

1 The practice of law

Teacher's brief

This unit covers a lot of important ground, but does not go very deeply into any one area. Many of the areas mentioned in this unit will be addressed much more fully in subsequent units.

Part I deals with **bodies of law**, and focuses on the two most internationally important bodies: **common law** and **civil law**. This distinction will be well known to all lawyers and even to most beginner law students. In common-law jurisdictions, such as England, Wales and Northern Ireland and the USA, laws come primarily from customs, usage and earlier court decisions. In civil-law jurisdictions (e.g. much of continental Europe), laws come from written legal codes. Much of the world can be neatly divided between these two bodies of law, but there are many **mixed systems** (e.g. India, Israel, Iran, China and South Africa). Note that the term **jurisdiction** is preferred to 'country': the countries of the UK, the USA and Canada are all mostly common law, but all contain several jurisdictions, some of which have rather different bodies of law (e.g. Scotland, the Channel Islands, Louisiana and Quebec).

Another important difference between common-law and civil-law jurisdictions is their approach to court **proceedings** (e.g. criminal trials). Common-law jurisdictions tend to use an **adversarial** system, pitting one side against the other, while some civil-law jurisdictions (e.g. France) use an **inquisitorial** system, where the proceedings are seen as a search for the truth rather than a battle between opposing sides. The match between civil law and the inquisitorial system on the one hand and between common law and the adversarial system on the other is far from perfect – some civil-law jurisdictions use an adversarial system, for example, and common-law jurisdictions may use an inquisitorial system for certain types of proceedings (e.g. for minor traffic violations).

Part I goes on to describe five **types of laws**: the most important of these are **statutes**, which are the documents issued by sovereign states (i.e. independent countries). Note that each state in a federation (such as the USA and Brazil) also has its own statutes and **codes**. Non-sovereign bodies (e.g. colonies and county, city or local

governments) issue **by-laws** (UK) or **ordinances** (USA). Non-governmental agencies, such as (in the UK) Companies House, the Driver and Vehicle Licensing Agency (DVLA) and HM Prison Service, have sets of **regulations**, which have the force of law. Not all countries have such agencies, which must be authorised by statutes to issue such rules and regulations. There is a type of law which is specific to the EU: **directives**. These devices commit the member states to meeting certain obligations in their own legislatures (parliaments). Finally, **bills** are proposed laws which have not yet been ratified or adopted. When they have been passed, they are known as **Acts of Parliament** (in the UK, Canada, New Zealand, Australia, etc.) or **Acts of Congress** (in the USA), but of course can be more generally described as **statutes**.

The section on **types of courts** is inevitably country-specific: countries will vary in terms of the types of court that exist and the names given to each. All jurisdictions tend to have **lower courts**, **appeals courts** and **high courts/supreme courts**, but they may not have anything like the UK's distinction between **small claims courts**, **crown courts** and **magistrates' courts**. Note that in the UK, **magistrates** are usually volunteer non-lawyers (**Justices of the Peace (JPs)**) who preside over minor cases, and who are advised on legal matters by a **Court Clerk**. This is different from the magistrates in mainland Europe, where the term is commonly used to refer to **public prosecutors**.

Part I goes on to describe some persons and documents in court. In a typical **lawsuit** (case), the most important persons are the **plaintiff**¹, who initiates the case by **filing a complaint**, and the **defendant**, who has to **answer** that complaint. However, when the case is a **petition** (request) for a **court order** (an official proclamation by a court), rather than a complaint, the two parties are known as the **petitioner** and the **respondent** respectively. An important type of court order is an **injunction** for a person to refrain from doing something or be obliged to do something. The lawyers for both parties and in both types of case are known as **advocates**, a general term for anyone who speaks on behalf of someone else. The general name for **complaints, answers, petitions and motions** is

¹ In the UK (except Scotland), the plaintiff is known as the **claimant**.

pleadings, a term which covers all documents filed by lawyers in a lawsuit. The legal claims made in these documents are called **causes of action**. More details about specific points in a pleading are given in **briefs** or **written submissions**.

The last section on the legal system focuses on **Latin** expressions used in legal English. (Many are also common in general English.) Latin borrowings (such as *versus*) have been a feature of legal English throughout the history of English, but Latin became the language of legal documents in England after 1066. It was replaced by French around 1275, which in turn was replaced by English in 1362 under the **Statute of Pleading**. French's influence on legal English is far greater than that of Latin, giving us most of the vocabulary mentioned in this unit.

Part II of the unit focuses on lawyers. The general term **lawyer** covers anyone who has been trained in the law and certified to give legal advice. In some jurisdictions, such as England, clients typically engage the services of a **solicitor** for legal advice, who may in turn engage a **barrister** to carry out a specific job, such as pleading in court. Solicitors may appear in lower courts, but require a **certificate of advocacy** if they wish to contest a case in a higher court. Both types of lawyer deal with both criminal and civil cases. In other jurisdictions, such as Canada, the two roles are not kept separate (so a lawyer is known as a **barrister and solicitor**). The same is true in the USA, where such a lawyer is called an **attorney**. In many civil-law countries, **notaries** play an important role in drafting contracts and giving legal advice to private individuals. These civil-law notaries should not be confused with the US term **notary public**, which refers to people who witness and certify the legal validity of documents, take **affidavits** (sworn statements), etc. Notaries public are not necessarily trained lawyers. Finally, a **corporate counsel** works exclusively for a corporation, and both advises and represents that corporation in all legal matters.

The section on **legal education** focuses on the stages involved in becoming a barrister or solicitor in the UK, or a lawyer in the USA. Different

countries around the world all have their own systems for preparing lawyers, but lawyers everywhere have to study formally (typically at a **university** or **law school**) before undertaking some sort of **work experience**, which involves **shadowing** fully qualified lawyers. There is usually some kind of **exam** and **ceremony** to mark the end of this process. For example, in the UK, new barristers are **called to the Bar** (invited into the profession).

The section goes on to look at an organigram (organisational hierarchy) of a **typical law firm**, and introduces the various levels within the hierarchy: **senior partners, full partners, salaried partners, associates, paralegals** and **clerks**.

The unit ends with a non-technical look at the advantages and disadvantages of large and small law firms.

Further information

- For a comprehensive list of **bodies of law** throughout the world, see <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-tableau.html>. For more detailed information, see http://en.wikipedia.org/wiki/Common_law.
- There is a useful analysis of the advantages and disadvantages of the **adversarial and inquisitorial systems** at http://en.wikipedia.org/wiki/Adversarial_system.
- For information on **magistrates' courts**, see <http://en.wikipedia.org/wiki/Magistrate>.
- For more on **legal Latin**, see http://en.wikipedia.org/wiki/List_of_legal_Latin_terms.
- There is some fascinating background to the **history and nature of legal language** at <http://www.languageandlaw.org>.
- The **difference between solicitors and barristers** is explained fully at <http://en.wikipedia.org/wiki/Barrister>.
- There is a very clear description of the stages involved in **becoming a UK barrister** at <http://www.barcouncil.org.uk>.
- The Law Society's Junior Lawyers Division offers similar insight into the process of **becoming a solicitor**: <http://juniorlawyers.lawsociety.org.uk/>.

PART I: THE LEGAL SYSTEM

Discussion

With the whole class, brainstorm the differences between *common law* and *civil law*. Use these questions to generate ideas.

- a Which jurisdictions around the world use which body of law?
- b What do you know about the histories of the two bodies?
- c What is the primary source of laws under each body?
- d Are there any jurisdictions which use a different body of law?

**Possible answers**

- a** Common law is used in England, Wales and Northern Ireland, most of the USA (except Louisiana), most of Canada (except Quebec) and most of the former British Empire / Commonwealth. Civil law is used in most of continental Europe. Much of the rest of the world uses either civil law or a mixture (e.g. civil law with Muslim law, etc.).
- b** Common law originated in England. It was institutionalised by King Henry II, who created a unified system of law which was 'common' to the country. Civil law is based on Roman law, especially Emperor Justinian's *Corpus Juris Civilis*.
- c** Under civil law, they come from legislation. Courts base their decisions on codes and statutes. By contrast, under common law, they are based primarily on customs, usage and court decisions. Of course, some laws do come from legislation, but such laws are seen as incursions into the common law. See http://en.wikipedia.org/wiki/Civil_law.
- d** There are many jurisdictions which use a mixture, including mixtures of common or civil law with Islamic (Sharia) law or customary law. See <http://www.droitcivil.uottawa.ca/world-legal-systems/eng-tableau.html>. You could use a list such as this for a light-hearted quiz: *Which system do they use in Argentina/Hungary/Israel/China (etc.)?*

1 Reading A: Bodies of law

- 1.1** Tell students to read the two excerpts quickly to answer the three questions. Allow one minute for strong classes or two minutes for weaker classes. Check the answers with the whole class. Do not analyse the texts in any detail, although you may decide to ask students what they understand by the term *law of torts* (see Background note in the next column).

**Answers**

- 1 A** international students who will be studying at English universities
B students who are going to study law in a foreign university
- 2 A**
3 B

**Background note**

The *law of torts* is a major branch of common law. *Tort* means 'civil wrong', and covers all cases of damage or injury, either through negligence or through wilful misconduct. It is usually taken to exclude criminal wrongs, although the same event may be covered by both branches (e.g. if somebody crashes into someone else's car, a civil wrong has occurred, but if the driver was drunk at the time, a criminal wrong has also occurred). The law of torts excludes breaches of contract, which are covered by contract law.

- 1.2** Do this quickly with the whole class. Point out that the term *civil law* has two distinct meanings: it contrasts with *common law* in terms of bodies of law, but with *criminal law* within the common-law jurisdictions. You may need to check the pronunciation of *penal* /'pi:nəl/.

**Answers**

- 1 b 2 c 3 a**

- 1.3** Tell students to work alone or in small groups to complete the extract. When most groups have finished, check the answers with the class.

**Answers**

- 1** based on **2** disputes **3** legislation
4 bound by **5** provisions **6** custom
7 precedents **8** rulings **9** codified
10 non-criminal

**Background notes**

- Normative principles* prescribe the way something ought to be, rather than describe the way it actually is.
- If you are *bound* /baʊnd/ by a particular law, you must act according to that law.
- Precedents* /'presɪdənts/ are previous court decisions which are used as the base for later decisions.

- *Restrictive trade practices* are any that interfere with the free market, usually by conspiring with 'competitors' to manipulate prices. Some such practices are endorsed by law (such as the EU's Common Agricultural Policy), but many are illegal.
- Under a property *lease* agreement, a *landlord* (property owner) rents all or part of a property to a tenant.
- A *mortgage* /'mɔ:ɡɪdʒ/ is a loan to buy property, which uses the property as security. If the property owner fails to keep up with regular mortgage repayments, the lender has the right to recover the money loaned by forcing the sale of the property. This is known as a *foreclosure* /fɔ:'kləʊʒəʀ/.

Optional extension**ILEC preparation: Test of Listening Part 4 Photocopiable worksheet 1.3**

If your students are planning to take the ILEC exam, point out that Part 4 of the Test of Listening involves listening to five short extracts, similar to the ones in Exercise 15.1, in order to complete two matching tasks. Photocopiable worksheet 1.3 provides practice of this type of exercise. Of course, this means that students will have listened at least three times (once or twice for Exercise 15.1 and twice for this worksheet), rather than only twice as in the exam, but it will still serve as good practice. Go through the instructions carefully with the class. Point out that it is a good idea to complete Task 1 the first time they listen and Task 2 the second time, but they could try to do both at the same time if they prefer. Make sure they also understand the numbering system, so that, for example, answer 7 refers to Speaker 2 and so on.

Play the recording twice for students to complete the two tasks. Afterwards, allow them to discuss their answers in pairs but not to change their answers. Then go through the answers with the class, focusing on the phrases in the recording that gave them the answers.

Answers

- 1 D** At present, I am working in commercial litigation and am enjoying it.

- 2 B** Two paralegals assist me in my work at my office.
- 3 E** I represent both plaintiffs and defendants in trade-mark, trade-secret and copyright infringement suits.
- 4 A** I advise clients on a regular basis with respect to restrictive trade practices.
- 5 C** I [...] have tried many cases (mostly to successful conclusion).
- 6 D** Our lawyers provide advice on many different legal areas, including [...] corporate tax ...
- 7 A** My clients are primarily individuals.
- 8 C** For bigger cases [...], I [...] can arrange representation under this firm if a client requests it.
- 9 E** I advise domestic and international clients.
- 10 B** I assist clients with all types of real-estate-related litigation [...] My practice also involves all types of real-estate transactions.

Optional extension**Photocopiable worksheet 1.4**

Listening E contains many useful phrases for talking about one's job. Photocopiable worksheet 1.4 highlights these phrases (in bold). Tell students to work in pairs to match the beginnings and endings of each extract. When most groups have finished, go through the answers with the class. Afterwards, students work in pairs to describe their own work (or planned work), using as many of the phrases in bold as possible.

Note that these phrases are all useful for Part 1 of the ILEC Test of Speaking, where candidates have to answer questions about their work or studies.

Answers

- 1 e 2 c 3 d 4 a 5 b 6 g 7 j 8 h**
9 f 10 i 11 m 12 l 13 n 14 o
15 k 16 s 17 p 18 t 19 q 20 r
21 x 22 w 23 y 24 v 25 u

15.2 Tell students to work in small groups.

Experienced lawyers should tell their partners about their current jobs. Law students should talk about their plans. Tell them to use the language from the listening exercise to give them ideas.

Photocopiable worksheet 1.3

Listen to Listening E again and complete the two tasks. You will hear the recording twice.

TASK ONE

For questions 1–5, choose from the list A–E what each lawyer says about his/her work.

- | | |
|--|-------------------------|
| A I advise clients on many types of anti-competitive behaviour. | 1 Speaker 1 ____ |
| B I work as the leader of a team of three people. | 2 Speaker 2 ____ |
| C I've won more court cases than I've lost. | 3 Speaker 3 ____ |
| D I like my current work. | 4 Speaker 4 ____ |
| E I specialise in intellectual property law. | 5 Speaker 5 ____ |

TASK TWO

For questions 6–10, choose from the list A–E what each lawyer says about his/her clients.

- | | |
|---|--------------------------|
| A They tend to be people rather than companies. | 6 Speaker 1 ____ |
| B They come to me to deal with disputes or simply to manage the legal aspects of a sale. | 7 Speaker 2 ____ |
| C They sometimes ask for a service that I can't provide by myself. | 8 Speaker 3 ____ |
| D Some of them need advice on tax issues. | 9 Speaker 4 ____ |
| E Some of them come from other countries. | 10 Speaker 5 ____ |