006.) **and choose the best heading:**

- Duty to consider social and environmental issues
- Duty to promote the success of the company
- Duty to respect the rule of law

Text 3

172.....

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to -

- (a) the likely consequences of any decision in the long term;
- (b) the interests of the company's employees;
- (c) the need to foster the company's business relationships with suppliers, customers and others;
- (d) the impact of the company's operations on the community and the environment;
- (e) the desirability of the company maintaining a reputation for high standards of business conduct; and
- (f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Exercise 13. Read the statute a second time and in small groups discuss the questions:

- 1) Which subsection is the easiest to understand?
- 2) Which seems most difficult? Why?

Exercise 14. Statutes are drafted in general terms to cover all foreseeable circumstances. Their meaning must be interpreted by lawyers and judges. Read below some rules to understand statutes correctly.

Some statutes are clearly written, meaning that you can easily understand exactly what the legislature intended. Unfortunately, many statutes are very difficult to understand. Here are some rules to follow when interpreting a statute:

- Make sure you understand the statute. Begin by reading the key sections quickly to get a general idea of what the statute says, then read it again for detail.

- Pay close attention to all the ands and ors. The use of and to end a series means that all elements of the series are included, or necessary; an or at the end of a series means that only one of the elements need be included,

- Assume all words and punctuation in the statute have meaning. It's tempting to skip words you don't quite understand and ignore awkward punctuation. Try not to do this.

- If the statute is only one of several you are studying, interpret it to be consistent with the other statutes if at all possible.

- Interpret a statute so that it makes sense rather than leading to some absurd or improbable result.

- Track down all cross-references to other statutes and sections and read those statutes and sections.

Exercise 15. In your group read the letter from Pippa Solloway to Baggers plc again and answer the questions:

- 1) Which of the provisions of statute 172(1) might Baggers be in breach of?
- 2) Explain the meaning of statute 172(2) to a partner. What kind of situations might it cover? Prepare by rewriting statute 172(2) in your own words.
- 3) Read statute 172(3). In what way is the duty it imposes limited?

Exercise 16. As a lawyer write a letter of advice to Baggers plc in which you outline the legal issues raised by the case, refer to relevant statutes and provide your opinion.

UNIT 6 COMMERCIAL LAW



Task 1: Reading

Exercise 1. Read the text “Commercial Law” fairly quickly to answer the question:

- What does the work of a commercial lawyer involve?

Translate the text.

Text 1

COMMERCIAL LAW

Commercial law deals with issues of both private law and public law. It developed as a distinct body of jurisprudence with the beginning of large- scale trade, and many of its rules are derived from the practices of traders. Specific law has developed in a number of commercial fields, including agency, banking, bankruptcy, **carriage of goods**, commercial dispute resolution, company law, competition law, contract, debtor and creditor, sale of goods and services, intellectual property, **landlord and tenant**, **mercantile agency**, **mortgages**, **negotiable instruments**, **secured transactions**, real- property and tax law.

The work of a commercial lawyer may involve any aspect of the law as it relates to a firm's business clients, and the role of the lawyer is to facilitate business clients' **commercial transactions**. It is essential for a commercial lawyer to have not only a good knowledge of a lot of substantive law, but also a thorough understanding

of both contemporary business practices and the particular business needs of each client.

A commercial lawyer may be asked to advise a client on matters relating to both **non-contentious** and **contentious work**. Non-contentious work largely involves advising clients on the drafting of contracts, whereas contentious work commonly involves the consequences of breach of contract.

Many jurisdictions have adopted **civil codes** that contain comprehensive statements of their commercial law, e.g. the Uniform Commercial Code (UCC), which has been generally adopted throughout the USA. Within the European Union, the European Parliament and the **legislatures** of member nations are working to unify their various commercial codes.

A substantial amount of commercial law is governed by international treaties and conventions. The United Nations Commission on International Trade Law (UNCITRAL) regulates international trade in cooperation with the World Trade Organisation (WTO). The WTO is responsible for negotiating and implementing new trade agreements, and is in charge of policing member countries' adherence to these agreements, which are signed by the majority of the world's trading nations and ratified by their legislatures (for example, Parliament in the UK or Congress in the USA).

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Частное право, публичное право, банкротство, перевозка товаров, законодательство о защите конкуренции, должник, интеллектуальная собственность, владелец недвижимости, торговое агентство, ипотечный залог, оборотный документ, обеспеченная ипотека, недвижимое имущество, налоговое право, коммерческая сделка, материальное право, составление проекта контракта, гражданский кодекс, Единый коммерческий кодекс, законодательная власть, торговое соглашение, строгое соблюдение, ратифицировать, Комиссия ООН по праву международной торговли, Всемирная Торговая Организация.

Exercise 3. Collocate the nouns with the following adjectives (some can collocate with more than one adjective):

Merchantable, mercantile, commercial, negotiable, financial, bankrupt

1. ... instrument
2. ... trading
3. ... bank
4. ... agency
5. ... law
6. ... terms

Exercise 4. Match the terms (marked in bold type in Text 1 “Commercial Law”) on the left with the definitions on the right:

1. negotiable instruments	a. transfer of legal title of a property, often land, to another as security for payment of a debt
2. secured transactions	b. struggle or effort, causing, involving or characterised by argument or controversy pertaining to causes between opposing parties
3. commercial transactions	c. loans or credit transactions in which the lender acquires a security interest in certain property owned by the borrower and has the right to repossess the property if the borrower cannot pay
4. non-contentious work	d. institution which deals with the supply of credit information about business organisations to other businesses and financial institutions
5. carriage of goods	e. selected body of people, usually elected, invested with the responsibility and power to make and repeal laws for a political unit, such as a state or nation; Congress and Parliament are legislatures
6. contentious work	f. person who has a right to hold or possess property usually in return for the payment of rent
7. civil codes	g. person who owns property and either rents it or leases it to another for money
8. , legislatures	h. written and signed documents which represent an intangible right of payment for a specified sum of money on demand or at a defined time; some examples are bills of exchange, promissory notes, bank cheques or certificates of deposit
9. landlord	i. field concerned with the legal relationships between the shipper (or owner) of goods, the carrier, and the receiver/consignee of goods
10. tenant	j. set of laws in written formulation used in civil-law systems developed from Roman law and used in many European countries
11. mercantile agency	k. work that largely involves advising clients and is not between contending parties, such as the drafting of contracts
12. mortgage	l. dealings and acts of carrying out of commercial functions including procedures of creation, transformation, agreements and exchanges, in conducting and negotiating business and economic activities

Exercise 5. Find the definitions.

Private law, public law, agency law, bankruptcy law, competition law, debtor and creditor law, intellectual property law, real property law, tax law, substantive law.

a is a body of law that deals with the relationship between the state and individuals.
b. is a branch of law in regards to financial obligations and legal interactions where one party is unable to pay a monetary debt to another
c. is a branch of law regulating rates or sums of money which may be assessed on personal and business income, real property values, and commercial transactions paid for the financial support of a government
d. is a branch of law regarding the relationship where one person (the agent) acts and is authorised to act for another (the principal)
e. is a body of law defining rights, duties and obligations and all matters that are not procedural
f. is a body of law that is concerned with the aspects of relationships between individuals that are of no direct concern to the state and in which the government is not directly concerned; it includes the law of property and of trusts, family law, the law of contracts and the law of torts
g. law associated with the obligations, use and rights of ownership of land or whatever is growing on it or built on it
h. body of law that regulates business activities and markets, especially agreements and practices that limit competition
i. law of property that protects legal rights associated with products of the mind, creativity or thought like copyrights, patents and trademarks
j. law regarding a legal procedure for the settling of debts of individuals or businesses unable to pay what they owe; all their property is surrendered to a court-appointed official who liquidates the property to pay the claims of creditors

Task 3: Comprehension

Exercise 6. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

1 Commercial law is a general term for a number of diverse areas of the law which regulate trade and commerce.

2 Contentious work includes the drafting of contracts and advising clients.

3 The Uniform Commercial Code applies to commercial transactions in all of the member nations of the European Union.

4 The World Trade Organisation checks to see if countries follow the trade agreements they have signed.

Exercise 7. Answer the questions.

1. What does commercial law deal with?

2. Which fields does commercial law include?

3. What is the work of a commercial lawyer?
4. What is more important for his good work?
5. Which matters may a commercial lawyer be asked to advise a client on?
6. What for have many jurisdictions adopted civil codes?
7. What is happening within the European Union about the question?
8. What is a substantial amount of commercial law governed by?
9. What organisations regulate international trade?
10. What is the WTO responsible for?

Task 4: Speaking

Exercise 8. Make a summary of the text “Commercial Law”.

Exercise 9. Discuss in pairs or speak on the following:

- What bodies of law govern commerce in your jurisdiction?
- How would a contract dispute between two companies from different jurisdictions be settled?
- Which international bodies do you know that set guidelines for commercial transactions?

Task 5: Case study

Exercise 10. Law students often write a letter of application to apply for an internship in response to a specific advertisement. Read the letter written by a student and translate it.

Text 2

Julia Schwende

(1) Marktgasse 17 1210 Vienna Austria

(2) 1 November 2008

(3) Robson, Mumsen and Meech LLP

Hawthorn Road

Saffron Walden

Essex

CB11 3KL

(4) Dear Sir or Madam

Summer internship in commercial law

(5) I am a student of law at the University of Vienna, Austria. (6) I am now in my second year and I expect to complete my degree in June 2010. (7) I am interested in applying for the summer internship in commercial law which is advertised on your website.

(8) In my studies, I have completed all of the required courses successfully to date.

I am particularly interested in commercial law, and have taken elective courses in

debtor-creditor law and negotiable instruments. (9) Furthermore, I have frequently attended guest lectures and discussions at my university on topics related to commercial law. (10) I have also already gained work experience at a law firm, as I carried out an internship last summer at a small law firm specialising in tax law in my hometown of Dornbirn. (11) There my duties included researching new legislation and helping the partners prepare cases for trial. (12) Full details of my studies and work experience are included on the enclosed résumé.

(13) The internship you are offering is especially attractive to me, as I would like to get to know what it is like to work at a large commercial law firm with many international clients and to have the experience of working abroad in an English-speaking country. (14) I am extremely motivated and a hard worker and I sincerely believe that I would make the best of such an opportunity.

(15) I can confidently say that I have a particularly good knowledge of English, as I have spent several summer vacations with my family in the USA and I have taken two courses in Legal English at my university. (16) I am enclosing writing samples in English as you request in your advert; the letters were written as part of my Legal English courses.

(17) Should you require further information, please do contact me. (18) I look forward to hearing from you.

Yours faithfully
Julia Schwende

Exercise 11. Read the letter again and in small groups discuss the questions:

- 1) What kind of organisation is she applying to?
- 2) Which areas of the law is she interested in?
- 3) What legal work experience has she had?
- 4) Which documents are enclosed in the letter?
- 5) Underline the adverbs used in the letter. Why do you think the writer uses so many adverbs? What effect does it have?

Exercise 12. Match the sections and ideas below which should be included in a letter of application for an internship (a-m) with the corresponding sentences in the letter (1-18). Some sections/ideas are used more than once.

- a) Reference to how you found out about the internship
- b) Your address
- c) Reference to things requested in the ad (writing sample, references, etc.) and enclosed in the letter
- d) Recipient's address
- e) Reasons for your interest in internship
- f) Description of your legal work experience
- g) Introduction, saying who you are

- h) Date
- i) Description of your studies and coursework
- j) A 'call for action' which closes the letter
- k) Salutation
- l) Reason for writing letter
- m) Details of any personal qualities, qualifications or skills that make you right for the internship

Exercise 13. Read an internship advertisement and translate it.

Text 3

Powderhouse Sommerville LLP International Commercial Law Internship

The international commercial law firm Powderhouse Sommerville LLP launched its International Commercial Law internship at the University Law School in 2006 and has renewed it for the current academic year.

Powderhouse Sommerville LLP is one of the world's largest law firms, with over 1,600 lawyers and 15 offices in North America, Europe and Asia.

Professor May Rikos, Director of the University Law School, said: 'The University Law School welcomes the opportunity to work with one of the first-rank global commercial law firms.'

Under the terms of the internship, students taking International Commercial Law courses in Mergers, Comparative Antitrust Law and World Trade Law will be invited to compete for the internship. Selection will be on the basis of an essay plus interview of the students who achieve the top essay mark in each of the relevant courses. Applications must be submitted by March 10, and the interviews will take place in late March/early April. The Internship will take place from May to July inclusive in the Powderhouse Sommerville Frankfurt Office.

Link to application at the bottom of this page.

Exercise 14. In your group discuss the questions:

- 1) Who can apply for the internship?
- 2) How will students be chosen for the internship?
- 3) When and where will the internship take place?
- 4) How can a student apply?

Exercise 15. Write a letter of application in response to the internship advertisement in Exercise 13. Be sure to include all of the sections and ideas necessary.

UNIT 7 REAL PROPERTY LAW



Task 1: Reading

Exercise 1. Read the text “Real Property Law” and translate it.

Text 1

REAL PROPERTY LAW

Real property can be divided into **freehold estates** and **leaseholds**.

Freehold estates are those in which an individual has ownership of land for an indefinite period of time. It is important to note that in property law, the term land refers to **real estate** (and everything that grows on that real estate), any improvements to the real estate (e.g. buildings) and the right to the minerals underneath the land and the airspace above it. There are generally three types of freehold estate in English-speaking jurisdictions: the fee simple, the life estate and the estate pur autre vie. A fourth type of freehold estate, the **fee tail**, is now largely obsolete. The transfer of title in land from one person to another is known as the conveyance.

The most complete, unlimited form of freehold estate is the fee simple, which is **inheritable** and lasts as long as the owner (or any subsequent **heirs**) wants to keep it. A life estate is one in which the individual retains possession of the land for the duration of his or her life. Although the ownership of a life estate is technically temporary because it ends when the owner dies, it is treated as complete ownership (fee simple) for the duration of the person's life. The estate pur autre vie is similar to the life estate, but differs in that it is measured by the life of someone other than the **grantee** (to whom an interest in the real property is conveyed by a **grantor**). An example of an estate pur autre vie would be a landowner who wishes to leave property to a charity in her will, but to enjoy tax savings during her life. She could formally donate the property but retain possession during her own life (a life estate)

and specify that she wants someone, e.g. her husband, to be able to remain in the property should he outlive her (estate pur autre vie).

In common-law jurisdictions, leasehold interests in land are sometimes classified as **personal property**, along with tangible property such as goods and **chattels**. Leaseholds are **property interests** of limited duration and are generally created through a lease - a contract for **exclusive possession** in return for which the **tenant** pays the **landlord** or **landlady** a specified **rent** or **compensation**. A licence is like a lease, but is generally for a shorter period of time, usually less than 12 months. Furthermore, if there is no exclusive possession of the property (as in a hotel room), then a licence is created, not a lease. A **licensee** is not granted any **title interest** in the land, merely permission to enter it for a specific purpose that would otherwise constitute a trespass.

The **Statute of Frauds** is generally applicable to interests in land, requiring that instruments such as **deeds**, real-estate sales contracts and certain leases be in writing to be legally enforceable.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Недвижимое имущество, безусловное право собственности на недвижимость, владение на правах аренды, полезные ископаемые, воздушное пространство, право наследования без ограничений, пожизненное право на недвижимое имущество, право на недвижимость, ограниченное действием другого, ограниченное право собственности на имущество, устаревший, передача правового титула, наследуемый, наследник, лицо, к которому переходит право собственности, лицо, передающее право, собственник недвижимости, экономия за счет уменьшения налоговых платежей, передавать в дар, движимое имущество, материальное имущество, имущественный интерес, аренда, исключительное право собственности, арендатор, арендодатель, арендная плата, лицензия, обладатель лицензии.

Exercise 3. Decide which of the nouns in the box collocate with the adjectives listed below. Some of the nouns go with more than one adjective.

Agreement, consent, estate, possession, property
--

- 1) real estate, ...
- 2) prior
- 3) mutual
- 4) exclusive

Exercise 4. Match the terms (marked in bold type in Text 1 “Real Property Law”) on the left with the definitions on the right:

1. real property	a. party who receives title to real property (e.g. the buyer)
2. freehold estate	b. estate which lasts as long as the original grantee or any of his descendants live
3. leasehold	c. share, claim, title or right in property
4. real estate	d. a written instrument transferring ownership in property
5. fee tail	e. land, including anything attached to it
6. Statute of Frauds	f. party who transfers (grants) title to real property (e.g. the seller)
7. deeds	g. personal property (excluding freeholds)
8. grantee	h. property whose duration of ownership or occupation is not determined
9. grantor	i. land and anything attached to it
10. personal property	j. things that are movable (as opposed to real property) and capable of being owned (also chattels in common law)
11. chattels	k. piece of legislation which declares that certain kinds of contract, for example those regarding land, pending marriage and the sale of goods worth over a certain amount of money, will be invalid unless put into writing and signed by both parties; the original statute was enacted in England in 1677 and serves as a basis for the US statutes
12. property interest	l. property whose duration of ownership or occupation is fixed or capable of being fixed

Exercise 5. Complete:

licensee

tenant

landlord or landlady

heir

is a person who...

Exercise 6. Give your own definition to the following terms:

Inheritable, rent, compensation, exclusive possession, title interest.

Task 3: Comprehension

Exercise 7. Read the text again and say whether these statements are true (T) or false (F). Prove your point.

1. A fee simple is an estate of indefinite duration.
2. A life estate can be passed on to the grantee's heirs.
3. A lease grants exclusive possession of real property for a limited term, but does not confer title interest in the property.
4. An oral contract for the purchase of real property is usually valid.

Exercise 8. Answer the questions.

1. How can real property be divided?
2. How can you define the term *freehold estates*?
3. What is the term *land*?
4. How many types are there in English-speaking jurisdictions? What are they?
5. What is the conveyance?
6. What is the most complete form of freehold estate?
7. How do you understand the terms *life estate*, *estate pur autre vie*?
8. What is the difference between personal property and real property?
9. What is a lease?
10. How will you define a tangible property?
11. How do you understand the term *licence*?

Task 4: Speaking

Exercise 9. Make a summary of the text “Real Property Law”.

Exercise 10. Buy-to-let, the practice of buying a property to rent out to tenants as a source of income, an attractive form of investment for many people. In recent years, EU enlargement and the availability of cheap flights from budget airlines have resulted in a growth in so-called fly-to-let - that is, buying to let in other countries. Discuss the questions in groups or speak on the following:

- Would you consider investing in property in a foreign country?
- What are the uncertainties involved in dealing with foreign markets?
- What advice would you give someone considering such an investment?

Task 5: Case study

Exercise 11. Marta Cervera is a Spanish woman who is thinking of investing in a buy-to-let property in Prague. She calls Jana Fialova, a Czech lawyer, to ask about the legal issues involved in such a purchase. Read the conversation and translate it.

Secretary: Novak and Fialova, how may I help?

Ms Cervera: Hello, can I speak to Ms Fialova, please?

Secretary: Certainly. Can I tell her who's calling?

Ms Cervera: It's Marta Cervera from Jacksons in Valencia. **Secretary:** I'll put you through.

Ms Fialova: Hello, Ms Cervera?

Ms Cervera: Hello, yes. I'm calling about my recent email.

Ms Fialova: I thought so, good to hear from you. How can I help?

Ms Cervera: I wondered if it would be possible to discuss some of the points over the phone?

Ms Fialova: Of course.

Ms Cervera: Well, first, thank you very much for all of the detailed information you sent me. My partner and I are very interested in buying a property in Prague. Should we go ahead, we wondered if you could handle the conveyance.

Ms Fialova: I'd be very pleased to. It's a buy-to-let property that you're interested in, is that right?

Ms Cervera: Yes, that's right. We first considered the idea a year or so ago, but at the time it wasn't possible. An old insurance policy of mine has just matured, and we're now able to go ahead.

Ms Fialova: Well, you may have missed some of the real bargains. But there are still plenty of reasonably priced properties available.

Ms Cervera: So I've heard. I think I mentioned in my email that a colleague of mine had recently bought a property in Prague with your help. It was Jordi that suggested I call.

Ms Fialova: Really? How is Mr Forrat?

Ms Cervera: He's very well, thank you. He sends his regards.

Ms Fialova: Thanks, please send him mine.

Ms Cervera: Your email was very detailed, but I wonder if you wouldn't mind talking me through the essentials? I plan to visit some properties sometime next month, but would first like to be clear on the legal issues involved in property purchase in the Czech Republic.

Ms Fialova: Well, first you should know that it's quite bureaucratic; there's a lot of paperwork to complete. The whole process takes an average of about four months.

Ms Cervera: Four months? That does sound a long time. OK, so what do I need to know?

Ms Fialova: First, as an EU citizen, you can buy a secondary residence in Prague under exactly the same terms as citizens of the Czech Republic, and will be entered into the cadastral register.

Ms Cervera: The cadastral register?

Ms Fialova: Yes, or the cadastre. It's the public register of all real property in a country, in this case, in the Czech Republic.

Ms Cervera: Right, so I don't need to form a limited company first to own property? I thought I did.

Ms Fialova: No, this requirement has been repealed since we joined the EU. You can now own property directly. However, some people still choose to incorporate.

Ms Cervera: Mm-hm. Why? Are there tax advantages?

Ms Fialova: It depends. You're probably better off talking to a local accountant, but I do know that as a company, there are certain tax advantages.

Ms Cervera: Such as?

Ms Fialova: Well, for example, you wouldn't have to pay stamp duty - that's the property transfer tax, which would normally be levied by the state on the sale of real estate. Actually, over here, stamp duty is normally paid by the seller anyway.

Ms Cervera: OK, well, I guess I should look into this. If I did choose to form a company before buying, how long would incorporation take?

Ms Fialova: Sorry, can you say that again, please? You're breaking up.

Ms Cervera: Sorry, I'm calling you from my mobile on a train

- we just went through a tunnel. I wanted to know how long it would take to set up a company.

Ms Fialova: About six to eight weeks. I know it sounds like a long time, but that can't be avoided. If you do decide to incorporate, then I can recommend a good company formation agent.

Ms Cervera: Great, thanks.

Ms Fialova: You're very welcome.

Exercise 12. Read the conversation again and answer the questions.

- 1) How did Marta Cervera first hear about Jana Fialova?
- 2) Does Ms Cervera need to form a company to buy a property in the Czech Republic?
- 3) What made Ms Cervera consider investing in a buy-to-let in Prague?
- 4) How does Ms Fialova describe the process of buying property in Prague?
- 5) Who normally pays the stamp duty in the Czech Republic?
- 6) How long can incorporation take in the Czech Republic?

Exercise 13. Write a follow-up email from Jana Fialova to Marta Cervera.

Include these points:

- a suitable greeting
- confirmation that you would be pleased to act for Ms Cervera
- a summary of the main points discussed
- details of the next stages
- a suitable ending

Exercise 14. When did you last use English on the telephone? How confident do you feel speaking English on the telephone? Underline the

expressions used by the speakers in the telephone enquiry. Are there any new types of functional language for you used in telephone enquiries?

Exercise 15. In pairs make your own dialogue reviewing the telephone conversation in Exercise 1. Act it out to the class.

Role cards

<p>Student A You are a property lawyer and receive a call from a foreigner interested in buying property in your jurisdiction. Prepare to take a call.</p>	<p>Student B You are interested in buying property in another country and phone a lawyer who has been recommended to you by a colleague. Write down the questions you need to ask.</p>
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Unit 8 LITIGATION AND ARBITRATION



Task 1: Reading

Exercise 1. Read the text “Litigation and Arbitration” and translate it.

Text 1

LITIGATION AND ARBITRATION

If a dispute is not settled by agreement between the disputing parties, it will eventually be heard and decided by a judge and/or jury in a court. A **lawsuit** before a court is commonly referred to as **litigation**. In fact, litigation includes all stages before, during and after a **trial**.

Litigation may be used to resolve a dispute between private individuals, an individual and a business, or between two businesses. Litigation sometimes involves disputes between an individual or business and a government agency, or between two governmental bodies.

In the UK, the majority of pre-trial work is carried out by a solicitor before the case is passed on to a barrister, who will represent either the claimant or the defendant during a **hearing** or a trial. In the USA, the same attorney may deal with the case from the time the client first makes contact through to the trial and **enforcement** stages. The steps in between these two stages typically include an attempt to reach a **settlement** before and/or after filing a lawsuit and **pleadings**, entering the **discovery phase** and then proceeding to trial. At the end of a trial, the court will deliver its judgment and pass an order, which the winning party's counsel and/or the court may help the winning party **enforce**.

Criminal matters are also considered litigation, and many civil litigation lawyers also deal with criminal cases, as well as some forms of **alternative dispute resolution** (ADR).

The term litigation is sometimes used to distinguish lawsuits from ADR methods such as negotiation, arbitration and mediation. If a case goes to arbitration, the disputing parties refer it to one or more impartial referees (the arbitrators, arbiters or **arbitral tribunal**); the parties agree to be bound by the referees' decision (e.g. an award for damages). Arbitration is the main form of ADR used by businesses. Mediation involves a type of structured meeting with the disputing parties and an independent third party who works to help them reach an agreement between themselves. In arbitration, a binding decision is imposed by an independent third party. With mediation, the role of the third party is to facilitate negotiation and agreement between the disputing parties.

Arbitration is often used to resolve commercial disputes, particularly those involving international commercial transactions, and it developed historically alongside international trade. The arbitral process for resolving disputes under international commercial contracts is referred to as international arbitration. Arbitration is also used in some jurisdictions to resolve other types of dispute, such as those involving employment-related issues.

Recent years have seen the development of online dispute resolution (ODR). ODR **proceedings** start with the filing of a claim online, followed by proceedings which take place over the Internet.

Task 2: Vocabulary

Exercise 2. Find in the text the English equivalents to the following words:

Спор, спорящие стороны, суд, судебный процесс, правительственное учреждение, слушание в суде, доверенное лицо, прийти к соглашению, предварительное производство по делу, выносить решение, обеспечивать исполнение, альтернативное урегулирование споров, арбитраж, посредничество, третейский судья, международный арбитраж, урегулирование споров онлайн.

Exercise 3. Match the verbs (1-5) with the nouns in the box they collocate with. Some of the verbs go with more than one noun.

an agreement, a dispute, a judgment, a lawsuit, an outcome / a settlement

- 1.) to reach an agreement, ...
- 2.) to file
- 3.) to deliver
- 4.) to decide on
- 5.) to settle

Exercise 4. Match the terms (marked in bold type in Text 1 “A Career in Law”) on the left with the definitions on the right:

1. settlement	a. dispute brought before a court for determination or solution
2. lawsuit	b. 1) agreement reached between the parties to a dispute resolving the dispute; 2) the amount granted or paid under such an agreement is also referred to as the settlement
3. pleadings	c. legally compelling performance by the other party
4. litigation	d. formal proceeding before any body having decision-making powers or authority
5. trial	e. formal process including the steps taken in an action or dispute
6. proceedings	f. period before trial when formal procedures are used to obtain relevant information from the other party/parties
7. alternative dispute resolution	g. form or method of resolving disputes apart from litigation
8. arbitral tribunal	h. collective body of arbitrators or arbiters
9. enforce	i. formal written statements setting out the cause of action or defence in a case
10. hearing	j. action or proceeding brought in court (also suit)
11. discovery phase	k. to make effective; in the case of an agreement, it is where one party legally compels performance by the other party
12. enforcement	l. legal examination in court of a dispute between parties

Exercise 5. Complete the following:

solicitor
barrister
attorney
arbitrator
arbiter

is a person who...

Exercise 6. Give your own definitions to the following terms:

Dispute
Court
Government agency
Pre-trial work
Order
Negotiation

Task 3. Comprehension

Exercise 7. Read the text again and say whether these statements are true (T) or false (F).

Prove your point.

1. The term litigation refers only to the hearing or a trial.
2. Mediation differs from arbitration in that the disputing parties are actively involved in the decision-making process.
3. International arbitration developed in response to the need to settle disputes involving more than one jurisdiction.
4. Online dispute resolution requires that the disputing parties meet in person with the arbitrators before a final decision can be made.

Exercise 8. Answer the questions.

1. What happens if a dispute is not settled by agreement?
2. What does litigation include?
3. How is pre-trial work carried out in the UK?
4. What is the difference between the work in the USA?
5. What are the steps in between the discovery phase and proceeding to trial?
6. What cases do lawyers deal with?
7. Whom do disputing parties refer to if a case goes to arbitration?
8. How can you define the term arbitration?
9. What is a mediation?
10. How is arbitration used to resolve international commercial transactions?
11. How do you understand ODR?

Task 4: Speaking

Exercise 9. Make a summary of the text “Litigation and Arbitration”.

Exercise 10. Discuss in pairs or speak on the following:

- In what different ways can a person’s employment end? Which of these might result in litigation or arbitration?
- What can businesses do to avoid litigation? If litigation is unavoidable, how can a business minimise its legal costs?
- Prepare a talk about an aspect of litigation or arbitration in your jurisdiction

Task 5: Case study

Exercise 11. Read the letter before action and translate it.

Text 2

64 Waldingfield Road
Doncaster South Yorkshire
DN13GF
telephone: +44 1405 73859235
fax: +44 1405 738 59236
email: info@minchinlacey.co.uk

YOUR REF:
OUR REF: CSK/DT-1

29 February 2008

STRICTLY PRIVATE AND CONFIDENTIAL

David Tyler Construction Ltd.
Kersey Lane Industrial Estate
Shawditch Road
Doncaster
South Yorkshire
DN2 3SQ

Dear Sirs

Our client: Jaycee Loushe

We are instructed by the above named in connection with her employment with your company.

We understand that our client has been employed by you since 13 January 2007, and that on 26 February, while attending to her duties with a colleague, she was accused by Mr David Tyler of stealing confidential information from your offices. Our client strenuously denies these accusations.

We are informed that there had been no previous criticism of our client's work. In fact, Mr Tyler recently informed her that she was a positive asset to the company and suggested that a promotion, together with a substantial increase in her remuneration, would shortly be forthcoming.

In light of your actions of 26 February, it is clear that our client would be fully entitled to resign and bring a tribunal claim for constructive dismissal. Due to the circumstances under which the allegations against our client were made, we have also advised Ms Loushe that she would stand excellent prospects of

success should she decide to pursue a claim for exemplary damages and/or defamation.

However, our client would be prepared to discuss alternative means by which this matter might be resolved. Our instructions are to commence proceedings against you if we do not receive satisfactory proposals for settlement of this matter within 14 days.

Yours faithfully
Minchin & Lacey Solicitors

Exercise 12. Read the letter again and in small groups discuss the questions:

- 1) What is the purpose of the letter?
- 2) What are the facts of the case?
- 3) What legal actions might the recipient face?
- 4) What must the recipient do to avoid litigation?
- 5) Do you think Ms Loushe would be prepared to go back to work for David Tyler Construction Ltd? Support your opinion with reasons.
- 6) What kind of settlement do you think would be acceptable to Ms Loushe?

Exercise 13. You are the lawyer acting on behalf of Mr Tyler. Write a letter in response to the letter outlining Ms Loushe's case (The initial response to a letter before action is often to test the potential claimant's will by strongly denying any claims. Alternatively, an initial offer may be put forward (often below what the potential claimant might wish for)). **Use some of the features of formal legal correspondence. Include the following:**

- an appropriate greeting and introduction
- your response to the claims made against your client
- any clarification of the facts as presented by Ms Loushe's lawyers
- a proposed settlement (if you wish to make one)
- an appropriate ending and sign-off.

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ПРАВО В ВЕЛИКОБРИТАНИИ: СРАВНИМ С РОССИЕЙ

Практикум

Составитель:

Алина Александровна Христолюбова

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