

Textbook

Paras

English for Law and for Business

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ENGLISH FOR LAW AND FOR BUSINESS

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PREFACE

A knowledge of the English legal system and the associated mechanics of legal reasoning is becoming increasingly important for law students in countries other than the United Kingdom. This book provides an introduction to the English legal system and the means to develop the language and analytical skills which form an essential part of legal study.

The two purposes of this text book are therefore :

1. to provide factual knowledge;
2. to develop the necessary language and analytical skills.

It specifically addresses the needs of overseas students with no previous knowledge of the English legal system or law. These will include :

1. students whose first language is not English, attending a higher education institution overseas whose studies require a background knowledge of the English legal system;
2. overseas students with an Upper – Intermediate level of English, wishing to apply to a British institution of higher education to study law;
3. overseas students with an Intermediate level of English, studying law at pre – degree or undergraduate level at a British institution of higher education;
4. students studying without a teacher.

This book begins by introducing some general features of the English legal system which will provide a background to the following topics. The legal system is the set within the constitutional framework with an examination of important constitutional concepts and with particular reference to the to the constitutional position of the judiciary.

Some chapters are concerned with the institutions of the legal system : source of law, the judiciary and the jury, the courts etc. Discussion is then centred on the subject of law reform. Each topic

is set within its social context by introducing relevant areas of debate and discussion.

It is important to note that, although for the purposes of convenience and structure each topic is dealt with under a separate title, the aim is to produce an overview of the English legal system and an awareness of the overlap between each subject.

Language work develops from the texts which were chosen for their relevance to the study of law and not as springboards for language exercises. Consequently, this book cannot provide comprehensive coverage of English grammar; the exercises provided concentrate on those reading, writing and study skills which are clearly necessary for academic study in the field of law. This book is very useful for law students. Any students who study law, this book will help them understanding English law and English Business.

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CHAPTER 1

PLASTIC MONEY

Plastic money is the name given to all types of plastic card which are used in place of cash. There are different names for these cards, but in general they have two main purposes : to enable people to obtain cash, or to make payments without using cash or cheques.

Banks now make available to their customers a single card which does three things : it guarantees cheques (like a bank card or cheques guarantee cards) ; it obtains cash from automatic teller machines (ATMs); and it pays for goods by electronic funds transfer at point of sales.

A fourth use for plastic money cards is to give customers credit when they purchase goods or services. Credit cards are issued by credit card companies such as Access, Mastercard, Visa, American Express. Some of these are owned by banks. Charge cards (American Express, Dinner's Club) are similar to credit cards except that the holder has to pay the account in full each month and there is also an annual membership fee.

Debit cards are like credit cards except that they are used to debit (substarct) money to the customer's bank account when a purchase is made. An existing credit balance is reduce. But when a credit card is used, a debit balance is increased.

The latest development in Plastic Money is the smart card. This carries a microchip on it with account information on the holder. It can also carry information about previous transactions which can be viewed at enquiry terminals. Clearly such a card could also be used to carry non-banking information, such as medical and other personal details.

- I. Say Whether The Following Statements are **TRUE** or **FALSE** according to the Text.
 1. All plastic money is used for making payments and giving credit.

2. All plastic money is used for making payments or getting cash.
3. It is possible to combine a bank card, cash card and electronic payment card all in one card.
4. All plastic money can be used to obtain cash.
5. Plastic money avoids the use of cash.
6. Credit cards and debits cards may both be used to pay for goods in shops.

II. Question and Answer.

1. What sort of card would a bank account holder use to obtain money when the banks are closed ?
2. What sort of card is used to pay for goods in a supermarket or petrol station without cash, cheque book or credit card ?
3. What sort of card would a shop ask if its customer wanted to pay for goods by cheque ?

III. Discuss The Following Question !

You can Answer This question both from the customers' point of view and the banks' point of view.

To help your discussion, you may use the following table to make true sentences.

		Adjectives			Verbs	Nouns
There	area	Convenient			making	payments
					sending	money
					saving	time
					giving	credit
					reducing	cost
		safe	way	of	transferring	funds
		economic	method		obtaining	cash

1. Which sentences apply to bank ?
2. Which sentences apply to the bank's customers ?



CHAPTER II

OPENING BUSINESS ACCOUNTS

Business accounts are more complicated to open than personal account. Clearly, a business was formed to carry on certain activities. The bank is interested in what kind of business it is. If the business has some legal form such as a limited company, the bank needs to have document to show how it was set up in case there is some restriction on the drawing of the cheques.

There may be many people working in the business and the bank needs to know the names and signatures of the owners of the business and who has the right to sign cheques. Sometimes the company may want two signatures on each cheque.

Banks need information on how limited companies were formed, because the formulation can effect borrowing or the writing of cheques. But they do not want details of how non-limited companies such as partnerships or sole-traders were formed. On the other hand some banks do try to collect as much information about the owners of the business other bank accounts, home ownerships, life insurance polies and pension schemes. This information is given by customers only if they wish. They mat refuse to give it and provide only the information needed to open an account.

Naturally there are many services in addition to those offered to personal customers that can be offered to business. The type of service depends on the size of business and it is the information on the account opening form that helps banks to sell further service to customers later on. So when a firm opens a business account, many banks use the opportunity to collect information about the customers and to find out what services they need.

I. Find One Word from the Reading Passage to Complete each Sentence.

1. At the evening institute several.....are available literary clubs.

2. The journey was very They had to change from taxi to bus and to train several times.
3. The valley was by a glacier many millions of years ago.
4. There are import taxes on goods.
5. There are on carrying guns on aeroplanes.
6. In 1959 he crossed the border without any travel
7. Are you the of this car ?
8. Interest rates business
9. Privatisation means the transfer of assets from state to private
10. He to go into the army and was sent to prison.

II. Choose the correct Alternative Preposition to Complete each Sentence.

1. The bank did not carry out / on my instructions.
2. The carried out / on sending my statement to the wrong address.
3. The document sets out / up details of the agreement.
4. They set out / up a market stall in the main square.
5. I would be interested in / to hear more about the offer.
6. I would be interested in / to hearing more about the offer.

III. Complete These Sentences Below.

1. Sole traders and partnerships are examples of
2. When a company opens a business account, it's good time for the bank to
3. When a company opens a business account the bank needs to know

IV. Question and Answer.

1. What is a sole trader ?
2. What is a partnership ?
3. What is a limited company ?
4. How can the way a company was set up affect the relationship with the bank



CHAPTER III

DOCUMENTARY COLLECTIONS

This method of getting payment is popular because it is very simple and cheap to operate.

The exporters ship the goods and send the shipping documents and draft bill of exchange to their bank. Their bank sends them to a bank in the importers country for collection. That bank tells the importers that the documents have arrived and they may then give an advance (= payment ahead of time) to the exporters for the draft. Meanwhile they negotiate acceptance or payment of the draft with the importers find a bank to accept payment, if it is a tenor draft, or pay it immediately if it is a sight draft.

The bank is not responsible for checking the correctness of the documents. If the bank has provided an advance, it should have a letter of hypothecation from the customer which gives the bank the right to sell the goods if the importers default.

Advantages :

1. it is quicker, simpler and cheaper than a letter of credit.
2. The exporters have control over the goods until the draft is paid or accepted.

Disadvantages :

If the importers default the exporters have the expense of selling the goods, storing them until later or bringing them back to their own country.

I. Are The Following Statements TRUE or FALSE

1. With the documentary collection method, the bank becomes the owner of the goods.
2. The price of the goods is negotiated with the bank.
3. A bill of Exchange may be used.
4. The bank has no protection if the goods are lost or damaged.
5. A bank which has given an advance against negotiation

- of bills has no protection if the importers default.
6. The bank must check the correctness of the shipping documents.
 7. The bank uses the documents to obtain the goods from the part of entry.
 8. A letter of hypothecation is provided by the bank to the exporters.

II. Find The Main Idea.

1. What is the main idea of the second paragraph !
2. What is the main idea of the third paragraph !
3. What is the main idea of the whole text !



CHAPTER IV

CREDIT CARDS

When you buy something you show your credit card to the seller. The seller takes the details of your card; the number, the credit limit and the expiry date. You sign the seller's voucher (making two copies) which he uses to collect payment from the credit card company. For this service the retailer pays a fee (around 4 per cent of the value of the transaction). Each month the credit card company sends the cardholder an account which lists that month's transactions and interest charges.

The advantages of credit cards to the customer are convenience and security. They are convenient because it is possible to buy an air ticket over the telephone by giving the number of your credit card to the travel agent. You don't have to carry so much cash around, so you run less risk of being robbed or mugged. Also if your card is lost or stolen, your account cannot be used by another person, provided that you report the immediately. Another advantage with somecards is that, if you pay your account in full each month, you pay no interest. In effect you have a continuous interest-free loan.

The advantage of credit cards to retailers is that, by making credit easily available, sales can be increased, and because no money changes hands they have added security because there is less cash on the premises. On the other hand, because of the 4 per cent fee the retailer faces increased costs charged by the credit card company. This cost is added to the prices of goods. There is also an administration cost because retailers have to keep records, total up sales vouchers and pay them into their banks.

The cardholder signs three copies of each voucher – one for himself, one for the retailer and one for the bank. The bank credits the retailer's account for the value of the vouchers, debits its credit card company account and sends the vouchers to the credit card company. The system varies from bank to bank. Some banks debit

the commission due on the value of the vouchers to the trader's account

When the credit card company receives the vouchers it pays the banks through the clearing system the value of each retailer's total sales minus the commission. At the time it debits the card holders' accounts and sends them a statement each month.

The numbers of lost and stolen cards are put into a computer network which lists all lost credit cards. These lists are constantly updated and shopkeepers and other retailers on the network can quickly check if a credit card presented by a customer has been stolen or lost, by pressing the card through their computer terminal.

I. MAKE PHRASES BY MATCHING WORDS FROM THE LEFT WITH WORDS FROM THE RIGHT.

Card	terminal
Interest	date
Credit	limit
Expiry	network
Travel	ticket
Air	cost
Computer	holder
Administration	charges
	agent

II. MATCH THE EXPRESSIONS ON THE LEFT WITH THE WORDS OF THE SAME MEANING ON THE RIGHT

Loan (V & N)	provide (V)
Money	purpose
Fee	ATM
Buy (V)	retailer
Shopkeeper	place of business
Bank card	cheque card
Cash machine	purchase (V & N)
Supply (V & N)	cash (V & N)
Premises	credit (V & N)

III. MATCH THE WORDS ON THE LEFT WITH THE WORDS OF OPPOSITE MEANING ON THE RIGHT

Sale (N)	supplier (N)
Debit (N & V)	disadvantage (N)

Reduce (V)	withdraw (V)
Deposit (N & V)	cost (V & N)
Advantage (N)	credit (V & N)
Price (V & N)	increase (V & N)
Customer (N)	purchase (V & N)

IV. PUT THE FOLLOWING SENTENCES IN THE RIGHT ORDER

- At the end of the month the credit card company sends a statement of account to the card holder.
- Cardholder pays by cheque or lets debts grow
- Bank credits the retailer's account for the value of the vouchers and debits the commission
- Retailer completes voucher
- Bank sends vouchers to the credit card company.
- Credit card company pays bank minus commission.
- Retailer sends vouchers to his bank.
- Retailer checks that the signature on voucher is the same as that on the credit card
- Customer hands in credit card
- Credit card company debits cardholder's account
- customer sign voucher and takes goods
- retailer checks card in computer terminal to check that card has not been reported lost or stolen.

V. COMPLETE THE FOLLOWING TABLE OF NOTES

To the customer → advantages

- C.....way to do shopping (no need for cash or chequebook)
- S.....(money can't get stolen or lost)
- I.....free credit

To the seller → advantages

- I.....sales
- Greater.....against robbery/theft

Disadvantages

To the customer

- temptation to O.....and G.....
- higher prices of G.....and S.....

To the seller :

1. I.....administrative costs
2. 4 per cent f.....to the credit card company
3. prices to all customers have to be i.....to pay the a.....costs and commission.



CHAPTER V

CASH CARDS

Cash dispenser, automatic teller machine or cashpoint are some of the names given to machine from which customers can withdraw money from their bank accounts, using their cash cards. They can do this at any branch of their bank and the branches of other banks which are linked to their bank. (Note : In the USA, the teller is a person receiving and handing out money in a bank. This occupation is called cashier in Britain).

With the cash card, customers also receive a PIN or Personal Identification Number which they should memorise. This number is kept secret even from the staff of their branch. When using the dispenser, customers insert the card and key the PIN number in. By following a clear set of instructions which appear on the video screen, they can withdraw cash up to a certain limit, check the balance of their account or deposit money.

Not all banks provide the same automatic teller services. Examples of services available from customers' own branch machines are account information, orders for new cheque books and deposits of cheques and cash. Own-branch machines may also issue mini statement of account, showing deposits just made and the current balance.

I. Answer The Following Questions Below !

1. State the main idea of each paragraph !
2. What are the function of PIN ?
3. Why the customers must keep the PIN ?
4. Can you explain how do you use your cash card ?
5. What are the advantages of using cash card ?

II. Match each of the Words With the Correct Definition !

1. The remaining amount of money in an account
2. Money paid into a bank

3. A record of the financial transactions of a person or business
4. An amount of money in an account
5. Note to a bank asking it to pay money from your account to a named person or business
6. Money in the form of bank notes and coins.
7. An amount of money deducted from an account
8. The removal of money from an account
9. A machine or person who counts out money
10. A container designed to give out money in regulated amounts.
11. A clerk who pays out and receives cash at bank.

dispenser	teller	cashier	withdrawal	balance	deposit
cheque	credit	debit	cash	statement	

III. Supply One word from the passage for each numbered space.

Cash (1).....authomatic (2).....machine or cashpoint are some of the names given to machines from which customers can (3).....money from their bank accounts using their (4).....cards. They can do this at any (5).....of their bank and the btanches of other banks which are linked to their bank. (Note : In the USA, the teller is a person receiving and handing out money in a bank. This occupation is called (6).....in Britain).

With the cash card, customers also receive a (7).....or personal identification number which they should memorize. This number is kept secret even from the staff of their branch. When using the dispenser, customers insert the card and key in the PIN number.

By following a clear set of instructions appearing on the video screen, they can withdraw cash up to a certain (8).....check the (9).....of their account or deposit money.

Not all banks provide the same automatic teller (10).....Examples of services available from customers' own branch machines are (11).....information, orders for new cheque books and (12).....of cheques and cash.

Own-branch machines may also issue mini (13).....of account, showing deposits just made and the (14).....balance.



CHAPTER VI

TRADE DEBT

Most business rely on giving credit to their customers. This is especially true in a free market where there are many suppliers competing to supply one product or service. These business have to fight competition to get sales. If their competitors are providing credit, they have to provide it as well. They may not want to give credit but, when faced with the choice between making a sale with credit and not making a sale, they will prefer to give credit. Competition forces suppliers to provide credit for their customers.

This situation gives rise to the problem of debt collection. A customer might pay a trade debts at the end of the credit period, say one month, or delay payment for as long as possible. Such a situation is harmful to the suppliers. They may find themselves financing their customers production. This is very expensive in times of high interest rates because their customers are using money on which the suppliers have to pay interest. Also the suppliers to employ extra staff to send out second invoices and reminders.

Customers who fail to pay at all can mean disaster for a business and there needs to be some way of avoiding late payers and non-payers. So it's hardly surprising that a whole industry exists to handle these problems of bad debts.

WORDS FORMATION

- I. Complete The List, with the help of a dictionary if necessary :

	VERB	NOUN (AGENT)	NOUN (CONCEPT)
a.	provide	.....	.....
b.	debit	.....	.....
c.	supply	.....	.....
d.	manage	.....	.....
e.	.....	.....	sale

- f. pay late
 g. complete.....
 h. Credit
 i. producer

Use of Words

- II. Complete the sentences below by using the correct form of each word.

- Banks have to make.....for bad debt.
- He failed to.....on time and lost the order.
- Do you think you can.....to come tonight ?
- Some business survive by.....their bills.....
- several.....went bankrupt last year leaving the market comparatively free of.....
- The central bank tried to control inflation by imposing a.....squeeze on the banking system.
- Another day older and deeper in.....!
- He bought it for next to nothing in a
- Great films make the names of their.....

- III. Choose the Best Verb to Complete each Sentence.

- Every business need to / get / create / make / do sales
- We need the money to / pay / fund / finance / cash production.
- Banks are well equipped to / handle / take / solve / settle these problems.
- Giving / presenting / supplying / providing credit is one of the things suppliers do to help sales.
- Companies have to / work / manage / provide / employ extra staff.
- They also have to / struggle / defeat / fight / battle competition.
- Customers not paying their debts can / mean / signify / spell / produce disaster for a business.
- When / meeting / faced / living with the choice, most people would buy the less expensive model.
- There are many brands / vying / struggling / trying / competing to supply our needs in the home.
- Firms exist which specialize in / repaying / collecting / getting / extracting debts.



CHAPTER VII

INTERNATIONAL TRANSFERS

There are four types of international transfer which are available to personal account customers-telegraphic transfers, banker's draft, instant cash transfers and mail transfers. Instant cash transfers are only possible when the sending bank has computer link with the receiving bank. The mail transfer is almost as quick because banks now use swift (society for worldwide Interbank Financial Telecommunication) services where possible, they put a large number of smaller remittances on to one swift transmission.

In the past, telegraphic transfers were the fastest method of sending money from one country to another and the most expensive. If the sending and receiving banks are correspondent banks and have accounts with each other. It is a simple matter for them to adjust these accounts. Otherwise another bank which is a correspondent has to be used, which can act as an intermediary between the remitting and receiving banks.

A cheaper but slower way of sending money is for the customer to buy a banker's draft and post it to the person or bank at the other end. A banker's draft is simply a cheque issued by a bank drawn on itself or on a correspondent bank in another country. It is better than a personal cheque because it has the backing of the issuing bank. Also, it can be made out to pay a named account at a specific bank to give it absolute security.

The Royal Bank of Scotland and The Bank of Santander have led the way in linking themselves to each other by computer. This enables them to offer instant cash transfers between the UK and Spain.

I. Use Suitable Expressions from The Box to Complete the Text.

Banker's drafts
issued

telegraphic transfers
instant cash transfer

remitting
backing

correspondent
transfer
intermediaries

International (1).....of money can be carried out by
(2).....banks which have accounts with each other. A
bank sending a (3).....debts the account which it keeps
of the receiving bank. The receiving bank credits the account it
keeps of the (4).....bank. If the customer wants to
send the transfer to a bank which is not a (5).....of
the sending bank, other banks have to be used as
(6).....
(7).....are as good as money because they have the
(8)..... of a bank. They can be exchanged by banks
which have accounts with each other and eventually presented
to the bank which originally (9).....the draft.
The method of remitting money internationally which involves
the least work is the (10).....which is only possible be-
tween banks which are linked by computer.

II. Match each of them with the expressions of equivalent meaning on the right.

Fastest method
From one country to another
Sending
Act as an intermediary between
Post
The backing
Absolute security
Led the way in
Linking themselves to each other.

joining up
pioneered
complete safety
mail
security
internationally
represent
quickest method
remitting



CHAPTER VIII

FACTORING

Normally, apart from providing credit for consumer goods (such as TVs, washing machines, stereo equipment), companies check the credit worthiness or credit status of their customers. To get this information they can ask their bank or a credit bureau. These have access to data banks of information on large numbers of businesses. They are able to sell information to businesses who want to calculate how much credit to allow a customer.

If the suppliers have decided to sell goods on credit, they believe that the customers are trustworthy and will be able to pay their invoices. They feel sure that they will get paid. But they still have the problem that the customers may delay payment and their money is tied up in unpaid invoices.

Factoring is a way of raising money from unpaid invoices. The factor agrees to buy the invoices of the suppliers at a discount. In this way the suppliers do not have to wait for a long time for payment. Also they do not have to employ staff to recover their debts. The factors make money by getting the full value of the invoices from the customers. Various techniques are used.

I. Complete the following sentences with the words and phrases listed below.

tie up in	information on	apart from	invoices
access to	on credit	at a discount	
consumer goods	allow	recover debts	

1. He bought the wine for the party.....
2.his mortgage, he had no debts.
3. They decided to.....us a month to pay.
4. They used.....their political enemies left behind by the KGB.
5. She had.....her money at all times of the day and night.

6. For a company, factoring can save the expense of raising.....and collecting payment from customers.
7. There was such little demand for houses in the area that they were being sold.....
8. For many years the soviet government supported heavy industry and neglected.....
9. The company's capital was.....unsold goods.
10. The company which owed them money had gone out of business so it was impossible for them to.....their.....

II. Answer the Questions below !

1. What is the main idea of the third paragraph ?
2. Please explain ! what is the meaning of "factoring" ?
3. How to overcome the problem if a debtor fails to pay ?
4. can you mention one of the some forms of full factoring?
5. Give the others meaning of the following words below briefly !
 - poor Risk
 - sales ledger;
 - chasing slow payers;
 - wages and salaries.

III. Complete the sentences, using the phrases.

in advance	base rate	discount	debts
credit management	sales ledger	at a discount	cash flow
with resource	without recourse		

1. When the factoring company buys invoices at its own risk, it does this.....
2. When the factoring company buys invoices at its customer's risk, it does this.....
3. Buying invoices is another way of buying.....
4. The factoring company makes a profit by buying invoices.....
5. The bank's.....is used to calculate different rates for lending.
6.deals with the amount of credit to be given to customers and deciding risks in giving credit.

7. factors can also pay their customers the full value of all their invoices at a fixed time each month. In this way they help to regulate their customers'.....
8. It is also possible for the factors to pay the invoices.....
9. A customer company may decide toall or some of its invoices.
10. Thecontains details of income from sales and unpaid invoices.

IV. Underline The Correct Preposition.

1. I lent her the money / on / with / by / at my own risk.
2. The factors took over / on / up / off administration of the sales ledger.
3. I lent her the money / on / with / by / at a non – recourse basis.
4. I bought the video player / on / with / by / at a big discount.
5. He bought the whisky from the corner shop / on / with / by / at credit.
6. It helps to know / at / in / with / by advance when you are going to get paid.
7. The shop packed the invoice / of / for / on / belonging to the goods in the carton.
8. Some customers go out of business and fail / paying / to pay/ payments of / pay their debts.
9. If you use a factoring service to manage your credit, you run no risk / by / on / of / with not being paid.
10. At/ on / by / in the same time the factor decides which companies their customers may give credit to.



CHAPTER IX

THE BILL OF EXCHANGE – AN INSTRUMENT OF SHORT TERM EXPORT CREDIT

Shipping on open account, documentary collections are the methods by which banks facilitate payment. We could also say that the banks supervise the transfer of money from importers to exporters against the transfer of goods or services from exporters to importers. They can do this and facilitate short term credit (up to six months) at the same time by using a mediaeval Italian invention – The Bill of Exchange.

The Bill of draft may be drawn on the importers or a bank. The drawee (usually the bank which issued the credit) accepts the Bill is guaranteed if it is accepted by a well known bank. This means that the bank will honour it when the Bill matures and take on the risk and work of collecting payment plus the commission from the importers.

The fact that the Bill has a life or tenor of one or more months means that the importers get credit for that period of time. At the same time the exporters may obtain their money by selling the Bill on the discount market. The buyer discount it by paying the face value minus the discount which is the interest on the Bill for the remainder of its life. At maturity, the holder presents the Bill to the accepting house for payment.

The interest is determined partly by the status of the accepting house (bank) and partly on the interest rates prevailing in the discount market at the time. A first class name means a lower rate and a less well known name produces a higher rate. The higher the rate the greater the discount and the less the value of the Bill in the market. Conversely, the better known the accepting house, the finer the rate and the smaller the discount.

However, the exporters have to cost the discount into the total price of the export contract.

Extension of Verbs to other contexts

- I. Complete the sentences using verbs and prepositions from the box.

draw.....on	cost.....into	present.....to
ship.....on	take.....on	pay.....against
		can do.....by

- II. How are the following ideas expressed in the passage
1. They.....the goods.....a sale or return basis.
 2. The building society.....for the house.....security of the title deeds.
 3. People watch satellite TV. They..... this..... fitting receiver dishes to the outside of their houses.
 4. I went to the bank and.....the cheques.....the clerk
 5. In a cif contract, insurance and carriage are.....the price of the goods.
 6. Hea cheque.....the Zamina branch of the National Bank of Menara for 7.000 dinars
 7. You should not.....so much work.

- III. How are the following ideas expressed in the passage ?
1. A newly designed system or product (1 word, paragraph 1)
 2. A bank which agrees to pay Bills of Exchange (3 words, paragraph 1);
 3. A bank which agrees to pay Bills of exchange (2 words, paragraph 3);
 4. Where Bills of Exchange can be bought and sold (2 words, paragraph 3);
 5. The worth of a document stated on the front (2 words, paragraph 3);
 6. Money paid to a bank for a service (1 word, paragraph 2);
 7. The interest on a Bill of Exchange (1 word, paragraph 3);
 8. When a bond, Bill or loan is due to be paid (2 words, paragraph 3)



CHAPTER X

THE PEOPLE'S CONSULTATIVE ASSEMBLY

- I. A nation is an organization of people living together. As an organization, a nation has persons **holding office** in which they have a **substantial** amount of power. Different nations have different systems **with regard to** power. In a totalitarian state, the head of the state has **absolute** power; any fiat he makes is the law of the nation and may not be **revoked**. In a democratic country, there is a **balance** of power. In Indonesia, a country which is based on Pancasila democracy, that power is **balanced** by the 'Majelis Permusyawaratan Rakyat' – the People's Consultative Assembly.
- II. The People's Consultative Assembly exercises the sovereignty of Indonesia which **resides** in the people. The implementation of this **sovereignty** is based on Pancasila democracy – a democracy which emphasized consultation and consensus and the spirit of **brotherhood**. The People's Consultative Assembly is **comprised** of members of Parliament and representatives from the regions and from groups that are decided by legal regulation. At least once in five years, this assembly holds sessions in the capital of the nation for the **purpose** of reviewing national objectives and to confer the responsibility of **realizing** national goals on the President (Mandatory). The People's Consultative Assembly also **provides** the President with the 'Guidelines of State Policy', which is the state policy in outline and often **referred to** as an expression of the **wish** of the people. In performing his duties, the President is guided by the 1945 Constitution which serves as a sound basis for **reaching** national goals. The Assembly is also given express power to amend the Constitution and to elect the President and Vice President of the Republic. All decisions, except Constitutional Amendments, are **supposed to** be by simple majority.

- III. The People's Consultative Assembly formulates the "guidelines of State Policy" with constitute a General Pattern of National Development. The General Pattern of National Development, as mentioned, is a series of Development programs which are **all-embracing**, directed, and integrated, and continuously **carried out**. The **consecutive** series of development programs is intended as a means to the 1945 Constitution, namely to protect the entire Indonesia nation and the entire territory of Indonesia, to promote the general welfare, to foster the intellectual life of the nation, and to contribute to the establishment of a world order which is based on **eternal** peace, freedom and social justice. In carrying out these national objectives, the President is responsible to the People's Consultative Assembly, and is assisted by the Cabinet members or the Ministers, the Supreme Advisory Council and the National Planning Board.
- IV. As stated above, the People's Consultative Assembly determines the 'Guidelines of State Policy'. This policy contains broad outlines of government programs on national development, namely in the economic, political, social, cultural, spiritual, defense and security fields. The following is an **excerpt** from the decree of the People's Consultative Assembly of the Republic of Indonesia No. II/MPR/1983 on the "guidelines of State Policy" in the field of law.

"Development and promotion of the law in the law abiding state of Indonesia is based on Pancasila and the 1945 Constitution. The development and promotion of the law will be aimed at :

- (1) stabilizing the development results already achieved;
 - (2) creating more stable conditions, so that each member of the society may enjoy a situation and climate of order and legal security based on justice;
 - (3) providing more support and security to development efforts in reaching prosperity
- In the development and promotion of the law, efforts will be made to continue to :
- (1) intensify and improve the development of national law in the **framework** of renewal of the law, by codification and unification of the law in particular fields while paying attention to the growing **legal awareness** within society;
 - (2) stabilize the position and role of the law-enforcement bodies

- and conform to their respective functions and **competence**;
- (3) strengthen the attitude and behavior of the law-enforcement personnel and their **capability** to improve the image and prestige of the law enforcement apparatus;
- (4) step up the practice of legal aid and making available legal aid to the less well to do sections of society;
- (5) improve the infrastructure and facilities necessary to support development in the legal field.

Legal guidance and information should be stepped up to achieve a higher degree of awareness of the law, so that each member of society may realize and comprehend his rights and duties as a citizen in the presence of law-enforcement, justice and protection of the dignity and integrity of the human being, order and legal security in accordance with the 1945 Constitution.

In the efforts to develop national law, it will be necessary to continue the steps taken to draw up a law concerning the fundamental rights and duties of citizens in the framework of the practice of Pancasila and the 1945 Constitution."

QUESTION and ANSWER

1. What is a nation ?
2. In a Country based on Pancasila, how is power balanced between the legislative and executive bodies in the government ?
3. What is the President responsible for ?
4. In outline form, what does the 'Guidelines of State Policy's comprise ?
5. Who determines the Guidelines of State Policy ?
6. What are the national objectives as mentioned in the Preamble to the 1945 Constitution ?
7. How do members of the People's Consultative Assembly reach a decision ?
8. Why is the 'Guidelines of State Policy' often referred to as the wish of the people ?
9. Paragraph III states that the President is responsible to the MPR for achieving national objectives. What is this an indication of ?
10. What are the objectives in the development and promotion of the law as stated in the GBHN ?
11. Give an example of a society that has legal security based on justice.



CHAPTER XI

HOME BANKING

Home banking (sometimes called remote banking) depends on electronics and a good telephone system.

The commonest form of remote banking is by simple use of the telephone. Customers can telephone their banks and ask for various transactions to be carried out. Example are transferring money from one account to another, cancelling a standing order and stopping a cheque. Sometimes the bank asks for confirmation in writing but carries out the transaction immediately.

Some banks have made it possible for their customers to carry out certain transactions over the telephone, by talking to a computer which understands spoken words.

But the method of remote banking which has attracted most attention recently uses a television screen or computer monitor so that the account holder can actually see a statement of account at home. To use a TV screen one needs a special adaptor which has a keyboard and connector to the television and telephone socket. When using a computer, one needs a modem (modulator demodulator) which effectively allows your computer to talk to the bank's computer via the telephone wires.

It is possible to call up details of standing orders, direct debits and statements of account over the previous three months. Also you can order new cheque books and printed statements, while one bank even allows you to open a new account.

When a customer speaks to the bank over the telephone, until the bank staff learn to recognise the caller's voice, they might ask for some information which only the customer could know.

In addition to the account number they might ask for the customer's mother's maiden name, or some other personal detail. With TV or personal computer banking, the customer has to use a PIN number. This has to be changed periodically for additional security. If another person obtains the number, the remote banking facility for that account can be frozen, until a new PIN is issued.

- I. Complete the Sentences, using the Best Choice of Word
1. When using your computer for home banking you should take/ bring/ make into account the increased cost of your telephone bill.
 2. Banks have spent a lot of money with/ in/ on small business advice departments
 3. She spent L 1000 a week in / on / by clothes
 4. They set up / made up / fixed up a new company in Barokonia
 5. She went under / through / to a lot of trouble to entertain her boss
 6. The project depends / depends to / depends on whether we can get a license to build a factory
 7. Another firm will carry out/over / with the construction (= do the work)
 8. The manager decided to talk over / to / by the customers himself
 9. The clerk called over / up / on the customer's account at the terminal
 10. They worked very hard and built up / constructed / formed their business

II. PARTICLES – PREPOSITIONS

1. Banks market the idea that people can buy financial security by/ for / on themselves
2. If you shop carefully you can get good value for / with / by your money
3. Most of us face the risk of loss / the loss risk / the losing risk
4. Banks offer advice on / for / from tax
5. There is also the possibility to change / of changing / in changing over to a private pension plan
6. Banks try to make it possible for their customers to deal in / to deal with / to deal all their financial problems in one place.
7. As a sole agent they have the responsibility for sales / to sell / of selling in the Ukraine
8. There is an allowance to / of / for dependants
9. A large part of the agent's income comes from his commission from / with / on sales
10. Sometimes they grant loans to people who can't afford paying / pay / to pay them back.



CHAPTER XII

ELECTRONIC FUNDS TRANSFER AT POINT OF SALE = EFTPOS

EFTPOS is exactly what it stands for: Electronic Funds Transfer at Point of Sale. The cost of goods is transferred electronically at the point of sale from the customer's bank to the seller's bank. The point of sale is at the supermarket or petrol station where customers use their plastic cards to pay for goods. The sales person swiped (passes) the card through a card reader which reads the information on the magnetic strip on the back of the card.

The card reader enables the cash terminal computer to send the customer's details via telephone wires to a central switch. The card details are encoded for security. The central switch selects the correct bank and sends the card details to the customer's bank's processor which checks the following information:

Authorisation checklist;

1. card issue number
2. has the card been reported stolen?
3. the expiry date of the card
4. the value of the purchase
5. is there enough money in the customer's account?
6. the retailer's identification number
7. the retailer's terminal number

If everything is in order, the customer's bank's processor sends a coded authorisation to the central switch which sends the message to the shop. The shop's terminal confirms the payment, issues a receipt for the customer to sign and the customer can take the good away. At the same time the central switch transmits the value of the transaction to the shop's bank. If the payment is not authorised the customer has to find another way to pay for the goods.

After three days the customer's bank debits the value of the purchase to his or her account. Meanwhile, also after three days, the shop's bank credits the shop's account with the value of the goods.

I. Complete The Sentences Using The Correct Verb From The Box

Authorise	Check	Collect	Confirm	Encode
Guarantee	Report	Swipe	Select	Transfer

- a. The retailer.....the card through a card reader at a terminal.
- b. The information is.....before being sent via the telephone system to ensure its security
- c. The central switch.....the right bank
- d. After being paid by credit card, the retailer has topayment from the credit card company.
- e. The different systems have to..... payment to the seller.
- f. The cardholder's bank's computer.....the information it receives.
- g. If everything is acceptable the computer..... payment to the central switch
- h. The display on the terminal.....payment
- i. A cardholder should.....the lost of a card to the company immediately
- j. The manager of my bank has been..... to another branch

II. Match The Adjectives on The Left With The Noun on The Right

ADJECTIVES

magnetic
plastic
interest - free
automatic
central

NOUNS

teller
processor
strip
loan
money

III. HOW ARE THE FOLLOWING IDEAS EXPRESSED IN THE TEXT?

- a. Place where you pay for the goods, or check - out till (3 words)

.....

- b. Pass the customer's card through the terminal reader (1 word)
.....
- c. Time when a card becomes no longer valid (2 words)
.....
- d. Official permission (1 word)
.....
- e. Expressed in a secret language (1 word)
.....



CHAPTER XIII

CORPORATE BANKING SERVICES

So far, we have been thinking about different banking service that could be offered to potensial customers. These services may be mentioned in a bank's publicity material or advertising to attract customers into the bank. Then, in the previous section, there was an opportunity to discuss which personal account services were most important or most useful in your own country.

While we may have a strong opinion about what services we ought to concentrate on offering, it would be wise to enlist the aid of marketing research experts to find out what people really want. After all, finding out what people want and providing it at the time, place and price they can afford – is what marketing is all about. Otherwise we are going by guess work.

In fact some banks do carry out some marketing reseaech themselves, and one method is by asking questions on the account opening form when a customer has decided to open an account. In this way, the bank can find out a great deal about what their customer is likely to need.

So it would repay us to study the form of a leading commercial bank and to analyse the the thinking behind it, though our main purpose here is to understand the language and leave the analysis to the specialists.

Marketing reaseach :

Finding out what people want and the best way of satisfying those needs through production and distribution.

Market research :

Examining the possible sales of a service before it has been put on the market, or the reasons for its performance after it has been launched.

Using The Right Verb

I. Complete the Sentences with appropriate verbs or verbal compounds.

1. The manager decided that the best way to.....people the bank was to put the best-looking men and women from his staff in the banking hall.
2. It seemed as though the bank was.....extra services.....the customers.
3. The director didn't like this policy and said they should.....offering only banking services.
4. They had an argument but in the end agreed tothe.....of a marketing expert.
5. He told them that the banks should.....what potential customers needed.
6. Instead of taking a map he.....by.....and they soon got lost.

II. Improve the Following Sentences by replacing the underlined words with adjective-noun combinations from the passage.

1. Marketing means finding out what people really need and then offering it to them, rather than choosing from a list of services such as payment, cheque books, financial advice, factoring, export finance and so on (3 words, paragraph one).
2. The question she asked was how could she get her message across to those people who were likely to be needing her services ? (2 words, paragraph one)
3. It does help if you have effective leaflets and newspaper, TV and radio advertisements persuading people to buy what you are selling. (4 words, paragraph one)
4. All business planning to sell new products or services engage in finding out what people want and the best way of satisfying those needs through production and distribution (2 words, paragraph two);
5. Using people who are very good at what they do can be dangerous. Their advice is useful but should be taken with caution (1 word, paragraph two);
6. The first direct leaflet is a good example of promotional printed material (2 words)



CHAPTER XIV

THE BEGINNING OF LAW

As far as we know, the law began with the family. The father was the head of the family, and the orders he gave, the rules of conduct made by him, were the law.

As families expanded and the members went out on their own, the family group became known as a clan, subject to the rule of the man who was selected to head it. Eventually, clans in the same area joined forces and became members of a tribe. They chose a chief to head this larger group.

The chief of the tribe made rules or laws to govern the dealings of one clan with another, but the head of the clan still made the laws for the family group. If a tribal law was broken, the chief decided the guilt or innocence of the person accused and fixed the punishment. The head of a clan judged and determined the punishment for those who broke the rules within his family group.

Those clan and tribal laws were not written down for countless centuries – we don't know how many -, but they were handed down by word of mouth from one generation to another. Some of them are actually still in force today. For example, a man who was a member of one clan could not marry a woman from the same clan; he had to choose his bride from another clan of the same tribe.

In ancient times, there were few property rights. It was considered that God owned all the land and that the members of any tribe who settled on the land could use it. Farming, hunting and fishing were the main ways of making a living then, and the tribes moved around a great deal. After a tract of land had been worked for a few generations, the tribe went on to look for richer soil and settled somewhere else. Wars of subjugation were avoided whenever possible.

When a tribe moved, the laws of the old land became the laws of the new land. These laws were changed or new laws were made only as the wanderers found new customs in new areas – or as the traits of the people changed. Still, the laws were handed down by

word of mouth and not written down because people had not yet invented writing, even on stone tablets.

In Indonesia, laws of the land date back to the Dutch colonial rule. It was the Dutch who introduced European laws to the country, then known as the Netherlands East Indies. As early as 1824, there was a concept of separate law made by the Dutch government. The population was then divided into three groups as far as laws were concerned, namely; Europeans, natives and foreign orientals. Netherlanders living in the Indies were subject to the laws for Europeans; the **indigenous** inhabitants were subject to the laws for natives, whereas the foreign Asians were not subject to either of the above. They were subject to a separate ordinance.

During the Dutch colonial rule, the laws for the natives were **primarily** the **adat** laws. Snouck Hurgronje, the Dutch Indonesian-Arabic scholar and statesman of the nineteenth century, first pointed out that, since customary practices among most of the peoples of the **archipelago** were **dominated** by the Arabic word **adat**, or custom, **adat** also had legal connotations – so, **adat** became 'adatrecht' in Dutch or '**adat** law' in English.

Many historians stated that the traits or customs of the people were the basis of adat law. Though deeply rooted in traditional culture, adat is an embodiment of the traditional values and morals as well as an expression of universal values. Today adat law still regulates such aspects of life as marriage, birth, death, inheritance, and divorce.

When speaking of the **origin** of laws in Indonesia, one must go back to the period when the Indonesia archipelago was under Dutch colonial rule. The Dutch brought with them the European system of government and other aspects of life, and European law one of them. As has been previously mentioned, there were separate laws in the country under the colonial government in 1826. Different groups of people were subject to different laws. However, by 1848, there was a start towards **codification** of the law for the population along European lines by **enacting** a Police and Procedure Code for Natives and Foreign Orientals in 1872. Thus, even beginning from the Dutch colonial rule, the nature of the law to be **applied** to each group of the different groups of peoples living in the country was one of the most difficult policy problems in the Netherlands east Indies.

Another factors which is of great **significance** in the study of the origin of law in Indonesia is the existence of the different ethnic groups in the country. The **various** ethnic groups have different cul-

tural backgrounds, values and customs with regard to many aspects of communal life. For instance, concerning marriage, the Minangkabau follow the matrilineal system, while the Batak adopt the patrilineal system. In the Batak clan system, members of the clan should assist one another in marriage ceremonies, and a certain type of **hierarchy** in the marriage organization, such as who should be the speaker, is decided by custom. The bilateral system is common to most of the regions of Indonesia, including Java and Madura, east Sumatra, Riau, Aceh, etc.

I. ANSWER THE QUESTIONS BELOW !

1. How did law begin ?
2. What was a clan ? A Tribe ?
3. Who made rules or laws with the clans ?
4. Who decided punishment for the guilty in a tribe society ?
5. How were the clan and tribal laws handed down ?
6. Can you name some clan or tribal laws that are in force today ?
7. Do you know of any marriage law that is handed down by word of mouth ?
8. In the ancient times, whose property was land considered to be ?
9. What were the main ways of making a living in the the old days ?
10. Why were laws handed down by word of mouth ?
11. Who introduced European law to our country ?
12. How many groups was the population of the Indonesian archipelago divided into at that time ?
13. What law was each of these groups subject to ?
14. During the Dutch colonial rule, why did the word *adat* have legal connotations ?
15. Name some adat laws that still regulate marriage, birth, death, divorce and inheritance
16. Do you think the Dutch laws used today are always appropriate for conditions existing now ?
Can you name some Dutch laws used today which should be changed to fit present situations ?
17. Paragraph IX states that adat is an embodiment of traditional values and morals. For example, the breaking of the egg in the Javanese marriage ceremony by the bridegroom and the cleaning of his feet by the bride is a sym-

bol of a woman's submission to man. Can you name other adat ceremonies that have such traditional values?

18. Paragraph XI states that the different ethnic groups have distinct culture, and as you know, the traditional culture is the root of the adat law. What is the most striking adat law in your ethnic group which comes from the traditional culture?

II. Fill the blank with the word given in the list below !

trait	assist	indigenous
root	selected	hirarchy
subject to	tort	enactment

- Mr. Robert read theof the regulations in the office to all his employees.
- The man did something legally wrong; he brought the.....to court to make up his wrongful act.
- The lecturer.....the best student to lead the discussion in front of the class.
- The client has keep religious.....His late father was a religoius teacher in the village.
- The students who fail the test are.....a certain regulation. They will take a make-up test.
- In the business organization, he is the man at the top of the.....
- At the law firm several men.....the director of the institution
- According to localthe man has committed a serious crime.

III. Fill in the blanks with words given in the list below !

subject to	selected	conduct
orders	expands	assist
hierarchy	apply	invent
by word of mouth		

According to the.....of the institution Mr. Abdullah Eteng is the man at the top. The five men who.....him are his deputies. These deputies help Mr. Abdullah Eteng give.....to employ-

ees at lower levels. The deputies give instruction.....and sometimes they write down rules for the employees. One of the rules states that employees should come to work on time. Everyone is.....this particular rule. There are no exceptions. As the institution.....the number of employees also increases. Again Mr. Abdullah Eteng has to make rules of.....for the different personnel. These rules are, among others : workers may not smoke in an air - conditioned room ; they may not fall asleep while on duty, etc. Abdullah Eteng did notthese rules. He merely copied them from other institutions. These institutions.....the same rules for their employees. However, Mr. Eteng did not just use every rule that is good for other offices. He.....the ones that best fit his workers.

IV. Vocabulary Focus

orders (n) – direction ; rules; commands = perintah

The manager of the firm gave **orders** to his subordinates; no employees should come late

conduct (n) – manner; behavior = perilaku; sikap

speaking in a low; soft voice is good **conduct** in a Javanese society.

expand (v) – extend; spread = berkembang

The use of computers has **expanded** to many fields such as medicine, law, and education.

be subject to (v) - obedient to = tunduk ; patuh kepada

The people of Jakarta are subject to laws of the special district of Jakarta.

select (v) – choose; pick out = memilih

the manager of the firm **selected** a brilliant economist to head the accounting departement.

govern (v) – rule; give directions = memerintah; mengatur

there are certain rules in the office that **govern** the workers' behavior while at work

innocence (n) – freedom from guilt; guiltlessness = keadaan tidak bersalah

the brilliant lawyer proved the man's **innocence** in front of the members of the jury.

accuse (v) – say that somebody has done something wrong = menuduh

The police **accused** him of stealing money from the bank.

by word of mouth (phrase) – oral; not written = lisan
the legend of "Roro Jonggrang" was handed down to the children **by word of mouth**.

in force (phrase) – in power = berlaku
the old regulation in the office is not **in force**, so many workers come in very late.

ancient (adj) – old ; belonging to times long past = kuno; purba kala

ancient people lived by the laws of nature; the strong lived and the weak died.

subjugation (n) conquest = penaklukan ; penundukan
Gajah Mada is an Indonesian historical figure; he fought many wars of **subjugation** to unite the country.

trait (n) – quality; characteristic = ciri; sifat
two **traits** of the Indonesian are friendliness and a refined manner

invent (v) – discover = menemukan
people who **invent** new products or processes should register them with the department of patents.

indigenous (adj) – native = pribumi
"temu lawak" is an **indigenous** rhizome plant of Indonesia.

primarily (adv) – originally; mainly = utama; pokok
most of Javanese legends such as the 'Ramayana' and 'Mahabharata' are **primarily** from Hindu culture.

dominate (v) have influence over = mempengaruhi; menguasai
the strong **dominate** the weak.

consequence (n) – result; outcome = akibat

people are buying more things and in **consequence**, prices are increasing

root (v) – implanted; instilled = berakar

Pancasila, the state ideology, is deeply **rooted** in Indonesian society.

embodiment (n) – giving from or body to = spirit; wujud
Balinese traditional ceremonies are an **embodiment** of religious and esthetic values

origin (n) – beginning = asal

Bahasa Melayu is the **origin** of the Indonesian language; it has spread from Sumatra to all parts of Indonesia.

previously (adv) – earlier in order or time = sebelumnya

The speaker is now talking on the subject of tort **previously**, he talked about ordinances.

codification (n) – collection of laws arranged in a system = penyusunan undang-undang

There is a system of **codification** of organizational rules which employees have to follow

enact (v) – make (by law); decree = menjadikan undang-undang; mengesahkan

A law has been **enacted** requiring every Indonesian citizen to have an identification card

significance (n) – importance; deep meaning = makna; dampak
there is great **significance** is asking the man about his educational background in front of the jury

with regard to (phrase) – concerning; pertaining to = sehubungan dengan; berkaitan dengan

the members of the jury are discussing about the client **with regard to** his educational background.

hierarchy (n) – arrangement of authority from lowest to highest = jenjang kekuasaan

according to the **hierarchy** of the enterprise, Mr. Lobo is the third man in the organization.

statutory law – hukum menurut undang- undang
tort – kesalahan ; kerugian
ordinance – peraturan
local ordinance – peraturan setempat
enactment – undang-undang; pengumuman ; pembuatan
codification – penyusunan undang-undang
code – sandi



CHAPTER XV

THE CHARACTERISTICS OF ENGLISH LAW

The United Kingdom does not have a single legal system. The law in Scotland was influenced by Roman law and is different from the law of English, Wales and Northern Ireland.

The English legal system is centralised through a court structure which is common to the whole country. It is hierarchical with the higher courts and judges having more authority than the lower ones. Some important characteristic of English law are :

1. English law is based on the common law tradition. By this we mean a system of judges made law which has continuously developed over the years through the decisions of judges in the cases brought before them. These judicial precedents are an important source of law in the English legal system. Common law systems are different from the civil law systems of Western Europe and Latin America. In these countries the law has been codified or systematically collected to form a consistent body of legal rules.
2. English judges have an important role in developing case law and stating the meaning of Acts of Parliament.
3. The judges are independent of the government and the people appearing before them. This allows them to make impartial decisions.
4. Court procedure is accusatorial. This means that judges do not investigate the cases before them but reach a decision based only on the evidence presented to them by the parties to the dispute. This is called the adversarial system of justice. It can be compared to the inquisitorial procedure of some other European systems where it is the function of the judges to investigate the case and to collect evidence.

I. Answer The Questions Below !

1. Find out whether the legal system in your country is adversarial or inquisitorial ?

.....
.....

2. Would a codified system of law make the law more certain or flexible ?

.....
.....

3. Why is it important for judges to be independent ?

.....
.....

4. What is the disadvantage of an adversarial system of justice ?

.....
.....

II. State Whether The Following Statements Are True or False According To The Text.

1. The law in Scotland is the same as the law in England. ()
2. English law has evolved gradually ()
3. Most of English law has been codified ()
4. The common law was developed by the judges ()
5. The judiciary is not independent of the government ()
6. The court structure of the English legal system is the same throughout the country ()
7. All the courts in the system are of equal authority. ()
8. English judges collect evidence in the cases before them. ()

III. Give Explanation in English For The following Terms, Then, Make A Sentence For Each To Support Your Explanation !

Example :

Evolve = develop gradually

Banking in Indonesia has developed gradually.

1. Independent =
2. Centralised =
3. Precedent =
4. Impartial =
5. Hierarchical =



CHAPTER XVI

DOCUMENTARY LETTER OF CREDIT

This is the commonest method of payment for trade between countries. It is operated by the banks and money is transferred from the buyer to the seller through the banking system.

The exporters (the sellers) present all the shipping documents (which prove that they have shipped the goods exactly in accordance with the letter of credit) together with a Bill of Exchange to a bank representing the importer.

This is the issuing bank, so called because it issues the credit on behalf of the importer. If all the documents are correct, the bank representing the importer makes immediate payment or accepts the bill which means that it will pay later. It then forwards the shipping documents to the importers who can use them to obtain the goods at the place where the goods enter their country (port, airport or border crossing).

The bill of exchange is a credit instrument which orders the issuing bank to pay a certain sum of money at 30, 60, 90 or 180 days after sight. In accepting the bill, provided the shipping documents are correct, the bank representing the importers simply puts its name and signature on the face of the bill and returns it to the exporters. By doing this, it agrees to pay the bill when presented in one, two, three or six months' time. The number of days, or tenor of the bill, is the period of credit that has been agreed between the exporter and the importer. If no credit has been agreed the exporters' bank draws a sight draft which is, in effect, an order to the importer's bank to pay immediately or on sight of the documents and bill.

If there is a period of credit, the letter of credit is based on D/A terms (documents against acceptance). If there is no period of credit the letter of credit is based on D/P terms (documents against payment).

I. Match the terms a-e with their correct definitions.

- | | |
|-----------------------|---------------------------------|
| a. shipping documents | A. documents against payment |
| b. the tenor | B. documents against acceptance |

- c. a sight draft
- d. D/A terms
- e. D/P terms

- C. An order to pay immediately
- D. The number of days of the bill
- E. papers which prove that the exporters have shipped the goods.

II. Without referring to the text, supply one suitable word for each numbered space.

This is the commonest method of payment for (1).....between countries. It is operated by the banks and money is (2).....from the buyer to the seller through the banking system. The exporters (the sellers) (3).....all the shipping (4).....(which prove that they have (5).....the goods exactly in accordance with the (6).....of (credit) together with a bill of exchange to a bank representing the importer.

This is the (7).....bank, so called, because it issues the credit on (8).....of the importers. If all the documents are correct, as (9).....on the letter of credit, the bank representing the (10).....makes immediate payment or (11).....a bill of exchange which means that it will pay to the importers who can use them to (13).....the goods at the place where the goods enter their country (port, airport or border (14).....). The bill of exchange is a (15).....instrument which orders the bank acting for the (16).....or its agent to pay a certain sum of money at 30, 60, 90 or 180 days after (17).....(depending on the credit period agreed by the importers and (18).....). Provided the shipping documents are (19).....as started in the documentary credit, and if it is a (20).....Bill (i.e. one giving a credit period) the importers' bank (21).....it by signing it. This means the bank will (22).....it at the end of the period given on the (23).....and because the bank is well-known, the bill has a (24).....and may be bought and sold on the (25).....for bills. In this way the exporters (26).....their money at the same time as giving (27).....to their customers.

If on the other hand, credit has (28).....been agreed, the exporters send a (29).....draft to the bank representing the importers, which pays it (30).....(providing the shipping documents agree with the letter of credit).



CHAPTER XVII

SPECIAL REMITTANCES

Sometimes a customer might want to send money quickly. There are various possibilities – postal, telephoned and telegraphic transfers. The speed of postal transfers depends on the efficiency of the Post Office. In the United Kingdom (UK) a letter posted first class should arrive the following morning. The paying bank could send a credit voucher direct to the receiving bank by post and the receiving bank credits the amount to the account on the day it receives the voucher.

A telegraphic transfer will normally be credited by the receiving bank on the same day it is sent. The sending bank has to use a code and allows a maximum amount to be sent, say 5.000 pound sterling. Only the manager of the sending bank can provide the code word and likewise only the manager of the receiving bank can decode the telegram before a clerk can process it.

Note that both international postal transfers, referred to in banks as mail transfers, and telegraphic transfers are sent by SWIFT (The Society for Worldwide Interbank Financial Telecommunications).

However, postal and telegraphic services may be used for countries where SWIFT Services are not available.

Banks also send money over the telephone between branches. Again, codewords are used to provide security. There is also an upward limit on such payment. Larger amounts have to be routed through the head office. But sums over 5.000 pound sterling are sent by CHAPS (The Clearing House Automated Payment System).

I. Complete The Following Sentences.

- a. The speed of postal transfers depend on the

- b. A telegraphic transfer will normally be credited by the receiving bank.....
- c. Only the manager of the sending bank can.....

II. Complete The Passage With One Appropriate Word For Each Numbered Space.

Sometimes a customer might want to (1).....money quickly. There are various possibilities (2).....(mail), telephoned and telegraphic transfers. The (3).....of postal transfers depends on the (4).....of the Post Office. In the (5).....a letter posted first class should (6).....the following morning. The paying bank (7).....send a credit voucher direct to the (8).....bank by post and the receiving (9).....credits the amount to the account (10).....the day it receives the voucher.

A (11).....transfer will normally be credited to the (12)..... Bank on the same day it (13).....sent. The sending bank has to (14).....a code and allows a maximum (15).....to be sent, say 5.000 pound sterling. Only the (16).....of the sending bank can provide the (17).....and likewise only the manager of the receiving (18).....can decode the telegram before a (19).....can process it.

Note that both (20).....postal transfers, referred to in banks as mail (21).....and telegraphic transfers are sent by (22).....

However, postal and (23).....services may be used for countries (24).....SWIFT Services are not available.

Banks (25).....send money over the telephone between (26).....again, codewords are used to provide (27).....There is also an upward limit (28).....such payments. Larger amounts have to be (29).....through the head office. But sums (30).....5.000 pound sterling are sent by CHAPS.



CHAPTER XVIII

PRIVATE INTERNATIONAL LAW

In discussing the role of international law in business, courts consider two different kinds of international law. As the text discusses above, public international law regulates the way that nations treat each other and each other's nationals. The second kind, of more immediate importance to specific business transactions, is private international law. Private international law is really another form of national law, this time dealing not with movement across borders, but with the effect of another nation's laws in its own courts.

In a contract dispute between an American seller and a Japanese buyer, whose law governs the transaction? Will a Swedish court enforce a judgment against a Swedish company obtained in an American court? Although the laws of the nation in which a court is resolving the problem may govern the result, the general principles of comity and reciprocity will influence the outcome of the case. The following case is the classic explanation of the concept of comity. Note carefully how it differs from the concept of reciprocity.

HILTON v. GUYOT

159 U.S. 113 (1895)

Supreme Court of the United States

FACTS:

The representatives of a French firm brought an action in a federal district court against two U.S. partners to collect on a judgment obtained in France. Nearly \$200,000 of the French judgment remained unpaid. In the federal court, the defendants denied they owed the money, and claimed that the French judgment against them had been procured by fraud. The plaintiffs prevailed in the lower courts, and the defendants appealed to the Supreme Court.

ISSUE:

Are there any grounds on which the defendants may challenge the French judgment?

RESULT:

Yes. Decision reversed and remanded for a new trial.

REASONS:

International law, in its widest and most comprehensive sense, including not only questions of right between nations, governed by what has been appropriately called the "law of nations," but also questions arising under what is usually called "private international law," or the "conflicts of laws," and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominions of another nation, is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man, duly submitted to their determination...

No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory... shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call "the comity of nations." Although the phrase has been often criticised, no satisfactory substitute has been suggested.

"Comity," in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws...

In view of all the authorities upon the subject, and of the trend of judicial opinion in this country and in England..., we are satisfied that where there has been an opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a sys-

tem of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of the nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact. The defendants, therefore, cannot be permitted, upon that general ground, to contest the validity or the effect of the judgment sued on.

[The court then examined the effect that an American judgment would have in a French court, concluding that a French court would re-view the merits of a case before giving effect to a judgment rendered in a foreign country.] . . . The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or in any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are prima facie evidence only of the justice of the plaintiffs claim.

In holding such a judgment, for want of reciprocity, not to be conclusive evidence of the merits of the claim, we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another, but upon the broad ground that international law is founded upon mutuality and reciprocity, and that by the principles of international law recognized in most civilized nations, and by the comity of our own country, which it is our judicial duty to know and to declare, the judgment is not entitled to be considered conclusive.



CHAPTER XIX

CONFLICTS OF LAW

A question that appears whenever a business transaction crosses a territorial border is choice of law. On a basic level, the problem exists from state to state: If a sales representative from Missouri has a car accident in Iowa, which state's law governs a subsequent lawsuit? Should it matter whether the victim sues in Missouri or in Iowa? Choice of law is a more complex issue from one nation to another. If a business in Georgia ships a defective product to England where that product injures a consumer, what law governs any subsequent action? Should it matter whether the lawsuit takes place in Georgia or in England? Should it matter if the accident takes place in Hungary, or Singapore, instead of England? Politics, prejudice, and public policy interests may lead to inconsistent results based on what other nations are involved.

The study of conflicts of law has long been a legal theoretician's delight, and thus a manager's nightmare. There are no universal rules for choosing the appropriate law to govern a dispute; rather, different states and countries employ a variety of techniques. These techniques have changed over time.

Historically, choice of law questions have had a territorial foundation. A dispute over property, for example, was generally governed by the law of the place of the property. A tort suit was generally governed by the law of the place where the tort occurred. A contract suit might have been governed by the law of the place where parties concluded the contract, or by the law of the place of performance.

In the 1960s these territorial rules began to fall apart, replaced by several approaches, such as "most significant contacts," "interest analysis," "the better rule," and "the center of gravity" approach. Some of the reasons for the changes may be illustrated by the following case.

BABCOCK v. JACKSON
12 N.Y.2d 473 (1963)
New York Court of Appeals

FACTS:

Babcock and Jackson were both residents of New York who left Rochester on an automobile excursion to Canada. While in Ontario, Jackson lost control of the car and crashed it into a stone wall, injuring Babcock. Babcock sued in New York, alleging that Jackson was negligent in operating the vehicle. Jackson claimed that Ontario law, as that of the place of the tort, should govern the suit.

Ontario at that time had a "guest statute," providing that "the owner or driver of a motor vehicle ... is not liable for any loss or damages resulting from bodily injury to, or the death of, any person being carried in ... the motor vehicle."

The trial court agreed with Jackson and dismissed the suit. The Appellate Division affirmed the dismissal. Babcock appealed to the Court of Appeals, the highest state court in New York.

ISSUE:

Should the court apply Ontario law to the lawsuit in New York?

RESULT:

No. Jackson's motion to dismiss the complaint was denied.

REASONS:

The question presented is simply drawn. Shall the law of the place of the tort *invariably* govern the availability of relief for the tort or shall the applicable choice of law rule also reflect a consideration of other factors which are relevant to the purposes served by the enforcement or denial of the remedy?

The traditional choice of law rule ... has been that the substantive rights and liabilities arising out of a tortious occurrence are determinable by the law of the place of the tort. ... It had its conceptual foundation in the vested rights doctrine, namely that a right to recover for a foreign tort owes its cre-

ation to the law of the jurisdiction where the injury occurred and depends for its existence and extent solely on such law. ...

[T]he vested rights doctrine has long since been discredited because it fails to take account of underlying policy considerations in evaluating the significance to be ascribed to the circumstance that an act had a foreign situs in determining the rights and liabilities which arise out of that act. ... More particularly, as applied to torts, the theory ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues. It is for this very reason that, despite the advantages of certainty, ease of application and predictability which it affords ... there has in recent years been increasing criticism of the traditional rule by commentators and a judicial trend toward its abandonment or modification.

Significantly, it was dissatisfaction with "the mechanical formulae of conflicts of law" ... which led to judicial departure from similarly inflexible choice of law rules in the field of contracts, grounded, like the torts rule, on the vested rights doctrine. According to those traditional rules, matters bearing upon the execution, interpretation, and validity of a contract were determinable by the

internal law of the place where the contract was made, while matters connected with their performance were regulated by the internal law of the place where the contract was to be performed. ...

... The "center of gravity" or "grouping of contacts" doctrine adopted by this court in conflicts cases involving contracts impresses us as likewise affording the appropriate approach for accommodating the competing interests in tort cases with multi-State contacts. Justice, fairness and "the best practical result" ... may best be achieved by giving controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation. The merit of such a rule is that "it gives to the place 'having the most interest in the problem' paramount control over the legal issues arising out of a particular factual context" and thereby allows the forum to apply "the policy of the jurisdiction 'most intimately concerned with the outcome of [the] particular litigation.'" ...

Comparison of the relative "contacts" and "interests" of New York and Ontario in this litigation, vis-a-vis the issue here

presented, makes it clear that the concern of New York is unquestionably the greater and more direct and that the interest of Ontario is at best minimal. The present action involves injuries sustained by a New York guest as the result of the negligence of a New York host in the operation of an automobile, garaged, licensed and undoubtedly insured in New York, in the course of a weekend journey which began and was to end there. In sharp contrast, Ontario's sole relationship with the occurrence is the purely adventitious circumstance that the accident occurred there.

New York's policy of requiring a tort-feasor to compensate his guest for injuries caused by his negligence cannot be doubted—as attested by the fact that the Legislature of this State has repeatedly refused to enact a statute denying or limiting recovery in such cases. . . . Per contra, Ontario has no conceivable interest in denying a remedy to a New York guest against his New York host. . . . The object of Ontario's guest statute, it has been said, is "to prevent the fraudulent assertion of claims by passengers, in collusion with the drivers, against insurance companies". . . .

Although this case may have had a clear "center of gravity," other cases may not be so clear. Often times, the choice of law becomes a matter of litigation, with an outcome depending on the result desired by the forum state. Some countries allow the victim in a tort case to choose the applicable law; courts in other countries will almost always choose to apply their own law.

Managers have some techniques available to help plan for choice of law problems. In the contract area, courts will often recognize and respect choices the parties make in their contract. Thus, a manager's best weapon against the uncertainty of conflicts doctrine is simply to specify what law will govern the transaction. Chapter 7 will examine this problem and solution in more detail.

In tort problems, the best preventive measure is to consider the tort law in a potential market as one factor in the decision to do business. If the substantive law of that market seems too onerous, the business should consider whether or not it really wants to enter that market or whether some devices might be available to insulate the foreign company from liability.



CHAPTER XX

ENFORCEMENT OF FOREIGN JUDGMENTS

The second branch of private international law deals with the recognition that the courts of one country will give to the judgments of the courts of another country. In the event of a dispute over an international transaction, the winner will sometimes need to go to another country to find the loser's assets. The winner would prefer not to have to relitigate the merits of the dispute, but to have the original judgment recognized and enforced.

Hilton v. Guyot, earlier in this chapter, sets out the general principles that American courts will use in examining the judgments of courts in other countries. Comity and reciprocity are the watchwords for courts looking at foreign judgments. Of the two concepts, reciprocity is the one observed most frequently around the world. The issue of reciprocity may be handled by treaty. For example, the nations of the European Economic Community have agreed to recognize each other's judgments. If no treaty controls, a court in one country will look at the approach of the other country toward the first country's nationals.

In the United States, the problem of enforcement of foreign judgments is complicated by the limits on the kinds of cases federal courts may hear and on the application of federal law. In many commercial matters, a federal court will apply state law, including the law of recognition of judgments. State courts have formulated their own approaches to the *Hilton* analysis. Some have, at various times, been reluctant to enforce judgments rendered in courts in socialist countries, while others have been more willing than the Supreme Court to give binding effect to foreign judgments.

In order to encourage some uniformity in the state law enforcement of foreign judgments, the National Conference of Commissioners on Uniform State Laws drafted a Uniform Foreign Money-Judgments Recognition Act. As of the writing of this book, seven-

teen states have adopted the Uniform

Act. The act rejects the requirement of reciprocity in favor of an approach based on a presumption of the validity of the foreign judgment.

Uniform Foreign Money-Judgments Recognition Act (1962)

Sec. 3. [Recognition and Enforcement].-Except as provided in section 4, a foreign judgment meeting the requirements of section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

Sec. 4. [Grounds for Non-recognition].

- (a) A foreign judgment is not conclusive if
 - (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with due process of law;
 - (2) the foreign court did not have personal jurisdiction over the defendant; or
 - (3) the foreign court did not have jurisdiction over the subject matter.
- (b) A foreign judgment need not be recognized if
 - (1) the defendant in the proceedings in the foreign country did not receive notice in sufficient time to enable him to defend;
 - (2) the judgment was obtained by fraud;
 - (3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;
 - (4) the judgment conflicts with another final and conclusive judgment;
 - (5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
 - (6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

The effect of the Uniform Act is to have courts begin a case with a presumption in favor of the foreign money judgment. It will be difficult for the defendant in an enforcement action to overcome the

presumption of the judgment's validity. Businesspeople will have limited reasons for attacking the judgment. The following case illustrates the perils a manager faces by choosing to ignore court proceedings in other countries.

BANK OF MONTREAL v. KOUGH
612 F.2d 467 (9th Or. 1980)

FACTS:

Kough, a California resident, was a shareholder, officer, and director of Arvee Cedar Mills, Ltd., a corporation organized and located in British Columbia. Kough personally guaranteed loans made by the Bank of Montreal to Arvee. When Arvee defaulted on the loans, the bank sued Kough on his guarantee in British Columbia. Kough was personally served with notice of the suit at his home in California, but did not appear to contest the Canadian court action against him. The Court entered a default judgment of \$842,278.75 against Kough.

The bank sued in the federal district court in California to enforce the Canadian money judgment. Kough claimed that the court should not enforce the judgment first, because he received notice of the suit in California, not British Columbia; and second, because a California judgment would not have conclusive effect in British Columbia. He also added several counterclaims against the bank.

The district court ruled in favor of the bank, based on the Uniform Foreign Money Judgments Recognition Act (UFMJRA), and Kough appealed.

ISSUE:

Should the court enforce the British Columbia judgment against Kough? May he assert his counterclaims against the bank in California?

RESULT:

Yes. The judgment did not violate concepts of due process, nor is reciprocity required. No. Kough had his opportunity to make counterclaims in the British Columbia lawsuit. Judgment against Kough affirmed.

REASONS:

The Supreme Court has repeatedly recognized that a constitutionally valid judgment which is entitled to full faith and credit in sister states may be entered by a state court as long as there is "a sufficient connection between the defendant and the forum state as to make it fair to require defense of the action in the forum," and provided that the defendant has received "reasonable notice" of the proceedings against him...

This appeal involves the recognition by California of the judgment of a Canadian province, not a sister state, but the language of [the UFMJRA] ... seems to us to leave the door open for the recognition by California courts of foreign judgments rendered in accordance with American principles of jurisdictional due process.

With respect to both minimum contacts with the forum state and adequate notice, those principles were satisfied in this case. Kough did have substantial contacts with British Columbia not only by means of the execution and breach of the guarantee there, but also by prior negotiations there involving the guarantee and by other promissory notes to the Bank previously executed. Since Kough was served at his California residence, no question can be seriously raised as to the adequacy of the personal service...

Kough also invokes the doctrine of reciprocity to defeat the recognition of the Canadian judgment. He predicates this argument upon his contention that British Columbia would refuse to recognize a default judgment rendered against one of its citizens in the United States under similar circumstances...

The difficulty with appellant's argument is that the section of the Uniform Act specifically dealing with the circumstances where recognition should or may be denied ... makes no mention of reciprocity, and we find nothing in the Act which authorizes us to read such a prerequisite into the statutory scheme by implication.

[The court then discussed Kough's counter-claims, holding that they "were so intimately intertwined" with the bank's claims against Kough that the Canadian court decision should be conclusive on the counterclaims as well as the main claims.]

The *Kough* case holds two important lessons for managers. The first is that since the recognition of foreign judgments is a state law, not federal law matter, court decisions may vary from state to state. Some states will follow the *Hilton* criteria, some are bound to follow the Uniform Act, and some will follow the ideas in the Uniform Act, even where the state has not adopted the Act. If there is a trend, it is toward more frequent enforcement of foreign judgments.

The second lesson of *Kough* is that a business ignores a foreign action at its peril. A decision to default abroad is a calculated risk, and probably not a good risk. That decision may lead both to an enforceable judgment against the business and to the loss of the opportunity to assert claims against the other party.

The problems of enforcing foreign judgments increase when the judgment involves some remedy other than money. Generally, courts are extremely reluctant to enforce injunctions, specific performance, or other equitable remedies. Courts are also reluctant to enforce either tax or criminal law judgments from other countries. However, if a country has a treaty calling for reciprocal tax collections or for extradition for criminal acts, the courts will follow the terms of the treaty. Thus, there is a wide network of tax treaties and extradition treaties allowing for the collection of revenues and the return of criminals to the judgment country. Some of these treaties will be discussed later in this book.

CONCLUSION

This chapter has introduced the different kinds of law that affect international business. Obviously, the laws of each nation touched by an international transaction will apply. Each nation will also have its own rules for resolving the problems caused by acts taking place outside its borders but affecting its interests. The rules of private international law will influence business transactions. Finally, the rules of public international law have a direct effect on business, either through treaties or through the law merchant.

You should leave this chapter with two main lessons. First, international law has a heavy component of politics. What seems to be a simple legal issue may turn into a diplomatic dilemma requiring lengthy negotiation. The interest of the business may be subordinate to the interest of the nation. As in *Barcelona Traction*, when the politicians lose interest, investors and traders may lose money.

Second, a business needs to anticipate problems and plan for them. Choice of law, choice of forum, jurisdiction, and remedies are all manageable problems, if you think about them in advance. Much of the rest of this book will be devoted to preventive law-the successful ways to avoid expensive and uncertain litigation in unfamiliar legal systems.

QUESTIONS FOR DISCUSSION

1. After a cloud of toxic gas escaped a chemical plant in India, many of the victims filed suit against Union Carbide Corporation in the United States and in India. The government of India then brought suit in the United States against Union Carbide. It sued in *parens patriae*, that is, on behalf of all Indian nationals. Its suit replaced all individual suits in any court by an Indian national. By depriving Indian nationals of their individual days in court, does the government's action violate international law?
2. Does the logic of the Barcelona Traction case make sense when applied to large multinational enterprises? Are there better solutions? Explain.
3. Manitoba Outfitters is a Canadian business with a successful product line of winter outdoor clothing and equipment for winter recreation. The company is considering starting a mail order operation to sell its clothing and equipment to Canadian and U.S. customers. Customers would place orders by calling or writing the Manitoba headquarters, and orders would be shipped postage paid to the customers. Prepare a brief memo to the president of the company explaining what law might apply to a dispute (a) with a customer over defective merchandise, or (b) with a U.S. person who has been injured by defective merchandise. Would the company have to be ready to defend itself in all U.S. states and Canadian provinces? Explain.
4. As a class project, take a survey of your class, asking each person for his or her nationality and domicile. Are there people for whom the two are different? Are there people with more than one nationality? What consequences does dual nationality have?



CHAPTER XXI

ENGLISH LAW

Section One: Sources of English Law Reading a Law Textbook

A. Before you read

Even in your own language you will generally understand a text better if you already know something about the subject. In a foreign language it is especially useful to think about the subject of the text for a few moments before you start to read. This will help you to know what you expect to read about and some of the language you may find.

- i) Before reading about the sources of English law, think about the subject in general:
 - Where do laws come from in your legal system? Which kinds of rules and principles have the authority and force of law? In other words, what are the *sources of law*?
 - What other sources of law do you know? For example, do you know any sources of International Law?
 - Do you know the English names for the sources you have thought of?
- To find the terms in English, use a dictionary or the glossary (look for cognates).
- ▲ To find the terms in English, use a dictionary or the glossary (look for cognates) or ask other members of the class or your teacher, then compare your ideas with the rest of the class.
- ii) Write a list of about five other law terms you think you may find in a text on this subject. Find the words in English.
- iii) Were any of the words below in your list? Check that you understand their meaning. Refer to a dictionary or the glossary if necessary.

the courts	rights
a law	the constitution
legislation	a judge
judicial precedent	custom
parliament	a code

B. Reasons for reading: reading to understand the general content of a text

Reasons for reading

There are different reasons for reading.

- Sometimes we read because we want to know about a subject in detail (*reading for detail*)
- Sometimes we want to find or check a particular piece of information (*reading for specific information*)
- Sometimes we want to know what a text is about in general (*reading for gist*) The way we read depends on our reason for reading.

1 Reading for gist

When you read for gist you only want to know *what the text is about in general, so you do not need to read or understand every word. This style of reading is called skimming. It is often a good idea to read a text for gist before you try to understand it in detail. To practise skimming, complete the activity below. Do not try to read or understand the whole text for this activity.*

As quickly as you can, skim the text on pages 14-17 to decide which heading (title) at the top of the text (e.g. (1) THE SUBSIDIARY SOURCES, (2) The sources of English law) goes with which section of the text. Choose one heading for each space marked " (letters A-G). Make a note of the correct headings in the right order in your notebook.

- Suggested time: 3 minutes.

- (1) THE SUBSIDIARY SOURCES
- (2) The sources of English law
- (3) CUSTOM
- (4) JUDICIAL PRECEDENT
- (5) LEGISLATION

- (6) THE PRINCIPAL SOURCES
- (7) BOOKS OF ACTS

Example:

A * The sources of English law
Answer A2

- 1 The courts are the interpreters and declarers of the law, the 'sources' of law are therefore the sources to which the courts turn in order to determine what it is. Considered from the
- 5 aspect of their sources, laws are traditionally divided into two main categories according to the solemnity of the form in which they are made. They may either be *written* or *unwritten*. These traditional terms are misleading, because
- 10 the expression 'written' law signifies any law *that is formally enacted, whether reduced to writing or not*, and the expression 'unwritten' law signifies *all unenacted law*. For example, as will appear, judicial decisions are often reduced
- 15 to writing in the form of law reports, but because they are not formal enactments they are 'unwritten' law.
Since the fashion was set by the Code Napoleon many continental countries have
- 20 codified much of their law, public and private; on the Continent, therefore, the volume of written law tends to preponderate over the volume of unwritten. But in England unwritten law is predominant, for more of our law derives
- 25 from judicial precedents than from legislative enactment. This does not, of course, mean that none of our law is codified, for many parts of it are, such as the law relating to the sale of goods (Sale of Goods Act 1979) and the law relating to
- 30 partnership (Partnership Act 1890). *All that is meant is that, as yet at least, although Parliament casts increasing multitudes of statutes upon us, we have not adopted the system of wholesale codification which prevails*
- 35 in many continental countries.

Two principal and two subsidiary sources of English law must be mentioned. These principal sources are Legislation, and Judicial Precedent: the subsidiary sources are

40 Custom and Books of
Authority.

B *
C *

Legislation is enacted law. In England the ultimate legislator is Parliament, for in our *traditional* constitutional theory Parliament is sovereign ... here we are only concerned to
45 explain the significance of the doctrine of '*parliamentary sovereignty*'. It means first, that all legislative power within the realm is vested in Parliament, or is derived from the authority of Parliament - Parliament thus has no rival within
50 the legislative sphere - and it means secondly that there is no legal limit to the power of Parliament. Parliament may therefore, and constantly does, by Act delegate legislative powers to other bodies and even to individuals
55 but it may also, by Act, remove these powers as simply as it has conferred them. By Act, moreover, Parliament may make any laws it pleases however perverse or 'wrong' and the courts are bound to apply them. The
60 enactments of Parliament are not subject to question, for our constitution knows no entrenched rights similar to the fundamental liberties guaranteed by the Constitution of the United States and safeguarded by the Supreme
65 Court. It will have been noted that we have referred to the 'traditional' theory. This is intended to serve as a warning that when constitutional law falls to be discussed the effects of 'Common Market' membership upon
70 that theory will have to be considered.

In the legislative sphere Parliament is thus legally 'sovereign' and master, but this does not mean that the courts have no influence upon the development of enacted law; for, in order to be
75 applied, every enactment, however it be promulgated, has to be interpreted (or *construed*), and the courts are the *recognized* interpreters of the law. The meaning of words is seldom self-evident; they will often bear two, or
80 even more, possible interpretations and hence the courts must always exercise a considerable degree of control over

the practical application of statutes (enactments of Parliament). The difficulty of interpretation may be illustrated by

85 a simple example. Suppose that Old King Cole, who is an absolute despot, commands that all 'dogs' in his kingdom are to be killed. Suppose that Jack Sprat, one of his subjects, who has an alsatian wolfhound, applies to the courts for a
90 decree that it shall be spared, alleging that it is a 'hound' and that the royal command is only concerned with 'dogs'. The court will have to decide whether the word 'dogs' is to be taken to embrace 'hounds': whichever way it decides, it
95 will influence the practical application of the King's command.

D *

In all countries, at all times, the decisions of courts are treated with respect, and they tend to be regarded as 'precedents' which subsequent

100 courts will follow when they are called upon to determine issues of a similar kind.

This reliance upon precedent has been both the hallmark and the strength of the common law. *Its rules have been evolved inductively*

105 from decision to decision involving similar facts, so that they are firmly grounded upon the actualities of litigation and the reality of human conduct. And new cases lead onwards to reach forward to new rules. Its principles are, to employ a popular phrase 'open ended'; they are not firm and inflexible decrees. This characteristic of the common law contrasts, again, with the European civil law. There, harking back to the tradition of the Corpus

115 *Juris*, law is characteristically derived from a code; that is, from an enacted body of rules either (as in the case of Justinian's or of Napoleon's legislation) embodying the whole of, or some considerable part of, the law, or

120 embracing some special aspect of it. Thus the *task of the courts is deductive: to subsume the present case under the mantle of the generalized and codified rule*. The word 'codification' was an invention of the ingenious

125 Jeremy Bentham (1743-1832). In principle this method carries the danger that the encoded rule may, being the work of a theorist divorced from reality, be out of touch with actual needs; and certainly, as noted above, in course of time it

130 may become so, and thus may require judicial adaptation to meet changed conditions. But in practice many codes are really restatements of rules previously embodied in the opinions of jurists (as was the Digest which formed the most important part of the *Corpus Juris*) or from case law (like the English Sale of Goods Act 1979) or from custom or from some other tried and tested source. So that although the approach to legal decision is on the one hand inductive at common law and on the other hand deductive in the civil law, in reality (apart from interpretive method) the two systems are not quite so divergent as might appear. One thing, however, which is distinctive of the English system is that

145 because the English judge has, through precedent, power to make new law his position in the legal system is central.

Another salient feature of the English system is the doctrine of the binding case. By this

150 doctrine the authority of the courts is hierarchical; a court which is inferior in authority to another court is obliged to follow ('bound by') a court of superior authority if called upon to decide upon facts similar to facts

155 already tried by the superior court.

The precedents formed by decided cases are, *thus*, as Bacon wrote of the Reports of Sir Edward Coke, the 'anchors of the laws'. A practitioner who is asked to consider a legal

160 matter will *therefore* look to the reported decisions of the courts; and he will do this even though the point in issue is regulated by a statute, for, as has been explained, statutes are interpreted by the courts, and a decision which

165 is concerned with the interpretation of the statute is just as binding as any other decision. *When this much has been said, it must not, however,* be imagined that the law is always discoverable by the simple process of looking

170 up, and finding, the right precedent. For facts are infinitely

various and by no means all cases are exactly covered by previous authority. Quite the reverse, the facts in issue often resemble two or more divergent authorities. In

175 these circumstances the courts therefore have freedom of choice in deciding which of the divergent authorities or streams of authority to 'follow', and much of the ingenuity of counsel is directed to 'distinguishing' the facts of

180 precedents which appear to bind the court to decide against him. *Further*, even today cases of 'first impression' sometimes arise; cases arising upon facts which bear no resemblance to the facts of any previous case. When the judge rules

185 in such a case he legislates, because future courts must usually 'follow' him. A remark which leads to the comment that in 'distinguishing' between previous decisions and 'following' one rather than another the judge,

190 though appearing only to apply existing law, in fact exercises a quasi-legislative discretion: a fact which the system of 'binding' precedent serves to conceal.

The administration of justice is not *therefore*

195 a slot-machine process of matching precedents. The judges have a field of choice in making their decisions. But they do not exercise their discretion in an arbitrary way; they rest their judgments upon the general *principles*

200 enshrined in case-law as a whole. Case-law does not consist of a blind series of decisions, 'A will succeed', or 'B will fail', but of reasoned judgments based upon rational principles. These principles have been evolved by the

205 courts through the centuries; and, building precedent upon precedent, they have framed them with two ends in view. First, they have sought so to formulate them that their application may be capable of effecting

210 substantial justice in particular cases; second, they have sought to make them sufficiently general in scope to serve as guides to lawyers faced with the task of giving advice in future legal disputes. *Thus* in a sense the history of the

215 common law (as opposed to statute law - for statutes are sometimes arbitrary and they have often wrought injustice) is the story of the evolution of the judges' conception of justice (a kind of natural law - see above) realized in the

- 220 form of rules of law intended to be general in their applica-
tion and as easily ascertainable as possible. The task of
attempting to dispense *justice*, while satisfying the essen-
tial need for *certainty*, has not been an easy one; in fact the
225 attempt can never achieve more than a compromise; but,
on the whole, it has been well performed and the common
law of England is no mean rival to the romanistic systems.

E *

F *

- Customs are social habits, patterns of
230 behaviour, which all societies seem to evolve without ex-
press formulation or conscious creation. In a sense custom
should be accorded pride of place as one of the principal
sources of law for much, if not most, law was originally
235 based upon it. Moreover custom is not solely important as a
source of *law*, for even today some customary rules are
observed in their own right and they command almost as
much obedience as rules of law proper; they only
240 differ from rules of law in that their observance is not *en-
forced* by the organs of the State. Thus, it will be seen ...
that many of the fundamental rules governing the Consti-
tution are 'conventional' (i.e. customary), rather than
245 legal, rules.

- But in modern times most general customs (i.e. customs
universally observed throughout the realm) have either
fallen into desuetude or become absorbed in rules of law.
For example
250 many of the early rules of the common law were general
customs which the courts adopted, and by this very act of
adoption made into law. So too, much of the modern mer-
cantile law owes its origin to the general customs of mer-
chants
255 which the courts assimilated during the course of the sev-
enteenth and eighteenth centuries and, indeed, they are
still assimilating international banking practice. So also
many of the rules of the law relating to the sale of goods

- 260 originated as customs, were adopted by the courts, and
eventually moulded into a statutory code by the Sale of
Goods Act 1893. General custom has therefore now ceased
to operate as an important source of law. For law, whether
265 enacted or judicially declared, has in most fields super-
seded custom.

- On the other hand customs, prevailing among particular
groups of people living in particular localities, are some-
times still recognized by the
270 courts as capable of creating a special 'law' for the locality
in question at variance with the general law of the land.
For instance in a well-known case the fishermen of Walmer
were held entitled, by reason of a local custom, to a
275 special right to dry their nets upon a particular beach. But
recognition of such variants upon the general law will only
be accorded if certain conditions are satisfied. The follow-
ing are among the more important of those
280 conditions:- The custom sought to be established must (1)
not be unreasonable, (2) be 'certain', that is to say the
right which is claimed must be asserted by or on behalf of a
defined group of people, (3) must have existed since
285 'time immemorial'. Literally this means that it must go back
to 1189 (by historical accident the terminal date of 'legal
memory') But in practice the burden upon a plaintiff
to establish such a custom - for example a customary duty
in
290 his neighbour to fence against a common upon which he
has grazing rights - is not so formidable. For if he can prove
that such a usage has in fact existed in the locality for a
reasonable time a lawful origin for the usage
295 will be *presumed*, provided, of course, that such an origin
was possible; and custom itself is such a lawful origin.

G *

- On the Continent the writings of legal authors form an im-
portant source of law. In England, in
300 accordance with our tradition that the law is to be sought
in *judicial decisions*, their writings have in the past been
treated with comparatively little respect. They have been
cited in court, if cited at all, rather by way of

305 evidence of what the law is than as independent sources from which it may be derived.

This general rule has, however, always been subject to certain recognized exceptions; for there are certain 'books of authority', written by

310 authors of outstanding eminence, which may not only be cited as independent sources in themselves for the law of their times but which also carry a weight of authority almost equal to

that of precedents. Among the most important

315 of these works are Bracton's *De Legibus et Consuetudinibus Angliae* (thirteenth century), Coke's *Institutes* (1628-1641) and Blackstone's *Commentaries* (1765).

When this much has been explained, it must

320 nevertheless be admitted that in modern times the established tradition appears to have been breaking down, because many textbooks are now in practice constantly cited in the courts, though only the best of them are likely to

325 command attention. The reason for this departure from the established tradition is probably that in comparatively recent years a large increase in the popularity of the study of English law in all our major universities has

330 done much to improve the quality of legal writing and to increase the volume of legal literature. Thus, today Salmond's *Law of Torts* is commonly referred to in court and even works of living authors, such as Smith and

335 Hogan's *Criminal Law*, are now often cited, though by a rule of etiquette, counsel who refers to works of the latter category should not cite them directly as authorities, but should request the leave of the court to 'adopt' the

340 arguments which they contain as part of his own submissions. In practice, however, even this latter etiquette is now not always observed.

Philip S. James, *Introduction to English Law*

2 Reading for general understanding

Check that you understand the questions below. Do *not* try to answer the questions yet.

- a) What are the two main types of sources of law? b) Is most English law written in a code?
- c) Who makes legislation in England?
- d) Can the English courts influence the effect of legislation?
- e) Has English law developed (1) from fixed general rules? or (2) through decisions in individual cases?
- f) Is the development of judicial precedent based on general principles of justice?
- g) Is custom important as a source of law (1) in the history of the law? (2) in England today?
- h) Are books of authority more important as a source of law in England or on the Continent?

These questions are about some of the main points in the text. Which sections of the text do you think will contain the answers? Read the relevant sections of the text *quickly* to find the answers. Do *not* stop and spend time on words or parts of the text you don't understand if you can answer the

● questions.

You now know what each section of the text is about and you understand some of the main points. You are going to study the principal sources of English law in detail in short sections.

C Reading for detail and language study: Introductory Section - lines 1-40

I Understanding new vocabulary

- i) Read lines 1-40 quickly. Note all the words or phrases which you don't know or are not sure of clearly and their line number.
- ii) How many words or phrases have you noted? You can see that you already know *most* of the language. The language you don't know is *limited*. And you were probably able to understand the main points of the text - that there are written and unwritten sources of law, and that English law is not written in a code - questions B 2a) and b) above - without understanding every word.
- iii) Check that you understand the detailed questions below. Do *not* try to answer the questions yet.

- a) Is all law which is written defined as 'written law'?
 - b) Is any 'unwritten law' in fact written?
 - c) Are codes of law popular in Continental countries?
 - d) Is most Continental law generally written or unwritten?
 - e) Is most English law found in the form of legislation or judicial precedent?
 - f) What is the law relating to the sale of goods?
 - g) What is the Partnership Act?
 - iv) Refer to the text and decide which of the 20 words and phrases below you need to understand to answer the questions in iii) above. Do not try to answer the questions yet.
- | | |
|--|---------------------------------|
| a) declarers (line 1) | k) codified (20) |
| b) aspect (5) | l) preponderate over (22) |
| c) solemnity (7) | m) predominant (24) |
| d) misleading (9) | n) legislative enactment (25-6) |
| e) enacted (11) | o) codified (27) |
| f) whether reduced to writing or not (11-12) | p) sale of goods (28) |
| g) unenacted (13) | q) partnership (30) |
| h) law reports (15) | r) casts (32) |
| i) formal enactments (16) | s) statutes (33) |
| j) set (18) | t) wholesale codification (34) |

▲ Compare your ideas with other members of the class.

- v) This exercise will show you that you can often use words you know, information in the text and logical reasoning, as well as cognates, to find the meaning of new words that you need to understand in a text. Complete the exercise, where possible using cognates to confirm your ideas. As you work, you will see when to answer the questions from iii) above.

- (1) A law which is passed (made) by the UK Parliament is called an *ACT of Parliament*. What do you think *enACTed* (line 11) means?
- (2) In simple English *reduced to writing* (lines 11-12) means *Whether ... or not* (lines 11-12) is used when there are two alternatives - one positive and one negative.
- (3) If *UNwritten law* is the opposite of *written law*, what is *UNenacted law* (13)?

- (4) An *enactment* is a single law.
Now answer questions iii a) and b).
What do answers a) and b) tell you about the meaning of words in legal English?
- (5) You know the word *code* (noun). What do you think the verb *codified* (20) means?
To check: you know that countries have done this since the Code Napolon, which created a fashion (18-19). What have they *probably* done? Answer question iii c).
- (6) You know that many countries have codified their law, therefore ... (21). *Therefore* introduces a consequence. In countries where law is codified, will the volume of written law therefore (as a consequence) probably be larger or smaller than the volume of unwritten law? Therefore, what does *preponderate over* (22) mean?
Answer question iii d).
- (7) You know the words *legislation* and *enactment*. What do you think *legislative enactment* (25-6) is? Answer question iii e).
- (8) The text refers to 'the law relating to the sale of goods ...' (28). *Sale of goods* must be an area of law. Do you know the noun *sale*? It is related to the verb *to sell*. What sort of things could be the object of a sale? What branch of law do you think sale of goods is part of?
Answer question iii f).
- (9) '... and the law relating to partnership' (29-30). Like sale of goods, *partnership* must be an area of law. You know the word *partner* - a person who takes part in some activity with another or others. In the context of the law, partners have a special kind of business relationship. *Partnership* is a related noun. What branch of law could include partnership? Answer question iii g).
- vi) Go back to the list of words in iv) above. Which ones did you in fact use to answer the questions in iii)? You can see that to answer the questions you only need to understand *some* of the words. Which words those are, depends on your reading purpose.

2 Check your knowledge

Complete the following passage to check that you have understood the text so far and can use the new vocabulary. For each blank space choose the correct word from the list below. Use each word *once* only.

The Importance of Legislation as a Source in English and Continental Law

In many (1) continental countries much of the law is (2) _____. For this reason there is more written, or (3) _____ law than (4) _____ law. In contrast, there is no general code of (5) _____ law. Still, (6) _____ is common, and many areas of law, e.g. (7) _____ are codified, but (8) _____ is the main source of the law.

Choose from:

- | | |
|----------------|-----------------------|
| a) partnership | e) English |
| b) enacted | f) judicial precedent |
| c) Continental | g) legislation |
| d) unwritten | h) codified |

3 Comparing legal systems

- i) Work in pairs or alone. Think about your legal system.
- Is the law codified in your country?
 - Are there written and unwritten sources of law?
 - Is most of the law written or unwritten?
- ii) In these phrases from the text the author compares English law and Continental law:
- 'On the Continent.... the volume of written law tends to preponderate ...' 'But in England unwritten law is predominant' (lines 21-4)

We could also say:

On the Continent the volume of written law tends to preponderate, but in England unwritten law is predominant.

but
while
whereas
however

Use your own knowledge and information from the text to compare the following:

- codification of law on the Continent and in England
- codification of law in your country and in England
- written sources of law on the Continent and in your country
- written sources of law in your country and in England
- unwritten sources of law in England and in your country

Examples

'Many continental countries have codified their law, whereas this has not happened in England. In fact, only some areas of English law, such as the sale of goods, are codified.'

'In England most of the law is unwritten and the same is true in my country. In fact the principal sources of law in the legal system in my country are ...'

- Write your comparisons down, or if you prefer to practise speaking, say them out loud or record them on tape, then listen to your recording.
- ▲ Work in pairs. In turns, compare the different legal systems. Do you agree with your partner's comparisons?

D Reading for detail and language study: Legislation - lines 41-96

1 Identifying law terms

- i) Study this passage from the text. All the law terms are marked. Choose the correct alternatives:
- a) words and phrases connected with legislation and the courts are underlined/circled
- b) other law terms are underline/circled

Legislation is enacted law. In England the ultimate legislator is Parliament, for in our traditional constitutional theory Parliament is sovereign ... Here we are only concerned to explain the significance of the doctrine of 'parliamentary sovereignty'. It means first that all legislative power within the realm is vested in Parliament, or is derived from the authority of Parliament - Parliament.

ment thus has no rival within the legislative sphere - and it means secondly that there is *legal limit* to the power of Parliament. Parliament may therefore, and constantly does, by Act delegate legislative powers to other bodies and even to individuals, but it may also, by Act, remove these powers as simply as it has conferred them.

- ii) Try to find all the law terms in lines 41-96 of the text and list them as you think best.
- iii) Transfer the marked words and phrases in lines 41-56 to two separate lists. There is not necessarily *one* correct position for each word - the choice is personal.

Example:

A Legislation and the courts
legislation
enacted law
legislator
Parliament
sovereignty

B Other law terms
constitutional (theory)
sovereign (adjective)
doctrine
parliamentary

- ▲ iv) Compare your lists with someone else. Have you chosen the same words and phrases? Have you put them in the same lists?
- v) Choose list A or B. Try to decide what you think each word or phrase means. Use cognates, other words you know, the context and logical reasoning to form your ideas. Sometimes you may have to guess! When you have finished, check your ideas by referring to the glossary and your dictionary.
- ▲ If you prefer, work together with someone else who has chosen the same list.
- vi) If you have time, repeat step iv) above with the other list. If not, refer directly to the glossary and your dictionary to check the meaning of the other words and phrases.

- ▲ Work in pairs or small groups with someone who has not studied the same list as you have. In turns, explain the meaning of the law terms in your list to your partner.

2 Comprehension check

Read lines 41-96 of the text carefully and use information in the text and your own knowledge to answer the following questions.

- a) Are you familiar with the legal concept of *sovereignty*? *Sovereignty* is supreme power in a State. Who exercises sovereignty in your legal system? Is it an individual person or a body (an organised group)? Does *parliamentary sovereignty* in Britain mean that (1) only Parliament can legislate? or (2) Parliament has unlimited power to legislate?
- b) Is delegated legislation possible in your country? Is it common? Compare the situation in Britain.
- c) If Parliament makes a law which is not just, must the English courts apply it? d) What do you suppose some of the 'fundamental liberties' guaranteed by the US Constitution are?
- e) Are basic rights entrenched in the English constitution? What does this tell you about parliamentary sovereignty in Britain?
- f) In your opinion, what effect could international obligations such as membership of the Common Market (European Community) have on parliamentary sovereignty? Is this a problem in your country, too?
- g) *Self-evident* (line 79) means *obvious, clear*. Use the context to decide if *seldom* (line 79) means *often* or *rarely*. Do you agree with the statement?
- h) Why does the author describe the case of Old King Cole and Jack Sprat? i) Did this case actually happen? Which phrase tells you this? j) What command did Old King Cole give?
- k) The example is full of pronouns: words like *who*, *it*, *that*, *which*, etc., which refer to other nouns mentioned in the text. To understand a text in detail, you need to know exactly *who* or *what* each pronoun refers to - it is not always the word next to it in the text. Study lines 85-96 and

decide what the pronouns on the left below refer to, answering the questions on the right to check your understanding.

Example: his (line 88) Is Jack Sprat a national of Old King Cole's kingdom? *Answer:* his refers to Old King Cole. Yes, Jack Sprat is a national of Old King Cole's kingdom.

- (1) who (line 88) Does the alsatian belong to Jack Sprat or Old King Cole?
- (2) it (line 90, first) What does Jack Sprat want to save ('spare')? Does he ask the King to save it?
- (3) it (line 90, second) Does Jack Sprat say the decree or the alsatian is a 'hound'? What word must the courts interpret?
- (4) it (line 94, second) What will influence the King's command?
- (5) What legal point does the example illustrate? What is the importance of this point in the context of sources of law?
- (6) Do law textbooks in your country contain imaginary examples like this?

- Look at the language of the English example. What forms do you notice?

3 Transfer

The classic definition of murder in English law is: 'the unlawful killing of a reasonable creature ... with malice aforethought ... the death following within one year and a day'. *Lawful* is an adjective. What do you think it means? (Compare *beautiful*, *helpful*, etc.) And *unlawful*? (Compare *unwritten*, *unenacted*, etc.) With *malice aforethought* means with the intention to kill or seriously hurt.

- i) Invent a simple example like the one in the text to show how the interpretation of words can influence the effect of the law. Remember to introduce the facts with 'Suppose that ...' and use the simple present tense as in the example in the text.

- • ii) Is your example probable in real life, or do you know of a case where this has happened?
- ▲ When you are ready, work together in groups of three. In turns, explain your examples. Which one is most probable in real life?

4 Law terms: legislation

How many different terms do you now know referring to *legislation*?

Can you complete the box? The number of letters in each word or phrase is given in brackets e.g. (7) = 7 letters. Make a note of your answers and refer to the text to check your answers.

- E Reading for detail and language study: Judicial precedent - lines 97-228

1 Reading for detail: lines 97-155

- i) Before you read the next section of the text, decide where you think some of the following pieces of information belong in the table: A civil law/common law
 - B central importance of enacted law/central importance of precedent
 - C inductive/decisions reached by reasoning from general rules to particular cases/reasoning in individual cases leads to general rules/deductive
 - D principles are flexible/principles are based on real facts/in time fixed principles may not correspond to changing circumstances/principles develop in individual cases/general enacted principles are applied to individual cases.
 - E original source of principles may be case-law, custom, etc./inferior courts must follow decisions of superior courts/central position of judges

	English law	Continental law
A	Type of legal system	
B	Basic characteristic of system	
C	Style of legal reasoning	
D	Legal principles	
E	Other characteristics	

- ii) Read lines 97-155 of the text carefully to check your ideas. Copy and complete the table.

2 Word study: lines 97-155

Match each word or phrase on the left to the correct definition on the right for groups i) to iv) below. Check that your ideas make sense in the context of the text.

Example: issues (line 101) are questions or matters Answer: group is a/2

- i) words or phrases from lines 97-110
- issues (line 101)
 - grounded (line 106)
 - actualities (107)
 - litigation (107)
 - cases (108)
- ii) words or phrases from lines 111-131
- code (line 116)
 - codification (124)
 - encoded (126)
 - theorist (127)
 - judicial adaptation (130-31)
- iii) words and phrases from lines 131-43
- restatements (132)
 - jurists (134)

- case-law (135-6)
 - approach to (138)
 - divergent (143)
- iv) words and phrases from lines 143-55
- salient feature (148)
 - binding case (149)
 - hierarchical (151)
 - follow (152)
 - tried (155)

definitions

- legal actions or sets of legal circumstances
- questions, matters
- legal action
- real conditions or facts
- based

definitions

- put into a code (adjective)
- a person who forms theories
- a written set or collection of laws
- modification by judges for a particular purpose
- the act of making into a code

definitions

- different from each other
- law based on judicial precedent
- declarations or statements in a new form
- experts in law, especially legal writers
- method of dealing with

definitions

- reach the same decision as
- striking or especially important characteristic
- case containing principles which a court must apply to similar facts in a later case
- heard, judged (in a court of law)
- classified into higher and lower grades or levels

3 Discussion point

- i) At lines 142-3 the writer says that the common-law and civil-law systems 'are not quite so divergent as might appear'. Use lines 97-155 of the text and the table in exercise E1 to decide:

- ◆ in what ways the systems are divergent
- ◆ why they are not in practice 'quite so divergent as might appear'.

Remind yourself of the language of contrast you practised in exercise C3.

- ii) When you are ready:

- • To practise speaking, say your answers out loud or record them on tape, then listen to your recording. If you prefer, write your answers down. Check your ideas in the key.
- ▲ • Discuss your answers in small groups before checking in the key.

4 Reading for general understanding: lines 156-228

The 'doctrine of the binding case' (line 149) is usually called the *doctrine of binding precedent*.

Read lines 156-228 of the text quickly and answer the following questions. Do *not* try to understand everything you read for this activity.

- a) Given the doctrine of binding precedent, is the work of the English courts relatively simple?
- b) In what way is the position of the judge central to the common-law system?

5 Word study: lines 156-228

Study the sections of the text containing the words and phrases on the left and use the context to decide if the definitions on the right are *true* or *false*.

Example: a practitioner (line 159)

- a) reported decisions of the courts
- b) in issue (162)

- c) authority (172)
authorities (174, 177)
- d) counsel (178)
- e) distinguishing (179, 188)
- f) cases of first impression (181-2)
- g) rules (184)
- h) discretion (191, 198)
- i) arbitrary (198)
- j) judgments (199, 203)
- k) substantial justice (210)
- i) disputes (214)

Definition: a practising lawyer

the law reports (160-61)

in publication

person(s) with power to act or judge

the lawyer who conducts the case in court

pointing to differences between the

present case and a past precedent

first session of cases in court

gives a decision

difference

based on individual opinion, not on reason

judges in lower courts

real, effective justice

agreements

6 Language study: connectors - lines 156-228

Connectors are words like *and*, *so*, *but*, *because*, which are used to join, or connect different pieces of language together. They show the relation between what the speaker or writer said before and what they will say next.

In the formal language typical of the law (particularly in written texts) you will find many connectors which are not common in everyday language. Learning to understand these words will help you to follow the arguments in legal texts.

- i) Study the sections of the text containing underlined words (e.g. thus, lines 157, 214). Copy and complete the table below, showing the meaning and use of each one.

Connectors: (1) thus (2) therefore (3) for (4) however (5) further

	Connector	Meaning	Use
a)	Therefore	for that reason, consequently	to give a logical consequence
b)		because, since	to give a reason
c)		more, in addition	to state another fact
d)		so, in this way, consequently	to give a logical consequence
e)		by contrast, on the other hand said before	to show a contrast with something that was

- ii) Choose the best connector from the table above to complete the following passage.

Judicial precedent

Judicial precedent is of fundamental importance in the English legal system, (1) the principles of the common law, which have developed gradually through case-law over the centuries, are the main source of English law.

The English courts are bound to follow decisions of higher courts in the judicial hierarchy; (2) in many cases they must also follow their own decisions. Decisions of inferior courts, (3) do not have binding force. Decisions concerning the interpretation of statutes are also binding, (4) English lawyers must always refer to case-law even if the facts of the case they are preparing are covered by statute-law and not common-law rules. The law reports are (5) basic works of reference for members of the English legal profession.

7 Reading for detail: lines 156-228

Read lines 156-228 of the text carefully and decide which of statements a), b) and c) in the exercise below corresponds exactly to the meaning of the text and best completes each statement.

- i) To decide a question of law, a practising lawyer
- only refers to judicial precedent if the case concerns statute law
 - refers to judicial precedent in all cases
 - only refers to judicial precedent if the case does not concern statute law.
- ii) If the facts of a case are similar to two different precedents, the courts.
- can choose which of the previous cases to follow
 - are not bound by the previous authorities
 - can use their discretion to legislate and create a new precedent.
- iii) In the case-law system
- judges do not exercise discretion, they simply match precedents
 - judges can reach any decision they consider right in cases where they have a choice
 - judges follow general principles developed by the common law when they exercise their discretion.
- iv) In developing legal principles, the English courts have had two aims:
- (1) to give real justice in individual cases and (2) to form general principles for lawyers to use in the future so that the law is certain
 - (1) to give a lot of justice in individual cases and (2) to help lawyers involved in future cases.
 - (1) to give justice in particular cases and (2) to form general rules which the courts can apply in future cases

Note: A detailed study of the hierarchy of the English courts and the operation of the doctrine of binding precedent is made in Unit 6.

F Development

1 Vocabulary revision: law terms

You have learnt a lot of law terms in this Section. This activity will help you to remember many of them.

PEOPLE Practitioner	THINGS Law Report	IDEAS Justice
PLACES Court		ACTIONS to Promulgate

- Try to think of about three words or phrases to write in each of the boxes on page 26. There is not always one 'correct' position for a particular word!
- Scan the text and exercises in Sections A-E above to find at least three more terms for each of your boxes. Check that you can remember what all the terms mean!

▲ Compare your completed boxes with someone else.

2 Comparing sources of law

- In your notebooks complete this chart showing the main sources of English law.

Source of law		Note any points of particular interest or contrast
Principal		
Secondary		More Important at a source in continental systems than in England
	Authoritative Writings	

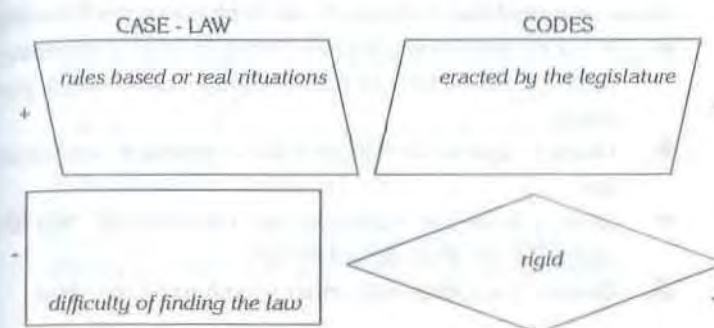
- Draw a similar chart of your own showing the main sources of law in your legal system. Note any particular points of interest or contrast.

- Use the two charts from i) and ii) above and facts and language you have learnt from the text to compare the sources of law in the English legal system and in your legal system.

- To practise speaking, say your ideas out loud. If you prefer, write some of your ideas down.
- ▲ Work together in pairs and discuss the information in your charts.

3 Case-law or codes?

What are the relative advantages and disadvantages of a legal system based on case-law and a legal system based on codes?



You will find some points in the text, especially in the section on Judicial decision. Think of some ideas of your own, too and write notes for the boxes at the foot of page 27

▲ Compare and discuss your ideas with someone else. Do you agree with each other? When you are ready, exchange your opinions with the rest of the class.

■ • Compare your ideas with the ones in the key - you may not agree with them all!

4 Personal study

If you are especially interested in the sources of law, you may like to continue studying this topic in detail on your own. Choose either custom (lines 249-97) or books of authority (lines 298-342). Read carefully the section of the text you have chosen and try to

understand the main points. Use some of the techniques you have learnt in this Unit to understand new vocabulary where necessary. How important are custom or books of authority as sources of English law?

Section Two : Common Law

Reading extracts from law dictionaries and works of reference

A Before you read

1 Think about the subject

Before you read about common law, think about the following:

- ◆ What do you understand by *common law*? If necessary, refer to Section One of this Unit (page 13) to check your ideas.
- ◆ Does a common-law legal system operate in your country?
- ◆ Does a term like 'common law' exist in your own language? If so, what does it mean?
- ▲ Discuss your ideas with other members of the class.

B Reading for specific information and general understanding

Reading for specific information

- 1 i) Look quickly at one or two of the dictionary extracts on pages 29-30, giving definitions of common law. Do *not* try to read them in detail. What do you notice about the term 'common law'?
- ii) In Section One of this Unit you learned that the common-law legal system contrasts strongly with the civil-law legal systems of Continental countries. Quickly find the definition which corresponds to this meaning of common law in texts A, B, C and D on pages 29-30. Do *not* try to read the whole text for this
- activity. Suggested time: 2 minutes.

TEXT A: Gavin McFarlane, *The Layman's Dictionary of English Law*

- 1 *common law*
Strictly, the general law contained in decided cases, as opposed to Acts of Parliament. But also used to include law in
- 5 Acts of Parliament and decided cases as a contrast with EQUITY (q.v.) A third use is to distinguish the English (common-law) legal system from a foreign (codified) system of law.

TEXT B: Roger Bird, *Osborne's Concise Law Dictionary*, Seventh Edition

- 1 *common law*. That part of the law of England formulated, developed and administered by the old common law courts, based originally on the common customs of the country, and unwritten. It is
- 5 opposed to equity (the body of rules administered by the Court of Chancery); to statute law (the law laid down in Acts of Parliament); to special law (the law administered in special courts such as ecclesiastical law, and the law merchant); and to the civil
- 10 law (the law of Rome).
It is 'the commonsense of the community, crystallised and formulated by our forefathers'. It is not local law, nor the result of legislation.

TEXT C: *The Encyclopaedia Britannica*

- 1 *common law*, also called ANGLO-AMERICAN LAW, the body of customary law, based upon judicial decisions and embodied in reports of decided cases, which has been administered by the common-law courts of England since the Middle Ages. From this has evolved the *type* of legal system now found also in the United States and in most of the member states of the Common-
- 5 wealth of Nations. Common law stands in contrast to the rules developed by the separate courts of equity (q.v.), to statute law (i.e., the acts of legislative bodies), and to the legal system derived from civil law (q.v.) now widespread in western Europe and elsewhere.

TEXT D: David M. Walker, *The Oxford Companion to Law*

- 1 *Common law*. A term used in various distinct senses. (1) It was originally used by the canonists (q.v.) *jus commune*, as denoting

- the general law of the Church, as distinct from divergent local customs which in
- 5 particular areas modified the common law of Christendom;
(2) As the powerful centralized system of justice of the English kings developed in the twelfth and later centuries, the royal justices increasingly
 - 10 developed and administered general rules common to the whole of England, the common law of England, as distinct from local customs, peculiarities, and variations, such as gavelkind (q.v.);
 - 15 (3) The common law accordingly came to mean the whole law of England, including ecclesiastical law and maritime and mercantile law, as administered in England, as distinct from that of other countries, particularly those based on the Roman law;
 - 20 (4) Hence, in the context of comparative law, a common law system is one based fundamentally on English common law, as distinct from a civil law system based on the civil law of Rome;
(5) With the development of equity (q.v.) and
 - 25 equitable rights and remedies, common law and equitable courts, procedure, rights, remedies, etc., are frequently contrasted, and in this sense common law is distinguished from equity; thus at common law a person aggrieved by a breach of contract could
 - 30 claim damages only, but in equity he could claim specific performance (q.v.);
(6) Common law was similarly distinguished from ecclesiastical law;
(7) Common law rights, powers, remedies,
 - 35 crimes, etc., are frequently distinguished from statutory rights, powers, remedies, crimes, etc., according to the formal source of the particular right, etc., in principles of common law or in the prescriptions of statute.
 - 40 In French and German law common law (*droit commun*, *Gemeinrecht*) mean law common to the whole area of the State as distinct from local or regional customs or peculiarities.

TEXT E: *Black's Law Dictionary*, Fifth Edition

- 1 Common law. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which
- 5 derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and in this sense, particularly the ancient unwritten law of England. The 'common law' is all

- 10 the statutory and case law background of England and the American colonies before the American revolution. *People v. Rehman*, 253 C.A. 2d 119, 61 Cal. Rptr. 65, 85. 'Common law' consists of those principles, usage and rules of action applicable to government and security of
- 15 persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature. *Bishop v. U.S.*, D.C.Tex., 334 F. Supp. 415, 418.
As distinguished from ecclesiastical law, it is the system
- 20 of jurisprudence administered by the purely secular tribunals. Calif. Civil Code, Section 22.2, provides that the 'common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States.
- 25 or the Constitution or laws of this State, is the rule of decision in all the courts of this State.'
In a broad sense 'common law' may designate all that part of the positive law, juristic theory, and ancient custom of any state or nation which is of general and
- 30 universal application, thus marking off special or local rules or customs.
For 'Federal common law', see that title.
As a compound adjective 'common-law' is understood as contrasted with or opposed to 'statutory' and
- 35 sometimes also to 'equitable' or to 'criminal'.

- 2 Sometimes when we read we are only interested in a specific piece of information, or a single section of a book, article, etc. Learning to find the information or section of the text we want quickly is an important reading skill because it helps us to save time and concentrate only on the parts of a text that interest us.

This style of reading (which you used to complete Activity 1 ii) above) is called *scanning*. To practise this skill, scan the texts on pages 29-30 to find the following information as quickly as you can. Do not try to read or understand the whole text for this activity.

- a) Which extract gives the greatest number of different definitions of common law?
- b) Which extract is from an American law dictionary?
- c) Which extract does not come from a law dictionary?

- d) How many distinct meanings of common law does *The Layman's Dictionary of English Law* give?
- e) What is the name of the court which administered Equity?
- f) What was the original source of common-law principles?
- g) What other countries apart from England have a common-law legal system?
- h) Find the name for the study and comparison of legal systems, used in text D.
- i) Does 'common law' have the same meaning in both French and German law?
- j) What force does 'the common law of England' have in the American state of California?
- k) Find the name of two cases in US law.

3 Reading for general understanding

Skim through the texts to understand their general meaning, answering the questions below. Do not worry about words or sections of the text that you don't understand if you can complete this activity.

- a) What three basic definitions of common law are given in all the British dictionary extracts?
 - b) Find the extra meaning that 'common law' has in the US.
 - c) Which definition of common law do you think gave it its name?
 - d) Which definitions in the American law dictionary correspond to Text D,
- definitions 6 and 7?

C Language study and law

1 Sentence structure

- a) Study these examples from the text:
 - (1) 'That part of the law of England formulated, developed and administered by the old common-law courts' (Text B, lines 1-2).
 - (2) 'Strictly, the general law contained in decided cases.' (Text A, line 1)

- b) We could also say:
 - (1) That part of the law of England *which was* formulated, developed and administered by the old common-law courts.
 - (2) Strictly, the general law *which is* contained in decided cases.
- c) Notice how in these passive phrases the relative pronoun (*which*) and the auxiliary verb (*was/is*) can be left out, to make a shorter, more compact phrase with the same meaning. Notice that the phrase may either be past (example 1: *which was* formulated) or present (example 2: *which is* contained) in meaning. The correct tense should be clear from the context.
- d) Scan Texts B and C and find more examples of this compact form. To check your understanding, can you 'translate' each example into its full form, as in b) above?

- e) Does a similar compact form exist in your own language?

2 Equity

- i) You can see that one definition of common law contrasts the body of law developed by the common-law courts and statute law, with *Equity* - the body of law originally formulated and developed by the Lord Chancellor and the Court of Chancery. The purpose of Equity was to add to or supplement common-law rules in cases where these were too rigid to give justice. These two parallel systems of justice exist side by side in English law and since 1873 they have been administered by the same courts.

The following example will show the different effect of common law and Equity in an actual case:

Suppose that Smith and Jones form a contract in which Smith agrees to sell Jones a certain piece of land. Smith later changes his mind and breaks the contract. At common law the court will order Smith to pay Jones money as compensation for the land he has lost. In Equity the court has discretion to order Smith to perform his part of the contract (to transfer the piece of land to Jones) if this is fair in the circumstances.

- a) What is the difference between the result given by Equity and common law in the example?
 - b) Note the phrase 'if this is *fair* in the circumstances'. Equity always looks to justice.
- ii) Find the exact names for the following in the section of Text D which contrasts common law with Equity.
Example: rights granted (given) by Equity Answer: equitable rights (Text D, line 25)
- a) breaking a contract
 - b) compensation in the form of money
 - c) an order to perform the obligations in a contract (in this case to transfer the land to Jones)
 - d) b and c above are two different c is a common-law and d is an equitable.....
- iii) What remedy would Jones have for a similar breach of contract in your legal system?

Equity is a complex area of English law, mainly concerned with the law of property.

If you wish to know more about it, refer to the following for a short introduction: David M. Walker, *The Oxford Companion to Law* (Oxford University Press, 1980) pp. 424-7.

Philip S. James, *Introduction to English Law*, 11th edition (Butterworth 1985), pp. 29-32, 34 and see Chapter 13.

For Equity in American law see:

Black's Law Dictionary, 5th edition (West Publishing Company, 1979), pp. 484-5.

3 Discussion points

Think about the following points for a few moments:

- ◆ Does your legal system contain rules of equity?
- ◆ If so, what is the role of equity - is it a separate system of rules, as in English law, or is it an integral part of the ordinary law?
- ◆ Is it possible to compare equity in your system, if it exists, with Equity in English law?

- ◆ You have seen that in England, Equity and common law are two separate bodies of legal principles which are now administered by the same courts - what is your opinion of this system?
- To practise speaking, say your answers out loud; if possible record them on tape, then listen to your recording. Or if you prefer, write your answers down.
- ▲ Discuss and compare your answers in small groups.

D Development

1 Remembering vocabulary: expressions with 'law'

- i) Using the box, write in your notebook all the expressions containing the word 'law' which you can remember.
- ii) Scan the texts in Sections One and Two of this Unit to continue your box.
- iii) Which of the phrases did you know before and which have you learnt studying this book?

2 Connections

Which word in BOX A below do you think is most closely connected with which word in BOX B? What is the connection between each pair of words?

Example: 15'a) CONNECTION: parliamentary sovereignty is a basic doctrine of British constitutional law

You must find a partner for every word, but there is not necessarily only one correct solution!

Box A

- 1 statute
- 2 case-law
- 3 justice
- 4 however
- 5 damages
- 6 Court of Chancery
- 7 common law
- 8 thus

Box B

- a) constitutional law
- b) to enact
- c) to interpret
- d) books of authority
- e) usage
- f) specific performance
- g) equity
- h) on the other hand

9	custom	i)	litigation
10	Parliament	j)	enactment
12	to construe	k)	civil law
14	to promulgate	l)	therefore
15	parliamentary sovereignty	m)	legislator
		n)	Equity
		o)	law reports

- Compare your answers with the solution suggested in the key. Can you give a good
- reason for any pairs which are different? Has every word got a partner?
- ▲ Work in pairs. Explain your solution to your partner. S/he will decide whether to
- accept the connections you give. If you can't agree about all the pairs, refer to the key.



CHAPTER XXII

STATE AND GOVERNMENT

Reading a Descriptive Legal Report

Section One: The State - Composition and Formation of the UK

A Before you read

In this Unit you are going to read a report on the UK system of government. It describes the relationship between some of the main state organs: the legislature, executive and monarchy. What are their relative powers and functions? And what is the role of the monarchy in the twentieth century?

But first, what and where exactly is the UK? Where exactly does the English legal system operate? The text in Section One gives some brief geographical and historical facts.

Before you read, test your general knowledge in the quiz below. There are nine true statements. Then read the first paragraph *only* of the text on page 36 to check your answers.

TEST YOUR KNOWLEDGE QUIZ

- i) Which of the following are parts of the UK?
 - a) England
 - b) Eire (Southern Ireland)
 - c) Scotland
 - d) Northern Ireland (Ulster)
 - e) Wales
- ii) Which of the following is/are not part of the UK?
 - a) The Isle of Man
 - b) The Channel Isles

- iii) Which of the following is a completely independent republic? a) Eire
b) Scotland
c) Ulster

- iv) The UK is
 - a) a federation of states
 - b) a unitary state.



- v) The UK is
 - a) an absolute monarchy
 - b) a constitutional monarchy.
- vi) The full name of the UK is: The United K..... of and

B First reading: understanding the contents and organisation of the text

- 1 We could give paragraph 1 on page 36 the heading 'Composition of the UK' or 'Geographical and Political Division of the British Isles'. Quickly skim paragraphs 2 and 3 and give each one a heading of your own. This quick first reading will help you to identify the general contents and organisation of the text and will make it easier for you to read it in detail later. Do not try to read or understand every word at this stage, just skim quickly to get an idea of the general content.

United Kingdom

Para. 1 1 The United Kingdom of Great Britain and Northern Ireland is a constitutional monarchy and a unitary state which is made up of the island of Great Britain (including
5 England, Scotland and Wales) and of Northern Ireland (which consists of the County Boroughs of Belfast and Londonderry, and the counties of Antrim, Armagh, Down, Fermanagh, Londonderry

10 and Tyrone - being part of the ancient Irish province of Ulster). The common language is English; Welsh and Gaelic are spoken regionally. The British Islands are not constitutionally part of the United Kingdom;

15 these islands, comprising the Channel Islands (of which the principal islands are Jersey, Guernsey, Alderney and Sark) and the Isle of Man are separate dependencies of the British Crown.

Para. 2 20 The independent Kingdoms of England and Scotland were first linked by personal union of the Crowns of both countries when *James VI* of Scotland succeeded to the throne of England (as *King James I*) in 1603. The

25 political unification of the two countries was only effected more than 100 years later through the Treaty of Union of 1707 (6 Anne, c. 11). The treaty and the subsequent Acts of Union abolished the

30 separate parliaments and established one parliament for Great Britain which was situated in London. Great Britain was united with Ireland by the Act of Union of 1800 (39 & 40 Geo. 3, c. 67) which came into effect

35 in the following year. By this Act provision was made for Irish representation in the Parliament at Westminster, as provision had been made for Scottish representation in the Act of 1707. The United Kingdom of Great

40 Britain and Ireland existed from 1801 until 1922, at which time, in consequence of the partition of Northern and Southern Ireland, the title was changed to the present one of The United Kingdom of Great Britain and

45 Northern Ireland. The Irish Treaty of 6 Dec. 1921 gave Dominion Status to 26 Irish counties under the name of the Irish Free State (*Saorstát Éireann*); in 1937 the Irish Free State assumed a republican form of

50 government but the new state continued in association with the British Commonwealth until 18 April 1949. Under the Government of Ireland Act, 1920 (10 & 11 Geo. 5, c. 67), as

- amended by the Irish Free State
- 55 (Consequential Provisions) Act, 1922 (12 & 13 Geo. 5, c. 4), a separate parliament and government, each with limited powers, were established for Northern Ireland. The Northern Ireland Assembly Act, 1973 (c. 17)
- 60 and the Northern Ireland Constitution Act, 1973 (c. 36) established a new constitutional framework to replace that provided by the Government of Ireland Act, 1920. The Northern Ireland Parliament was replaced by
- 65 an elected Assembly and the government by an executive, the composition of which was to be agreed by the Assembly. The Northern Ireland Act, 1974 (c. 28) dissolved the Assembly, and provided that a Constitutional
- 70 Convention should be held on the future of Northern Ireland. The Convention has since collapsed, and rule at present is direct from Westminster.
- Para.3 English law and Scots law are very
- 75 different from each other in form and substance. The separate evolution of the two legal systems, both before and after Union, has resulted in different principles, institutions and traditions. Although in
- 80 modern times Scots law has been greatly influenced by English law, it is still based upon principles of Roman or Civil law and upon rules of Canon, feudal or customary law origin. In spite of the existence of a common
- 85 Parliament for England and Scotland for over 250 years there has been no assimilation of the legal systems of the two countries. A fusion of law has, however, taken place between England and Wales, as a
- 90 consequence of the subjugation of the latter country in the middle ages. The law of Northern Ireland, although administered as a separate system, is similar in many essentials to English law.

Kenneth R. Simmonds, *International Encyclopaedia of Comparative Law: National Report - the U.K.*

- ▲ Compare your headings with other members of the class. Are all the headings
- possible?
- Try to think of an alternative heading for some of the paragraphs. Are different
- headings possible?

C Reading for detail and language study: paragraph 2

1 Reading for detail

- i) Paragraph 2 describes the most important events in the history of Britain and Ireland. A *summary* (a brief description of the main points in different words) of each event is given in note form in the chart below. First, check that you understand the notes in the chart, then copy it into your notebook.
- ii) Read paragraph 2 carefully and put each event in the correct historical order by giving it a number from 1 to 10. To do this you will need to match the summary of each event to the corresponding part of the text.

Example: The phrase 'Union of Crowns of Scotland and England' (f) is a summary of the first five lines of paragraph 2. It happened in 1603 and so was the first historic event.

This activity will help you to think carefully about the meaning of the text as you read it. It is also a first step towards reformulating a text - that is, expressing the information contained in the text in a different form such as a summary, chart or table.

	Event	Date	Order
a)	Northern Ireland Assembly constituted		
b)	Political unification of Scotland and England		
c)	Republican government adopted in Irish Free State		
d)	Northern Ireland Assembly dissolved		
e)	Single parliament established for Great Britain	1603	1
f)	Union of Crowns of Scotland and England		
g)	The Republic of Ireland left the British Commonwealth		
h)	Union of Great Britain and Ireland		
i)	Southern Ireland became a dominion-the Irish Free State		
j)	Northern Ireland given separate parliament and government		

2 Vocabulary study: understanding new words

As you saw in Unit One, it is often possible to understand the meaning of a new word from the context. Read carefully the section of the text containing each word listed in the first column at the

Note: this word can have both meanings, depending on the context. *Clues:* in this case it would not make sense for the Isle of Man etc. to have a particular relationship with the object the monarch wears on his head (lines 18-19), or talk about the 'personal union' of two physical crowns (21-2). Also, when *Crown* means monarch/monarchy it is normally written with a capital 'C' as in the text.

ACTIVE: English law has greatly influenced Scots law....
 PASSIVE: Scots law has been greatly influenced by English law

To form the passive, use the verb *to be* in the same tense as the active verb followed by the *past participle* of the main verb:

ACTIVE (main verb)	PASSIVE (to be + past participle of main verb)
united (simple past)	was (simple past) + united
has influenced (present perfect)	has been (present perfect) + influenced

Use *by* if you want to say who or what did the action (... *by* the Act of Union/... *by* English law). This is called the *agent*. We often prefer the passive form when the action (*united/influenced*) or the object (*Great Britain/Scots law*) is the most important element in the sentence, or when we do not know who did the action (e.g. her bag was stolen). It is important that you recognise and understand the passive form because it is extremely common in legal English.

- ii) Scan paragraph 2 to find more examples of passive phrases. Check that you understand them.
- iii) Transform the following active sentences into the passive form and decide whether it is necessary to specify who did the action (the agent): first find the object of the active sentence.
Example: Special courts administer ecclesiastical law. *Answer: Ecclesiastical law is administered by special courts.*
 - a) The English courts interpret (Acts of Parliament) according to fixed rules of precedent.
Answer: Acts of Parliament
 - b) It is possible that Parliament will eventually codify much English law.
 - c) Roman law has influenced many modern European legal systems.
 - d) The Treaty and Acts of Union of 1706 and 1707 established one parliament for Great Britain.
 - e) A person who marries a second husband or wife while still legally married to the first one commits bigamy.

5 Oral practice

- i) Use the information in the chart from Exercise C1 above to describe the history of the UK, using some of the new vocabulary you have learnt and the passive where you think this is the best form.

Start like this:

The Crowns of England and Scotland were united in 1603, but the political unification of the two countries did not take place until ...

- ▲ Work in pairs: take turns to describe some of the main events in the history of the UK.
 - Speak aloud. If possible record your description on tape, then listen to your recording.
- ii) Describe the formation and historical development of your own country in the same way. Use some of the new language you have learnt where possible.
- ▲ Work in pairs or small groups.

6 Discussion point

- a) Do you know anything about the 'Troubles', or situation of tension in Northern Ireland?
 - b) Read this very simple summary to check your ideas:
 The people of Ulster are divided into two groups - the Catholic minority, who want to join the Republic of Ireland, and the Protestant majority, who want to remain in the UK. The British government have sent the army to Ulster to control the violence between the two groups, but both sides hate this interference and many soldiers have been killed. The government say that Ulster is part of the UK and they therefore have a duty to keep the peace there. And how can they cede (give) Ulster to Eire when the majority of its people are against this?
 - c) You have read about the historical relationship between Britain and Ireland. From a legal point of view, what is your opinion on the matter? Can you see a solution to the problem?
- ▲ Discuss your ideas with other members of the class.

D. Study in detail: paragraph 3

1 Reformulating a text: taking notes step by step

In this exercise you will learn to focus on the main points of a text and transfer this information to a simple chart in note form. This will involve understanding the main points of the text and will help you to remember them. A chart, table or summary is also useful for quick and easy reference in the future.

- i) Quickly read paragraph 3 of the text on page 36 and divide it into three sections describing the relationship between the legal systems of:

- 1) England and Scotland, 2) England and Wales, 3) England and Northern Ireland.

Using the line numbers, list the divisions in your notebook.

- ii) Read each section carefully and make a note of the parts of the text which:

- a) compare the two legal systems
- b) give reasons for the differences or similarities between them.

- iii) Transfer this information in note form to the following chart in your notebook. Use your own words where possible, e.g. 'The law of Northern Ireland is similar in many essentials to English law' (lines 91-4). In other words: the law of Northern Ireland is basically similar to English law. In note form in the table: 'basically similar'.

Legal system	Relationship with English law	Reasons for differences/similarities
Scotland		
Wales		
Northern Ireland	<i>basically similar</i>	

- iv) Choose the legal system of Northern Ireland, Scotland or Wales. Use the information in your chart to describe the relationship between the system you have chosen and English law.

- ▲ Work in small groups. Decide together if your information is correct and
- complete, before checking in the key to make sure.
- Speak aloud. If possible record your description on tape, then listen to your recording. If you prefer, use your notes to write a brief description. Then check
- your information in the key.

2 Discussion points

Consider each of the following points, then do some personal research to check your ideas. For example, for the first point, you will find some information in the text from *The Encyclopaedia Britannica* on page 29.

- ▲ Work in pairs.
- ◆ What other legal systems are based on the English common law?
- ◆ What are the historical reasons for this?
- ◆ Has your legal system been influenced by English law or another legal system in any way? Can you give reasons for this?
- ◆ Has your legal system influenced other legal systems? Can you explain the reasons for this?
- ▲ Discuss your ideas and findings in small groups.

3 Scanning for expressions with 'law'

Scan the whole text and find other expressions with 'law' to add to your box from page 32, Unit One (e.g. feudal law- line 83).

E. Development

1 Personal vocabulary research: state systems

The text refers to several different types of State or State systems (e.g. constitutional monarchy, unitary State).

- i) Quickly scan Paragraphs 1 and 2 to find more examples and write them in column 1 of the following table in your notebook. Do you know the meaning of each term?

Type of State	UK	Eire	Your country	Another example
constitutional monarchy	✓	X		Sweden France
unitary State	✓	✓		

- ii) Use a dictionary to find some other terms in English (at least five) to add to the list, e.g. presidential republic, dictatorship.
 iii) Complete the other four columns of the table, giving a different example State for each system.
 ▲ Compare your list with someone else and discuss your examples together.
 iv) To practise the vocabulary in your table, describe the State system in the countries from your table that you know something about.

Example: 'Eire is a unitary State, which is now a republic. It was part of the U K until 1922. It became a dominion, and later a completely independent republic about 50 years ago.'

- ▲ Work in pairs.

2 States of the world

Each group of countries on the right has the same State system. Can you find it from the list on the left?

Example: Burma, China, Ethiopia and Mozambique are all PEOPLE'S REPUBLICS.

Answer: 1 / f

1. PEOPLE'S REPUBLIC	a) Bahrain, Brunei, Oman, Saudi Arabia
2. COLONY	b) Bermuda, the Falkland Islands, Gibraltar, Hong Kong (until 1997)
3. CONSTITUTIONAL MONARCHY	c) Brazil, India, Mexico, the United States of America
4. FEDERAL REPUBLIC	d) Egypt, France, Indonesia, Peru
5. REPUBLIC	
6. MONARCHY	

- e) Belgium, Denmark, Japan, the Netherlands
 f) Burma, China, Ethiopia, Mozambique

When you have finished, check your answers in the key. Do any of the groups or answers surprise you?

3 Discussion point

Choose one state system from Exercise 2 above and any country or countries you know well to use as an example of that system. Describe the state system in the country or countries you have chosen in outline and consider any points of interest and comparison.

- ▲ Work in small groups.
 ■ Speak aloud. If possible record your description on tape, then listen to the recording. If you prefer, write a short description for written practice.

Section Two: The UK System of Government

A Before you read

- i) Write down all the words and expressions you can think of on the topic of STATE AND GOVERNMENT. You have 3 minutes!
- ii) Can you continue your list by including other related words? For example, if you have written *politics*, you could include *political* and *politician*.
- ▲ When you have finished, compare your list with those of other members of the class.



B. Reading for confirmation

The three main topics in the text on pages 44-6 are:

- a) The monarchy
- b) The legislature
- c) The executive.

i) Do not read the text yet.

▲ Work in pairs. Choose topic a, b or c.

■ Work on topics a, b and c.

▲ Write three lists in note form containing the following information about your topic(s):

A. Facts you know

B. Facts you're not sure of

C. Facts you want to know

3. State Organs

- 1 The constitutional principles, rules and practices of the United Kingdom have never been codified; they derive from statute law, from common law, and from conventions of the constitution, which
 - 5 are not laws at all, but political practices which have become considered as indispensable to the smooth working of the machinery of government. The monarchy, followed by the legislative, executive and judicial organs of government will
 - 10 be discussed in turn.
- a. The *monarchy* is the most ancient secular institution in the United Kingdom, with a continuous history stretching back over a thousand years. The monarchy is hereditary and

- 15 the present title to the Crown derives from provisions of the Act of Settlement of 1701 (12 & 13 Will 3, c. 2) which secured the Protestant succession. This succession cannot now be altered, under a provision of the Statute of Westminster,
- 20 1931 (22 & 23 Geo. 5, c. 4), except by common consensus of the member states of the Commonwealth which owe allegiance to the Crown.

Queen Elizabeth II, who succeeded to the

- 25 throne in 1952, is, in addition to being an integral part of the legislature, the head of the judiciary, the commander-in-chief of the armed forces of the Crown and the temporal head of the established Church of England.
- 30 The monarchy in the United Kingdom has evolved over the centuries from absolute personal authority to the present constitutional form by which the Queen reigns but does not rule. Her Majesty's government governs in the name of the
- 35 Queen who must act on the advice of her ministers. The Queen summons, prorogues (dismisses at the end of a session) and dissolves Parliament; she usually opens new sessions of Parliament with a speech from the throne in which
- 40 the major governmental policies are outlined. These acts form part of the Royal Prerogative, defined by *Dicey* as 'the residue of discretionary or arbitrary authority, which at any given time is left in the hands of the Crown'. Prerogative rights are
- 45 of legislative, executive and judicial character. The Monarch must give the Royal Assent before a Bill which has passed all its stages in both Houses of Parliament can become a legal enactment (Act of Parliament). The Monarch's consent and
- 50 approval is required before a Cabinet (see *infra*, c) can be formed or a minister take up office. As Head of State the Monarch has the power to sign international agreements, to cede or receive territory, and to declare war or make peace. The
- 55 Monarch confers honours and makes appointments to all important offices of state, including judges, officers in the armed services, diplomats and the leading positions in the Established Church. As the 'fountain of justice', it
- 60 is only the Monarch who is able to remit all or part of the penalties imposed upon persons convicted of crimes through the exercise of the prerogative of mercy on the advice of the appropriate minister.
- At the present time the Monarch, although
- 65 exercising residual authority by consent of Parliament and according to the advice of the government of the day, is regularly informed and consulted on many aspects of public affairs. The Privy Council is the body on whose advice and

70 through which the Monarch exercises most statutory and many prerogative powers. There are about 330 members of the Privy Council, which, however, only meets as a full body on the death of the Monarch. It conducts much of its business in

75 committees at which the Monarch may not constitutionally be present. All Cabinet ministers are members; other members are appointed by the Monarch on the recommendation of the Prime Minister.

80 *b. Legislature.* - Parliament is the legislative organ and is constitutionally composed of the Monarch, the House of Lords, and the House of Commons. The Queen in Parliament represents the supreme authority within the United

85 Kingdom.

(1) The *Parliament at Westminster* legislates for the United Kingdom, for any one of the constituent countries, or for any combination of them. It may legislate on certain 'excepted' and

90 'reserved' matters for Northern Ireland (see *infra* (2)), subject to the provisions of the Northern Ireland Constitution Act, 1973 (c. 36). It may also legislate for the Channel Islands and the Isle of Man, under certain conditions, although these

95 islands possess their own ancient legislatures. The Parliament Act, 1911 (1 & 2 Geo. 5, c. 13) s. 7 provides that the life of one Parliament may not exceed five years.

Parliament consists of two Houses: the House

100 of Lords and the House of Commons.

The *House of Lords* is for the most part still a hereditary body. It consists of the Lords Temporal and the Lords Spiritual. The Lords Temporal include hereditary peers and peeresses who have

105 not disclaimed their peerages under the Peerages Act, 1963 (c. 48); life peers and peeresses created by the Crown under the Life Peerages Act, 1958 (6 & 7 Eliz. 2, c. 21) in recognition of public service; and the Lords of Appeal in Ordinary. The

110 House of Lords is presided over by the Lord Chancellor who is *ex officio* chairman of the House. The Lords Spiritual include the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and the 21

115 most senior diocesan bishops of the Church of England.

The *House of Commons* is an elected and representative body; members (at present 650) are elected by almost universal adult suffrage to

120 represent constituencies in England (523), Scotland (72), Wales (38) and Northern Ireland (17). The law

relating to Parliamentary elections is contained in substance in the Representation of the People Act, 1949, as amended.

Any British

125 subject aged 21 or over, not otherwise disqualified (as for example, members of the House of Lords, certain clergy, undischarged bankrupts, civil servants, holders of judicial office, members of the regular armed services and the police forces) may

130 be elected a Member of Parliament (M.P.). Members are paid a salary and an allowance for secretarial and office expenses; after a Parliament is dissolved all seats are subject to a General Election. By-elections take place when a vacancy

135 occurs during the life of a Parliament, as when a member dies, is elevated to the House of Lords or accepts an 'office of profit' under the Crown.

The Speaker of the House of Commons is elected by the members from the members to

140 preside over the House immediately after each new Parliament is formed. He is an impartial arbiter over Parliamentary procedure and the traditional guardian of the rights and privileges of the House of Commons.

145 The *supremacy, or sovereignty*, of the United Kingdom Parliament is probably the most basic principle of British constitutional law. Parliament has of its own will settled the duration of the life of a Parliament, acts in such a way as not to bind its

150 successors in the manner or form of their legislation, and, in the Parliament Acts of 1911 and 1949 has provided that in certain circumstances a Bill may become law without the concurrence of all the component parts of

155 Parliament. These two Acts have clarified the supremacy of the House of Commons over the House of Lords, which can only delay the passage of Public Bills for a maximum period of one year and cannot delay at all the passage of Money Bills

160 (financial measures).

The European Communities Act, 1972 (c. 68), which made legislative changes in order to enable the United Kingdom to comply with the obligations entailed by membership of the

165 European Coal and Steel Community, the European Economic Community, and the European Atomic Energy Community, from 1 Jan. 1973, gives the force of law in the United Kingdom to existing and future Community law

170 which under the Community treaties is directly enforceable in member states, and provides for subordinate legislation in connection with the implementation of obligations or the exer-

cise of rights derived from the Community Treaties.

- 175 (2) The *Parliament of Northern Ireland* established by the Government of Ireland Act, 1920, was abolished and replaced by the Assembly elected under the provisions of the Northern Ireland Assembly Act, 1973 (*supra* Introduction preceding I). The first Northern Ireland Executive agreed upon by this Assembly took office in November 1973, but collapsed in May 1974. Direct rule by the Parliament at Westminster has been reimposed, under the provisions of the 185 Northern Ireland Constitution Act, 1973, in consequence.

c. *Executive.* - The government consists of the ministers appointed by the Crown on the recommendation of the Prime Minister, who is

- 190 appointed directly by the Crown and is the leader of the political party which for the time being has a majority of seats in the House of Commons. The office of Prime Minister dates from the eighteenth century and is the subject of a number of constitutional conventions. The Prime Minister is the head of the government and presides over meetings of the Cabinet; by convention he is always a Member of the House of Commons. He consults and advises the Monarch on government business, supervises and to some extent co-ordinates the work of the various ministries and departments and is the principal spokesman for the government in the House of Commons. He also makes recommendations to the Monarch on many important public appointments, including the Lord Chief Justice, Lords of Appeal in Ordinary, and Lords Justices of Appeal.

The Cabinet is the nucleus of government; its members consist of a small group of the most

- 210 important ministers who are selected by the Prime Minister. The size of the Cabinet is today about 23 and its principal function, much of the work being carried out in Committee, is to determine, control and integrate the policies of the government for submission to Parliament. The Cabinet meets in private and its deliberations are secret; no vote is taken, and, by the principle of 'Cabinet unanimity', collective responsibility is assumed for all decisions taken.
- 220 The central government ministries and departments give effect to government policies and have powers and duties conferred on them by legislation, and, sometimes, under the Royal Prerogative. Each is headed by a minister who is

- 225 in most cases a member of either the House of Lords or the House of Commons. There are over 100 ministers of the Crown at the present time; they include departmental ministers (e.g., the Secretary of State for Foreign and Commonwealth

230 Affairs; Chancellor of the Exchequer (Treasury); Secretary of State for Social Services); non-departmental ministers (e.g., Lord President of the (Privy) Council, Paymaster-General, Ministers without Portfolio); ministers of state

235 (additional ministers in departments whose work is heavy); and junior ministers (usually known as Parliamentary Secretary or Parliamentary Under-Secretary) in all ministries and departments.

The Lord Chancellor and the Law Officers of

240 the Crown deserve special mention at this point. The Lord High Chancellor of Great Britain presides over the House of Lords both in its legislative capacity (*supra* b (1)) and as a final court of appeal; he is a member of the Cabinet and

245 also has departmental responsibilities in connection with the appointment of certain judges. He advises on, and frequently initiates, law reform programmes with the aid of the Law Commissions, the Law Reform Committee and ad

250 *hoc* committees. The four Law Officers of the Crown include, for England and Wales, the Attorney-General and the Solicitor-General; for Scotland, the Lord Advocate and the Solicitor-General for Scotland. The English Law Officers

255 are usually members of the House of Commons and the Scottish Law Officers may be. They represent the Crown in civil litigation, prosecute in certain exceptionally important criminal cases, and advise government on points of law. They

260 may appear in proceedings before the International Court of Justice, the European Commission of Human Rights and Court of Human Rights. They may also intervene generally in litigation in the United Kingdom as

205 representatives of the public interest.

The United Kingdom has no Ministry of Justice. Responsibility for the administration of the judicial system in England and Wales is divided between the courts themselves, the Lord

270 Chancellor, and the Home Secretary. The Lord Chancellor is concerned with the composition of the courts, with civil law, parts of criminal procedure and law reform in general; the Home Secretary is concerned with the prevention of

275 criminal offences, the apprehension, trial and treatment of offenders, and with the prison service,

Kenneth R. Simmonds, *International Encyclopaedia of Comparative Law: National Report- the U.K.*

- ii) Read the relevant section(s) of the text to confirm or check your facts and find some answers. Do not worry about words or phrases you don't understand if you can complete this activity.
- iii) Was most of the information in list A correct? And list B? Did you find the answers to your questions in list C?
- iv) Form groups of three people who have each read a different section. Exchange the information you have learnt and discuss any points of particular interest.
- v) Think about this method of reading. Did you find it easier to read the text after thinking about the topic, and with personal information to check and find? You can use this method with any text of your choice. Even if you don't know much about the subject, it can still be helpful to think of some ideas and questions *before you read*.

C Reformulating text information

You are going to study the text in detail one section at a time, and transfer the most important information to your chart from page 47, showing the main components of the system of government in the UK today.

Identifying relevant information

- I First you need to identify the most important points to include in the chart. The choice is personal, but remember that the completed chart should illustrate *the modern position of each state organ (monarchy, legislature and executive) from the legal point of view, and give the main facts about its composition, powers and functions today*. Choose your information carefully and don't try to include everything from the text! To practise the skill of identifying and selecting relevant information, decide which five of the following 10 points from the beginning of the text on the monarchy you would choose to include:

- a) most ancient secular (non-religious) institution in UK

SYSTEM OF GOVERNMENT AND STATE ORGANS IN THE UK TODAY

a. The Monarchy

THE MONARCH
* Head of State
* Hereditary Protestant succession
*
*
*
*
*
*

b. The Legislature

PARLIAMENT	
* Queen in parliament (monarch House of Commons. Lords) is supreme authority	
*	
*	
THE HOUSE OF LORDS	THE HOUSE OF COMMONS
* not elected mainly hereditary	* elected by almost universal adult suffrage
*	*
*	*
*	*
*	*
*	*

c. The Executive

THE GOVERNMENT	
* Ministers appointed by monarch on Prime Minister's recommendation	
*	
*	
*	
THE CABINET	THE PRIME MINISTER
* about 2 most important ministers	* head of Government
*	*
*	*
*	*
*	*

- b) continuous history of over 1000 years
- c) hereditary succession (monarchy passes from one member of family to another)
- d) Queen Elizabeth II became queen in 1952
- e) integral part of legislature

- f) head of judiciary
- g) head of armed forces
- h) temporal head of Church of England
- i) constitutional position has changed from absolute power to no real power
- j) remaining rights and duties are part of the 'Royal Prerogative'

- 2 i) Read section a of the text carefully (lines 11-79: the monarchy) and identify the points you wish to include on the chart from page 47. List these points in your notebooks. Do *not* transfer them to your chart yet. Do not worry about individual words or phrases you don't understand, just try to follow the main arguments so that you can complete this activity.

D Study in detail: the monarchy

1 Word study

- i) a) Which phrase in lines 11-29 of the text means *became queen*?
 b) Which word in lines 11-23 means *a legal condition in an enactment*?
 c) What is the difference in meaning between the two verbs in the phrase 'the Queen *reigns* but does not *rule*' (line 33)? Why is the difference vital to the British constitution?
 d) What do you understand by *advice* (line 35)? Is the word normally used in exactly this sense?
 e) What do you suppose *outlined* (line 40) means?
 f) Use the context to decide what a Bill (line 47) is.
 g) What role does the monarch have in legislating?
 h) Notice the use of *can* with the passive in lines 49-51.
 i) *Remit* (line 60) means *reduce*. What do you think the *prerogative of mercy* (lines 62-3) is?
- ii) Study lines 36-40. Using this box, match the letters on the left with the numbers on the right to form three true statements about some of the Queen's duties. Don't be afraid to guess!

A	Parliament is prorogued by the Queen	1. before a new legislature can be elected
B	Parliament is summoned by the Queen	2. when the Prime Minister requests a General Election
C	Parliament is dissolved by the Queen	3. at the end of the year's session.

Who summons, prorogues and dissolves parliament in your country? When?

2 Language study: power and obligation

- i) Look at this phrase from the text:

The Queen summons, prorogues and dissolves Parliament (lines 36-8)

It simply tells us that the Queen does these actions. Now look at phrases a) to e) below, taken from the text. They do not simply tell us what the Queen does: they also give an extra idea of obligation (e.g. *must*) or capacity (e.g. *is able to*). Obviously the language of the law often includes concepts like these. Decide which phrases express obligation, and which express capacity, and put a tick (J) in the corresponding box on the right.

		Obligation	Capacity
a)	The Queen <i>must</i> act on the advice of her ministers		✓
b)	The monarch <i>is able to</i> remit penalties		
c)	The monarch's consent is <i>required</i> before a Cabinet can be formed		
d)	The monarch <i>has the power to</i> sign international agreements		
e)	The monarch <i>may not</i> be present at Privy Council meetings.		

- ii) Think of some other words or phrases which express power and obligation, and make an example sentence with each one. For instance, the Queen is *obliged to* act on her ministers' advice.

3 Comprehension check

Read the text carefully to answer the following questions.

- a) Could Prince Charles, the Queen's eldest son and heir, succeed to the throne if he became a Catholic?
- b) How has the role of the monarchy changed over the centuries? c) What do you understand by the *Royal Prerogative*?
- d) Does the monarch still have real power? Which sections of the text tell you this?

4 Reformulation

Now that you understand this section of the text fully, transfer the main points (your list from C2 above) to the first section of your chart from page 47. Write brief notes and use your own words where possible as you learnt to do in Section One of this Unit (Exercise D 1).

- ▲ When you have finished, compare your chart with other members of the class. Have you chosen the same information?
- When you have finished, compare your chart with the version in the key. Have you
- chosen the same information?

5 Oral practice

Use the information in your chart from page 47, and the language and vocabulary you have learnt in the exercises above, to describe the British monarchy. Who is Head of State in your country? Is their role at all similar to that of the British monarch?

Start like this: 'Succession to the British monarchy is hereditary. The monarch, who must be a Protestant, is part of the legislature and head of...'

- Speak aloud. If possible record your description on tape, then listen to the recording.
- ▲ Work in pairs. Take turns to describe some aspects of the British monarchy.

E Study in detail: the legislature

1 Identifying relevant information

Repeat exercise C2 above for section b of the text (lines 80-186: the Legislature).

2 Word study

- i) a) Use the context to help you decide what the following words probably mean:
 - a) peer/peeress (lines 104, 106)
 - b) suffrage (line 119)
 - c) constituencies (line 120)
 - d) by-election (134)
- ii) People who work in government departments cannot become Members of Parliament. What are they called?
- iii) Find words or phrases in the text that mean the following:
 - a) to place under legal obligation (lines 145-55)
 - b) agreement, accord (145-55)
 - c) to cause something to wait (155-60)
 - d) written legal agreements between states (161-74)

3 Language study: understanding complex sentences

- i) Study these phrases from the text:
 - A *Queen Elizabeth II, who succeeded to the throne in 1952, is, in addition to being an integral part of the legislature, the head of the judiciary*
 - B *The monarch must give the Royal Assent before a Bill which has passed all its stages in both Houses of Parliament can become a legal enactment.*

Read the italic part of each sentence. This is the basic part. The boxed phrases beginning WHO and WHICH give us extra information: they are *relative clauses*. The first gives us more information about the subject (A - Queen Elizabeth II became Queen in 1952); the second defines the subject (B - which kind of Bill is referred to? One which has passed all its stages in both Houses of Parliament). The use of relative clauses can make it more difficult to understand a sentence because it interrupts the basic subject-verb-object sequence. This is especially true in the long, complex sentences typical of legal English.

If you have difficulty understanding a phrase containing a relative, read it twice. If you still have difficulty, take out the relative clause and study the basic part of the sentence first. Then consider the meaning of the phrase *with* the relative clause. What does the relative pronoun (who, that, which, whom, whose) refer to? What extra information does it give you, or how does it define the word it refers to?

- ii) Practise these skills by studying the sentences containing relative clauses in sections a and b of the text. Decide *what* or *who* each of the following pronouns refers to and check that you understand each complete sentence by answering the questions:

Example: which (line 39): on what occasion does the Queen present the main government policies?

Answer: *which* refers to the Queen's speech from the throne. The Queen presents the main Government policies in her speech when she opens Parliament.

- a) which (line 43): is the Royal Prerogative the same today as it was many years ago?
- b) who (60): can the monarch reduce criminal penalties?
- c) whose (69): what important function does the Privy Council perform? d) which (73): what unusual event happens when the monarch dies? e) which (157): which House of Parliament can delay Bills for a year?

- iii) Study lines 161-74 of the text.

- a) In this complex sentence, can you find the subject, main verbs and objects?
- b) What are the two basic points of the sentence?
- c) What do the relative pronouns *which* (162) and *which* (170) refer to?
- d) What extra information do the relative clauses give?

4 Vocabulary skills: word families

- i) Study these phrases from the text:

- (1) Parliament is the *legislative* organ (lines 80-81)
- (2) The Parliament at Westminster *legislates* for the UK (lines 86-7)
- (3) The Channel Isles and the Isle of Man possess their own ancient *legislatures* (lines 94-5)
- (4) The European Communities Act 1972 (...) provides for subordinate *legislation* (lines 171-2)

The four words in italics clearly share the same origin and belong to the same *family*: they all have the same ROOT (basic part of the word) and their meaning is related. What is the exact difference in their meaning and grammatical function?

Example: (1) *legislative* is an adjective. It describes *organ*. A *legislative organ* is an

- organ which has power to make law (legislate).
- ii) Many words belong to families like this. Learning to recognise root words and understand the relationship between different members of a family is one of the best ways to improve your vocabulary and understanding of new words. If you know just one word in a family, you will be able to work out the function and meaning of many other members of that family.

Quickly scan the whole text to find one other word which is related to each of the following (the words appear in the same order in the text):

- a) succeed b) constitution c) represent d) qualify
- e) hold f) judiciary g) guard h) supreme i) member
- j) impose

If you do not already know it, work out the meaning of each related word. Use the grammatical form and the context to help you. Can you think of other words in each family?

5 Comprehension check

Read the text carefully to answer the following questions.

- Is the UK legislature composed only of the House of Lords and the House of Commons?
- Are all UK laws national in their effect?
- Is Parliament a democratically elected body?
- Which of the three categories of Lords Temporal do you think are called 'The Law Lords'?
- Can a judge become a Member of Parliament?
- Can a judge become a Member of Parliament?
- Can Parliament pass any law it chooses, or are there constitutional limits on its power?
- From what you have read, can you see any external limit to Parliamentary sovereignty?

6 Reformulation

Now that you understand this section of the text fully, transfer the main points (the information you have listed from E 1 above) to the second section of your chart from page 47. Write brief notes and use your own words where possible.

- ▲ When you have finished, compare your chart with other members of the class. Have you chosen the same information?
- When you have finished, compare your chart with the version in the key. Have you
- chosen the same information?

7 Oral practice

Use the information in your chart from page 47, and the language and vocabulary you have learnt in the exercises above, to describe the UK legislature. How is the legislature composed in your country? Is it democratically elected?

Start like this: 'The UK legislature is also called the Queen in Parliament. It is composed of the Monarch, the House of Lords and the House of Commons. One Parliament cannot last for more than ...'

- Speak aloud. If possible record your description on tape, then listen to the recording.
- ▲ Work in pairs. Take turns to describe some aspects of the UK legislature.

F Study in detail: the executive

1 Identifying relevant information

Repeat exercise C2 above for section c of the text (lines 187-277: the Executive).

2 Word study

- Spokesman* (line 202) is a noun formed from more than one word: it is a *compound noun*. What two basic words is it formed from? Use their individual meaning and the context to decide what *spokesman* probably means.
- The Prime Minister is described as 'the *head* of the government' (line 196). In line 224 the same word is used as a verb - what does it mean?
- The Prime Minister *presides* over meetings of the Cabinet' (lines 196-7). What noun, common in the context of state and government, is related to the verb *preside*? What do you think the verb means? Who presides over the House of Commons, and the House of Lords (see section b of the text)?
- What is a *Committee* (line 213)? If necessary, use your dictionary to find out. Is government work ever done in Committee in your country? What advantages does the system have?
- Which adjective in lines 220-34 is closely related to *department*? What does it mean? Find the word with the opposite meaning.
- Which phrase repeated in lines 247-77 means the process of changing and revising the law to make it better?
- The Law Officers advise the government on *points of law* (line 259). What do you think these are?
- h) What important area of law is distinguished in this section from criminal law?

3 Vocabulary skills: choosing the right meaning

In Section One of this Unit you saw that some words, e.g. *crown*, *rule*, have more than one meaning, depending on the context. The ability to choose the correct meaning of a word in a particular context is an important vocabulary skill which will help you to understand and use correctly words you already know, and also to use a dictionary effectively.

Below are some simple dictionary definitions of the word **TITLE**:

- (1) name of a book, poem, picture, etc.
- (2) name used to show a person's position, status or occupation
- (3) right to the possession of a position or property

Which of these three meanings do you think **TITLE** will usually have in the context of the law?

- Will this always be true? Does it have this meaning in line 15 of the text? Find and study the sentences in the text containing the words in capitals in the next exercise. First decide from the context what you think the word could mean, then choose the appropriate dictionary definition.

E.g. **THRONE** (lines 25, 39)

- 1) ceremonial chair or seat of a monarch, bishop, etc.
- 2) royal authority, the sovereign

Answer: line 25 - definition 2
line 39 - definition 1

- a) **OFFICE** (lines 51, 193)
 - 1) room used as a place of business
 - 2) buildings of a government department
 - 3) public position of authority
- b) **EXERCISE** (line 62)
 - 1) use or practice of powers, duties or rights
 - 2) activity for physical, mental or spiritual training
- c) **BODY** (lines 69, 118)
 - 1) the whole physical structure of a person or animal
 - 2) an organised group of people working as a unit
- d) **SUBJECT** (line 125)
 - 1) any member of a State except the supreme ruler
 - 2) a topic or argument which is talked, written about, or studied

- e) **SEAT** (lines 133, 192)
 - 1) something for sitting on, e.g. a chair
 - 2) a place where something is, or is located or based
 - 3) a parliamentary constituency
 - 4) membership in a legislative body
- f) **PASSAGE** (line 157)
 - 1) passing of a Bill so that it becomes law
 - 2) passing, act of going through or past
 - 3) voyage, journey
 - 4) short extract from a speech or piece of writing
- g) **BUSINESS** (line 200)
 - 1) buying, selling, commerce, trade
 - 2) affairs, matters
 - 3) shop, commercial or industrial enterprise
- h) **APPOINTMENT** (line 205)
 - 1) arrangement to meet somebody
 - 2) position or office
 - 3) the act of presenting something,
- i) **SUBMISSION** (line 215)
 - 1) act of accepting the power or consideration authority of another
 - 2) legal theory, opinion presented to a judge or jury e.g. a plan or document, for

Note: The last two paragraphs of the text (lines 239-77) contain a lot of new vocabulary relating to the administration of justice. You will learn this area of language later in the book, but if you are interested now, use a dictionary to find out what some of these terms mean. Choose about five words or phrases. First decide from the context what you think each word might mean, then look it up to find out.

4 Comprehension check

Read the text carefully to answer the following questions.

- a) How is the Prime Minister selected in the UK?
- b) What is the relationship between the Prime Minister and the monarch? c) What is the relationship between the Cabinet and Parliament?

- d) What is the vital difference between the role of the Cabinet and the role of government ministries or departments?
- e) The Lord Chancellor is the most important legal figure in the UK. What do you notice about his role and functions?
- f) Who is the UK Minister of Justice?

5 Reformulation

Now that you understand this section of the text fully, transfer the main points (the information you have listed from F1 above) to the third section of your chart from page 47. Write brief notes and use your own words where possible.

- ▲ When you have finished, compare your chart with other members of the class. Have you chosen the same information?
- When you have finished, compare your chart with the version in the key. Have you
- chosen the same information?

6 Oral practice

Use the information in your chart from page 47, and the language and vocabulary you have learnt in the exercises above, to describe the UK executive. Who is the leader of the executive in your country? Is there a body like the Cabinet, which plans and decides government policy?

Start like this: 'The UK Government consists of a body of Ministers called the

Cabinet, who are appointed by the Crown. The head of the Cabinet is the Prime Minister, who is the leader of ...'.

- Speak aloud. If possible record your description on tape, then listen to the recording.
- ▲ Work in pairs. Take turns to describe some aspects of the UK executive.

G Development

1 Remembering vocabulary: word categories

You have met a lot of new vocabulary in this Unit. One way to fix words in your mind is to put them into groups or categories

of related words. The act of choosing and classifying the words will help you to remember them and so will other words in the group that you know.

- i) Copy the following table into your notebooks. Write as many words and expressions as you can think of to complete it.

There is not necessarily a 'correct' position for a particular word. The choice is personal.

Parliament	Monarchy	Government	Legislation	Other
House of Lords	the Queen reigns but does not rule		Bill as amended by	suffrage European Community

- ii) Scan the whole text for other words and phrases that you want to remember and write them in the table. If you like, create more columns for other topics.

2 Translation focus: national institutions

- i) Study the following words and phrases from the text, relating to UK institutions: Bill the judiciary Cabinet MP Lord Chancellor constituency by-election Community law Prime Minister peer Act of Parliament Do similar institutions, etc. exist in your system, with comparable characteristics and functions?

Discuss your ideas with other members of the class.

- ii) Which English terms do you think it is possible to translate directly into your own language? In your opinion, what does

this depend on? When a direct translation is not possible, how can you refer to the English terms when speaking your own language?

- ▲ Work in pairs. When you have finished, exchange your ideas with other members of the class.
- iii) What does this activity teach you about translating law terms, and in particular
 - terms describing the national institutions of a State?
- iv) Choose five institutional terms from your own system and decide how you would refer to them when speaking English.
- ▲ Compare your ideas with other members of the class.

3 Describing a system of government: your country

- i) Prepare to describe the system of government in your own country. Use the elements of the UK system of government as a guide and make brief notes if you like.

Include the following points:

THE HEAD OF STATE: appointment, functions and powers, relationship with other state organs

THE LEGISLATURE: composition, functions and powers, relationship with other state organs

THE EXECUTIVE: composition, functions and powers, relationship with other state organs.

- ii) Speak aloud. If possible record your description on tape, then listen to the recording.
- ▲ Work in small groups. Take turns to describe different aspects of the system of government in your own country.

4 Vocabulary theme: law and laws

LAWS are separate, individual rules. A LAW is one individual rule, or one Act of Parliament.

LAW or THE LAW is a whole system.

Each rule, which we call A LAW, is part of the whole system, which we call LAW or THE LAW.

- i) Study each of the four sentences in the text containing the word *law* (lines 3, 122, 147, 168). Which two refer to individual laws, and which two refer to law as a whole system?

- ii) All the words in the box are used in the text to refer to law and laws. Look at each word in context and try to decide its exact use or uses. Which terms are similar or equivalent? Which words are quite different from all the others?

LAW (5, 122, 147, 168)
 CONVENTION (4, 195, 197)
 RULE (1)
 PRACTICE (1, 5)
 PROVISION (16, 19)
 BILL (47, 153)
 ACT OF PARLIAMENT (48-9, 155)
 LEGAL ENACTMENT (48)
 STATUTE LAW (3)
 LEGISLATION (151, 172)

- iii) Complete the passage below by choosing the best word from the box for each blank space. Do *not* use any word more than once. Choose the singular or plural form and the article *a* or *an* as appropriate.

English laws

A proposal of law, or (1).....only becomes *a/an* (2) called *a/an* (3)when all its (4) have been approved by the Queen in Parliament. Many (5) of English constitutional (6) do not derive (come) from (7) or common law, but are political (8) called (9)....., which have the force of law.

5 Comparing systems of government

- ▲ Work alone or in pairs.
- ▲ Think about the following points for a few minutes. Take time to refer back to the text and the activities you have completed in this Unit and write short notes if you like. Refer to Unit One (page 20) for some expressions of contrast and comparison which you can use to introduce your ideas when you speak about them.
- ◆ What are the most striking differences between the UK system of government and your own?

- ◆ Are there significant similarities between the two systems?
- ◆ Compare one or more aspects of government that particularly interest you.
- ▲ When you are ready, compare and discuss the different systems of government in small groups. Then exchange your most interesting ideas with the rest of the class.
- When you are ready, compare the different systems of government. Speak aloud. If possible record your ideas on tape, then listen to the recording. If you prefer, write some of your ideas down.



CHAPTER XXIII

THE CONSTITUTION

Section One: Parliamentary Sovereignty

A Using prediction and understanding the general themes of the text

1 Making predictions

All the words and phrases in the box below come from the text you are going to read in this Section.

- i) Check that you understand their meaning, using your own ideas and a dictionary or the glossary to help you if necessary.
- ▲ Work in small groups. Discuss the meaning of the words and phrases using your own ideas and your teacher, a dictionary and the glossary to help you if necessary.

House of Commons	hundred years	the British constitution
the electoral system	sovereign representative government	
dictatorship	the party machine	control customs

- ii) Use the words and phrases in the box to predict what you think the text may be about. What sort of topics and ideas do you think it will contain?
- ▲ When you have finished, compare your ideas with other groups in the class.

2 Checking predictions

- i) Skim the text on page 59 to check your predictions from Exercise 1 above and find out what the text is about in

general. Do *not* read the text in detail for this activity.

- ii) Which of your ideas from 1 were right? Were any of your predictions completely wrong?
- Compare and discuss your answers with the other members of the group you worked with in 1.

3 Understanding the general themes of a text

- i) Without looking at the text again, decide which of the following you think are *magi* themes.

Elective Dictatorship

- 1 The extent to which the perception of the British constitution has changed over the last hundred years is well illustrated by quotations from Dicey's *Law of the Constitution* (1885) and Lord Hailsham's lecture 'Elective Dictatorship' (1976). First, Dicey on sovereignty: 'The essential property of representative government is to produce coincidence between the wishes of the sovereign and the wishes of the subject ... This, which is true in its nature of all real representative government, applies with special truth to the English House of Commons' (p. 84). On conventions, Dicey said: 'The
- 5 to conventions of the constitution now consist of customs which (whatever their historical origin) are at the present day maintained for the sake of ensuring the supremacy of the House of Commons, and ultimately, through the elective House of Commons, of the nation' (pp. 430-1). Contrast these quotations with Lord Hailsham, 'So the sovereignty of Parliament has
- 10 increasingly become, in practice, the sovereignty of the Commons, and the sovereignty of the Commons has increasingly become the sovereignty of the government, which in addition to its influence in Parliament, controls the party whips, the party machine and the civil service. This means that what has always been an elective dictatorship in theory, but one in which the
- 15 component parts operated, in practice, to control one another, has become a machine in which one of those parts has come to exercise a predominant influence over the rest' (p. 497). And more succinctly: 'The government controls Parliament and not Parliament the government' (p. 496). So the nub of the indictment is that the elected part of Parliament, namely the
- 20 House of Commons, having achieved supremacy over the unelected parts, namely the Queen and the House of Lords, has surrendered its sovereignty to the government which controls it through the party machine.
- 25 Which of these snapshots represents a more accurate picture of

- the constitution as it exists today? If the aim of representative government is 'to
- 30 produce coincidence between the wishes of the sovereign and the wishes of the subjects' the representative body must reflect the wishes of the electorate and exercise control over the government. The crucial issues, therefore, are the electoral system and the relationship between the government and Parliament.

Gabriele Ganz, *Understanding Public Law*

Choose three only.

- a) The changing balance of power between state organs in Britain
- b) The role of the monarch in the British constitution
- c) An analysis of the UK electoral system
- d) The role of the House of Commons in the British constitution 100 years ago
- e) The relationship between Parliament and the government in modern Britain
- f) The role of political parties in modern Britain.

- ii) Refer quickly to the text to check your answers to i) above, but do *not* spend time
- reading in detail for this activity.

B Reading for detail and language study

1 Reading for detail; selecting vocabulary for study

- i) Check that you understand the following questions. Do *not* try to answer the questions yet.
 - a) One of the two famous authorities mentioned in the text (Dicey and Lord Hailsham) was made Lord Chancellor in 1970. Which one?
 - b) According to Dicey, did the English House of Commons provide representative government for the people?
 - c) Constitutional conventions are a source of British constitutional law. Which other source of law are they closely related to?
 - d) In Dicey's opinion, what was the purpose of constitutional conventions?

- e) How has the balance of power changed in Lord Hailsham's view?
 - f) Why does the government have so much influence today?
 - g) What danger does Lord Hailsham see in the present situation?
 - h) Complete this phrase: according to Lord Hailsham the government controls Parliament; Parliament the government.
 - i) Are Dicey's and Lord Hailsham's views of the British constitution very different?
 - j) According to the author, which of the two views (see question i) is more accurate today?
- ii) Read the text carefully to answer the questions from i) above. As you read, note the words and phrases you don't know or understand in the text. You can use a dictionary to find the meaning of two words only. Decide carefully which two unknown words or phrases you need to understand to answer the questions.
- iii) Which unknown words did you select for study? Could you answer the questions without understanding *all* the vocabulary in the text? "
- Check your answers in the key.
 - ▲ Discuss your answers with other members of the class and compare the words you
 - selected for study before checking your answers in the key.

2 Word families: the suffix -ship

The nouns below can all be used to form another noun which has a related, but slightly different meaning by adding the suffix -ship. Complete the sentences which follow by choosing a suitable noun in -ship from the list below as in the example. Decide what meanings -ship can give to the main noun. Choose from: (1) member (2) scholar (3) citizen (4) relation (5) leader (6) friend (7) partner (8) owner (9) dictator (10) author

Example: Some people thought that Britain was becoming a/an *AKkQrft* - under Margaret Thatcher's iron rule.
Answer: (9)

- a) Britishcan be gained by birth, adoption, registration or naturalisation.
- b) Anita Mason was extremely pleased when Smith and Jones, the owners of the company she had directed for five years, asked her to form awith them.
- c) This country needs a strong to tell people what to do and get things working again!
- d) This is an exclusive club. May I see your card, please, sir?
- e) Homeis growing in Britain as more and more people are able to buy their own house.

3 Word study

- a) Does the noun *sovereign* in line 7 refer to the British monarch?
- b) Have you any idea what a *party whip* (line 18) is?
- c) What do you understand by the *party machine* (18, 27)?
- d) Study lines 18-22 of the text and decide:
 - (1) has the British constitution always been an elective dictatorship in theory?
 - (2) and in practice?
 - (3) what has happened to change the situation?

Language note: In lines 19-22 the subject of the main verb is the phrase 'what has always been an elective dictatorship in theory'. 'What' refers to 'a system which'. (what has always been an elective dictatorship in theory) ... (has become) (a machine ...).

main subject

main verb

Notice that in this sentence the subject and verb are separated by the comment 'but one in which the component parts operated, in practice, to control one another' Now check your answers to questions (1), (2) and (3) above.

- e) You know the verb *to elect* and the noun *election*. What do you suppose the *electoral system* (line 33) is?

4 Reformulation: completing a diagram

Without looking at the text again, complete the two diagrams below by choosing a suitable word or phrase from the list provided. When you have finished, check your diagrams by referring carefully to the text.

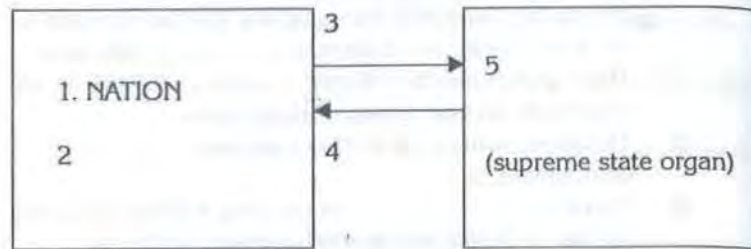
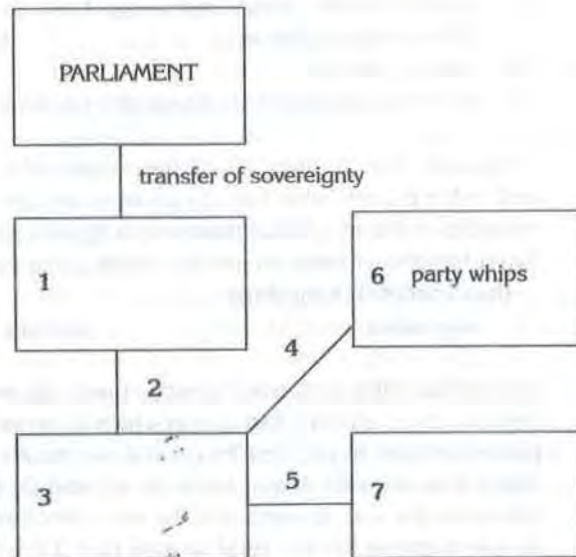


Figure 3.1 Dicey's view of the British Constitution in 1885: representative government

Choose from: a) represents b) exercises sovereignty through the House of Commons

- c) NATION d) HOUSE OF COMMONS
e) elects PARLIAMENT



Choose from: a) party machine b) GOVERNMENT c) civil service d) controls e) controls f) HOUSE OF COMMONS g) transfer of sovereignty

5 Oral practice

Use your completed diagrams from 4 above to describe:

- (1) sovereignty in Britain according to Dicey in 1885;
- (2) sovereignty in Britain according to Lord Hailsham in 1976. Why do you think Lord Hailsham describes the system as an 'elective dictatorship'? Start like this:

- (1) 'According to Dicey, writing in 1885, the House of Commons is the supreme state organ in Britain. It is elected by the nation and. ...'
- (2) 'Lord Hailsham, on the other hand, writing nearly 100 years later, finds a very different situation. In his view, the sovereignty of Parliament has been transferred first to the House of Commons and then to ...'

- Speak aloud. If possible, record your description on tape, then listen to the recording. If you prefer, write your description down.
- ▲ Work in pairs. Take turns to describe some of the information in each of the diagrams.

C Development

1 Understanding the author's attitude

- a) Do you think Lord Hailsham is in favour of the developments he describes in the British constitution, or is he against them? Which words or phrases in the text help you to decide?
 - b) At the end of the text, the author asks which view of the British constitution is more accurate today: Dicey's or Lord Hailsham's. Does he express his own opinion about this?
- ▲ Discuss your answers with other members of the class before referring to the key.

2 Prediction

- a) How do you think this text will continue?
What is your prediction based on?
Compare your prediction with other members of the class.
- b) To check your prediction from a), look at the title of the next part of the text, reproduced on pages 64-5. Do not read the text yet!

3 Discussion points

Think about the following points for a few minutes.

- ◆ Could the constitutional system in your country develop into an elective dictatorship? Give reasons for your answer.
- ◆ Do party whips exist in your country's political system?
- ◆ Must elected representatives in your country (like MPs in Britain) always 'follow the party line' in Parliament, or are they free to vote independently of their political party?
- ◆ What advantages and disadvantages can you see in each case?
- ◆ Do you think a strong 'party machine' and the 'whipping system' encourage representative government?
- Talk about your ideas. If possible record them on tape, then listen to your recording.
- ▲ Compare and discuss your ideas in small groups.

Section Two: The UK Electoral System

A Before you read

1 Think about the subject

Before you read about the UK electoral system, consider the following points.

- What sort of electoral system does your country have?
- What do you know about different electoral systems in other countries?

- Do you know anything about the UK electoral system?
- Do you know anything about Britain's political parties?
- ▲ Discuss your ideas in small groups.

2 Which of the following political parties do you think have members in the UK Parliament

The Republican Party	The Social Democratic Party
The Labour Party	The Liberal Party
The Royalist Party	The Socialist Party
The Communist Party	The Conservative Party
The Social and Liberal Democrats	The Green Party

B Reading for rapid information; reading for general understanding

1 Reading for rapid information

Scan the text on pages 64 and 65 to find the names of Britain's political parties at the

time of writing and check your ideas from Exercise 2. You have 30 seconds!

1 ELECTORAL SYSTEM

Every British citizen aged eighteen years or over who is not serving a sentence of imprisonment and is not a peer is eligible to be placed on the electoral

5 register in a constituency (Representation of the People Act 1983). Normally this involves residence in the constituency on a certain day (10 October) but members of the armed forces and now British citizens who live abroad but have been registered

10 within the previous five years can be entered on the register (Representation of the People Act 1985). At the moment there are 650 constituencies, the boundaries being drawn by impartial Boundary Commissions whose recommendations

15 need the approval of both Houses of Parliament (Parliamentary Constituencies Act 1986). Their impartiality has not prevented their recommendations being highly controversial as the way the boundaries are drawn can profoundly

20 affect the electoral prospects of a particular party. The parties draw their support from different sections of the electorate

and the exclusion or inclusion of a particular area can turn a safe seat into a marginal one and vice versa. In 1969 the Labour government refused to implement the Boundary Commission's recommendations and in 1983 unsuccessfully challenged them in court (*R v. Boundary Commission for England ex parte Foot*, 1983).

30 Not only the delimitation of boundaries but the choice of candidates by the parties profoundly affects the extent to which the voters' wishes are reflected in the House of Commons because the voter can only choose between rival candidates.

35 Unlike the USA where in some states voters through primaries have a voice in choosing between the parties' candidates, each party here has its own method for choosing candidates. The Labour Party in 1980 insisted that all Labour

40 MPs must undergo a reselection process if they wished to be candidates at the next General Election. Anyone can form a political party, as happened in 1981 when the Social Democratic Party (SDP) was launched. Though election law

45 puts strict limits on expenditure during an election campaign, to prevent bribery and corruption, it is very expensive to fight an election, particularly as national propaganda does not count towards election expenses. The

50 Labour and Conservative parties draw their financial support mainly from the trade unions and industry respectively. The other parties have no such firm financial base and to that extent suffer a considerable electoral disadvantage.

55 Their main disadvantage is, however, the British electoral system. Electors vote in their constituency and whichever candidate obtains most votes is elected an MP, even if he or she obtains only one vote more than his or her nearest

60 rival and only a small percentage of the total vote. This system works best when there are only two parties, though even then it is possible for a party to obtain more votes over the country as a whole but have fewer seats in the House of Commons

65 because its support may be unevenly distributed, so that it obtains big majorities in some seats and loses narrowly in others. This result is accentuated when there are three or more parties. A third party like the Liberals or now the

70 Social Democratic and Liberal Alliance, whose support is spread fairly evenly throughout the country, is likely to win few seats but come second in many. Thus in the General Election of 1983, the Alliance obtained 25 per cent of the vote but

75 only 4 per cent of the seats. Small parties like the Scottish

National Party, whose support is concentrated in a particular part of the country, are more likely to win seats.

It is this lack of correlation between votes and

80 seats which has given a strong impetus to the call for a different electoral system which would allow voters to express preferences between candidates so that if their first-choice candidate is not elected or has not received sufficient votes to be elected,

85 his second-preference votes can help to elect that candidate. Thus these votes are not completely wasted and a candidate may be elected because more voters have put him as their second choice. This system of voting can be used for one MP, i.e.

90 in single-member constituencies (the alternative vote), or for several MPs, i.e. in multi-member constituencies (the single transferable vote). These systems give more chance to a third party such as the Alliance to win seats, because its

95 candidates can be elected by being the voters' second choice. If this system were adopted in this country it would be very unlikely that either of the two main parties would win an overall majority of seats (i.e. more seats than all other

100 parties combined) and this would have a profound effect on who would form the government.

Gabriele Ganz, *Understanding Public Law*

2 Reading for general understanding

Read the text quickly to decide if the author thinks the UK electoral system is generally fair or unfair. Find at least three reasons for your answer. Do *not* try to understand the text in detail for this activity.

C Reading for detail and language study

1 Word families

In Unit Two you learnt that words are not just separate units - they often belong to groups called word families, which have the same basic root and are closely related in form and meaning.

- i) Use your own knowledge and scan the texts in Sections One and Two of this Unit to complete the table overleaf showing the relationship between the adjective, noun and verb forms in 12 different word families. You need one word for each of the spaces numbered 1-20. As you work, check that you understand the meaning of all the words in each family. Use the grammatical part of speech (verb, noun, etc.) and relationships with other words in the family to understand unknown words.
- ii) *Looking for regular patterns*
- Which part of speech usually corresponds to the root word in each family?
 - Which typical noun endings do you notice in the second column? For example, -ship (dictatorship)
 - Which typical noun endings refer to persons?
 - Some adjectives and nouns have exactly the same form, e.g. election (adj.)/ election (noun). What other typical adjectival forms do you notice?
- iii) In some families there is more than one noun in the second column. Use your own knowledge and the text to decide the difference in meaning between the following nouns, then check your answers in your dictionary.
- an *election* (line 42) and the *electorate* (22)
 - the *sovereign* (Section One text, line 7) and *sovereignty* (Section One text, 5, 14, 15, 16 (twice), 26)
 - a *prison* and *imprisonment* (line 3)
 - a *register* (lines 5, 11) and *registration* e) *expenses* (line 49) and *expenditure* (45)
- iv) Choose a suitable adjective from the list below to complete each of the following sentences.
Example: The UK Parliament exercisessovereign..... power. Answer: (2)
 Choose from: (1) resident (2) sovereign (3) voting (4) electoral (5) prison (6) residence (7) election

Verb	Noun (thing or concept)	Noun (person)	Adjective
dictate	1. <i>dictatorship</i>	dictator	—
reign	a) sovereign 2. b)	3.	sovereign
imprison	a) prison 4. b)	5.	prison
elect	a) election 6. b)	elector	7. a) 8. b) election c) elective d) elected
8.	9. a) b) registration	registrar	registered
represent	10.	representative	11.
reside	12.	resident	13. a) b) residence
recommend	14.	—	recommended
approve	15.	—	approved
16.	vote	17.	voting
spend	a) expenses 18. b)	spender	19.
20.	preference	—	preferred

- On first arriving in Britain she applied for a/an permit for one year.
 - The register of electors is also known as the roll.
 - He worked for 20 years as a/an officer in the top security wing.
 - How long have you been in the UK?
 - TV plays an important part in modern campaigns.
 - Voters must show which candidate they choose at an election by putting a cross on their 'ballot paper' or ' paper'.
- v) In the sentences below, fill each blank space with a suitable word from the word family given in CAPITALS on the right.

Example: The president was..... by a large majority (ELECT)

- a) Members of the lower house of the American Congress are called..... (REPRESENT)
- b) Nearly all British citizens over the age of 18 are members of the (ELECT)
- c) The district (1).....is the official who (2)births, marriages and deaths in a certain area. (REGISTER)
- d) In the British constitution the Queen in Parliament is the legislative..... (SOVEREIGN)
- e) Many British (1) are in favour of changing the (2) system. ((1) VOTE) ((2) ELECT)
- f) Sums of money which are (1).....to pay fees to lawyers are called legal (2).....(SPEND)
- g) Dangerous criminals are always sent to a/an where there is very strict security. (PRISON)
- h) For the purposes of tax, a person isin the UK if s/he stays there for more than six months of the year. (RESIDE)
- i) Parliament (1)the (2) of the special Commission last week. ((1) APPROVE) ((2) RECOMMEND)
- j) Directto the European Parliament are held every five years. (ELECT)

2 Word study

- i) Study the following words and phrases in their context in the text and match each one to the correct definition from the list below.

Example: a constituency (b) is an electoral area in the UK which is represented by a Member of Parliament (5). Answer: b/5

- a) eligible (line 4)
- b) constituency (5)
- c) boundary (14, 19)
- d) impartial (13)
- e) safe seat (23)
- f) marginal seat (24)

Choose from:

- (1) electoral area in which an MP is elected by only a small majority

- (2) suitable, with the right qualifications
- (3) electoral area in which it is certain that the candidate of one particular party, e.g. Labour, will win
- (4) dividing line that marks the limit between two areas
- (5) electoral area in the UK which is represented by a Member of Parliament
- (6) fair, not favouring one more than another.

- ii) What do you suppose a *reselection process* (line 40) is? What does the prefix *re-* often indicate? Work out the meaning of the following words, then choose the correct form of one of them to complete the sentences which follow. (1) reconsideration (2) reorganisation (3) to re-state (4) to rewrite (5) to rearrange (6) to remarry

Example: to rewrite (4) means to write something again.

Answer: a/4

- a) There are three spelling mistakes in this letter, will youit, please?
- b) Hesoon after his divorce from his first wife.
- c) She is ill, so her appointments will have to be
- d) After careful.....of the facts, the Committee changed their original decision.
- e) At the protest meeting last Monday the council representative the official arguments in favour of the new road.

- iii) a) Which word in lines 16-20 means *because*?
- b) *R v. Boundary Commission for England and Wales ex parte Foot*, 1983 (lines 28-9) is the name of a case in which the Crown (R = *Regina* or *Rex*, Latin for Queen or King) represents the State against the Boundary Commission. *Ex parte Foot* shows that in this case the application to the court was made by an individual - Michael Foot, leader of the Labour Party 1980-83.
- c) What do you understand by the following phrase from the text? 'whichever candidate obtains most votes is elected an MP' (57-8)

Example: The president was by a large majority (ELECT)

- a) Members of the lower house of the American Congress are called (REPRESENT)
- b) Nearly all British citizens over the age of 18 are members of the (ELECT)
- c) The district (1) is the official who (2) births, marriages and deaths in a certain area. (REGISTER)
- d) In the British constitution the Queen in Parliament is the legislative (SOVEREIGN)
- e) Many British (1) are in favour of changing the (2) system. ((1) VOTE) ((2) ELECT)
- f) Sums of money which are (1) to pay fees to lawyers are called legal (2) (SPEND)
- g) Dangerous criminals are always sent to a/an where there is very strict security. (PRISON)
- h) For the purposes of tax, a person is in the UK if s/he stays there for more than six months of the year. (RESIDE)
- i) Parliament (1) the (2) of the special Commission last week. ((1) APPROVE) ((2) RECOMMEND)
- j) Direct to the European Parliament are held every five years. (ELECT)

2 Word study

- i) Study the following words and phrases in their context in the text and match each one to the correct definition from the list below.

Example: a constituency (b) is an electoral area in the UK which is represented by a Member of Parliament (5). Answer: b/5

- a) eligible (line 4)
- b) constituency (5)
- c) boundary (14, 19)
- d) impartial (13)
- e) safe seat (23)
- f) marginal seat (24)

Choose from:

- (1) electoral area in which an MP is elected by only a small majority

- (2) suitable, with the right qualifications
- (3) electoral area in which it is certain that the candidate of one particular party, e.g. Labour, will win
- (4) dividing line that marks the limit between two areas
- (5) electoral area in the UK which is represented by a Member of Parliament
- (6) fair, not favouring one more than another.

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Work out the meaning of the following words, then choose the correct form of one of them to complete the sentences which follow. (1) reconsideration (2) reorganisation (3) to re-state (4) to rewrite (5) to rearrange (6) to remarry

Example: to rewrite (4) means to write something again.

Answer: a/4

- a) There are three spelling mistakes in this letter, will you it, please?
- b) He soon after his divorce from his first wife.
- c) She is ill, so her appointments will have to be
- d) After careful of the facts, the Committee changed their original decision.
- e) At the protest meeting last Monday the council representative the official arguments in favour of the new road.

- iii) a) Which word in lines 16-20 means *because*?
- b) *R v. Boundary Commission for England and Wales ex parte Foot*, 1983 (lines 28-9) is the name of a case in which the Crown (R = *Regina* or *Rex*, Latin for Queen or King) represents the State against the Boundary Commission. *Ex parte Foot* shows that in this case the application to the court was made by an individual - Michael Foot, leader of the Labour Party 1980-83.
- c) What do you understand by the following phrase from the text?
'*whichever candidate obtains most votes is elected an MP*' (57-8)

- d) What do you understand by 'a lack of correlation between votes and seats' (line 79)?

iv) *The prefix un-*

Read the parts of the text which contain the answers to the following questions carefully. In each case find a word beginning with un- in the text which helps you to answer, and decide exactly what that word means.

- Did the Crown win the case against the Boundary Commission in 1983?
- Do voters help to choose electoral candidates (1) in some USA states? (2) in the UK?
- If there are two parties in Britain, when can the one which gains more than 50 per cent of the votes obtain less than 50 per cent of the seats in the House of Commons?
- If the system of the alternative vote were adopted in Britain, would one of the two main parties probably win more than 50 per cent of the seats in the House of Commons?

3 Language study

i) *though*

Study the following sentences from the text:

'*Though* election law puts strict limits on expenditure // it is very expensive to fight an election' (lines 44-8)

'This system works best when there are only two parties // *though* even then it is possible for a party to obtain more votes over the country as a whole, but have fewer seats in the House of Commons' (lines 61-4)

In each example, *though* shows the relation between the first and second parts of the sentence. Which of the following could be used in place of *though* without changing the meaning of each sentence in the full context of the text? Choose one alternative only.

- because (introduces a reason or cause)
- if (introduces a condition)
- even if (shows contrast between facts)
- d) when (indicates a time)

ii) *whose*

Study this phrase from the text:

'the boundaries [of the 650 constituencies in the UK are] drawn by impartial Boundary Commissions *whose* recommendations need the approval of both Houses of Parliament' (13-15)

- a) *Question:* who makes the recommendations which Parliament must approve? *Answer:*
Notice the use of the relative pronoun *whose* to indicate *of which* or *of whom*. It refers to a noun which comes before it: '*the Boundary Commission whose* recommendations. ...'

- b) Complete this phrase: Parliament must approve the (1) of the (2)

Read lines 55-78 of the text carefully and decide:

- what kind of party will not win many seats at an election even if it has quite a lot of support in the country?
- Why is the Scottish National Party more likely to win seats in Parliament than
• a party like the Liberals?

iii) Read lines 77-101 of the text carefully and decide:

- which expression means *in such a way that*?
- which word means *in this way or so*?
- which form means *that is (to say)*?
- in this paragraph the author describes an alternative electoral system - does he think the system will probably be adopted in the UK?

4 Reading for detail

Read the whole text on pages 64 and 65 carefully and for each of the following choose *one* correct answer from the four alternatives.

Example: Which of the following people was eligible to be registered on the electoral roll and vote in the Basingstoke constituency in the June 1987 General Elections?

- (1) Alan Tweedy, a yuppie who went to live in the constituency on 10 November 1986;

- (2) Maggie Tatter, a Basingstoke woman who has been serving a 10-year prison sentence for armed robbery since 1983;
- (3) Jane McGee, a constituent who lives in Spain and was last registered in Basingstoke in October 1984;
- (4) Lord Mole, last of a noble family who have lived in Basingstoke since the Norman Conquest.

Answer: not (1)-he was not yet resident in Basingstoke on 10 October (line 7) not (2)-she was serving a sentence of imprisonment (line 3) *correct answer* (3)- she lives abroad, but has been registered within the last five years (lines 9-12) not (4) - he is a peer (line 4)

- a) The Boundary Commissions
 - (1) decide the exact boundaries of constituencies;
 - (2) draw their support from different sections of the electorate;
 - (3) make recommendations about constituency boundaries which people do not always agree with;
 - (4) make recommendations which favour the Conservative Party.
- b) Party candidates
 - (1) are chosen by voters;
 - (2) are chosen differently in each party;
 - (3) reflect voters' wishes in the Commons;
 - (4) must be reselected if they want to be candidates in more than one General Election.
- c) Expenditure during an election campaign
 - (1) officially includes national propaganda;
 - (2) encourages corruption;
 - (3) does not include election expenses;
 - (4) is strictly limited by law.
- d) The money needed by political parties in Britain comes from
 - (1) different sources;
 - (2) national propaganda;
 - (3) industry;
 - (4) the trade unions.

- e) The election results for a UK constituency in which 100000 people voted were as follows:

Candidate	Number of votes	Approximate % of total votes
Conservative	29999	30
Democrat	29998	30
Green Party	4500	4.5
Independent	9046	9
Labour	25503	25.5
votes not valid	954	1

Who was elected?

- (1) no one - no candidate obtained a majority of total votes;
 - (2) the Conservative and Democrat candidates;
 - (3) the Democrat candidate;
 - (4) the Conservative candidate.
- f) In Britain,
 - (1) to be elected, a candidate must have more than a small percentage of total votes in a constituency;
 - (2) it is always a disadvantage for a party to have unevenly distributed support in the country;
 - (3) the Social Democratic and Liberal Alliance became the second party in 1983; (4) it is possible for a party to obtain a large percentage of total votes, but only a small percentage of seats in the House of Commons.
 - g) Many British people are in favour of changing the electoral system because they want
 - (1) a system which would give a single party an overall majority in the Commons;
 - (2) to elect the Alliance;
 - (3) a system in which the number of seats a party obtains corresponds to the number of votes they win;
 - (4) to elect second-choice candidates.

5 Oral practice: describing electoral systems

- i) Using the text, and language and information from the completed exercises above, prepare to talk about the UK electoral system. Include the following points.
- THE ELECTORATE: who can vote?
 - PARLIAMENTARY CONSTITUENCIES: number of constituencies/role of the Boundary Commissions/political effects of drawing boundaries
 - PARLIAMENTARY CANDIDATES: who chooses candidates?/how?
 - FINANCING POLITICAL PARTIES: expenditure during election campaigns/who finances parties?
 - THE ELECTORAL SYSTEM: which candidates are elected?/the importance of the distribution of political support in the country
 - ELECTORAL REFORM: reason for changing the system/possible alternative systems/possible effects of electoral reform on UK constitution

- ii) Talk about the UK electoral system, by describing each of the points listed above. If possible, record your description on tape, then listen to the recording.

- ▲ Work in pairs. In turns, talk about different aspects of the UK electoral system by describing each of the points listed above.

- ▲ Start like this

'Nearly all British citizens who are 18 years old or over are members of the electorate. They are eligible to be registered on the electoral roll in a constituency if they are resident there on ...'

- iii) Describe the electoral system in your own country. Use some of the points listed in capitals in i) above as a basis for your description and include any other information which you think is important.

- ▲ • Work in pairs or small groups.

D Development

1 Completing a ballot paper

The procedure in the UK for elections to the European Parliament (an institution of the European Communities) is the same as for elections to the UK Parliament. Members, called **MEN** - Members of the European Parliament - are elected under the European Assembly Act 1978 for constituencies comprising two or more UK constituencies. Below is a ballot paper for the:

Election for the
Leeds European Parliamentary Constituency
15th day of June 1989

(Use information you have learnt in the text and the instructions given below to decide if the vote is valid.)

VOTE FOR ONE CANDIDATE ONLY		
	EWENS Joan (known as Penny) Ewens 3 Holmwood Drive, Leeds LS6 4NF Social and Liberal Democrat	
	LORD Clive Richard Lord 44 Upper Batley Low Lane, Batley West Yorkshire WF17 0AP Green Party U K	
	McGOWAN Michael McGowen 3 Grosvenor Terrace, Otley West Yorkshire LS21 1 HJ The Labour Party Candidate	
	TWEDDLE John Wilfred Tweddle 9 Barrowby Avenue, Austhorpe Leeds LS15 80D The Conservative Party Candidate	
INSTRUCTIONS TO THE VOTER Vote for one candidate only Put no other mark on the ballot paper or your vote may not be counted Mark a cross(X) in the box on the right hand side of the ballot paper opposite the name of the candidate you are voting for 2 Under		

2 Understanding the author's attitude

- i) Which of the following do you think best describes the author's attitude in the text to the UK electoral system?
 - a) He is strongly in favour of the system
 - b) He is in favour of the system
 - c) He expresses no particular opinion for or against the system
 - d) He is against the system
 - e) He is strongly against the system
 - ii) Which parts or aspects of the text help you to answer i) above? Think about the facts and arguments the author chooses, his choice of vocabulary and style of writing.
 - iii) From what you have read in Section Two of this Unit, do you suppose that the author believes that Dicey's or Lord Hailsham's view of the British constitution (see Section One) is more accurate today?
- ▲ Compare your answers with other members of the class before referring to the key.
- Refer to the key to check your answers.

3 Vocabulary consolidation

- i) The text contains many words and phrases which are directly related to elections and electoral systems (e.g. the electorate, to be elected, safe seat, multi-member constituency).

It contains many other words and phrases which you can use to talk about either electoral law, or other areas of the law (e.g. eligible, boundary, citizen).

Scan the text to find all the vocabulary relating to electoral systems and other terms which you think are useful. Copy these words and phrases on to a separate piece of paper.
- ii) Design a vocabulary table (similar to the one which you completed from page 55, Unit Two) and put the words and phrases from i) above in groups and categories of your own choice. Your table will be a personal record which will help you to remember some of the vocabulary you have learnt in this Unit. Remember there is no one 'cor-

rect' way to design and complete your table!

- ▲ When you have finished, compare your completed table with other members of the class and discuss your choice of categories and vocabulary.

4 Discussion points

Work in pairs.

Choose one of A, B or C below and follow the instructions in steps i) and ii).

If necessary, refer to page 20, Unit One, to revise the language of comparison.

- A Compare the UK electoral system with another electoral system that you know well.

What are the main similarities and differences? What are the best and worst aspects of each system in your opinion?
 - B Plan a model electoral system which you think would be completely fair and democratic. How is it different from the UK system and the system in your country?
 - C What are the main disadvantages of the UK electoral system and the electoral system in your country? What advantages does each system have? Suggest one change you would make to each system.
- i) Take time to think about your ideas. If you wish, make brief notes.
 - ii) Explain your ideas aloud. If possible, record them on tape, then listen to your recording. If you wish, write some of your ideas down.
- ▲ Form larger groups. Explain and compare your ideas and discuss any points of interest.



CHAPTER XXIV

STATUTORY INTERPRETATION AND EC LAW

Section One: Statutory Interpretation

Reading a Law Textbook

A Before you read

1 Think about the subject

Work alone or in pairs. Consider the following points:

- Who interprets and applies legislation in your legal system? Is it the same in the English legal system? (If you can't remember, refer again to Unit One, page 15).
 - How are statutes interpreted in your legal system? (For example, by looking only at the words of the statute, by looking at the statute in its historical context, etc.)
 - Can you think of any other possible methods of interpretation?
 - Do you know of any legal orders (including International Law and EC Law - the law of the European Communities (see glossary), for instance) where a different method of interpretation is used?
- ▲ Discuss your ideas with other members of the class.

2 Vocabulary revision

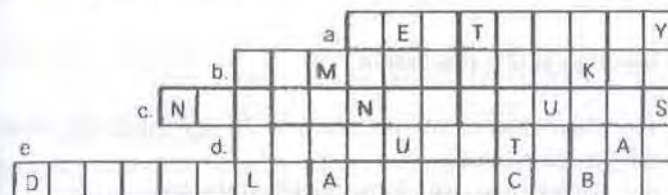
In this Unit you will use again some of the vocabulary that you learnt at the beginning of this book - but how good is your memory? To find out, complete the exercise below.

To help you *recall* the words (that is, bring them back to your memory) they are arranged in three general groups. Before

you do each group of exercises, think of some words and phrases you know which belong to that group. This will help you to recall specific words more easily.

i) GROUP 1: National law and European Community law

- The international agreement setting up the EEC (3,6)
- Another (unofficial) name for the EEC (6,6)
- The courts of an individual country, as opposed to an international court (8,6)
- A short name for the law of the European Communities (9,3)
- This type of EC law can be applied directly in individual Member States without national legislation (adverb + adjective) (8,10)



ii) GROUP 2: Parliament and legislation

- A single enacted law; a statute (9)
- A person or body with power to make law (10)
- To make a law in parliament (infinitive) (2,4,1,3)
- Theare the individual rules or conditions in a statute (10)
- By (or) the Equal Pay Act 1970 men and women have the right to equal pay for equal work (5)
- Relating to parliament (adjective) (13)
- The executive power in England, Scotland, Wales and Northern Ireland (1,1,10)



iii) **GROUP 3: Litigation and the courts**

- a) The courts must the words of a statute before they can apply it (8)
- b) A request to a court or administrative body (11)
- c) The lawyer or lawyers (called 'barristers') who conduct a case in court (7)
- d) The legal decision of a court (8)

b.		a	C					U	E
	P	P				T			
		c.		O			S		I
d.			U		G				T

B Reading skills: prediction

I The main rules of interpretation of UK legislation are given in the text on page 85.

- i) Before you read, look quickly at the text.
Why do you suppose the author has divided it into sections?
- ii) Look at the four *headings* only (e.g. i) The literal rule ii) The golden rule)
What do the headings tell you?
You know that this text is about statutory interpretation: what information do you think each section of the text will contain?
- iii) Use the headings to form a few questions of your own about each section of the text. This will give you a personal purpose for reading and will help you to read with more attention and understanding.
Examples: Section i) has been done for you. If you like add other questions of your own.

The literal rule

- a) What is the literal rule?
- b) Does it mean that the words in the statute have their literal meaning?
- c) When is the literal rule applied?
- d) Are there any exceptions to the literal rule?

Complete the following questions for *Section ii*. If you like add other questions of your own.

The golden rule

- a) What is the rule?
- b) When?
- c) Are there any exceptions to?

Write your own questions for *Section iii* and *Section iv*.

- iv) Read the text to find the answers to your questions.
- v) Did the text answer all your questions? What other main points does the text include?
- vi) Compare your work with other members of the class before referring to the key.
- Check your work in the key.

- 1 i The literal rule - The cardinal rule is that the words of an enactment must *prima facie* be interpreted in their *ordinary, literal or grammatical* sense. And provided that so to interpret them does
- 5 not give rise to some absurdity, repugnancy, inconsistency or ambiguity the court is not entitled to construe them loosely or fancifully, even if a strict construction appears to it to lead to a wrong result.
- 10 ii The golden rule- Here we may cite Lord Wensleydale in *Grey v. Pearson (1857) 6 H.L. Cas. 61* at 106: 'In construing statutes', he said, 'the grammatical and ordinary sense of the words is to be adhered to'; in other words, the literal rule is to
- 15 be applied. This is how a lawyer takes his first look at an enactment; but perforce, for such is often the case, Lord Wensleydale went on to say if this approach proves unsatisfactory as leading to 'some *absurdity*, or some *repugnancy* or *inconsistency*
- 20 with the rest of (the statute)' then 'the grammatical and ordinary sense of words may be modified so as to *avoid that absurdity and inconsistency, but not further*'. This is the so-called 'Golden Rule': be strict in interpretation, but modify the construction
- 25 where essential so as to avoid absurdity or inconsistency. How, then, is such modification to be approached?
- iii Consider the whole enactment -If the use of the 'Golden Rule' leads to the conclusion that the

- 30 words under consideration produce absurdity, repetitiveness, inconsistency or redundancy the next thing the lawyer must do is to look at the whole of the enactment in question. For what seems absurd or redundant as it stands may take on
- 35 meaning in the light of the whole context.
- iv The history of the enactment - The word 'history' is here used in a double sense. In the first sense it signifies the *genesis* of the enactment itself: its progress through Parliament and the debates
- 40 and discussions which produced it. Nothing would, perhaps, seem more sensible than that the courts should consider these things in order to discover the true intention of the legislators. But, though travaux préparatoires are freely referred to in
- 45 European courts (though not, it seems, in the Court of Justice of the European Communities itself), the rule at present is that the 'history' in this sense may *not* be referred to; and the main argument in favour of this is that debates are two or many-sided affairs
- 50 from which no sure indication can be gained. Hansard¹ is thus not to be cited.
- A second sense of the word 'history' in this context signifies the *background* against which the statute is passed. This may include, for instance, a
- 55 previous series of enactments in the same field as the Act to be interpreted (often, misleadingly, called the 'parliamentary history' of the enactment) and it may also include such matters as the general social, political and legal background prevailing at
- 60 the time of the passing of the Act. It is permissible and generally desirable for the court to consider the 'history' in these senses; though a House of Lords decision has emphasized that in interpreting a consolidating statute (one which brings together a
- 65 series of previous enactments), unless the word or phrase in the consolidating enactment is ambiguous, there is to be no recourse to the statutes consolidated.
1. *Hansard* is the name of the official report of debates in the UK Parliament.

Philip S. James, *Introduction to English Law*

C Reading for detail and language study

1 Sentence structure: expressing purpose

- a) Study this phrase from lines 20-22 of the text:
[When the application of the literal rule leads to absurdity ...] 'the grammatical and ordinary sense of words may be modified *so as to avoid that absurdity*' Can the grammatical and ordinary sense of words be modified? In what circumstances? For what *reason* or *purpose*?
- b) The phrase 'so as to avoid absurdity' expresses the *purpose* of the first action - that is the reason for doing that action. It is called a 'purpose clause'.

so as + infinitive with 'to'

Find another example of this type of purpose clause in Section ii of the text. Find an example of a different type of purpose clause in Section iv of the text. In each case decide: what is the main action? What is the purpose of the action? Apart from the form 'so as to', what other type of purpose clause did you find? Do you know any other ways of expressing purpose?

- If so, give an example using information from the text.

2 Obligation and possibility: further study

The text describes in detail what the courts *must* and *can* do when interpreting legislation, e.g. the courts must first apply the literal rule of interpretation.

- i) What other expressions do you know with the same meaning as 'must' and 'can'?
To recall some of the language of obligation and possibility, refer again to your table from Unit Two, pages 48-9.
- ii) What different forms are used in the text on page 85 to say what the courts *must* and *must not* or *can* and *can not* do? Scan the text and note all the examples you can find.
- iii) Add any new forms to your table from pages 48-9.

3 Contextual deduction

In these statements from the text, the *phrases in italics* (called 'context clues') can help you to understand the meaning of the words in CAPITALS. Use the context clues in italics to decide what the words in capitals probably mean.

Example: Here we may CITE Lord Wensleydale in *Grey v. Pearson*: 'In construing statutes', he said

Answer: The words Lord Wensleydale spoke in a case are given here. We may CITE Lord Wensleydale = we may *give Lord Wensleydale's words*. Probable meaning: CITE = to give someone's exact words.

- a) The word 'history' . . . signifies *the genesis of the enactment itself: its progress through Parliament and the debates and discussions which produced it ... But, though TRAVAUX PREPARATOIRES are freely referred to in European courts ... the rule at present [in the UK] is that the 'history' in this sense may not be referred to....*
- b) in interpreting a CONSOLIDATING STATUTE (*one which brings together a series of enactments*), there is to be no recourse to the statutes consolidated.

4 Word Study: Section One

- a) What do you suppose 'the cardinal rule' (line 1) means?
- b) Do you suppose 'prima facie' (line 2) means *always* or *first*?
- c) Find the word which means 'in this way'.
- d) Things are *consistent* when they have a regular form or pattern and do not contradict. Which related noun in this section means 'contradiction' or 'irregular pattern'? Does a similar word exist in your language? If so, is it a true cognate or a false friend?
- e) Which noun is closely related to the verb 'to construe'? What does it mean? f) A *strict construction* (line 8) means an exact literal interpretation.
- Which phrase in Section i means the opposite?

5 Reading for detail

Read the text carefully and answer the following questions.

- a) Must the courts always first construe the words of a statute in their ordinary, literal and grammatical meaning?
- b) Can the courts construe the words differently if their literal interpretation leads to a wrong result?
- c) What can the courts do if the literal interpretation of the words is absurd or ambiguous?
- d) What is the 'golden rule' of interpretation?
- e) Can the court consider the words of one section of a statute in the context of the whole statute?
- f) Can the UK courts use parliamentary discussion (from debates when the Act was passed) to help them construe a statute?
- g) Can the Court of Justice of the European Communities do this (see f)?
- h) Can European courts in general do this (see f)?
- i) Can the UK courts consider the political background to the Act they must interpret?
- j) Can the UK courts consider previous enactments on the same subject when interpreting a later Act of Parliament?

6 Oral practice

You have read some of the main rules of statutory interpretation in English law.

- ▲ Form pairs. Each choose two different rules of statutory interpretation from page 85.
- ▲ Use the text and your answers to exercises B 1 and C5 to decide:
 - ◆ What exactly do the rules consist of?
 - ◆ When are the rules applied?
 - ◆ Are there any exceptions to the rules?
- When you are ready, describe the main rules of English statutory interpretation. To practise speaking, say your answers out loud, or record them on tape, then listen to your recording. If you prefer, write your answers down.
- ▲ When you are ready, work with your partner and in turns describe the main rules of English statutory interpretation.

D Development

1 Interpreting the words of a statute

To help and guide the courts, modern statutes often include an interpretation section with definitions of words and expressions used in the statute. The courts must use the definitions in the interpretation section to construe those words when applying the statute. The Public Order Act 1986 is an example. Part of the Act is reproduced on page 88. Complete the following activities.

- i) The Public Order Act was passed in order to abolish some old common-law and statutory offences and to create new offences. From its name, what kind of situations do you think the Act deals with?
- ii) Scan the extracts from the Act below to find seven words and phrases whose meaning is defined in the interpretation sections of the Act. Do not read the definitions yet. Write the seven words on a separate piece of paper.
- iii) Do any of the seven words and phrases confirm or change your ideas from i) above?
- iv) In fact, the purpose of the Act is to prevent and control all situations of public violence, including racial violence and violence at sporting events such as football matches. *Without* reading the definitions of the seven words given in the Act, decide what you think their literal meaning is. Where necessary, use a dictionary to help you.
Example: you may think a 'public assembly' is an assembly of people in a public place, or an assembly which the public can go to. Compare your ideas with two or three other members of the class.
- v) Read the definitions in Sections 16, 17 and 29 of the Act below. Which of your definitions are similar? Are any completely different? In general, what do you notice about the definitions in the Act? Discuss your findings in small groups.
- vi) Read the Act carefully and decide:
 - a) Is a political meeting of 200 people in the town square a 'public assembly'?
 - b) And if the same meeting is held in an old theatre?
 - c) Is a road a 'public place'?

- d) Is a football stadium a 'public place' when a match is played?
- e) Is hatred of the Welsh (people from Wales) 'racial hatred'?
- f) And hatred of a group of French visitors on holiday in Britain?
- g) If three people live in a tent, is it a 'dwelling'?
- h) Is a garage for the car, attached to the family home, a 'dwelling'?
- i) How must the courts construe the word 'recording'?
- j) Is a poster 'written material'?

ELIZABETH II PUBLIC ORDER ACT 1986

1986 CHAPTER 64

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the

5 Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART II INTERPRETATION.

16. In this Part-

10 'public assembly' means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

'public place' means-

(a) any highway, or in Scotland any road 15 within the meaning of the Roads (Scotland) Act 1984, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of

20 express or implied permission;

'public procession' means a procession in a public place.

PART III MEANING OF 'RACIAL HATRED'.

17. In this Part 'racial hatred' means hatred against

25 a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

29. In this Part-

'dwelling' means any structure or part of a structure

30 occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose 'structure' includes a tent, caravan, vehicle, vessel or other temporary or movable structure;
 35 'recording' has the meaning given by section 21(2), and 'play' and 'show', and related expressions, in relation to a recording, shall be construed in accordance with that provision;
 40 'written material' includes any sign or other visible representation.

2 Discuss and compare

On the Continent: statutes contain general principles of law rather than very small detail.

To construe legislation, courts look at the general intent or purpose of the legislator, and the spirit of the statute, rather than only the literal sense of the words used.

- i) Choose A, and B or C. Work in pairs. Choose either A, B or C.

A Statutory interpretation in the English legal system
 B Statutory interpretation in your legal system
 C Statutory interpretation in Continental legal systems

Think about each of the following discussion points for the legal system(s) you have chosen. Use information from this book and your own knowledge and ideas. Prepare to explain and discuss your ideas, taking notes if you like.

- ◆ What is the basic style of interpretation in the legal system(s) you have chosen?
- ◆ What are some of the main rules of interpretation?
- ◆ How do you think this style of interpretation influences relationships within the legal system (e.g. between judge-made law and statute law, between the judiciary and legislature)?
- ◆ What advantages do you think this method of interpretation has?
- ◆ Can you see any disadvantages?

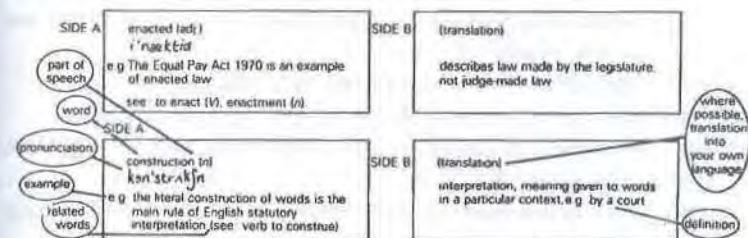
- ii) Form groups of 3-6 in which the different members have prepared at least two of A, B and C.
- Explain your answers to the questions in i) above, comparing statutory interpretation in the different legal systems. Which method of statutory interpretation do you prefer?
 - ▲ Discuss your ideas in the group, then compare your decision with the rest of the class.
 - For oral practice, say your answers out loud, or record them on tape, then listen to your recording. Alternatively, you may wish to write your ideas down.

3 Techniques for storing vocabulary

- i) What do you do when you meet new English words that you want to remember? Do you write them in a special place? What other information do you write? (For instance, a translation, an example?) Do you mark the words on the text you are reading? Does your system work - do you find that you can in fact remember most of the words after a few days, weeks, months or years?

Compare your vocabulary habits with other members of the class.

- ii) Here is one idea for storing vocabulary.
 You need a small piece of paper or card for each word or phrase.



Instructions

- (1) If possible, make your cards at the end of a lesson or period of study or during the next 24 hours.
- (2) Choose words and expressions you have just studied that you personally want to remember.

- (3) Use a dictionary, the glossary, text and exercises in this book to find the information you need to make your cards.
- (4) Use the cards to test and exercise your memory in two ways: look at side A, remember side B / look at side B, remember side A.
- (5) Mix the cards so that your memory does not depend on the order of the words.
Repeat step (4). As you work, take out the cards you already know, continue with the ones you still find it difficult to remember, until you know all the words by heart.
- (6) Repeat step (5) at regular intervals, so that you will remember the words permanently.

Suggested
intervals are:
the next day
a week later
a month later
6 months later

You can carry the cards in your bag or pocket and do this anywhere in just a few minutes. Your collection of cards and vocabulary will grow rapidly!

- iii) Make some cards now, choosing words from Section One of this Unit. Do the same after each period you spend studying Section Two. At the end of Section Two you will learn more ways to use the cards to consolidate your vocabulary. *Then* decide if you like the system. At the end of this Unit, you may decide that you prefer your own personal system of storing vocabulary. In any case, here are some points to note:
 - Be methodical - any system which works is good
 - Always write vocabulary in a special, separate place
 - Give full information about each word, including at least one example
 - Spend time memorising the words - if not, you will quickly forget most of them
 - Revise them at regular intervals (e.g. 24 hours, a week, a month, six months) - if not you will forget most of them before long
 - Read as much as you can in English - this is the best way to learn and consolidate vocabulary.

Section Two: EC Law

Reading a Case

A Before you read

Think about the subject

- i) Think about each of points A, B and C below. Make notes of your ideas if you like. In pairs, choose one of points A, B and C below. Think about your ideas alone, then discuss them with your partner.

A In Section One of this Unit you learnt about the English style of statutory interpretation, and compared this with Continental legal systems and your legal system. See Exercise D 2, page 89.

- What is the basic difference between statutory interpretation in the UK and most European legal systems?
- In two situations the UK courts must use the Continental style of interpretation:
 - in construing European Conventions adopted by the UK;
 - in construing the EC Treaties and secondary legislation enacted by EC bodies.
 Do you think the UK courts might find this difficult? Give reasons.

- B The purpose of Articles 30-37 EEC is to allow completely free trade between Member States. In the case of *Henn v. Darby* [1978] 2 C.M.L.R. 688, the English Court of Appeal found that the phrase 'quantitative restrictions' in Article 30 EEC did not refer to the *total* exclusion of products, but only to their exclusion *in part*. This interpretation was wrong.
- Why do you suppose the Court of Appeal construed 'quantitative restrictions' in this way? To help you answer, use a dictionary, and think about the English style of interpretation.
 - Why do you suppose the construction was wrong? Think about the European style of interpretation.
 - What does the example illustrate?

- C What happens when provisions of EC law conflict with national law?

Under the EC Treaties, Community law is supreme, but under the English doctrine of parliamentary sovereignty, the UK Parliament is supreme and has absolute power to pass any law it wants. In Unit Two you learnt that it cannot pass a law which binds future Parliaments, and in fact a later law is always supreme over an earlier one.

- What exactly is the problem? Can you see a solution?
- Does your country belong to the EC, or another similar international organisation?
- If so, does the same problem exist? How has it been solved?

- ii) Compare your ideas with the ones in the key. Form groups in which the different members have studied each of points A, B and C above. In turns, explain the problem you have studied to other members of the group and discuss your answers. Then compare your ideas with the ones in the key.

B Reading for rapid information and understanding the organisation of themes in a text.

You are going to read part of the judgment of an English court case. The judgment is the process of reasoning by which the court arrives at a decision in a particular case and the decision itself.

1 Reading for rapid information (suggested time: 2-3 minutes)

Scan the whole text on pages 92-3 to find the following information about the case as quickly as you can. Do not try to read the whole text for this activity.

- a) The name of the case
- b) Two different courts which heard the case
- c) The names of the judges who heard the case in the English court

- d) If the case involved a man or a woman
- e) The UK Acts of Parliament referred to
- f) The Article of the EEC Treaty referred to in the case
- g) If all the English judges agreed on the decision
- h) The exact date of the final judgment

1

Macarthy's Ltd v Smith
(Case 129/79)

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
JUDGES KUTSCHER (PRESIDENT), O'KEEFE, TOUFFAIT (PRESIDENTS OF CHAMBERS), MERTENS DE WILMARS, 5 PESCATORE, LORD MACKENZIE STUART, BOSCO, KOOPMANS, DUE
30th JANUARY, 28th FEBRUARY, 27th MARCH 1980
COURT OF APPEAL, CIVIL DIVISION
LORD DENNING MR, LAWTON AND CUMMING-BRUCE LJ 17th APRIL 1980

- 10 Employment - Equality of treatment of men and women - Like work - Comparison of woman's work with duties of former male employee - Substantial interval between respective employments - Whether comparison restricted to comparing woman's work with that of man in contemporaneous employment - Equal Pay Act 1970 (as amended by the Sex Discrimination Act 1975), s 1(2)(a)(i) - EEC Treaty, art 119.

Costs - Order for costs - Action concerned with construction of legislation - United Kingdom law inconsistent

- 15 with EEC law - Litigant arguing case on basis of meaning of United Kingdom law - Whether litigant required to have regard to EEC law - Whether litigant required to pay costs of action when United Kingdom law on which he relied is struck down as being inconsistent with EEC law.

LORD DENNING MR. Although this application is only about costs, I will say a word about it; because it is of public importance.

- 20 The applicant, Mrs Wendy Smith, was employed by wholesale dealers in pharmaceutical products. She was paid a salary of £50 a week. She discovered that a man (who had left) had previously been performing her task. He had been paid £60 a week. She took proceedings under our English statute, the Equal Pay Act 1970 (as amended by the Sex Discrimination Act 1975). She claimed that her pay should be equal to his. An objection was taken that her application was bad in point of

law, because our English statute did not apply in the the case of

25 successive employment, and it only applied when the man and the woman were employed together at the same time contemporaneously.

That point was argued before this court. The majority of the court held that the objection was well founded. They interpreted it as meaning that the equal pay provisions only applied when the man and the woman were employed at the same time contemporaneously. But then the point arose: what was the position under

30 Community law? We were referred to art 119 of the EEC Treaty. The Court of Justice of the European Communities sitting at Luxembourg had decided that art 119 of the Treaty was directly applicable in the national courts of each country. It was submitted that under art 119 there was no requirement that the man and the woman should be employed contemporaneously at the same time, and that, under that article, the woman was entitled to equal pay even though the man had left before she joined and the woman had taken his job

35 afterwards.

The majority of this court felt that art 119 was uncertain. So this court referred the problem to the European Court at Luxembourg. We have now been provided with the decision of that court. It is important now to declare, and it must be made plain, that the provisions of art 119 of the EEC Treaty take priority over anything in our English statute on equal pay which is inconsistent with art 119. That priority is given by our own law. It is

40 given by the European Communities Act 1972 itself. Community law is now part of our law; and, whenever there is any inconsistency, Community law has priority. It is not supplanting English law. It is part of our law which overrides any other part which is inconsistent with it. I turn therefore to the decision given by the European Court. The answer they gave was that the man and the woman need not be employed at the same time. The woman is entitled to equal pay for equal work, even when the woman is employed after the man has left.

45 That interpretation must now be given by all the courts in England. It will apply in this case and in any such case hereafter.

Applying it in this case, the applicant was right. Although she was employed subsequently to the man, she was entitled to be

paid the same as the man. She was entitled to be paid not £50, but £60. That is the result of the Community law as applied to our present law. So that must be the decision.

50 The appeal that the employers brought to this court must therefore be dismissed.

The argument before us today was as to costs. It was argued before us that at the hearing before the tribunals, and indeed before this court, the employers were entitled to look solely to our English statute on equal pay. It was said that, in that statute, our parliamentary draftsmen thought they were carryinE out, and intended to carry out, the provisions of the EEC Treaty. So much so that, before the European Court at Luxembourg, the United

55 Kingdom government argued that, in order for the woman to be entitled to equal pay, her employment had to be contemporaneous. Accordingly the employers said that they were entitled to go by the English statute, and not the EEC Treaty, and so the costs should not fall on them of the appeal to this court.

The answer is this: the employers had no right to look at our English statute alone. They ought throughout to have looked at the EEC Treaty as well. Community law is part of our law by our own statute, the European

60 Communities Act 1972. In applying it, we should regard it in the same way as if we found an inconsistency between two English Acts of Parliament; and the court had to decide which had to be given priority. In such a case the party who loses has to pay the costs. So it seems to me that the employers should pay all the costs of the appeal to this court.

LAWTON LJ. I agree.

65 CUMMING-BRUCE LJ. I agree. I would only add a word in view of that fact that counsel for the applicant has drawn the attention of this court to the existence of a note by Professor Hood Phillips in the *Law Quarterly Review* ((1980) 96 LQR 31) which apparently expressed the view that the decision of this court has created a doubt about the constitutional position arising from a conflict between an English statute and European law. In my view there is no real room for doubt, and, if anything that I said in my judgment has given rise to doubt 70 which is based on misunderstanding, I repeat what I said on the last occasion, that 'If the terms of the Treaty are adjudged in Luxembourg to be inconsistent with the provisions of the Equal

Pay Act 1970, European law will prevail over that municipal legislation'. I went on to say this: 'But such a judgment in Luxembourg cannot affect the meaning of the English statute' (see [1979] 3 All ER 325 at 335-336).

Perhaps I expressed myself a little too widely there. The majority in this court took the view that there was no ambiguity about the words of the Equal Pay Act 1970 which we had to construe; and, as there was no ambiguity, the majority took the view that it was not appropriate, according to English canons of construction, to look outside the statute at art 119 as an aid to construction. In my view that was clearly right, but I would make it clear that had I been of the view that there was an ambiguity in the English statute, I would have taken the view that it was appropriate to look at art 119 in order to assist in resolving the ambiguity.

so I only add those words because of the doubt which has arisen in the article in the Law Quarterly Review.

Appeal dismissed.

Solicitors: *Baileys, Shaw & Gillett* (for the employers) ; *John L Williams* (for the applicant).

Sumra Green Barrister.

Case 129/79 *Macarthus Ltd v. Smith* [1981] 1 All ER 111

2 Understanding the organisation of themes in the text

Do not read the case in detail. Quickly skim the text to find the following sections and make a note of them, using line numbers:

Example: the summary in note form of the issues involved in the case Answer: lines 10-17.

- a) the summary of the facts of the case
- b) two sections of the text which discuss what happens when UK and EC law conflict
- c) two sections of the text which give Lord Denning's decision in this case
- d) the section in which Cumming-Bruce LJ discusses the interpretation of English statutes

- 3 Read the relevant sections of the text to find the two main practical issues in the case.
What do you think is the most interesting legal issue?

- 4 From exercises 1,2, and 3, how much do you know now about *Maithus Ltd v. Smith*?

5 Abbreviations

In the title of the case *Macarthus Ltd v. Smith, v.* is an abbreviation for *versus*.

What do you think it means? This word is often used in a completely different context from the law - do you know which one? Find the abbreviations in the text used for:

- a) Limited (a type of company)
- b) Master of the Rolls (the President of the Civil Division of the Court of Appeal - the most important civil judge in England outside the House of Lords)
- c) Lord Justice [of Appeal] (the title given to an ordinary Court of Appeal judge)
- d) Lords Justices [of Appeal] (plural form of c)
- e) All England Law Reports (one of the main collections of law reports of English cases - like all the law reports it is a private publication-there is no official edition).

C Language study and reading for detail

1 Word-building

Study the words from the text in the column on the left below. Write all the words in the same family, prefixes and suffixes you know in the your notebook, and use this information to decide what you think each word might mean. Then check your ideas by looking at the word in context in the text, before referring to the key.

Word from the text	Related words, prefixes, suffixes	Possible meaning
a) uncertain (adj) 36 b) applicant (n) 20,47,65 c) requirement (n) 32 d) inconsistent (adj) 39,42 e) whenever (adv) 40 f) overrides (v) 42 g) hereafter (adv) 46 h) costs (n) 57,62 i) parliamentary draftsmen (n) 53 j) misunderstanding (n) 70	<i>un- certain</i> <i>to apply,</i> <i>application, -ant</i>	<i>not certain,</i> <i>not sure</i>

2 Contextual deduction

- i) Study the words and phrases below in their context in the text and decide what you think each one probably means. Which information in the text helps you to decide?

- | | |
|-------------------------------------|-----------------------------|
| a) she took proceedings (line 22) | f) dismissed (50, 81) |
| b) she claimed (23) | g) as to (51) |
| c) successive employment (25) | h) hearing (51) |
| d) held (27) | i) party (62) |
| e) was entitled to (33-4, 47-8, 48) | j) will prevail over (71-2) |
| is entitled to (44) | k) solicitors (82) |

- ii) Choose the correct form of one of the words or phrases from i) to complete the following sentences. Use each word or phrase *once* only.

Example: In cases of conflict, EC law *prevails over* national law.

- a) Poor people in England free legal advice and help called 'Legal Aid'.
b) Mrs Adams against the man who broke her car windows.
c) The is at Winchester Crown Court on Tuesday March 23rd.

- d) The two to the case have not spoken to each other since the incident.
e) The applicant that his employer had broken the law.

3 Reading for detail

Read the parts of the text containing the answers to the following questions carefully:

- a) Why did Mrs Smith take proceedings against her employers?
b) What was the position under English law?
c) Why did the English court refer the case to the European Court of Justice?
d) What was the decision of the European Court on the interpretation of Article 119?
e) In what way did national law and EEC law conflict?
f) Did the Court of Appeal apply European law (Article 119 EEC) or national law (Equal Pay Act 1970)? Why?
g) What secondary issue of the case did the court decide on 17 April 1980? h) Why did the losing party claim that they should *not* pay costs?
i) What was the Court's decision on this issue?

4 The passive: further study

- i) In Unit Two you studied the passive form, e.g. Mrs Smith *was employed* by Macarthy's Ltd. If necessary, refer again to Unit Two, page 39, to see how the passive is formed. Study these phrases from the text:

- (1) 'the man and woman *need not be employed* at the same time' (line 43)
(2) 'that interpretation *must now be given* by all the courts in England' (line 45)
How are these two examples different in form from the one above (Mrs Smith was employed)?

In these passive phrases the modal verbs *need* and *must* express the extra ideas of *necessity* and *obligation*. When a modal verb (*NEED, MUST, CAN, MIGHT, SHOULD, etc.*) is used in the passive form, the construction is:

Modal verb	+ be (infinitive)	+ Main verb (past participle)
must	be	given
need (not)	be	employed
ought to	be	done

Use *by* if you want to say who did the action, e.g. by all the courts in England (example (2) above).

- ii) Scan the text to find three more examples of modal passives. Check that you understand them.
- iii) First identify the modal verbs in the sentences below. What is the object of the active phrase? Then transform each active phrase into the passive:

Example: In applying [Community law] we should regard it in the same way as if we found an inconsistency between two English Acts of Parliament. (lines 60-61)

Answer: In applying Community law it should be regarded in the same way as if we found an inconsistency between two English Acts of Parliament.

- a) In such a case the party who loses has to pay the costs. (61-2)
- b) The employers should pay all the costs of the appeal to this court. (62-3)
- c) But such a judgment in Luxembourg cannot affect the meaning of the English statute. (72-3)
- d) The majority in this court took the view that there was no ambiguity about the words of the Equal Pay Act 1970 which we had to construe. (74-5)

5 Adjectives: positive and negative forms

- i) Complete the table by giving the missing positive or negative form of each adjective. You will find some of the missing words in the text. What different negative prefixes do you notice (e.g. uncertain)? Can you think of other examples of each type of negative? When you have finished, complete the phrase in ii) by choosing the best *negative* adjective from your table.

Positive adjective	Negative adjective
applicable	<i>inapplicable</i>
certain	uncertain
	inconsistent
appropriate	
lawful	illegal
	invalid
ambiguous	
relevant	unsatisfactory

- ii) *Example:* When the meaning of EC law is *uncertain*, national courts can ask the European Court of Justice for help in interpretation.

- a) The man accused the police officer of arrest.
- b) If the words of a statute are, the court must construe them literally.
- c) Don't forget it's to park your car on double yellow lines in England.
- d) When a UK statute is with EC law, EC law prevails.
- e) The Equal Pay Act is when a woman is paid less than another woman in the same job.

6 Oral practice

- i) Use these cues to describe the facts and decision in *Macarthy's*:
Facts: applicant worked for Macarthy's Ltd / £50 a week / man before / £60 a week
UK law: Equal Pay Act 1970 / Sex Discrimination Act 1975 / not employed at same time
EEC law: Art. 119 EC / directly applicable / interpretation uncertain / referred to European Court of Justice / EC and UK law inconsistent
Decision: EC law prevails / applicant right / £60 a week / employers pay costs.

Start like this: 'In the case of *Macarthy's Ltd v. Smith* the applicant, Mrs Smith, worked for Macarthy's Ltd for £50 a week. She found out that ...'.

ii) Choose A or B:

A Ms Jones is paid £ 120 a week. Mr Adams is paid £150 a week.
Both work for Industrial Holdings Ltd now and do the same work.

B Ms Felps was paid £160 a week. Mr Wilson is paid £145 a week.

Ms Felps left her job at Brain and Co. a month ago.

Mr Wilson is now employed to do the same job there.

iii) Imagine the facts and decision of the case you have chosen in detail, and write simple cues as in i) above, of the *Facts*, *UK law*, *EEC law* and *Decision*. You will find all the legal information you need in the text and in your answers to the comprehension exercises.

iv) Use your cues from iii) to describe the facts and decision in the case you have chosen, then refer to the key to check your decision and legal reasoning.

Work in pairs with someone who has not prepared the same case as you. In turns, use your cues to describe the facts and decision in each case. Do you agree with your partner's legal reasoning? When you have finished, check your decisions in the key.

D Development

1 If you have not already done so, finish making vocabulary cards for all the law terms in Section Two of this Unit which you want to remember, following the instructions on page 90.

2 Storing vocabulary

i) Divide all the vocabulary cards you have made during this Unit into three general groups:

- words and phrases related to *Legal action*, *The courts*, etc.
- words and phrases related to *UK and EC law*, *Parliament*, *Legislation*, etc.
- other words and phrases.

ii) One useful way to store vocabulary which will also help you to remember words better is to arrange them in logical categories or groups. You can use your vocabulary cards (or vocabulary lists) to create categories of words in this way and consolidate your knowledge of vocabulary on a particular subject which interests you.

You may prefer to:

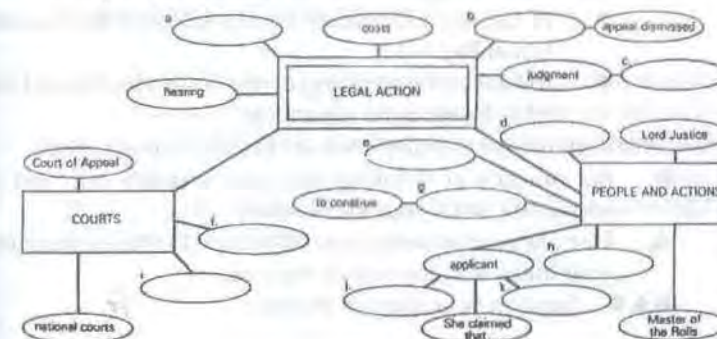
- sort and store your vocabulary cards in groups of related words;
- copy groups of related words from your vocabulary cards or lists on to simple lists and tables of your own like the ones on page 89 of this book;
- create vocabulary networks like the ones in iii) which show a group of words on a particular subject and the relationship between them.

iii) Study and complete vocabulary networks (1) and (2) on page 98. This activity will help you to store and remember words you have learnt in this Unit. There is no one correct solution to the networks.

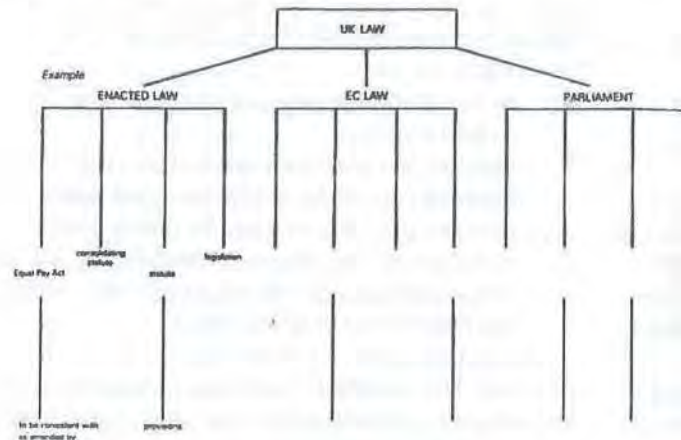
▲ When you have finished, compare and discuss your networks with other members of the class.

●■ When you have finished, compare your networks with the ones in the key. NETWORK (1) Choose a suitable word or phrase from the list overleaf for each space:

1. Appeal 2. The court held that ... 3. Party 4. Tribunals 5. He was entitled to ... 6. Counsel 7. Judge 8. European Court of Justice 9. Versus (*Macarthy's Ltd v. Smith*) 10. Litigant 11. She took proceedings against ...



NETWORK (2) Use your vocabulary cards or lists or the texts from this Unit to complete the network by putting a suitable word or phrase at the end of each line as in the example.



3 Discussion points

Use the text of *Macarthy's Ltd v. Smith* and your own knowledge to decide the following.

- ◆ For what reason did Lord Denning hold that EC law prevails over UK law?
- ◆ Is his decision consistent with the doctrine of parliamentary sovereignty?
- ◆ Did Lord Justice Cumming-Bruce agree with Lord Denning about the supremacy of EC law?
- ◆ The Court of Appeal had two alternatives:
 - to use the EEC Treaty to help interpret the English Equal Pay Act
 - to look at the meaning of the Equal Pay Act and the EEC Treaty quite separately.

Which alternative did they choose? In your opinion, why?

- For practice in speaking, say your answers out loud. If you prefer, write your ideas down.
- ▲ Discuss your answers in small groups before exchanging your ideas with the rest of the class.
- ▲● Confirm your ideas in the key.



CHAPTER XXV

THE JUDICIAL SYSTEM

Section One: The Courts

Reading Works of Legal Reference

A Before you read

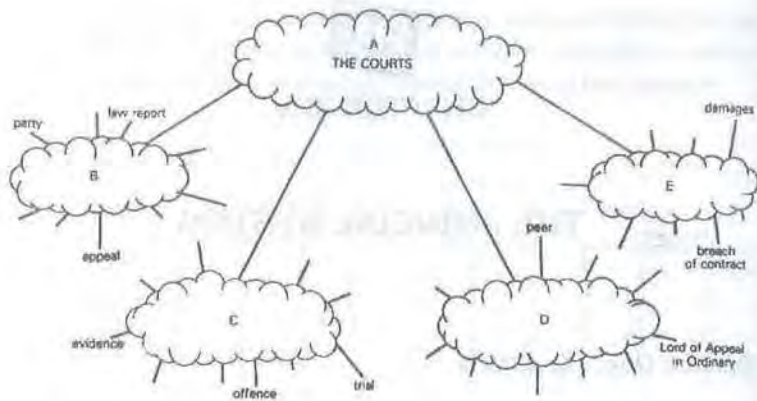
1 Before you read about the English courts, think about your own judicial system:

- How is the administration of justice organised in your country?
- Are there separate jurisdictions for different areas of law (e.g. public and private)?
- What is the relationship between the different courts?
- What is the role and position of judges and other lawyers in your country?

▲ Discuss your ideas with other members of the class.

2 You have already learnt many words in this book relating to the judicial system.

- i) Use the glossary to check that you remember the meaning of all the words in the vocabulary network below. Then put the following headings in the correct spaces marked A-E.
- (1) Criminal law (2) The judiciary (3) The courts (4) Civil law (5) The case



- ii) Continue the network yourself with other words and phrases that you know on this subject. *You* may wish to refer to Units One, Two and Five for some ideas.

▲ Compare your work with other members of the class.

B First reading: understanding the general content of the text

- 1 The text on pages 101-2 describes judicial organisation in England and Wales. Quickly skim the text and give each paragraph (A, B, C, etc.) a suitable heading. Suggested time: 3 minutes.

Example: suitable headings for paragraph A are: 'Jurisdiction of the House of Lords' or 'The House of Lords'. Look for key words and phrases to help you decide the main subject of each paragraph, but do *not* try to read every word or understand the whole text for this activity.

2 Reformulating information in the text: completing a diagram

Read the text in more detail and complete the diagram on page 102, which shows the hierarchy and jurisdiction of the Courts in England and Wales, in your notebooks. Write the name of each court in the correct box as in the example and indicate which are inferior and superior courts. Do *not* worry about words and phrases *you* don't know or understand if you can complete this activity.

3 Which words from the vocabulary network on page 100 did you find in the text?

1 - Judicial organization

A *Superior courts.* The highest court is the House of Lords, which exercises the judicial function of Parliament. In theory appeal to the House of

5 Lords is an appeal to the whole House but in practice, particularly since the Appellate Jurisdiction Act, 1876, created a group of salaried life peers, the Lords of Appeal in Ordinary, or 'law lords', there is an established convention

10 dating from 1844 that= seers do not participate in judicial ffm of the House. Appeals are referred to an Appellate Committee of the House. By that Act an appeal must be (heard by at least three of the Lord Chancellor,

15 the Lords of Appeal in Ordinary, and such peers as hold or have held high judicial office. The louse has almost entirely appellate jurisdiction only, in civil and criminal cases from the Courts of Appeal in England and in Northern Ireland

20 and in civil cases only from the Court of Session in Scotland. B The Court of Appeal sits in both civil and criminal divisions. The Civil division hears appeals from the High Court, county courts, the

25 Restrictive Practices court, certain special courts, and certain tribunals, such as the Lands Tribunal. The Criminal division hears appeals by persons convicted on indictment in the Crown Courts.

C The High Court in its civil jurisdiction is

30 divided into three Divisions (Queen's Bench, Chancery, and Family (formerly Probate, Divorce and Admiralty)) to each of which certain kinds of cases are assigned. Divisional courts (q.v.) of each of the divisions, consisting of two

35 or more judges, have limited appellate jurisdiction in certain cases. The main civil jurisdiction is exercised by single judges hearing cases of the kind appropriate to the divisions to which the judges belong.

D 40 The criminal jurisdiction of the High Court is exercised exclusively by the Queen's Bench Division. A divisional court of two or three judges of that Division deals with appeals from a Crown Court and magistrates' courts, and also

45 exercises the supervisory jurisdiction of the court, issuing the prerogative writ of habeas corpus and to ensure that magistrates' courts and inferior tribunals exercise their power prop-

erly, by granting orders of mandamus, prohibition and
50 *certiorari*.

E The Crown Court, created in 1972, replaces the former assizes and quarter sessions. It exercises criminal jurisdiction and sittings are held regularly at major towns throughout England and Wales.

55 Wales. It comprises judges of the Queen's Bench Division of the High Court, circuit judges and Recorders (part-time judges). They sit singly with juries trying persons charged on indictment with crimes. A 'ud - e of the Crown Court sits with two
60 to four of the peace to hear appeals from magistrates' courts and proceedings on committal by magistrates to the Crown Court for (sentence).

F The Central Criminal Court, known as the Old
65 Bailey, is also sitting of the Crown Court, having criminal jurisdiction only, over indictable offences committed in Greater London or on the high seas. The court consists of *ex officio* judges and in practice consists of judges of the Queen's
70 Bench Division, the Recorder of London, the Common Serjeant, and certain additional judges of the Central Criminal Court.

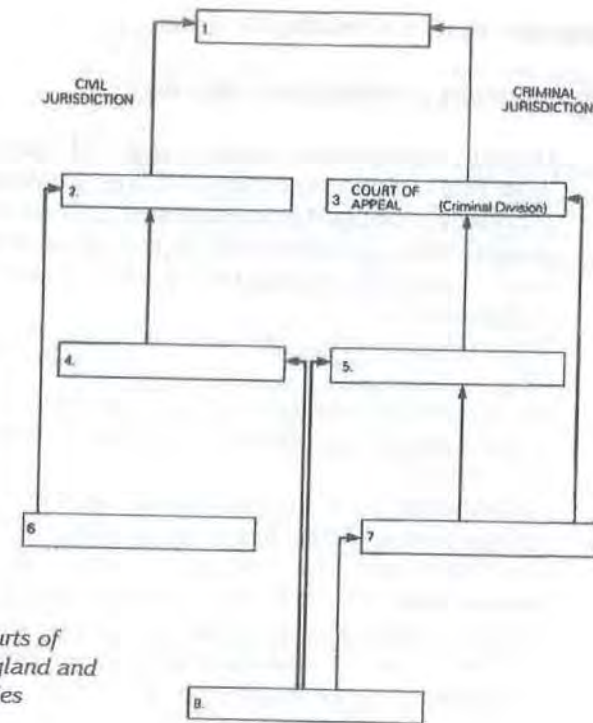
G Inferior courts. County courts have exclusively civil jurisdiction, which is limited in extent and in
75 area, and which is entirely statutory. The judges are persons who also hold office as Circuit judges of the Crown Court.

H Magistrates' courts consist of a stipendiary magistrate or of from two to seven (usually two
80 or three) lay justices of the peace; a single lay justice has a very limited jurisdiction. Magistrates' courts have civil jurisdiction in relation to certain debts, licences, and domestic (proceedings. In the exercise of criminal

85 jurisdiction one or more justices may sit as examining magistrates to conduct a preliminary investigation into an indictable offence. A magistrates' court may try summarily many minor statutory offences, and also certain

90 offences if the prosecutor applies for the case to be heard 'the court agrees it is a suitable mode of trial and the defendant does not elect jury trial. Cases may be appealed to the Crown Court or defendants remitted for

95 sentence to the Crown Court.



Courts of
England and
Wales

4 Reading for general understanding

Use your completed diagram to answer these questions:

- What are the two main areas of jurisdiction of English courts?
- Which courts exercise jurisdiction in both areas?
- Which are the superior courts in England and Wales?
- Which is the final court of appeal?
- Which Division of the High Court has criminal jurisdiction?
- What is the maximum number of appeals in a civil case?
- And in a criminal case?
- Do the county courts hear all civil cases?

C Language study and reading for detail

1 Dictionary use - choosing the right word

- i) Do you use a dictionary to help you study English? What kind of dictionary do you use? Is it monolingual (all in English) or bilingual (with translations into another language)? What do you use it for (to find the meaning of a word, to check the meaning of a word, to check spelling or grammar)? Do you like using the dictionary? How useful do you find it? Do you have any problems using it, or find any disadvantages? Compare your dictionary habits with other members of the class.
- ii) You know that some words, like *body*, *office* and *authority* have several different meanings depending on the context. Other words, like *cost* and *judge*, have more than one grammatical function (they are both verbs and nouns). When you look a word up in the dictionary you will find a list of all its different meanings and functions. Learning to choose the correct definition from the list is therefore an important vocabulary skill.
Look at the boxed words in the text on pages 101-2. If possible decide what you think each word means here: use cognates, word-families, logical reasoning and the context to help you decide. Even if you have no idea what the word means, decide if it is a verb, adjective, noun, etc. This will make it easier for you to choose the correct dictionary definition for each word later.
- iii) Choose the correct definition for each word from the following extracts from *The Oxford Advanced Learner's Dictionary*. First choose the correct definition for *sittings* (lines 11, 53, 65), then compare your answer with the example below.
Example: sittings (11, 53) has the meaning given in definition 1 (time during which a court of law is sitting continuously). But note that *sitting* (65) does not have any of the meanings given in this dictionary. What do you think it means? What does this teach you about using a dictionary?

2 Word study

- i) Which nouns that you already know are related to the adjectives on the left and what do the phrases on the right mean?
Example: judicial (1) judicial function (line 3)
Answer: judicial is related to *judge*. The judicial function is the function of a person or body acting as a judge. In the text it refers to the function of the House of Lords as a court, not as a legislative body.
a) appellate (1) Appellate Committee (line 12)
(2) appellate jurisdiction (17)
b) divisional (1) divisional court (33, 42)
c) statutory (1) statutory jurisdiction (74-5)
(2) statutory offences (89)
- ii) The adjective *domestic* refers to the home and family. What do you suppose domestic proceedings (lines 83-4) are?
- iii) Answer the questions below, then use your dictionary to check.
a) The person who starts criminal proceedings (usually in the name of the Crown) is called the *prosecutor* (line 90). Find the name for *the person accused of a crime* used in lines 87-95 of the text.
b) In line 93 of the text do you think the verb *elect* has its usual meaning - *to choose by vote*?
c) Does the verb *to try* have its usual meaning in lines 58 and 88?
Find the related noun in paragraph H. What do you think it means?
- iv) A special part of the work of the Queen's Bench Division of the High Court is the judicial review of administrative action - the court has the power to make sure that the acts and decisions of inferior courts, tribunals and administrative bodies are legal and valid.
a) Which lines of the text describe this part of the court's jurisdiction?
b) Find the names of four special orders the court can make as part of this
● jurisdiction. Use your dictionary if necessary.

3 Reading for detail

Read the text carefully and decide if the following statements are *true* or *false*: *Example*: When the House of Lords sits as a court, it only hears appeals. *Answer*: False. (The House of Lords has 'almost entirely' appellate jurisdiction (line 17), *not* entirely.)

- a) When the House of Lords sits as a court (not a legislative body) only peers who are senior members of the judiciary can take part in the proceedings.
- b) The House of Lords is the final court of appeal for civil and criminal cases in the UK.
- c) The three Divisions of the High Court each hear different kinds of cases.
- d) The Queen's Bench Division of the High Court is responsible for judicial review of administrative action.
- e) A jury is always present at Crown Court hearings.
- f) The Old Bailey is the name of the Crown Court for the London area.
- g) The county courts only hear cases concerning statute law.
- h) All English judges and magistrates are professional lawyers.
- i) The magistrates' courts hear certain categories of less important cases.
- j) The magistrates' courts investigate some cases which are later tried by jury in the Crown Court.
- k) The magistrates' courts can choose to hear cases with or without a jury.

4 Taking Notes

- i) Read the text again and pick out the most important points about each court as in the example. As you work, look up any new words which interest you in your own dictionary - remember to decide *first* what you think the word means and if it is a verb, noun, etc.
- ii) Transfer the words you have chosen to your diagram on page 102. Write notes, using your own words where possible, as in the example.

1 Judicial organization

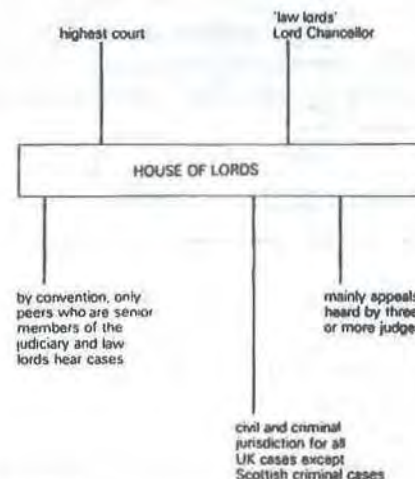
A *Superior courts*. The highest court is the House of Lords, which exercises the judicial function of Parliament. In theory appeal to the House of

5 Lords is an appeal to the whole House but in practice, particularly since the Appellate Jurisdiction Act, 1876, created a group of salaried life peers, the Lords of Appeal in Ordinary, or 'law lords', there is an established convention

10 dating from 1844 that "seers do not participate in judicial of the House. Appeals are referred to an Appellate Committee of the House. By that Act an appeal must be heard by at least three of the Lord Chancellor,

15 the Lords of Appeal in Ordinary, and such peers as hold or have held high judicial office. The House has almost entirely appellate jurisdiction only, in civil and criminal cases from the Courts of Appeal in England and in Northern Ireland

20 and in civil cases only from the Court of Session in Scotland.



5 Oral practice

Use your completed diagram to describe the organisation of the courts and judiciary in England and Wales. Include the following points:

- Courts of civil and criminal jurisdiction
- The hierarchy of courts
- the role and jurisdiction of each court
- ▲ Work together in pairs or small groups.

D Development

- 1 Study the table below giving information about the judiciary in England and Wales. Each number from 1 to 10 corresponds to a piece of missing information given in the list below.

- i) Can you complete the table by putting the missing information in the correct spaces? Number 1 has been done for you.

Example: 1 / d law lord

JUDGES						
Called	Court	Referred to as	Title	Addressed in Court	Retiring age	Salary
Lord of Appeal in Ordinary or 1. law lord	House of Lords	Lord Wise	5. 6.	My Lord	75	£66 000
2. Appeal court judge	3.	Lord Justice Wise	Knighthood - 7.	My Lord	75	8.
High Court Judge	High Court	Mr (or Mrs) Justice Wise	Knighthood - Sir John (or Dame Jean) Wise	My Lord My Lady	75	10.
Circuit Judge	Crown Court or 4.	His (or Her) Honour Judge Wise QC (if a QC)	8.	Your honour*	72	£40 000
Recorder	Crown Court	Mr (or Mrs) Recorder Wise	None	Your honour	72	£151 per day

*Judges of the Old Bailey, although strictly ordinary circuit judges, are addressed as 'My Lord'. Marcel Barfina and Clara Dyer, *The Law Machine*.

Missing information: a) Court of Appeal b) None
c) £66 000 d) law lord e) County Court f) peerage
g) Lord Justice of Appeal h) Lord Wise i) £60 000
j) Sir John Wise

- ii) What does the table tell you about the economic and social position of English judges?

- 2 If you have not already done so, make vocabulary cards for the words from this Section that you want to remember, or add them to your own personal vocabulary lists. Then complete the vocabulary network from page 100 with some of the words you have chosen.

3 Discussion points

Compare the organisation of the courts and judiciary in England and Wales, and in your own country. Choose at least two of the following points which interest you and prepare to talk about your ideas:

- ◆ Areas of jurisdiction of the courts
- ◆ Hierarchy of the courts and system of appeals
- ◆ Use of lay magistrates to decide less important civil and criminal cases 3
- ◆ Judicial and legislative functions of the House of Lords
- ◆ Social and economic position of judges
- ◆ Use of the jury, composed of 12 ordinary men and women, to try serious crimes (the jury decides questions of fact, the judge decides questions of law).
- ▲ Discuss your ideas in small groups, then exchange opinions with the whole class.
- For practice in speaking, say your answers out loud. If possible, record them on tape, then listen to your recording. If you prefer, write some of your ideas down.

Section Two: Judicial Precedent

Reading a House of Lords Statement; reading works of legal reference

A Before you read

1 How much have you learnt about judicial precedent so far in this book?

Can you answer the following questions? If necessary, refer again to Units One and Five.

- What do you understand by the doctrine of *judicial precedent*?
- Why is judicial precedent central to the English legal system?
- What is a *binding* decision?
- In the context of case-law, what is an *authority*?

▲● Discuss your answers with other members of the class before checking in the key.

■● Check your answers in the key.

2 In 1966 the House of Lords made a statement in which they changed the rules of precedent.

Before you read the statement, think of one or two advantages of the system of binding precedent. Can you think of any disadvantages? Copy and complete the table in your notebooks.

Binding precedent	
Advantages	Disadvantages

A Discuss and compare your tables in small groups.

Judgment - Judicial decision as authority - Stare decisis - House of Lords - Freedom of House of Lords to depart from their previous

B Reading a House of Lords statement

1 Skimming and scanning activities

- i) Quickly skim the statement below to find the section of the text which: *Example:* describes the advantages of precedent

Answer: lines 12-18 a) describes the disadvantages of precedent b) explains in note form what the statement is about c) gives the new rule of precedent.

- ii) Quickly scan the statement to find out:
- a) who read it
 - b) on what date
 - c) If the statement was made by the House of Lords acting as a *judicial* or as a *legislative* body
 - d) the name of the work of legal reference which describes the binding effect of
 - House of Lords decisions.

NOTE.

1 Judgment - Judicial decision as authority - Stare decisis - House of Lords - Freedom of House of Lords to depart from their previous

5 decisions where right to do so - Doctrine of precedent nevertheless an indispensable foundation of decisions of law.

Before judgments were given in the House of Lords on July 26, 1966, LORD GARDINER, L.C.,

10 made the following statement on behalf of him-self and the Lords of Appeal in Ordinary:

Their lordships regard the use of precedent (1) as an indispensable foundation upon which to decide what is the law and its application to

15 individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

Their lordships nevertheless recognise that

20 too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this 25 House as normally binding, to depart from a previous decision when it appears right to do so.

In this connexion they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and

30 fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.

This announcement is not intended to affect the use of precedent elsewhere than in this
35 House.

(1) As regards the binding effect of decisions of the House of Lords, see 22 HALSSUEY's LAWS (3rd Edn.) 798, 799, para. 1686; and for cases on the subject, see 30 DIGEST (Repl.) 219-221, 624-646.

- 2 Use information from the text to complete the table in activity A 2, opposite.

• Were any of your own ideas the same as those in the text?

- 3 Read the statement carefully to answer the following questions:

Before 1966 all House of Lords decisions were binding on lower courts (the Court of Appeal and below) and on the House of Lords itself.

- What is the new rule?
 - How does the 1966 statement change the rules of precedent (1) in the House of Lords? (2) in lower courts?
 - The statement says that the House of Lords will 'depart from a previous decision when it appears right to do so' (lines 25-6). Do you think this means that in future
 - the House of Lords can choose not to follow a precedent in a particular case, but the previous decision remains the precedent for all other cases? or
 - the House of Lords can choose not to follow a precedent in a particular case, and the new decision becomes the precedent for future cases?
- d) In what branches of law can the new rule create problems? Why?

4 Word study

- Do you know Latin? Even today, many principles of English law are expressed in Latin. Find the Latin phrase in lines 2-7 of the text. Do you know what it means? Lawyers pronounce Latin in a special traditional way, e.g. the phrase in the text is pronounced /sta:rel de'si:sts/:
- In 1966 Lord Gardiner held the most important legal office in the English legal system and presided over the House of Lords. The abbreviation for the position he held is LC (line 9). What was he?
- Which expression in the text refers to the peers who made the statement?
- From the context decide if 'nevertheless' (lines 6, 19) means *never*, *however*, or *therefore*.

C Reading a work of legal reference

1 The binding part of a decision

- In the extracts which follow, quickly find the Latin terms which are pronounced:
a) /dikto/ b) /bubito dikto/ c) /,rel f lav desi'dendi/
- Read the extracts and find the difference between the *ratio decidendi* and *dicta*. Which constitutes binding precedent?
- Do *dicta* bind judges in later cases?
 - Which will have more influence: *obiter dicta* or judicial *dicta*?

1 573. Ratio decidendi. The enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a pre-cedent. This underlying principle is called the ratio

5 decidendi, namely the general reasons given for the decision or the general grounds upon which it is based, detached or abstracted from the specific peculiarities of the particular case which gives rise to the decision. What constitutes binding precedent is the

10 ratio decidendi.

574. Dicta. Statements which are not necessary to the decision, which go beyond the occasion and lay down a rule that it is unnecessary for the purpose in hand are generally termed 'dicta'. They have no

15 binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as 'obiter dicta', whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the

20 ratio decidendi, have been termed 'judicial dicta'.

Lord Hailsham, *Halsbury's Laws of England*

2 First reading: personal reading comprehension

The extracts on this page and the next are from *Halsbury's Laws of England*, the work of reference referred to in the 1966 House of Lords statement. The text on pages 114-11 explains in detail how the system of binding precedent operates in the English courts.

- i) First read the paragraph headings *only* (e.g. paragraph 577 House of Lords decisions) to see exactly what the text on pages 110-11 is about. Do *not* read the
- text yet. Which paragraph refers to High Court decisions?

JUDICIAL DECISIONS AS AUTHORITIES

577. House of Lords decisions. The decisions of the House of Lords upon questions of law are normally considered by the House to be binding upon itself,

5 but because too rigid adherence to precedent may lead to injustice in a particular case and unduly restrict the proper development of the law the House will depart from a previous decision when it appears right to do so, although it bears in mind the danger of

10 disturbing retrospectively the basis upon which contracts, property settlements and fiscal arrangements have been entered into and the especial need for certainty as to the criminal law. When a broad principle has been clearly decided by the House, the

15 decision should not be weakened or frittered away by fine distinctions, and an erroneous decision of the House upon a ques-

tion of law can be set right only by Act of Parliament. A decision of the House of Lords occasioned by members of the House being equally

20 divided is as binding on the House and on all inferior tribunals as if it had been unanimous. Decisions of the House of Lords are binding on every court inferior to it.

578. Court of Appeal decisions. The decisions of the

25 Court of Appeal upon questions of law must be followed by Divisional Courts and courts of first instance, and, as a general rule, are binding on the Court of Appeal, until a contrary determination has been arrived at by the House of Lords. There are,

30 however, three, and only three, exceptions to this rule; thus (1) the Court of Appeal is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) it is bound to refuse to follow a decision of its own which, although not

35 expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords; and (3) the Court of Appeal is not bound to follow a decision of its own if given per incuriam. Unlike the House of Lords, the Court of Appeal does not have liberty to

40 review its own earlier decisions.

A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of co-ordinate jurisdiction which covered the case before it, in which case it must

45 decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force.

50 In its criminal jurisdiction the Court of Appeal applies the same principles as on the civil side, but recognises that there are exceptions (a) where the applicant is in prison and in the full court's opinion wrongly so; (b) where the court thinks that the law

55 was misunderstood or misapplied; and (c) where the full court is carrying out its duty to lay down principles and guidelines in relation to sentencing.

579. Divisional Court decisions. A Divisional Court is bound by its own previous decisions, regardless of

60 how many judges are sitting, with limited exceptions in criminal cases, subject always to the per incuriam rule. Faced with

conflicting earlier decisions the court is free to decide which to follow. Divisional Court decisions bind judges of first instance, even of

65 a different division, but not the Employment Appeal Tribunal.

585. **Scottish and Irish decisions.** Decisions of the Scottish and Irish courts are not binding upon English courts, although entitled to the highest respect.

70 On questions of principle it is desirable that the laws of England and Scotland should be uniform and that a decision of the House of Lords, when founded on principle and not on authority, should be regarded as applicable to both countries, unless the House itself

75 says otherwise. There is a well-settled practice that in revenue and taxation matters courts of first instance in England endeavour to keep in line with the courts of Scotland. Further, an English court ought to follow the unanimous judgment of the higher Scottish

80 and Irish courts, where the question is one which turns upon the construction of a statute which extends to those countries as well as to England, leaving it to be reviewed, if thought fit, by the appeal court, *as it is* desirable that interpretations should be

85 avoided which result in one meaning in one country and one in another.

586. **Overseas decisions.** A decision of an overseas court in a common law country is not of course binding on an English court, but may be useful as a

90 guide to the court to which it is cited as to what its decision ought to be. Thus, for example, great respect is paid to the views of eminent judges of the United States Supreme Court and to decisions of the highest tribunal of the State of New York. English

95 courts should be in keeping with United States courts on carriage by sea and carriage by air, although if English law proved to be different, effect would have to be given to the difference, whatever the inconvenience.

100 It is desirable that the great common law jurisdictions should not differ lightly, particularly on so universal a matter as commercial law, or the measure of damages, or remoteness of damage, or interpretation, or privilege, or patent law.

Lord Hailsham, *Halsbury's Laws of England*

ii) You now know what the text is about in general. Before you read, write down a few questions you hope the text will answer. This will give you a personal purpose for reading, and will help you to read with more understanding and focus on the points of interest to you.

iii) Read the text to find the answers to your questions from ii). Do not worry about parts of the text you don't understand if you can complete this activity.

iv) Did you find the answers to all your questions? What other important points does the text contain?

▲ Compare your work with other members of the class.

3 Language study

i) Study the following sentences from the text and decide which of the forms given in the list below means exactly the same as each phrase in italics in a) to e):

Choose from:

- (1) need not (2) need not be followed by (3) must
(4) must be followed by (5) must follow.

Example: a) the Court of Appeal is *bound to* decide which of two conflicting decisions of its own it will follow (lines 31-3)

Answer: a / 3 must

b) the Court of Appeal is *not bound to* follow a decision of its own if given per incuriam (37-8)

c) A divisional court is *bound by* its own previous decisions (58-9)

d) Divisional Court decisions *bind* judges of first instance (63-4)

e) A decision of an overseas court is *not binding on* an English court (87-9)

ii) Notice the construction of the different types of phrase with *bind*, *binding* and *bound*:

to be bound TO	+ infinitive
to be bound BY	+ noun
to be binding ON	+ noun
to bind	+ noun

Lower courts are bound to follow House of Lords decisions
 Lower courts are bound by House of Lords decisions
 House of Lords decisions are binding on lower courts
 House of Lords decisions bind lower courts

- Which two pairs of sentences have exactly the same meaning and emphasis?

- iii) Complete the following sentences correctly using a phrase with *bind*, *bound*, or *binding*.

Refer to paragraph 578 of the text for the legal information you need.

- a) Divisional Courts by Court of Appeal decisions on questions of law.
- b) In general the Court of Appeal follow its own decisions.
- c) A Court of Appeal decision given per incuriam on the Court of Appeal in a later case.
- d) Court of Appeal decisions the House of Lords.

- iv) Study these phrases from the text:

An English court *ought to follow* the unanimous judgment of the higher Scottish courts (78-80)

The laws of England and Scotland *should be* uniform (70-71)

- a) Are judgments of higher Scottish courts binding on an English court?
- b) Must the laws of England and Scotland be uniform?
- c) Scan paragraphs 585 and 586 of the text to find some more phrases containing *should* and *ought to*.
- d) Study the phrases from c) above. In what way is the meaning of the modal verbs *should* and *ought to* different from *must*, *to be bound to* and similar expressions of obligation?
-

4 Word study

- i) Study lines 41-9 of the text. The word 'case' is repeated four times.

For each example, decide if *case* is used with its special legal meaning of a legal action or set of legal circumstances. What do you think the expression 'in which case' means?

- ii) *Word families*: use your knowledge of word families to work out the probable meaning of the following words from the text. Make sure that your ideas are possible in the context before checking in the key.

- a) 'weakened' (line 15): think of the adjective *weak*; what do you suppose the related verb *to weaken* means?

- b) 'overruled' (35): when the judge *rules* in a case, s/he decides what the law is and gives judgment. What do you suppose the judge does when s/he *overrules* a previous decision?

- c) if the law is 'misunderstood' or 'misapplied' (55) do you think it is:

(1) not understood or not applied (2) understood or applied correctly (3) understood or applied wrongly

What does the prefix *mis-* mean? Do you know any other words beginning with *mis-*?

- d) What do you suppose 'guidelines' (57) are?

5 Reformulating a text: designing a diagram

In Section One of this Unit, you read a text and completed a diagram showing the main points of the text in visual form. Like taking notes, reformulating a text in this way both helps you to understand and shows understanding of the text.

- i) Read the text on pages 110-11 again and make a note of the main points.

- ii) Using information from the text, design your own diagram to show how the doctrine of binding precedent operates in the English judicial system. Concentrate on the main points of the text only. Your diagram should include

the operation of precedent in the House of Lords, the Court of Appeal, the High Court and lower courts, and the effect of Scottish, Irish and overseas decisions on the courts of England and Wales.

- ▲ When you have finished, compare your work with other members of the class. "
- When you have finished, compare your diagram with the one in the key.

6 Cognates and false friends

- i) Study the sections of the text containing the words in italics in the exercise below and decide which of the two definitions which follow is correct in the context. In each case, does a similar word exist in your language? If so, decide whether it is a true cognate or a false friend in this context.

Example: The court has acted in *ignorance* of a previous decision (lines 41-2)

- (1) the court didn't know about a previous decision
- (2) the court knew about a previous decision, but chose not to follow it.

Answer: definition (1) is correct.

Is ignorance similar to a word in your language? If so, does it have the same meaning?

- a) the *proper* development of the law (line 7)
 - (1) the typical, characteristic development of the law
 - (2) the correct, appropriate development of the law.
- b) fiscal *arrangements* (11)
 - (1) agreements, accords relating to tax payments
 - (2) plans, preparations relating to tax payments.
- c) an *erroneous* decision (16)
 - (1) a wrong decision
 - (2) a decision which is not precise or exact
- d) a contrary *determination* (28)
 - (1) a contrary decision
 - (2) a contrary definition
- e) sentencing (57)
 - (1) deciding the punishment for a crime, e.g. a sum of money, a certain period in prison

(2) giving judgment in a case: deciding if the defendant is right or wrong and why.

- f) *patent* law (105)
 - (1) the law relating to licences and permits
 - (2) the law relating to the exclusive right to make and sell an invention

- ii) Which verbs are closely related to the italicised nouns in b), d), e) and f) above?

E.g. b) *arrangements* (noun) Answer: *to arrange* (verb)

- iii) Complete the following sentences with a suitable word from exercises i) or ii) above:

Example: of the law is no defence.

- a) The designer immediately applied for a for the new model he had created.
- b) The court that the defendant was in breach of his obligations.
- c) The remedy for breach of contract is often an order of specific performance.
- d) The judge the murderer to life imprisonment.

7 Oral practice

Use your diagram to describe how the doctrine of binding precedent operates in the English judicial system. Include the following points:

- Decisions of the English superior courts
- Decisions of Scottish and Irish courts
- Overseas decisions.

- ▲ Work together in pairs or small groups, and in turns describe precedent in each court.

D Development

1 Applying the doctrine of binding precedent

Use your diagram and the text to solve the following practical problems:

- a) If the House of Lords follows its own precedent in the present case (concerning the law of property) the result will not be just. Is it bound to follow the precedent or not?
- b) The House of Lords has reached a wrong decision on a question of law. Can it overrule the decision in a later case?
- c) The House of Lords has reached a decision which the Court of Appeal does not consider just. Is the Court of Appeal bound by the House of Lords authority in a later case?
- d) There are two previous authorities for the present case before the Civil Division of the Court of Appeal - a Court of Appeal precedent and a conflicting House of Lords precedent. Which authority binds the court?
- e) Two previous, but conflicting Court of Appeal decisions exist. In the present case, the Civil Division of the Court of Appeal would prefer to follow the earlier decision. Can it do so?
- f) The Court of Appeal decides that if it follows a precedent of its own, the result in the present case will be unjust. Can it depart from its previous decision?
- g) The members of the Court of Appeal agree that they did not apply the law correctly in a previous case. Must they follow the precedent in the present case?
- h) The first hearing of a civil case takes place at the County Court. Must the court follow a precedent of the Family Division of the High Court?
- i) The first hearing of a criminal case takes place at the Crown Court. Is the court bound by a Court of Appeal precedent?
- j) In a previous case, a Scottish superior court has interpreted a statute which is applicable in all the UK. Is the English High Court bound to construe the statute in the same way?
- k) Is the English Court of Appeal bound to follow a decision of the US Supreme Court concerning patent law?

- 2 Design and complete your own vocabulary network on the subject of the judicial system. Use vocabulary from the whole of this Unit and include other words and phrases you knew be-

fore, too. See the networks on pages 100 and 102 for some ideas about design.

3 Discussion points

Think about the following points for a few minutes and prepare to talk about them:

- ◆ In your legal system, do some judicial decisions bind or influence courts in future cases? If so, in what circumstances? How important is precedent in your judicial system?
- ◆ Compare the use of judicial precedent in the English judicial system and in your country.
- ◆ To practise speaking, talk about your ideas. If possible, record them on tape. If you prefer to practise writing, write some of your ideas down.
- ▲ Compare and discuss your ideas with other members of the class.



CHAPTER XXVI

PRIVATE LAW - CONTRACT

Reading the Judgment of an English Court Case

Section One: The facts of the Case; the Defence

A Before you read

- 1 You are going to read part of the judgment of an English court case which created an important precedent in the law of contract. Judgments of superior courts which contain decisions or 'rulings' on important questions of law, like *Carlill v. Carbolic Smoke Ball Co.*, are published in the law reports. It is because decisions are recorded in this way that the English case-law system, based on the doctrine of binding precedent, can operate.
 - i) Before you read, write a list of some vocabulary (about 10 words or phrases) that you think you might find in a text of this type.
 - If necessary, use a dictionary to find the terms that you need in English.
 - ▲ If necessary use other members of the class, your teacher or a dictionary to find the terms you need in English, then compare your list with the rest of the class.
 - ii) Use your knowledge of word families to continue your list: e.g. if you have written the noun *appeal*, you could add the verb *to appeal*, and the related noun *appellant*.
- 2 Did your list include any of these words, which appear in the text? Try to match each word to the correct definition.

- | | |
|---|------------------------|
| 1 | plaintiff |
| 2 | defendant |
| 3 | to hold |
| 4 | to be entitled |
| 5 | to dismiss an appeal |
| 6 | to sue |
| 7 | case of first instance |
| 8 | to deliver judgment |
| 9 | damages |

- a. the first hearing of a case, not an appeal
- b. money given as legal compensation
- c. to reject, or not accept an appeal
- d. a person who brings [i.e. starts] an action in civil law
- e. to have a right to something
- f. to decide in legal proceedings
- g. a person who defends a civil or criminal action
- h. to take legal action against someone in a civil case
- i. to give a judicial decision

3 Abbreviations

- a) Look at the title of the case. Do you understand the abbreviations: v. and Co.?
- b) [1893] 1 Q.B. 256 is the reference number of this case in the law reports: it is reported in volume 1 of the Q.B. law reports for the year 1893 at page 256. Q.B. refers to the series of law reports (the Queen's Bench law reports) in which the case was reported, NOT the court in which it was heard. It was heard in the Court of Appeal.
- c) What information does the title of the case give you *without* looking at the case?

B First reading: understanding the contents and organisation of the text

- 1 The first part of the case, which is reproduced on pages 117-18, contains five main elements:
 - i) legal principles decided in the case
 - ii) the facts of the case
 - iii) decision in the case of first instance
 - iv) first judge's decision in the appeal
 - v) second judge's decision and judgment in the appeal: arguments for the defendant. Skim the text and divide it clearly into these five sections, so that you can see exactly how the material is organised.

- Do not try to read the text in detail or
- understand everything you read for this activity.
- 2 Look at the development of the text. Why do you think the case *starts by* stating the legal principles decided in the case?
 - 3 Scan the text to find four other abbreviations: what do they mean?

Carlill v. Carbolic Smoke Ball Co.
11893110 .B. 256

An offer, to be capable of acceptance, must involve a definite promise by the offeror that he

- 5 will bind himself if the exact terms specified by him are accepted.

An offer may be made either to a particular person or to the public at large.

If an offer takes the form of a promise in

- 10 return for an act, the performance of that act is in itself an adequate indication of assent.

APPEAL from a decision of Hawkins, J.

The defendants, who were the proprietors and vendors of a medical preparation called

- 15 "The Carbolic Smoke Ball," inserted in the *Pall Mall Gazette* of November 13, 1891, and in other newspapers, the following advertisement:

"1001. reward will be paid by the Carbolic

Smoke Ball Company to any person who contracts

- 20 the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. 10001. is deposited with the Alliance Bank,

- 25 Regent Street, shewing our sincerity in the matter. During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by

- 30 those using the carbolic smoke ball. One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10s. post free. The ball can be refilled at a cost of 5s. Address, Carbolic Smoke Ball

- 35 Company, 27, Princes Street, Hanover Square, London."

The plaintiff, a lady, on the faith of this advertisement, bought one of the balls at a chemist's, and used it as di-

rected, three times a

- 40 day, from November 20, 1891, to January 17, 1892, when she was attacked by influenza.

HAWKINS, J., held that she was entitled to recover the 1001.

The defendants appealed.

LINDLEY, L.J., delivered judgment

- 45 dismissing the appeal.

BOWEN, L.J. I am of the same opinion. We were asked to say that this document was a contract too vague to be enforced.

The first observation which arises is that the

- 50 document itself is not a contract at all, it is only an offer made to the public. The defendants contend next, that it is an offer the terms of which are too vague to be treated as a definite offer, inasmuch as there is no limit of time fixed

- 55 for the catching of the influenza, and it cannot be supposed that the advertisers seriously meant to promise to pay money to every person who catches the influenza at any time after the inhaling of the smoke ball. It was urged also,

- 60 that if you look at this document you will find much vagueness as to the persons with whom the contract was intended to be made—that, in the first place, its terms are wide enough to include persons who may have used the smoke

- 65 ball before the advertisement was issued; at all events, that it is an offer to the world in general, and, also, that it is unreasonable to suppose it to be a definite offer, because nobody in their senses would contract themselves out of the

- 70 opportunity of checking the experiment which was going to be made at their own expense. It is also contended that the advertisement is rather in the nature of a puff or a proclamation than a promise or offer intended to mature into a

- 75 contract when accepted. But the main point seems to be that the vagueness of the document shews that no contract whatever was intended.

C Reading for detail and language study: the facts of the case

- 1 Scan the text to find the following facts:
 - a) Who was the plaintiff in the case of first instance?
 - b) Who were the defendants?
 - c) Who won the case of first instance?
 - d) Who appealed against that decision?

- 2 Vocabulary: using context clues (1) In previous units you have seen that it is often possible to use the context to understand the meaning of new words in a text. Sometimes the general context will help you to understand a word, and sometimes specific words or phrases in the text will indicate its meaning. Words or phrases that help you understand unknown words in this way are called 'context clues'.

In the exercise below, try to work out the probable meaning of the words in CAPITALS by using the context clues in *italics*. In Section Two of this Unit you will have to find the context clues yourself.

Example:

100l. REWARD will be paid ...
to any person who
contracts influenza

REWARD = money you
offer to someone who
does a certain thing.

REWARD = money
offered for a certain
action

- a) the increasing epidemic
influenza, colds or any
DISEASE caused by taking cold ...

DISEASE = a general
term ('any') which
includes colds and 'flu.
DISEASE =

- b) 1000l. is DEPOSITED with
the Alliance Bank

DEPOSITED =

- c) many thousand smoke balls
were sold as PREVENTIVES
against this disease and in no
case was the disease contracted ...

PREVENTIVES =

- d) Hawkins J. held that she
[the plaintiff] was entitled to
RECOVER the 100e. The
defendants appealed.

RECOVER =

- ▲ Compare your work with other members of the class, then check your answers in the key.
■▲● Do your definitions correspond exactly to the key? If not, are they similar in meaning?

3 Reading for detail

Read the text carefully and answer the following questions:

- What did the Carbolic Smoke Ball Co. sell?
- What were they for?
- According to the company, did they work?
- Were they expensive?
- Who did the Company offer to pay loot. to?
- Why did they deposit 1000f. with the bank?
- Why did the plaintiff buy the product?
- Did she follow the instructions?
- Did it work in her case?
- Why do you suppose the company made this offer?
- In your opinion, does it look like a serious offer? Give reasons for your answer.

- 4 Which summary of the facts given below corresponds exactly to the text?

As a preventive against flu the plaintiff bought a carbolic smoke ball from the defendant company because she had read their advertisement. She used it according to the instructions.

- She later sued the company for damages because she caught flu.
- She later sued the company for the loot. reward they had advertised because she caught flu.
- She later sued the company because she caught flu, and then appealed against the decision of the court of first instance.

5 Oral practice

Use your answers to exercises 3 and 4 to describe the facts of the case briefly.

Start like this: 'The defendants, The Carbolic Smoke Ball Company, sold a product called carbolic smoke balls, which they advertised as a very good preventive against influenza. In their advertisement the Company offered to pay ...'.

- ▲ Work together in pairs, taking turns to describe some of the facts.

D Reading for detail and language study: the defence

1 Was the advertisement a contract?

2 Understanding complex sentences

The use of long, complex sentences, typical of legal English, may make this section of the text difficult to read. As a general rule, if you have difficulty understanding a sentence, read it twice. If you still have difficulty, try this technique:

- divide the sentence into short phrases
 - study each phrase: (1) for *content* - what information does it give? (2) for *function* - what is its relation to the rest of the sentence?
 - think about the global meaning of the sentence: (1) what are the main points? (2) what other information is important?
- i) When you first use this technique it is helpful to write each stage down. Study the example below. The sentence on the left has been divided into short phrases and the function of each phrase is described in the box on the right. Note any important points in the final column. This activity will help you to understand the relation between the different parts of the sentence and the value of each new piece of information.

Example sentence
from the text

It was urged also

1 that, if you look at this document

you will find much vagueness

as to the persons with whom the contract was intended to be made -

Function of each phrase	Notes
The speaker is REPORTING Preliminary CONDITION	what the defendants said
ASSERTING	that the document is vague
SPECIFYING	

2 that, in the first place, its terms are wide enough

to include persons who may have used the smoke ball before the advertisement was issued;

3 at all events, that it is an offer to the world in general,

4 and, also, that it is unreasonable to suppose it to be a definite offer,

because nobody in their senses would contract themselves out of the opportunity

of checking the experiment which was going to be made at their own expense.

ASSERTING

SPECIFYING

ASSERTING

ASSERTING

EXPLAINING

SPECIFYING

- ii) You can see that the sentence contains four main assertions. The first one is done for you in the following table. What are the other three, in your own words? What other important information is given?

Main assertions	Other important information
The defendants contend that: 1 the document is very vague 2 3 4	regarding the persons involved

- iii) You can use this technique every time you have difficulty understanding a complex section of text. At first, it may seem slow, but with practice, you will soon be able to mark the divisions directly on the text and analyse the meaning and impor-

tance of each short phrase in your head.

Practise the technique now as follows:

- (1) Divide the sentence beginning 'The defendants contend next ...' (lines 51-2) into short, logical phrases.
- (2) Compare your division of the sentence to the one on the left below (it should be similar, but need not be exactly the same).
- (3) Choose the function of each phrase from the list below the box.
- (4) Ask yourself what piece of information each phrase gives and make notes in the space provided.

Function of each phrase Notes

- a) The defendants contend next,
- b) that it is an offer
- c) the terms of which are too vague to be treated as a definite offer,
- d) inasmuch as there is no limit of time fixed for the catching of the influenza
- e) and it cannot be supposed that the advertisers seriously meant
- f) to promise to pay money
- g) to every person
- h) who catches the influenza at any time after the inhaling of the smoke ball.

REPORTING
ASSERTING

Functions: (some functions are used more than once)
reporting / specifying / explaining / asserting

- (5) Identify the main assertions and decide if there is any other important information.
Copy the box into your notebook.

Main assertions	Other important information
The defendants contend that:	

- 3 i) Use the text together with your answers to Exercise 2 to complete part A of the table below, in your notebook, showing the different arguments presented by the defendants in *Carlill*. State the arguments briefly and simply in your own words. You will complete Part B of this table at the end of Section Two of this Unit.

Part A

Part B

Defendants' arguments	Bowen L.J.'s ruling on the point of law
The advertisement is only an offer, not a contract.	

- ii) What are the defendants' basic arguments?
- ▲ Compare your work with other members of the class before looking at the key.

4 Oral practice

- i) Scan the section of the text containing arguments for the defence: find the phrases used by the judge to introduce the legal arguments presented by the defence. For instance:

<i>Introductory phrase</i>	<i>Legal argument</i>
The defendants contend next	(that it is an offer the terms of which are too vague. ...)

- Can you think of any other phrases of this type?

- ii) Use Part A of your completed table in Exercise 3 above to present the defendants' arguments in *Carlill*. Introduce each argument with one of the phrases from i) above.
- ▲ Work in pairs, taking turns to present the different arguments.

5 Prediction

You have seen that Bowen LJ begins his judgment by stating the defendants' arguments. How do you think the judgment will continue?

E Development

1 People in private law

The suffixes -er and -or are often added to nouns or verbs to form related nouns (called 'agent nouns') which refer to the person or thing that does an action.

Examples:

Noun or verb	Agent noun	Meaning
offer	offeror (line 4)	person who offers
advertise	advertiser (56)	person, company, etc. who advertises
property	proprietor (13)	person who owns property (also owner)

Can you think of some more examples of agent nouns ending in -or and -er?

- i) Check that you understand the list of topics in CAPITALS in exercise ii) below (e.g. CIVIL ACTION, LEGAL ADVICE, WILL, etc.). Use your dictionary to find any new terms.
- ii) Complete the phrases on the right by choosing the two people related to each topic from the list given on page 124. Where possible, use word families to help you choose.

Example:

CIVIL ACTION In a civil case, the party who takes legal action against the defendant = (for example for a tort, or breach of contract) is called the plaintiff.

Answer: 1, h

- (1) LEGAL ADVICE A is a lawyer who gives legal advice to his or her and may sometimes represent them in court.
- (2) WILL The is the person appointed to 'execute' the will, that is to give effect to the wishes expressed in the will by the
- (3) TORT A is a person who commits a civil wrong, called a tort, which causes damage or injury to the.....
- (4) SALE The sells an article or product to the buyer, or, who buys, or 'purchases' it.
- (5) TRUST (repeat each word twice) A is the legal owner of property which s/he holds in trust for the benefit of the Under rules of Equity, the must act in the interests of the according to the terms of the trust.
- (6) CONTRACT In English law a contract is formed when the accepts the offer which the has made.
- (7) EMPLOYMENT A contract of employment creates a special legal relationship in which the two parties have certain rights and duties. For example, the has the duty to make sure that the 's place of work is safe.
- (8) LEASE OF LAND The is the person who owns land which the uses (e.g. as a dwelling or place of work), and for which s/he pays a sum of money called rent.

List of people: a) client b) injured party c) offeror d) executor e) trustee f) vendor g) beneficiary h) plaintiff i) landlord j) employee k) solicitor l) defendant m) testator n) offeree o) purchaser p) employer q) tortfeasor r) tenant

- iii) You have seen that the suffixes -er and -or indicate the agent, or person who does
- the action. What does the suffix -ee indicate in nouns like *employee* and *offeree*?

2 Role play

- i) Consider for a few moments the facts of *Carlill*.
 - ◆ Would there be a valid contract under your legal system in these circumstances?
 - ◆ Would the defendants be able to present similar arguments?
 - ◆ What arguments would the plaintiff present?
 Decide whether you think a contract would or would not exist under your own legal system.
- ▲ii) Form groups of three. Each choose one of the following roles:
 - In this activity, you will play the role of three different people:
 - ▲● THE JUDGE COUNSEL FOR THE DEFENDANT COUNSEL FOR THE PLAINTIFF
 Follow the instructions below, applying principles of contract law from your legal system to the facts of *Carlill*. Speak aloud, if possible recording yourself on tape, then listen to your recording.
 - (1) Read the instructions, then spend a few minutes preparing your role(s).
 - (2) JUDGE: present the facts of the case.
 - (3) COUNSEL FOR THE PLAINTIFF: present your case. (Introduce your arguments with these phrases, used by English lawyers in court: 'In my submission, the advertisement ...', 'In my respectful submission. ...', 'It is submitted that ...')
 - (4) COUNSEL FOR THE DEFENDANT: present your case. (Introduce your arguments as in (3) above)
 - (5) JUDGE: comment on counsels' submissions. (Introduce your comments with the phrases you practised in exercise D4) and give judgment in the case.
- iii) Do you think the judges in *Carlill* will reach the same decision as you?

- ▲ Compare your decision with other groups in the class. Do you all agree?

Section Two: The Decision

A Understanding the development and organisation of the text: the skill of prediction

- 1 In previous units you have practised thinking about a text before you read and predicting what topics and information you think it will contain, to help you read with understanding. The skill of prediction can also be used *while reading* to decide how you think the text will continue or develop. The ability to predict the way the writer has organised ideas in the text, and to follow the developing arguments in a text both helps you to understand better and is a sign of understanding. Most good readers use this technique when reading in their own language, without even thinking about it. It *does not matter if your predictions are wrong*. The important thing is that as you see your predictions confirmed (or not) you will understand how the writer's thoughts develop in the text. As you continue to read Bowen LJ's judgment, answer the questions inserted in the text which follows, to practise the skill of prediction. Read a question and make a prediction, then read the section of the text which follows to see if your prediction was right or wrong. Check your answer, then continue. Always cover the text so that you can't see what follows during this activity. *Do not* try to understand the text in detail. This text is the continuation of the text you read in Section One.
- Before you start, refer to your answer to Exercise D5 in Section One and decide how you think the text might start, then check this by reading the first extract below.

1 It seems to me that in order to arrive at a right conclusion we must read this advertisement in its plain meaning, as the public would understand it. It was intended to be issued to the public and to be read by the public. How would an ordinary person reading this document construe it?

- a) Predict how Bowen LJ will continue. Do you think he will construe the words of the advertisement now?

5 It was intended unquestionably to have some effect, and I think the effect which it was intended to have, was to make people use the smoke ball, because the suggestions and allegations which it contains are directed immediately to the use of the smoke ball as distinct from the purchase of it. It did not follow that the smoke ball was to be purchased from the defendants

10 directly, or even from agents of theirs directly. The intention was that the circulation of the smoke ball should be promoted, and that the use of it should be increased. The advertisement begins by saying that a reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic after using the ball.

Was your prediction right? If not, what has the speaker done here?
Answer: No, he describes the effect the advertisement was intended to have.

- b) Will he (1) examine this point in detail? or (2) continue to describe the rest of the advertisement?

15 It has been said that the words do not apply only to persons who contract the epidemic after the publication of the advertisement, but include persons who had previously contracted the influenza. I cannot so read the advertisement. It is written in colloquial and popular language, and I think that it is equivalent to this:

Answer: (1)

- c) Will he explain the meaning of the words in the advertisement?

20 "100l. will be paid to any person who shall contract the increasing epidemic after having used the carbolic smoke ball three times daily for two weeks." And it seems to me that the way in which the public would read it would be this: that if anybody, after the advertisement was published, used three times daily for two weeks the carbolic smoke ball, and then caught cold, he would be

25 entitled to the reward. Then again it was said: "How long is this protection to endure? Is it to go on for ever, or for what limit of time?"

Answer: Yes.

- d) What will he do next?

I think that there are two constructions of this document, each of which is good sense, and each of which seems to me to satisfy the exigencies of the present action. It may mean that the protection is warranted to last during
30 the epidemic, and it was during the epidemic that the plaintiff contracted the disease.

Answer: He answers the question about the time limit, saying that there are two possible constructions.

- e) How will the text continue?

I think, more probably, it means that the smoke ball will be a protection while it is in use. That seems to me the way in which an ordinary person would understand an advertisement about medicine, and about a specific against

35 influenza. It could not be supposed that after you have left off using it you are still to be protected for ever, as if there was to be a stamp set upon your forehead that you were never to catch influenza because you had once used the carbolic smoke ball. I think the immunity is to last during the use of the ball. That is the way in which I should naturally read it, and it seems to me

40 that the subsequent language of the advertisement supports that construction. I ... I

Was it intended that the 100l. should, if the conditions were fulfilled, be paid?

Answer: He examines the second possible construction of the document regarding the time limit.

- f) What method will he use to answer the question? Answer the question yourself, then read to check.

Answer: He examines the words of the advertisement to answer the question. He thinks it was intended to be a serious offer.

The advertisement says that 10001. is lodged at the bank for the purpose.

45 Therefore, it cannot be said that the statement that 1001. would be paid was intended to be a mere puff. I think it was intended to be understood by the public as an offer which was to be acted upon.

But it was said there was no check on the part of the persons who issued the advertisement, and that it would be an insensate thing to promise 1001. to

50 a person who used the smoke ball unless you could check or superintend his manner of using it.

Answer: He examines the words of the advertisement to answer the question. He thinks it was intended to be a serious offer.

g) How will the text continue?

The answer to that argument seems to me to be that if a person chooses to make extravagant promises of this kind he probably does so because it pays him to make them, and, if he has made them, the extravagance of the

55 promises is no reason in law why he should not be bound by them.

It was also said that the contract is made with all the world - that is, with everybody; and that you cannot contract with everybody. It is not a contract made with all the world. There is the fallacy of the argument.

Answer: He answers the defendants' argument, then goes on to a new point.

h) Will he explain why it is not a contract made with all the world?

It is an offer made to all the world; and why should not an offer be made to all

60 the world which is to ripen into a contract with anybody who comes forward and performs the condition? It is an offer to become liable to anyone who, before it is retracted, per-

forms the condition, and although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement.

65 1 ... 1 Then as to the alleged want of consideration. The definition of 'consideration' given in Selwyn's *Nisi Prius*, 8th edn., p. 47, which is cited and adopted by Tindal, C. J., in the case of *Laythoarp v. Bryant*, is this:

Answer: Yes.

i) How will the text continue?

"Any act of the plaintiff from which the defendant derives a benefit or advantage, or any labour, detriment, or inconvenience sustained by the

70 plaintiff, provided such act is performed or such inconvenience suffered by the plaintiff, with the consent, either express or implied, of the defendant."

Answer: He gives the definition of *consideration* from the work of authority cited.

j) Will he apply these principles to the present case?

Can it be said here that if the person who reads this advertisement applies thrice daily, for such time as may seem to him tolerable, the carbolic smoke

75 ball to his nostrils for a whole fortnight, he is doing nothing at all - that it is a mere act which is not to count towards consideration to support a promise (for the law does not require us to measure the adequacy of the consideration). Inconvenience sustained by one party at the request of the other is enough to create a consideration. I think, therefore, that it is consideration enough that

80 the plaintiff took the trouble of using the smoke ball. But I think also that the defendants received a benefit from this user, for the use of the smoke ball was contemplated by the defendants as being indirectly a benefit to them, because the use of the smoke balls would promote their sale. [...]

A. L. SMITH, L.J., delivered judgment to the same effect.

Answer: Yes.

- 2 Use your answers to Exercise 1 above and the main themes of the text to continue this general description of how the judgment develops:
 'Bowen LJ begins by defining how the advertisement must be read, and who it was intended for. He goes on to consider the effect the advertisement was intended to have, and then explains who the words of the advertisement apply to and how long..'.
 ●

B Language study and reading for detail

- 1 Without looking at the text again, decide if you think the following statements are *true* or *false*. Then read the text carefully and check your original answers before looking at the key.

- i) General questions
 - a) In this section of the text Bowen LJ answers the defendants' arguments.
 - b) He agrees with most of the defendants' arguments.
 - c) He construes the words of the advertisement in detail one section at a time.
 - d) He does not give the words of the advertisement any special legal meaning.
- ii) Detailed questions
 - a) The words of the advertisement are intended to make people buy the smoke ball.
 - b) It refers to anyone who catches flu before or after the advertisement was published.
 - c) The smoke ball should be used regularly for three weeks.
 - d) In Bowen LJ's opinion the smoke ball should give protection during the period of use.
 - e) The offer of a reward was valid because the company deposited £ 1000 at the bank to prove their sincerity.

Which questions did you get right first time? Which ones did you get right only after *referring* to the text again? What does this tell you about these two different styles of reading: reading for general understanding (as in exercise A1) and reading for detail?

2 Word study

- i) *Dictionary use* First decide what you think the following words might mean in the text on pages 125-7, then use your dictionary to check their exact meaning:
 a) warranted (line 29) b) fulfilled (42) c) insensate (49)
 d) extravagant (53) e) liable (61)
- ii) Complete this phrase with information from lines 48-51 of the text, substituting a phrase with *if* for *unless*:
 'It would be an insensate thing to promise 1001. to a person who used the smoke ball if ...'.

● What does *unless* mean?

- iii) Vocabulary: context clues (II)

Find context clues in the text that help you to work out the meaning of the following words and phrases (see Section One, Exercise C2 on page 118 for information about context clues).

Example: it pays him (lines 53-4) Context clues: 'if a person chooses to make extravagant promises of this kind he probably does so because IT PAYS HIM to make them. ..' (lines 52-4).

Meaning: IT PAYS HIM = refers to a probable reason for making an extravagant promise

IT PAYS HIM = it gives him some advantage.

- a) fallacy (line 58) b) to ripen into (60) c) retracted (62)
- d) benefit (68, 81, 82) e) detriment (69) f) nostrils (75)

- ▲ • Check your ideas with other members of the class before looking at the key.

- iv) Complete the sentences below by choosing the correct form of a suitable word from exercises i) and iii) above:

Example: a tortfeasor is*liable*..... to pay damages to the injured party to compensate for the harm or wrong he has caused.

- a) She offered to pay £300 for the painting, but her offer when she learnt that it was not an original.
- b) The vendorthe high quality of the material.
- c) The idea that the law is always just is a even a good law may sometimes cause injustice in individual cases.
- d) In her will the testator created a trust for the of the poor.

- e) A contract comes to an end when both parties have all their obligations.
- f) Bad working conditions at Smith's Ltd were a serious to the employees' health. In fact, in 1979 a group of workers who fell ill sued their

● employers for damages.

3 Reading in detail

Answer these questions on lines 48-83 of the text, using your own words:

- a) Can an extravagant or ridiculous promise be legally binding?
- b) Why does Bowen LJ think the company made this extravagant promise?
- c) The defendants contend that you can't make a contract with the whole world.
Why doesn't Bowen LJ accept this as a defence?
- d) When can an offer to the world become a contract?
- e) Who does an offer to the world create legal relations with?
- f) To create a contract, must the offeree always state that s/he accepts the offer?
- g) What happens if the condition is fulfilled after the offeror has retracted the offer? h) In English law a contract is only valid if it is 'under seal' (in a special written form) or if there is 'consideration'. In general terms, what is consideration?
- i) What was the 'double consideration' in this case?

4 Was the decision in *Carlill* unanimous?

5 The decision

- i) Go back to Section One, Exercise D3 on page 122 and complete the table showing the arguments for the defence and the decision, by filling in Bowen LJ's ruling on each point in Part B, in your notebook.
- ▲● Compare your table with other members of the class.
- ii) The following phrases are used to introduce the legal principles and decision contained in a judgment:

'It was held that an offer may be made to a particular person or to the public in general.'

'The court held that the plaintiff was entitled to recover.'

'It was laid down that ...'

'The court found that. ...'

Use the information in Part B of your table from page 122 to describe the judgment in *Carlill*. First describe the judgment orally, then write a few sentences giving the decision.

- Work in pairs.

6 Conclusion

- i) Refer to Part B of your completed table from page 122. Which rulings apply only to the specific facts of *Carlill v. Carbolic Smoke Ball Co.*, and which rulings contain general legal principles?
In your opinion, what is the *ratio decidendi* of *Carlill* - which principles contained in the judgment will be binding on courts in future cases?
- ii) Refer to the legal principles decided in the case, given at the very beginning of the case (page 117) and see which points correspond to your ideas from i) above. (Only the main points are listed in the decision and you have only read part of the judgment, remember.)
- iii) Give an example of *dicta* from Bowen LJ's judgment.
- iv) Use your knowledge of the English judicial system to decide:
 - which courts are bound by the decision in *Carlill*?
 - how can the binding principles of *Carlill* be changed?
- v) Which sources of law does Bowen LJ use to reach his decision in *Carlill*? (Refer again to the text for your answer.)

7 Discussion points

- i) Study the following points for a few moments:
 - ◆ *Consideration*
In the English legal system a promise is legally binding only if it is made under seal or if there is consideration. What is the law in your country? Are all promises legally

binding? Is there anything similar to the English doctrine of consideration? If your system is one based on Roman law, compare *causa* and consideration.

◆ *The style of the judgment*

Consider (1) the scope of the judgment (what does it include?) and (2) the style in which Bowen LJ presents his arguments.

Compare the scope and style with the judgment of a superior court in your country.

◆ *The law*

Was the decision of the English High Court the same as the decision you reached in the role play at the end of Section One (Exercise E 2)? Is this part of the law of contract very different from your own system or are there significant similarities?

- ii) Choose one or more of the three discussion points in i) which interests you. To practise speaking, talk about your ideas, if possible recording them on tape. Then listen to your recording.

If you prefer, write some of your ideas down in note form. Choose the discussion point in i) which interests you most. Work in pairs with someone who has chosen the same point as you. Compare and discuss your ideas, and prepare to present them to other members of the class. When you are ready, form groups of 3-6 in which the different members have prepared each of the three discussion points. Exchange and discuss your ideas on each topic.

C Development

1 Summary of the case

Complete the following extract from Philip S. James, *Introduction to English Law* by choosing the correct word or phrase for each blank space from the list below. When you have finished, read the completed extract and consider the importance of *Carlill* in the wider context of the English law of contract.

THE INTENTION TO CONTRACT

We have seen that most contracts are *agreements* (1). It should now be noted that it is by no means true to say that all agreements are..... (2). Many agreements fall outside the scope of the law of contract, either because they concern matters of moral, rather than of legal, (3) or because the (4) agree that they are not to be treated as enforceable contracts, or because they are not intended to be such. A familiar example is the (5) of a person who drives a friend somewhere in return for payment of the petrol. The (6) have, moreover, repeatedly declined jurisdiction over agreements which are expressed in a way which shows an intention to exclude their (7). On the other hand, what appears on the face of it to be a business transaction will not lightly be treated as a merely moral obligation, and it should be noted that expressed (8) may sometimes have the effect of turning into a (9) contract an agreement which might otherwise have been regarded as (10). A famous example of the latter situation was provided by *Carlill v. Carbolic Smoke Ball Co.*, (1893) 1 Q.B. 256. The (11) manufactured "carbolic smoke balls" which they advertised as miraculous cures for (12). The advertisement stated that £100 (13) would be paid to anyone who contracted influenza after having used the ball as prescribed. It was further stated that £1,000 was deposited with a bank to show the sincerity of the (14) intention. The (15), Mrs. Carlill, used one of these balls, but nevertheless contracted influenza; she (16) for the promised reward (17) that she was entitled to (18): normally such advertisements are mere "puffs" which are not intended to create (19), but in this instance taking into account, amongst other circumstances, the reference to the (20) at the bank, the court (21) that the Company had intentionally made a binding (22) which the plaintiff had (23).

Choose from:

- a) plaintiff b) contracts c) non-contractual d) accepted e) intention f) defendants g) parties h) influenza i) recover j) offer

- k) It was held l) reward m) obligation n) courts
 o) deposit p) agreements q) jurisdiction r) Company's
 s) sued t) found u) case v) binding w) legal relations

2 A moot

- i) A moot is an imaginary case argued by law students for practice in presenting cases in court. Choose case A or case B below. Use the decision in *Carlill* and the information in your table on page 122 to decide the legal position of the plaintiff and the defendant under the English law of contract. Are all the principles of *Carlill* applicable to the case you have chosen, or is it necessary to distinguish some of the facts?

Case A

X advertises in the local paper that she will pay a £ 100 reward to anyone who finds and returns her lost Persian cat, Miaow. Y finds Miaow two months later and takes her back to X, asking for the reward. Meanwhile, X has bought another cat to replace Miaow. She agrees to take her back, but refuses to pay the reward. Y sues her for the £100 reward.

Case B

The Superhair Company produces an expensive new product 'guaranteed to make your hair grow in only 3 weeks or your money back'. The advertisement specifies that users must follow the instructions on the packet carefully. Z, who is completely bald (he has no hair at all) sees the advertisement and buys the product. He uses it as instructed on the packet, but his hair does not begin to grow again. When Superhair refuse to give Z his money back, he sues them.

- ii) For each case, appoint two people to act as counsel for the plaintiff and two people as counsel for the defendant. The other members of the class will act as judges in the case they have chosen.
- In this activity, you are going to play the roles of counsel for the plaintiff, counsel for the defendant and judge.

- ▲■ Prepare your role(s) carefully. Revise some of the expressions you learnt in Section One, Exercise E 2 if you are acting as counsel and in Section One, Exercise D 4 if you are the judge.

- iii) Hold the moot, at which first the plaintiff, then the defendant are represented in turn in court. Deliver judgment, and decide who has won the case. iv) Issue a short written judgment beginning like this:

It was held that the plaintiff was/was not entitled to recover on the grounds that [because] ...

- Then check your arguments and decision in the key.

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