

1

The practice of law

PART I: THE LEGAL SYSTEM

Bodies of law

1 Read the excerpts below from the course catalogue of a British university's summer-school programme in law and answer these questions.

- 1 Who is each course intended for?
- 2 Which course deals with common law?
- 3 Which course studies the history of European law?

A

LAW 121: Introduction to English law

This course provides a general overview of English law and the common-law system. The course will look at the sources of law and the law-making process, as well as at the justice system in England. Students will be introduced to selected areas of English law, such as criminal law, contract law and the law of torts. The relationship between the English common law and EC law will also be covered.

The course is designed for those international students who will be studying at English universities later in the academic year. Other students with an interest in the subject are also welcome to attend, as the contact points between English law and civil law are numerous. The seminars and all course materials are in English.

B

LAW 221: Introduction to civil law

More individuals in the world solve their legal problems in the framework of what is called the civil-law system than in the Anglo-Saxon case-law system. This course will introduce students to the legal systems of Western Europe that have most influenced the civil-law legal systems in the world. It aims to give students an insight into a system based on the superiority of written law. The course will cover the application and development of Roman law in Europe to the making of national codes all over the world.

The course is intended to prepare students who are going to study in a European university for the different approaches to law that they are likely to face in their year abroad.

2 Match these bodies of law (1–3) with their definitions (a–c).

- | | |
|-----------------------|--|
| 1 civil law | a area of the law which deals with crimes and their punishments, including fines and/or imprisonment (also penal law) |
| 2 common law | b 1) legal system developed from Roman codified law, established by a state for its regulation; 2) area of the law concerned with non-criminal matters, rights and remedies |
| 3 criminal law | c legal system which is the foundation of the legal systems of most of the English-speaking countries of the world, based on customs, usage and court decisions (also case law , judge-made law) |

- 3 Complete the text below contrasting civil law, common law and criminal law using the words in the box.

based on bound by codified custom disputes legislation
non-criminal precedents provisions rulings

The term 'civil law' contrasts with both 'common law' and 'criminal law'. In the first sense of the term, civil law refers to a body of law **1)** written legal codes derived from fundamental normative principles. Legal **2)** are settled by reference to this code, which has been arrived at through **3)** Judges are **4)** the written law and its **5)**

In contrast, common law was originally developed through **6)**, at a time before laws were written down. Common law is based on **7)** created by judicial decisions, which means that past **8)** are taken into consideration when cases are decided. It should be noted that today common law is also **9)**, i.e. in written form.

In the second sense of the term, civil law is distinguished from criminal law, and refers to the body of law dealing with **10)** matters, such as breach of contract.

- 4 Which body of law, civil law or common law, is the basis of the legal system of your jurisdiction?

Types of laws

The word *law* refers generally to legal documents which set forth rules governing a particular kind of activity.

- 5 Read the following short texts, which each contain a word used to talk about types of laws. In which kind of document do you think each appeared? Match each text (1–5) with its source (a–e).

1 The new EU Working Hours **Directive** is reported to be causing controversy amongst the medical profession.

3 The purpose of this **Ordinance**¹ is to regulate traffic upon the Streets and Public Places in the Town of Hanville, New Hampshire, for the promotion of the safety and welfare of the public.

2 When a **statute** is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be.

4 These workplace safety and health **regulations** are designed to prevent personal injuries and illnesses from occurring in the workplace.

5 Mr Speaker, I am pleased to have the opportunity to present the Dog Control Amendment **Bill** to the House. It is a further milestone in meeting the changing expectations we have about what is responsible dog ownership.

¹ (UK) by-law

- a court ruling
- b local government document
- c newspaper
- d parliamentary speech
- e brochure for employees

- 6 Find words in Exercise 5 which match these definitions. Consult the glossary if necessary.
- 1 rules issued by a government agency to carry out the intent of the law; authorised by a statute, and generally providing more detail on a subject than the statute
 - 2 law enacted by a town, city or county government
 - 3 draft document before it is made into law
 - 4 legal device used by the European Union to establish policies at the European level to be incorporated into the laws of the Member States
 - 5 formal written law enacted by a legislative body
- 7 Complete the sentences below using the words in the box.

bill directive ordinance regulations statutes

- 1 The Town Council will conduct a public hearing regarding a proposed concerning property tax.
- 2 According to the concerning working time, overtime work is work which is officially ordered in excess of 40 hours in a working week or in excess of eight hours a day.
- 3 Early this year, the government introduced a new on electronic commerce to Parliament.
- 4 A number of changes have been made to the federal governing the seizing of computers and the gathering of electronic evidence.
- 5 The European Union on Data Protection established legal principles aimed at protecting personal data privacy and the free flow of data.

Speaking 1: Explaining what a law says

There are several ways to refer to what a law says. Look at the following sentences:

The law **stipulates that** corporations must have three governing bodies.

The law **provides that** a witness must be present.

The patent law **specifies that** the subject matter must be 'useful'.

These verbs can also be used to express what a law says:

The law **states / sets forth / determines / lays down / prescribes that ...**

- 8 Choose a law in your jurisdiction that you are familiar with and explain what it says using the verbs listed in the box above.

Types of courts

Courts can be distinguished with regard to the type of cases they hear.

- 9 Match each of the following types of court (1–9) with the explanation of what happens there (a–i).
- | | |
|---|--|
| 1 appellate court (or court of appeals, appeals court) | a This is where a person under the age of 18 would be tried. |
| 2 crown court | b This is the court of primary jurisdiction, where a case is heard for the first time. |
| 3 high court (or supreme court) | c This is where small crimes are tried in the UK. |
| | d This is where law students argue hypothetical cases. |

- 4 juvenile court**
 - 5 lower court** (or court of first instance)
 - 6 magistrates' court**
 - 7 moot court**
 - 8 small-claims court**
 - 9 tribunal**
- e** This is where a case is reviewed which has already been heard in a lower court.
 - f** This is where cases involving a limited amount of money are handled.
 - g** This is where serious criminal cases are heard by a judge and a jury in the UK.
 - h** This is where a group of specially chosen people examine legal problems of a particular type, such as employment disputes.
 - i** This is usually the highest court in a jurisdiction, the court of last resort.

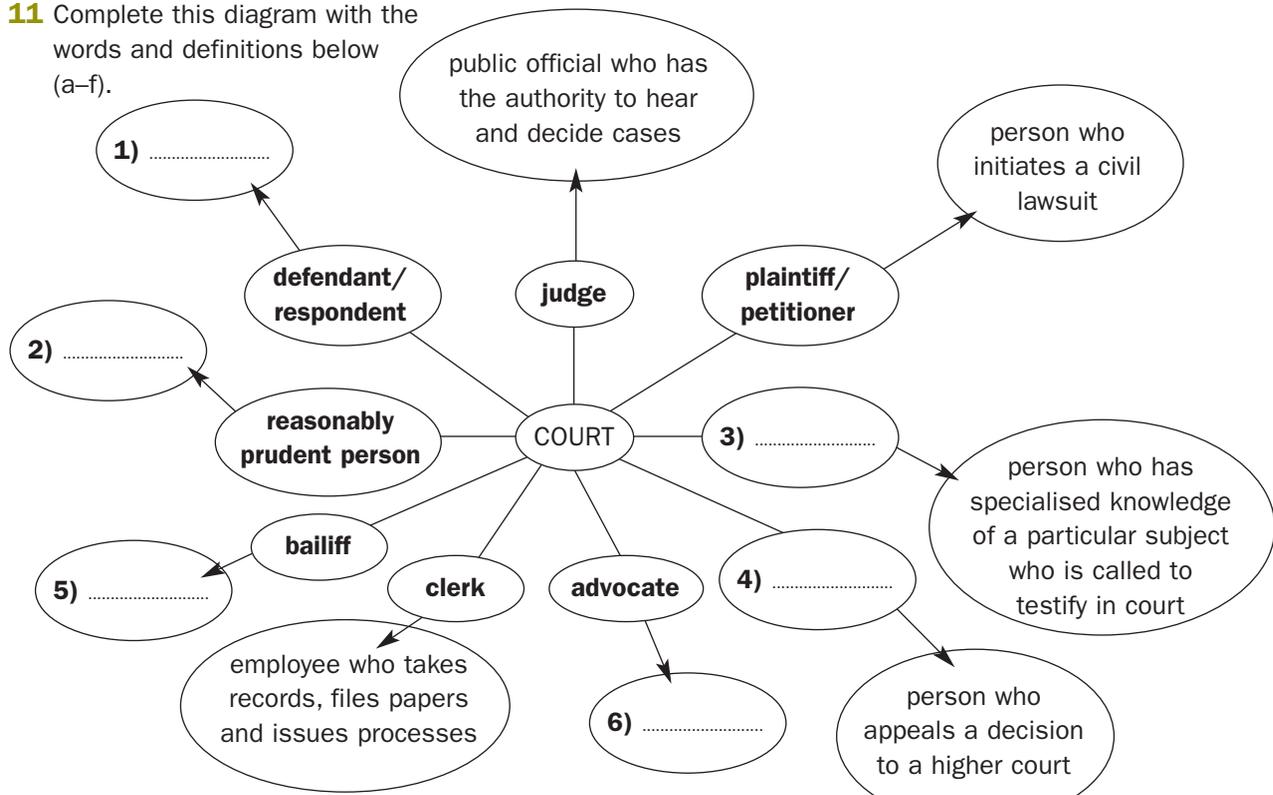
Speaking 2: Civil court systems

10 Work in small groups.

- 1** Describe the different types of court in your jurisdiction and the areas of law they deal with.
- 2** Select one type of court in your jurisdiction and explain what kinds of cases it deals with.

Persons in court

11 Complete this diagram with the words and definitions below (a–f).



- a** expert witness
- b** appellant
- c** person who is sued in a civil lawsuit
- d** officer of the court whose duties include keeping order and assisting the judge and jurors
- e** person who pleads cases in court
- f** hypothetical person who uses good judgment or common sense in handling practical matters; such a person's actions are the guide in determining whether an individual's actions were reasonable

Listening 1: Documents in court

12 ▶ Listen to a lawyer telling a client about some of the documents involved in his case and answer these questions.

- 1 What claim has been filed against the client?
- 2 Will the case go to trial?

13 Match these documents (1–9) with their definitions (a–i).

- | | |
|--------------|---|
| 1 affidavit | a a document informing someone that they will be involved in a legal process and instructing them what they must do |
| 2 answer | b a document or set of documents containing the details about a court case |
| 3 brief | c a document providing notification of a fact, claim or proceeding |
| 4 complaint | d a formal written statement setting forth the cause of action or the defence in a case |
| 5 injunction | e a written statement that somebody makes after they have sworn officially to tell the truth, which might be used as proof in court |
| 6 motion | f an application to a court to obtain an order, ruling or decision |
| 7 notice | g an official order from a court for a person to stop doing something |
| 8 pleading | h in civil law, the first pleading filed on behalf of a plaintiff, which initiates a lawsuit, setting forth the facts on which the claim is based |
| 9 writ | i the principal pleading by the defendant in response to a complaint |

14 ▶ Listen again and tick the documents that the lawyer mentions.

- 1 answer 2 affidavit 3 brief 4 complaint 5 injunction
 6 motion 7 notice 8 pleading 9 writ

15 Match each verb used by the lawyer (1–5) with its definition (a–e).

- | | |
|---|---|
| 1 to draft a document | a to deliver a legal document to someone, demanding that they go to a court of law or that they obey an order |
| 2 to issue a document | b to produce a piece of writing or a plan that you intend to change later |
| 3 to file a document with an authority | c to deliver a document formally for a decision to be made by others |
| 4 to serve a document on someone
(or to serve someone with a document) | d to officially record something, especially in a court of law |
| 5 to submit a document to an authority | e to produce something official |

16 Decide which of the nouns in Exercise 13 can go with these verbs. The first one has been done for you.

- 1 draft *an answer, a brief, a complaint, a motion, a pleading*
- 2 issue
- 3 file (with)
- 4 serve (on someone)
- 5 submit

Legal Latin

Lawyers use Latin words and expressions when writing legal texts of every kind, from statutes to emails.

The following excerpt is from the legal document known as an 'answer'. It was submitted to the court by the defendant from Listening 1.

- 17** Underline the common Latin words and phrases in the text. Do you know what they mean?

The claim for breach of contract fails inter alia to state facts sufficient to constitute a cause of action, is uncertain as to what contract plaintiffs are suing on, and is uncertain in that it cannot be determined whether the contract sued on is written, oral or implied by conduct.

The complaint alleges breach of contract as follows: 'At all times herein mentioned, plaintiffs were a part [sic] to the Construction Contract, as well as intended beneficiaries to each sub-contract for the construction of the house. In light of the facts set out above, defendants, and each of them, have breached the Construction Contract.'

On its face, the claim alleges only that defendants 'breached the Construction Contract'. But LongCo is not a party to the Construction Contract. Therefore LongCo cannot be liable for its breach. See e.g. GSI Enterprises, Inc. v. Warner (1993).

- 18** Match each Latin word or expression (1–8) with its English equivalent and the explanation of its use (a–h).

1 ad hoc	a thus (<i>used after a word to indicate the original, usually incorrect, spelling or grammar in a text</i>)
2 et alii (et al.)	b for example (<i>used before one or more examples are given</i>)
3 et cetera (etc.)	c for this purpose (<i>often used as an adjective before a noun</i>)
4 exempli gratia (e.g.)	d against (<i>versus is abbreviated to 'v.' in case citations, but to 'vs.' in all other instances</i>)
5 id est (i.e.)	e and others (<i>usually used to shorten a list of people, often a list of authors, appellants or defendants</i>)
6 per se	f and other things of the same kind (<i>used to shorten a list of similar items</i>)
7 sic	g by itself (<i>often used after a noun to indicate the thing itself</i>)
8 versus (vs. or v.)	h that is (<i>used to signal an explanation or paraphrase of a word preceding it</i>)

- 19** Match each Latin term (1–10) with its English equivalent (a–j).

1 de facto	a among other things
2 ipso facto	b per year
3 inter alia	c number of shareholders or directors who have to be present at a board meeting so that it can be validly conducted
4 per annum	d in fact
5 pro forma	e of one's own right; able to exercise one's own legal rights
6 pro rata	f proportionally
7 quorum	g by that very fact itself
8 sui juris	h as a matter of form
9 ultra vires	i as follows
10 videlicet (viz.)	j beyond the legal powers of a person or a body

PART II: A CAREER IN THE LAW

Listening 2: Lawyers

- 20**  Several different words can be used to refer to a lawyer. Listen to three law students in the UK talking about the kind of work they would like to do when they have completed their law studies. Write the correct word for *lawyer* in the gaps.

Anna: So, what are you two planning to do later, when you've completed your degree?
Daniel: Well, right now, I'm planning to become a **1)**, because I'd really like to plead cases in court.
Anna: You've been watching too many of those American films, when the handsome young **2)** wins the case against the big, bad corporation!
Daniel: Very funny. I just like the idea of arguing a case. I think it'd be exciting. What about you?
Anna: Actually, I'd like to work for a big corporation and advise them on their legal affairs, as **3)** I've heard the work can be very challenging. What are your plans, Jacob?
Jacob: I'm thinking about becoming a **4)** I'm not that interested in pleading cases in court. I'd rather do research and give legal advice – I think that'd suit me better.

- 21** Discuss these questions.

- 1** Does your native language have more than one word for *lawyer*? Do they correspond to the different English words for *lawyer* mentioned above? If not, how do the concepts differ?
- 2** What is each type of legal practitioner in your jurisdiction entitled to do?
- 3** What English term do you use to describe your job or the job you would like to do?

- 22 a** Combine the nouns in the box with the verbs below to make combinations to describe the work lawyers do. Some of the verbs go with more than one noun.

cases	clients	contracts	corporations	decisions	defendants
disputes	law	legislation			

- 1** advise
- 2** draft
- 3** litigate
- 4** practise
- 5** represent
- 6** research

- b** Choose three 'verb + noun' pairs from above and write sentences using them.

- 23** Choose the words from the box which can be combined with the word *lawyer* to describe different types of lawyer. Say what each one does.

bar	corporate	defence	government	patent	practitioner
public-sector	sole	tax	trial		

Legal education: A call to the Bar

In English-speaking countries, the **Bar** is a term for the legal profession itself, while a **bar association** is the association which regulates the profession. A person who qualifies to practise law is **admitted to the Bar**; on the other hand, to **disbar** a lawyer is to make him or her unable to practise law.

The following text is an excerpt from a guide written for school leavers about courses of study in English-speaking countries. This section of the guide deals with the study of law and the requirements for entering the legal profession in the UK and the USA.

- 24** Read the text and say whether legal education in your country is more similar to the UK or the US model.

Studying law in the UK

In the UK, a legal education usually begins with the completion of a bachelor degree in law, known as an **LLB**, which usually takes three years. In the subsequent vocational stage, a person who wishes to become a **barrister** joins one of the **Inns of Court** before beginning the **Bar Vocational Course**. The completion of this stage is marked by a ceremony referred to as the **call to the Bar**. A third stage, known as **pupillage**, is a year-long apprenticeship, usually at a set of **barristers' chambers**, which customarily consists of groups of 20–60 barristers. Similarly, a person wishing to become a **solicitor** must also complete three stages: the first stage involves gaining a law degree; the second stage requires passing a one-year **Legal Practice Course (LPC)**; and the final stage entails working for two years as a **trainee solicitor** with a firm of solicitors or in the legal department of a local authority or large company.

Studying law in the USA

In the USA, a legal education comprises four years of undergraduate study followed by three years of **law school**. A law-school graduate receives the degree of **juris doctor (J.D.)**. In order to qualify as a lawyer, a law-school graduate must pass the **bar examination**.

- 25** Find terms with the word *bar* in the introduction to this section and in the text above which match these definitions.
- 1** a lawyer who is qualified to plead on behalf of clients
 - 2** in the UK, a training course which enables people who wish to become barristers and who have registered with the Inns of Court to acquire the skills and knowledge to prepare them for the specialised training of the pupillage
 - 3** a ceremony held at the end of this training course, when a candidate enters the profession
 - 4** organisation regulating the legal profession
 - 5** in the USA, an important test taken by law-school graduates which, when passed, qualifies a person to practise law
 - 6** granted entrance to the legal profession
 - 7** to compel a lawyer to stop practising law due to an offence committed

A lawyer's curriculum vitae

26 Read the following CV (curriculum vitae)¹ of a young British lawyer and answer these questions.

- 1 Where did he work in summer 2002?
- 2 What languages does he speak?
- 3 Where did he complete his first degree?
- 4 What was his main duty at the European Commission?
- 5 What is he doing now?

Linus Walker

Address: Frejg 17, SE-118 25, Stockholm, Sweden
Email address: linuswalker@eli.se

Nationality: British
Date of birth: 12 May 1982

EDUCATION

- 2005 – present **University of Stockholm, Sweden**
Master's Programme in Law and Information Technology
 Course covers the legal aspects of Information Technology and the legal implications of the use of the Internet
- 2000–2004 **University of Essex, Colchester, United Kingdom**
LLB (English & French law degree)
 Course included all the core legal subjects, with a focus on contract law, company law, common law, property law and European law
- 2002–2003 **Université Paris X, Paris, France**
DEUG (French law degree), Nanterre
 Part of the degree programme at University of Essex included an intensive course in French. Among subjects studied: European Community Law, Information Law, Civil Law and Penal Law

LEGAL WORK EXPERIENCE

- June 2004–
February 2005 **European Commission, Brussels, Belgium**
 Legal Assistant within the Legal Department of the Service Commune Relex (SCR). Drafting opinions in English and French dealing with contracts awarded for projects
- Summers
2001–2004 G. R. Foster & Co. Solicitors, Cambridge, UK
 Liaison with clients; conducting research into multiple legal areas, including family law, tort law and contracts; assisting with trial preparation
- Summer 2000 Westlake Chambers, Bath, UK
 Mini-pupillage, involving shadowing a number of counsel; assisted in daily activities

SKILLS AND QUALIFICATIONS

- Languages:** Native English speaker; fluent in French (written and spoken); upper-intermediate Swedish
- Computing:** Proficient in Word, Windows, email
- Membership:** The Law Society
- Strong researching and writing skills

INTERESTS

- Skiing, French history, chess
 References available upon request

¹ (US) *résumé* or *resume*

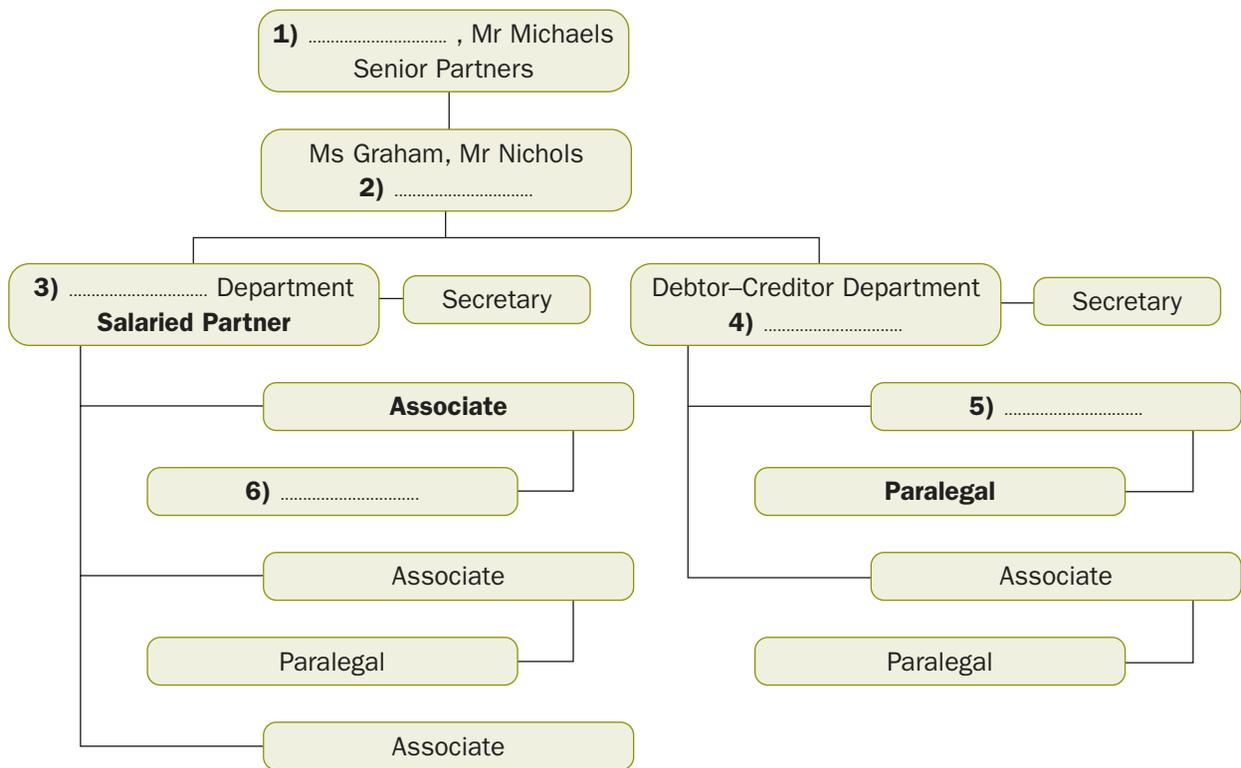
Listening 3: Law firm structure

27 Linus Walker has applied for a position at a law firm. Listen to his job interview and answer these questions.

- 1 What does Mr Nichols say about the atmosphere of the firm?
- 2 What does Linus say about the size of the firm?

28 Listen again and complete this organigram of the firm using the words in the box.

Associate Full Partners Mr Robertson Paralegal Real Property Salaried Partner



Speaking 3: Describing a law firm

29 Look at the following phrases used by Mr Nichols to describe the firm. Which can be used to speak of a department or company, and which of a person? Which can be used for both?

- ... is/are headed by ...
- ... is/are assisted by ...
- ... is/are managed by ...
- ... is/are responsible for ...
- ... is/are in charge of ...
- ... report to ...

30 Using the phrases in Exercise 29, describe the structure of a law firm with which you are familiar or the one just described in Listening 3. Refer to the positions and duties of the personnel.