

АНГЛИЙСКИЙ ЯЗЫК

ДЛЯ СТУДЕНТОВ-ЮРИСТОВ
ДНЕВНОГО И ВЕЧЕРНЕГО ОТДЕЛЕНИЙ

2 СЕМЕСТР



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Настоящее пособие предназначается для студентов первого курса дневного и вечернего отделений ОИ МГЮА по направлению подготовки «Юриспруденция», уровень подготовки: бакалавр. Цель данного пособия – последовательное обучение студентов грамматике и правовой лексике английского языка на основе образовательных текстов, адаптированных для студентов-юристов. Пособие состоит из языкового материала второго академического семестра.

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Предисловие

Настоящее пособие предназначается для студентов первого курса (второй семестр) дневного и вечернего отделений ОИ МГЮА по направлению подготовки «Юриспруденция», уровень подготовки: бакалавр. Цель данного пособия – последовательное изучение правовой лексики на основе образовательных текстов, объединенных в шесть тематических блоков: "Уголовное право", "Наказание", "Деликтное право", "Представление доказательств и расследование", "Судебная система", "Профессия юриста".

Виды заданий, предлагаемых в учебном пособии:

BEFORE READING - задание выполняется до прочтения тематического текста

SCANNING - подробное изучение текста

LEXIS - лексический минимум, который необходимо усвоить при изучении текста

QUESTIONS - вопросы к прочитанному тексту

AGREE OR DISAGREE - задание предполагает оценку соответствия предложений содержанию изученного материала; если предложение не соответствует действительности, то необходимо внести соответствующие изменения и дать исправленный вариант предложения

DEBATES - спорные суждения, выносимые для детального обсуждения темы и для обоснования студентами своей точки зрения

KEY WORDS - ключевые слова по изученной теме; необходимо дать толкование каждого из них, используя материал прочитанных текстов

MAKE A REPORT – основные вопросы, которые необходимо учесть при подготовке сообщения по материалам тематического блока.

Unit 7. Criminal Law



7.1. BEFORE READING learn the following words and phrases which are essential on the topic:

actus reus - лат. виновное действие; противоправное действие; объективная сторона преступления

administration of justice - отправление правосудия, обеспечение правопорядка

attempt - покушение (на преступление)

be charged with criminal responsibility - привлекаться к уголовной ответственности, нести уголовную ответственность

chain of causation - причинно-следственная связь, цепь причинности

commission of crime - совершение преступления

corpus delicti – лат. состав преступления, вещественные доказательства

criminal = delinquent = first offender = culprit = wrongdoer = perpetrator - злоумышленник, правонарушитель, преступник

criminal offence = crime - преступное посягательство, нарушение (какого-л. права)

criminal punishment - наказание за уголовное преступление

felony - тяжкое уголовное преступление (фелония); преступление, за которое предусматривается серьезная уголовная ответственность и наказание от длительных сроков тюремного заключения до смертной казни

indictment - обвинительный акт, официальное предъявление обвинения в совершении тяжкого преступления; вердикт большого жюри о привлечении к уголовной ответственности и передаче дела в суд

mens rea - лат. = guilt - виновная воля, вина; субъективная сторона преступления

misdemeanor - судебнаоказуемый проступок, мисдиминор (класс преступлений, серьезность которых ниже, чем у фелоний; за них, в свою очередь, предусматриваются менее тяжкие наказания)

object of crime - объект преступления

offence – правонарушение, посягательство, преступление

omission - бездействие, несовершение действия, оплошность

preparation of a crime - приготовление к преступлению

sentence of court - приговор суда, определяющий меру наказания; судебное решение по уголовному делу

subject of crime - субъект преступления



7.2. SCANNING

Criminal Law

1. Criminal law is to provide protection for the social and state system, the universal freedoms and personal rights of citizens against corrupt activities and criminal offences. In general, criminal law classifies crimes on different grounds. According to the object of a criminal activity we may speak about:

- crimes of violence: vandalism, assault, battery, mugging, robbery, kidnapping, homicide,
- crimes committed for political reasons: hijacking, terrorism, assassination, treason,
- crimes connected with drugs: possession of drugs, drug traffic,
- crimes involving stealing or theft crimes;
- crimes committed by people in business or by office holders (so called "white-collar crimes"): bribery, money laundering, perjury, computer crimes,
- car crimes: joy riding, drink driving, etc.

2. Criminal law also classifies a crime with respect to its gravity, such as treason, felony, and misdemeanor and fixes punishments for them. Also included in criminal law are rules and procedures for preventing and investigating crimes and prosecuting criminals, as well as the regulations governing the constitution of courts, the conduct of trials, the organization of police forces, and the administration of penal institutions.

3. As a matter of fact criminal law is based on a number of universal principles. Here are some of them:

- a person may be charged with criminal responsibility only if he has committed an act provided for in the criminal legislation;
- there is a presumption that the accused is innocent and the prosecution must prove his guilt beyond reasonable doubt;
- responsibility can exist only in the presence of guilt;
- a person may not be considered guilty unless all elements of an alleged crime have been established in his acts;
- criminal punishment shall be applied only by a sentence of the court;
- persons committing crimes in a state of intoxication are not released from criminal responsibility.

4. The following general defences may excuse the accused from criminal responsibility:

- lack of age (if an offender is under 14 he is not criminally liable);
- self-defence (when people have good reason to believe they are in danger of serious injury or death, they can use force to protect themselves);

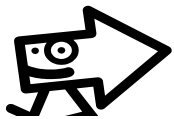
- defence of family members (courts will not punish someone for using force to rescue a family member from attack if there was good reason to believe the victim was in danger of severe bodily injury or death);

- insanity (but everyone is presumed sane until the contrary is proved);

- duress by threats or duress of circumstances;

- automatism (it may arise as the result of a reflex action or concussion);

- entrapment (if a law enforcement officer induces a law-abiding citizen to commit a crime, which would not have been committed without the involvement of the officer).



LEXIS

corrupt - 1) испорченный, порочный, безнравственный

2) коррумпированный, продажный

crime of violence - насильственное преступление

vandalism - умышленная порча имущества, вандализм

mugging - ограбление прохожего, бандитское нападение на человека на улице

kidnapping - похищение человека с целью выкупа

hijacking - захват транспортного средства (судна, самолёта, автомашины); угон транспортного средства

assassination - заказное убийство, убийство по политическим мотивам, политическое убийство

treason - государственная измена

possession of drugs - хранение наркотиков

drug traffic - торговля наркотиками, контрабандная перевозка наркотиков

office holder - должностное лицо, государственный служащий

white-collar crime - беловоротничковое преступление (преступная махинация, совершённая служащим или лицом, занимающим высокое общественное положение)

bribery - 1) взяточничество; подкуп 2) продажность

money laundering - легализация незаконно полученных денег, отмывание "грязных" денег

perjury - лжесвидетельство, ложное показание под присягой, заведомо ложное показание

joy riding - угон автомобиля с целью покататься на нём

drink driving - вождение в нетрезвом виде

treason - государственная измена

gravity - серьёзность, тяжесть (правонарушения)

fix - устанавливать, фиксировать; закреплять

prevent - предотвращать, предупреждать

investigate - расследовать; изучать (вопрос); рассматривать (дело)
 police force - полицейские силы, полиция; полицейское подразделение
 penal institution - исправительное учреждение; пенитенциарное, карательное учреждение; пенитенциарий; тюрьма
 beyond reasonable doubt - при отсутствии обоснованного сомнения (юридический принцип, согласно которому любое обоснованное сомнение в виновности обвиняемого трактуется в его пользу); преодолевая принцип презумпции невиновности
 criminal punishment - уголовное наказание, наказание за преступление
 sentence - судебное решение, приговор суда
 state of intoxication - состояние наркотической или алкогольной интоксикации; опьянение
 defence - 1) обстоятельство, освобождающее от ответственности 2) защита (на суде); аргументация ответчика, подсудимого; возражение по иску, обвинению
 lack of age - несовершеннолетие (моложе установленного законом возраста, лишь по достижении которого наступает полная гражданская дееспособность)
 self-defence - самозащита, самооборона
 injury - увечье; травма; вред, ущерб
 punish - налагать наказание, наказывать
 victim - потерпевший
 sane - находящийся в здравом рассудке; вменяемый
 insanity – невменяемость, душевное расстройство
 duress by threats - противозаконное принуждение под угрозой насилия, принуждение путём запугивания
 duress of circumstances - принуждение под влиянием обстоятельств
 concussion - контузия, сотрясение
 entrapment - провоцирование на уголовно наказуемое действие, провокация преступления с целью его изобличения

7.3. QUESTIONS



1. What does criminal law define?
2. How are crimes classified in criminal law?
3. What are the general principles which Criminal Law is based on?
4. What does a presumption of innocence mean?
5. When is criminal punishment applied?
6. May a defence be connected with the age of an offender?
7. Give examples of general defences that may excuse the accused from criminal responsibility.



7.4. AGREE OR DISAGREE

1. Criminal Law not only defines crimes and fixes punishments for them but also includes some procedures for preventing crimes.
2. A person may be considered guilty as soon as any element of an alleged crime has been established in his acts.
3. Persons committing crimes in a state of intoxication are usually released from criminal responsibility.
4. Children under 14 are considered to be criminally responsible.
5. Crimes may be classified only with respect to their gravity.



7.5. SCANNING

Nature of Crime

1. Each crime consists of a number of individual elements. The sum total of those elements, known as the *corpus delicti*, characterizes the purpose of the criminal act, the form and method of a criminal action, the character of the guilty conduct and so forth.

2. In general the *corpus delicti* has several basic common elements:

- a voluntary act or omission (*actus reus*);
- "a guilty mind" or "knowledge of the wrongfulness of conduct" (*mens rea*);
- "concurrence" between the *mens rea* and the *actus reus*;
- chain of causation.

3. The *corpus delicti* in any act is a ground for establishing criminal responsibility against the offender. In the absence of any element of *corpus delicti* in the acts of the accused, criminal proceedings may not be instituted, and if instituted, may not be continued, and must be stopped at any stage. In pronouncing its sentence the court must above all answer these questions:

- i) did the act ascribed to the accused actually take place?
- ii) does it contain *corpus delicti*?
- iii) was the act performed by the accused?

3. A crime may be committed by an act, i.e. the active behaviour of a person, or by an omission, i.e. the non-performance of acts which it was his duty to perform (such as failure to use authority).

4. As a rule, premeditated criminal activity consists of several stages: preparation, attempt and commission.

Preparation of a crime is the search for or adaptation of means or instruments, or any other premeditated creation of conditions for the commission of a crime. Preparation of a crime is generally a punishable offence. But in cases where the person plotting a crime has

not *gone beyond* the preparations, the court usually imposes a milder penalty or *none at all*.

5. An **attempt** is a premeditated act directly aimed at the commission of a crime but not completed for reasons not depending on the will of the guilty person. An attempt is also a punishable offence. But in determining the penalty the court must *take into consideration* the character and the degree of the danger to society involved in the act committed by the guilty person, the degree to which the criminal intent has been *put into effect*, and the causes that prevent the full commission of the crime.

6. **Commission** of a crime is considered as performed when the guilty person has carried out the act containing the *corpus delicti* of a crime.

In theory of crime there are two other legal categories: “object of crime” and “subject of crime”. The **subject of crime** is a person who commits the crime and is responsible for it. Only persons who have attained a certain age (usually 16 years of age) and are *compos mentis* can be subjects of a crime.

7. The **object of crime** is under criminal law social relations guarded by criminal legislation. This means that all crimes prescribed by the Criminal Code are in the final count aimed against social relations taking shape and developing in society. However, each crime has an *immediate* object. Thus, *murder* has as its immediate object human life; *theft* - state or personal property; *rowdyism* - public law and order.



LEXIS

guilty conduct - виновное поведение, преступление

voluntary act - умышленное действие

guilty mind - вина, виновная воля, преступный умысел

conduct - поведение, поступок

concurrency - совпадение во времени и пространстве, стечение (обстоятельств)

criminal proceedings - уголовное судопроизводство

institute - начинать, возбуждать (уголовное дело)

ascribed - приписываемый

punishable - наказуемый, заслуживающий наказания

plot - 1) организовывать заговор 2) замышлять, составлять план

go beyond - выходить за пределы

none at all - совершенно никакого

take into consideration - учитывать, принимать во внимание

immediate - непосредственный, прямой

murder - убийство, совершённое с заранее обдуманым злым умыслом

theft - похищение имущества, воровство

rowdyism - хулиганство, дебоширство

put into effect - приводить в исполнение, осуществить

7.6. QUESTIONS



1. How can a crime be defined?
2. What is known as the *corpus delicti* of a crime?
3. What do the elements of a crime characterize?
4. What is ground for establishing criminal responsibility against the offender in any act?
5. What questions must the court answer in pronouncing its sentence?
6. What do the terms the “subject” and “object of a crime” refer to?
7. How many stages of premeditated criminal activity do you know? What are they?
8. When is an act regarded as a crime and what are the consequences of such an act?
9. Shall the criminal proceeding be instituted in the absence of any element of *corpus delicti* in the acts of the person?

7.7. AGREE OR DISAGREE



1. The non-performance of acts cannot constitute a crime.
2. Preparation of a crime is not punishable.
3. Each criminal action consists of three stages: preparation, attempt and commission.
4. The age limit for crimes is defined by the court itself.

7.8. WORK WITH THE WORDS given in the box below:



- a) match the words with their definition (bear in mind that there are some odd words in the box);
- b) classify all crimes given in the box into violent or non-violent ones.

armed robbery, blackmail, vagrancy, arson, fraud, murder, speeding, shoplifting, burglary, assault, libel, battery, theft, treason, smuggling, assassination, money laundering, perjury, homicide, bigamy, drug dealing, forgery, embezzlement, gambling, extortion, manslaughter

- 1) a generic term for the killing of another person;
- 2) any instance in which one party deceives or takes unfair advantage of another;
- 3) actual use of illegal force on another person;
- 4) attempt to transform illegally acquired money into apparently legitimate money;
- 5) attempt to use illegal force on another person;

- 6) betraying your country to a foreign power;
- 7) breaking into a private home with the intention of committing a felony;
- 8) driving a vehicle in excess of the permitted limit;
- 9) getting money from people by threatening to publicise facts they do not want revealed;
- 10) getting money from people by using threats;
- 11) going through a ceremony of marriage when you are still married to someone else;
- 12) killing a public figure illegally and intentionally;
- 13) making an illegal copy of a banknote or document;
- 14) possession of and/or trading in illegal substances;
- 15) setting fire to a building;
- 16) taking goods illegally into or out of a country;
- 17) taking the property of another without right or permission;
- 18) telling lies when you have sworn an oath to say what is true in court;
- 19) unlawful killing of a person with intent;
- 20) unlawful killing of a person without malicious intent and therefore without premeditation;
- 21) unlawful taking of another's property using a dangerous weapon;
- 22) using illegally or stealing money which you are looking after for someone else;
- 23) writing, publishing or broadcasting a statement which damages someone's character.



7.9. DEBATES

1. In which of the following situations would a defence of automatism be successful?

- While riding his bicycle Ted is hit on the head by a stone which is thrown up from the road. He loses control of the bicycle and injures Liz, a foot-passenger.
- Bob is a diabetic and assaults Nick whilst suffering from a deficiency of blood sugar.
- Bob is holding a knife when Nick seizes his hand and forces the knife into Rod's chest.
- After drinking two bottles of wine, Bob is involved in a fight during which he shoots and kills Nick.

2. Henry plans to kill Mabel. He puts some poison in a glass which Mabel subsequently drinks. Ten minutes later and before the poison has taken effect, Mabel is involved in a car accident and dies from his injuries. Is Henry guilty of murdering Mabel?

3. Keith is employed as a swimming pool attendant. His job is to maintain order on the premises and to ensure the safety of the

swimmers. One evening Keith goes home early although he knows that there are some children swimming in the pool. After he leaves, one of the children gets into difficulties and subsequently drowns.

- a) Has Keith committed a criminal act?
- b) Would your answer to “a” be different if Keith was a bystander who saw that the child was in difficulty but failed to help?



7.10. ANSWER the following questions:

1. Give an example of an unlawful act which may be a criminal offence in one country and not in another.
2. Give an example of an unlawful act which can be both a criminal offence and a civil wrong.
3. What acts are universally regarded as crimes?
4. What is the essence of the principle of legality?
5. What is double jeopardy?
6. Why do all systems of law have statutes of limitation?
7. What is the difference between ignorance of the law and ignorance of the fact?
8. Why do people commit crimes? What do you know about the following criminological theories:
 - psychological and psychiatric theories,
 - biological theory,
 - multiple causation theory,
 - social environment theory,
 - theological and ethical theories,
 - climatic theory?

7.11. KEY WORDS

actus reus

arson

attempt

blackmail

chain of causation

commission of a crime

corpus delicti

criminal

criminal offence

criminal responsibility

duress

embezzlement

exemptions from criminal liability

felony

fraud

guilt

homicide

intoxication

lack of age

mens rea

misdemeanor

money laundering

object of crime

omission

preparation of a crime

presumption of innocence

prosecution

punishment

self-defence

subject of crime



7.12. MAKE A REPORT on the topic “Criminal law”, paying attention to the following points in your speech:

- purpose and principles of criminal law;
- different classifications of crimes;
- *corpus delicti* of a crime;
- stages of premeditated criminal activity;
- general defenses from criminal responsibility.

Unit 8. Punishment



8.1. BEFORE READING learn the following words and phrases which are essential on the topic:

cautioning - предостережение, предупреждение о возможных правовых последствиях

community service - общественные работы (в порядке наказания за небольшие правонарушения; бесплатный труд на не требующих квалификации работах)

compensation - возмещение, компенсация лицу, права которого были нарушены

conviction - осуждение (признание виновным); судимость; обвинительный приговор

corporal punishment - телесное наказание

custodial sentence - приговор, связанный с лишением свободы

death penalty = capital punishment - смертная казнь, высшая мера наказания

deterrence - сдерживание, препятствование; удержание от враждебных или преступных действий, устрашение

fine - штраф | налагать штраф, штрафовать

injunction - судебный запрет, судебное предписание предпринять или воздержаться от к.-л. действий)

isolation - изоляция, изолирование

non-custodial sentence - приговор, не связанный с лишением свободы

order - предписание суда, частное определение | давать указания, давать распоряжение, требовать

penalty - взыскание; санкция; штраф; пеня, наказание; карательная мера

prisoner - заключенный, арестант, узник; арестованный

probation - условное осуждение, система испытаний, probation (вид условного осуждения), освобождение на поруки

rehabilitation - реабилитация, восстановление в правах, оправдание, восстановление доброго имени

restoration - возмещение, восстановление, реституция, компенсация

retribution = revenge = reprisal = requital - воздаяние, возмездие, кара, наказание, расплата

suspended sentence - приговор, отсроченный в исполнении, условное наказание



8.2. SCANNING

Possible Reasons for Punishment

1. What is the purpose of punishment? There are many possible reasons that might be given to justify or explain why someone ought to be punished; here follows a broad outline of typical, possibly *contradictory* justifications.

2. **Deterrence** means *dissuading* someone from future wrongdoing, by making the punishment *severe* enough that the benefit gained from the offence is *outweighed* by the cost (and probability) of the punishment. Deterrence is a very common reason given for why an offender should be punished. It is often believed that punishment can also deter *punishee's peers* from committing similarly punishable offences.

3. **Rehabilitation.** Some punishment includes work to reform and rehabilitate the wrongdoer so that they will not commit the offence again. This is distinguished from deterrence, in that the goal here is to change the offender's attitude to what they have done, and make them come to accept that their behaviour was wrong.

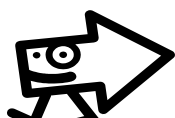
4. **Isolation.** In the prison system, *imprisonment* has the effect of *confining* prisoners, physically preventing them from committing crimes against those outside, i.e. protecting the community. The most dangerous criminals may be sentenced to life imprisonment or the death penalty with a goal of protecting society.

5. **Restoration.** For minor offences, punishment may take the form of the offender "*righting the wrong*"; for example, a vandal might be made to clean up the mess he has made. In more serious cases, punishment in the form of fines and compensation payments may also be considered a sort of "restoration".

6. **Retribution.** Retribution is the practice of "*getting even*" with a wrongdoer - the suffering of the wrongdoer is seen as good in itself, even if it has no other benefits. One reason for societies to include this judicial element is to diminish the perceived need for street justice and blood revenge. Retribution sets an important standard on

punishment - the transgressor must get what he deserves, but no more. Those who steal from others should be deprived of their own property. For those who attack others corporal punishment should be used. Murderers should be subject to the principle "an eye for an eye and a tooth for a tooth" and automatically receive the death penalty.

7. Though sometimes it is said that such views are unreasonable, cruel and barbaric and that we should show a more humane attitude to punishment and try to understand why a person commits a crime and how society has failed to enable him to live a respectable, law-abiding life.



LEXIS

contradictory - противоречивый, противоречащий

dissuade - отговаривать, отсоветовать, разубеждать

severe - суровый, строгий, жестокий

outweigh - перевешивать; быть более влиятельным, важным

punishee's peers - люди из окружения того, кто понёс наказание;
такие же как и тот, кто был наказан

imprisonment - тюремное заключение, лишение свободы

confine - лишать свободы; заключать в тюрьму

righting the wrong - возмещение нанесенного ущерба, восстановление нарушенного права

getting even - сведение счётов, расплата, воздаяние

transgressor - правонарушитель, нарушитель закона, преступник

deserve - заслуживать, быть достойным чего-л.

deprive - отбирать, отнимать, лишать (чего-л.)

barbaric - грубый, варварский; первобытный

humane - человеческий, гуманный

respectable - заслуживающий уважения; допустимый; приемлемый

law-abiding - соблюдающий право, уважающий закон, законопослушный

8.3. QUESTIONS



1. What reasons for criminal punishment are deemed to be legally warranted?
2. What does "deterrence" as a purpose of punishment mean?
3. What distinguishes "rehabilitation" from "deterrence" in criminal law?
4. What effect should "isolation" have if it is used as a penalty?
5. What is the difference between restoration and retribution as a justification of punishment?
6. How should the punishment be organized? Substantiate your point of view.

8.4. AGREE OR DISAGREE



1. Punishment always deters the punishee's peers from committing similarly punishable offences.
2. The most dangerous criminals must be sentenced to death with a goal of protecting society.
3. Criminals should be subject to the principle "an eye for an eye and a tooth for a tooth".
4. We needn't show a humane attitude to punishment and try to understand why a person commits a crime.

8.5. SCANNING



Penalties

1. The earliest known form of punishment for crime was corporal punishment. The examples of common methods of corporal punishment were stocks, pillory, ducking stool, whipping and capital punishment.

2. Stocks were wooden boards with holes in which a person's ankles were made fast. The pillory was a larger frame of wood on a wooden post. In this frame there were holes through which a person's head and arms were put. Stocks and pillories were set up in public places, often in a market place. The purpose of this form of punishment was not only to make the criminal suffer physical discomfort, but also to put him to shame, and to allow the neighbours to make fun of him for hours.

4. Another popular method of punishment was "the ducking stool" when the offender had to sit in a special "chair" at the end of a wooden pole, which was wheeled through town and then dipped into the water, hence the name "ducking stool".

5. Whipping or caning on various body parts was inflicted for serious offences such as robbery with violence.

An important form of punishment was the confinement of criminals in geographically isolated penal colonies, such as Devils Island.

6. The death penalty or capital punishment was the most drastic form of corporal punishment as it required law enforcement officers to kill the offender. Forms of the death penalty included hanging, crucifixion, the firing squad, burning at the stake, lethal injection, gas chambers, beheading, and starvation, among others.

7. Fortunately for present-day wrong-doers many of these methods of punishment have been abolished in most countries. All types of penalties applied to criminals nowadays may be divided into several groups: capital punishment, custodial sentences, and non-custodial sentences.

8. **Custodial sentences** include imprisonment and other forms of forced detention (e.g., *involuntary institutional psychiatry*). Imprisonment means putting a convicted into a special building (prison) where he is forced to live as a punishment for a fixed period of time. Prison is not considered to be corporal punishment, although the body is confined, no punishment is inflicted upon the body.

9. **Non-custodial sentences** include:

Suspended sentences: the offender does not go to prison unless he or she commits another offence.

10. *Probation* is a kind of punishment when, instead of *jailing* a person convicted of a crime, a judge will order that the person reports to a *probation officer* regularly and according to a *set schedule*. An offender may have to report weekly for the first three months, then fortnightly and, if all is going well, every three or four weeks. A court probation order can last from six months to three years. It is a criminal offence not to *obey* a probation order.

11. *Community service*. Sometimes *petty criminals* instead of going to jail may, with their consent, be given community service orders. The court may order from 40 to 240 hours' unpaid service to be completed within 12 months. Examples of community service orders include decorating the houses of elderly or *disabled* people and building *adventure playgrounds*. Be this penalty the court punishes offenders by making them give something back to the community.

12. An *injunction* is a court order that prohibits a party from doing something (*restrictive injunction*) or compels them to do something (*mandatory injunction*).

13. *Fines*. About 80 per cent of offenders are punished with a fine. There is no limit to the fine, unless set by statute. When fixing the amount of a fine, courts are required to reflect the seriousness of the offence and to take into account the *financial circumstances* of the offender.

14. *Compensation*. The courts may order an offender to pay compensation for personal injury, loss or damage resulting from an offence. In England and Wales courts are required to give reasons for not *awarding* compensation to a victim. Compensation *takes precedence* over fines.

15. *Curfew order* or "house imprisonment". Courts in the *trial areas* can require offenders to remain at home for a period up to 12 hours a day. The order can be combined with probation or community service.

16. *Cautioning*. The police have discretion whether to charge an offender or formally to caution him or her. Cautioning is a form of warning and no court action is taken. Properly used, it is an effective deterrent to those who have committed minor offences or who have of-

fended for the first time. However, it is an inappropriate response to serious offences.

17. *Socio-economical punishment* has become rather common nowadays and takes the form of such penalties as loss of income; confiscation; demotion, suspension or expulsion (especially in a strict hierarchy, such as military service); restriction or loss of civic and other rights.



LEXIS

stocks – колодки, тяжелые деревянные оковы

pillory - позорный столб

ducking stool - позорный стул

whipping - битье, побои, порка

wooden boards – деревянные бруски, деревянные доски

ankle - голеностопный сустав, лодыжка

make fast - закреплять

frame – рама, коробка

wooden post – деревянный столб, деревянная опора

suffer – подвергнуться, страдать, претерпевать

put to shame – срамить, пристыдить

make fun - высмеивать

wheel - катить, везти, толкать

dip into the water - погружать в воду

caning - избиение палкой

inflict - налагать (наказание), наносить (удар, рану и т. п.)

penal colony - колония для уголовных преступников

drastic - решительный; радикальный

crucifixion - распятие на кресте (казнь)

firing squad - команда, назначенная для произведения расстрела

lethal injection - смертельная инъекция (введение смертельной дозы в сочетании с парализующим химическим препаратом)

gas chamber - газовая камера

beheading - отсечение головы, обезглавливание

starvation - голодная смерть

involuntary institutional psychiatry - принудительное помещение в психиатрическую больницу

convicted - осуждённый, признанный по суду виновным

jailing - заключение в тюрьму

probation officer - чиновник, надзирающий за лицами, направленными судом на пробацию; инспектор, наблюдающий за условно осужденными

set schedule - предписанный режим, установленный график

obey - выполнять, повиноваться, подчиняться, удовлетворять условиями

petty criminal - мелкий преступник
 disabled - нетрудоспособный, с ограниченными возможностями
 adventure playground - детская игровая площадка, детский городок
 restrictive injunction - ограничительное предписание
 mandatory injunction - обязывающее решение суда
 financial circumstances - финансовое положение, финансовое состояние
 awarding - присуждение
 take precedence - иметь преимущественное значение, превосходить по важности
 curfew order - предписание суда о соблюдении условий "комендантского часа", что лишает осужденного возможности покидать жилище в определенное время суток
 trial area - судебный округ
 loss of income - снижение дохода, понижение оплаты труда
 demotion - понижение в должности [звании, ранге], перевод на менее квалифицированную работу
 suspension - временное отстранение от должности, отстранение от работы; дисквалификация
 expulsion - увольнение (с работы); исключение
 civic - гражданский

8.6. QUESTIONS



1. What types of punishment are described in the text above?
2. Which was the earliest known form of punishment?
3. What is meant by "capital punishment"? What forms does this punishment include?
4. Where were stocks and pillories usually set up?
5. What do we refer to as custodial sentences? Can you characterize some of them?
6. What is meant by non-custodial sentences? Can you distinguish some of them?
7. What are socio-economic forms of punishment?

8.7. AGREE OR DISAGREE



1. Prison is considered to be corporal punishment.
2. A court probation order can last from six months to thirteen years.
3. All offenders may, with their consent, be given community service orders.
4. In England and Wales compensation takes precedence over fines.
5. About 30 per cent of offenders are punished with a fine.
6. The grounds for deportation vary from country to country.



8.8. DEBATES

1. Are you for or against capital punishment? For what crimes should the death penalty be imposed?
2. Is there a connection between death penalty and the crime rate in a country?
3. Capital punishment is often replaced with long-term or life imprisonment. Do you support this replacement?
4. Is there a connection between a political regime in a country and the practice of capital punishment?
5. Do you share the opinion that criminals need help more than punishment? Give your arguments for and against this statement.
6. Is it a hard burden for a judge to decide whether to punish another person or not?
7. What forms of punishment will be applied in future?

8.9. KEY WORDS

community service

convicted

conviction

corporal punishment

court order

curfew order

custodial sentence

death penalty = capital punishment

fine

imprisonment

injunction

non-custodial sentence

offender

penalty

probation

purpose of punishment

socio-economical punishments

suspended sentence



8.10. MAKE A REPORT on the topic “Punishment”, paying attention to the following points in your speech:

- possible reasons for punishment under criminal law;
- old forms of punishment;
- capital punishment;
- custodial sentences;
- non-custodial sentences.

Unit 9. Law of Tort



9.1. BEFORE READING learn the following words and phrases which are essential on the topic:

actionable per se - дающий право на возбуждение иска сам по себе; непосредственно подлежащий преследованию в исковом порядке

assault - словесное оскорбление и угроза физическим насилием или покушение на нанесение удара либо угроза таковым

award of damages - решение суда о возмещении убытков

balance of probabilities - перевес доказательной базы; более убедительные, правдоподобные аргументы; предпочтение доказательствам, представленным одной из сторон в деле

civil wrong = tort = tortious act = legal injury - гражданский вред, деликт; гражданское правонарушение

damage - 1) ущерб, урон, повреждение, убыток, убытки, вред, порча 2) материальные или моральные потери

damages - компенсация за убытки, денежное возмещение

defamation - клевета; умышленно ложное сообщение; разглашение позорящих другое лицо правдивых сведений, дискредитация; урон чьей-л. репутации

direct interference - прямое вмешательство

indirect interference - опосредованное, косвенное вмешательство

injured party - сторона, понесшая ущерб; потерпевшая сторона

intentional tort - умышленное гражданское правонарушение

invasion of privacy - вмешательство в личную жизнь

nuisance - вред, помеха, неудобство; нарушение покоя, источник вреда, «зловредность» (в частности, причинение собственнику недвижимости помех и неудобств в пользовании ею); вредное воздействие

remedy - 1) средство правовой судебной защиты, средство защиты права 2) право на возмещение

tortfeasor - причинитель вреда, деликвент, правонарушитель

trespass - нарушение владения (с причинением вреда); вторжение в чужое владение или противоправное пользование чужим владением без согласия владельца или лица, управляющего этой собственностью



9.2. SCANNING

Nature of Tort

1. The word "**tort**" means "wrong" in French, and in English Law it is used to denote certain civil wrongs, e.g. trespass, defamation, invasion of privacy, negligence, false arrest, false imprisonment, infringement of intellectual property rights, assault and nuisance. It is important to distinguish torts from other legal wrongs, notably crimes and breaches of contract.

2. Generally, in order to succeed in an action in tort, the plaintiff must prove that the defendant:

(a) has infringed a legal right of the plaintiff;

(b) has caused the plaintiff damage (meaning loss or injury).

If the defendant has not infringed a legal right of the plaintiff, he will not be liable in tort even if he has caused the plaintiff damage. This situation is described as "*Damnum sine injuria*" – "Damage without legal injury". An example would arise where a shopkeeper was ruined by the legitimate competition of a nearby supermarket. There would be damage but no violation of a legal right, and thus the shopkeeper would have no remedy in tort.

3. Conversely, the causing of damage is not essential to every action in tort. Certain torts are said to be actionable *per se* (by themselves - without proof of actual damage). In these torts, there is infringement of a legal right but no damage. This situation is described as "*Injuria sine damno*" – "Legal injury without actual harm". Examples include libel and trespass. Thus if A. trespasses on B.'s land, A. may be liable to pay compensation to B. even though he has caused no actual harm.

4. **A tort and a crime** can be distinguished in the following way:

(i) A crime is an offence against the State, and proceedings are usually initiated by the State, although a private citizen may prosecute in certain cases. A tort, on the other hand, is a civil wrong. The party injured by the commission of the tort is entitled to sue the guilty party (called a tortfeasor).

(ii) A crime carries with it the various "penalties" or sanctions of the criminal law, e.g. fines, probation, imprisonment. The aim of the law of tort, on the other hand, is not to punish the tortfeasor but to compensate the injured party by an award of damages. An injunction is also a proper remedy in certain cases.

(iii) In a criminal trial, there is a presumption that the accused is innocent and the prosecution must prove his guilt beyond reasonable doubt. There is no such presumption in a civil action, and the defendant's responsibility for a tortious act need only be established on a balance of probabilities.

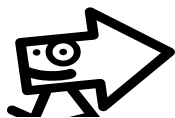
(iv) A criminal prosecution may not be stopped by the victim. An action arising out of tort may, like other civil actions, be discontinued or settled out of court by the plaintiff at any time.

5. **A tort and a breach of contract** may be distinguished as follows:

(i) Contracts impose duties but these are created by the agreement of the parties. On a breach of contract, there is a breach of such a duty. A tort, on the other hand, is a breach of a duty imposed by the law. It is not based on the agreement of the parties. Thus you are under a duty imposed by the law not to slander X, not to trespass on X's land and so on.

(ii) By the doctrine of privity of contract, only a party to a contract

can sue for breach of it. A tortious act, however, entitles any injured party to sue.



LEXIS

breach of contract - нарушение договора, невыполнение условий контракта (без юридических оснований)

succeed - достигать цели, иметь успех

liable - ответственный, несущий ответственность

prosecute - преследовать в судебном порядке; поддерживать обвинение, обвинять

commission - совершение (действия), деяние

penalty - наказание; карательная мера; санкция

presumption - 1) предположение; допущение 2) презумпция

accused - 1) обвиняемый (в преступлении) 2) подсудимый

innocent - невиновный, безвинный

settle out of court - урегулировать спор без судебного разбирательства

impose duties - создавать обязательства, возложить обязанности

privity of contract - 1) договорные отношения, договорная связь; 2) частный характер договорной связи

entitle - давать право; уполномочивать



9.3. QUESTIONS

1. What does the word "tort" denote?

2. Can you give any examples of civil wrongs, which can be classified as torts?

3. What must the plaintiff prove in order to succeed in an action in tort?

4. Certain torts are said to be actionable per se. What do you know about them?

5. What do we call the guilty party in a tort?

6. How are torts and crimes distinguished?

7. How is a breach of contract distinguished from torts?



9.4. AGREE OR DISAGREE

1. If the defendant has caused the plaintiff some damage but has not infringed a legal right of the plaintiff, he will not be liable in tort.

2. It is causing of damage that is essential to every action in tort.

3. The aim of the law of tort is to punish the tortfeasor.

4. Tort cases are heard only by civil courts.

5. In a civil action, as well as in a criminal one, there is a presumption that the defendant is innocent.

6. An action arising out of tort may be settled out of court.



9.5. SCANNING

Classification of Torts

Most torts arise from either an intentional, wrongful action or from a negligent action.

(i) **Negligence**

In a tort case arising out of negligence, the plaintiff must show four things: (a) there was a duty imposed on the defendant in favor of the plaintiff, (b) the defendant breached (violated) that duty, (c) the breach was the proximate (natural and foreseeable) cause of the harm, and (d) plaintiff suffered damages.

(ii) **Intentional torts**

To constitute an intentional tort, the defendant's act must be expressly or implicitly intended; the resulting harm need not be intended, but must have to be reasonably foreseeable. Examples of intentional torts are as follows:

a) **Interference with the person**

○ Assault: any attempt to use illegal force on another person without that person's consent. Verbal threats do not constitute assault. If violence actually occurs, the act is termed battery.

○ False arrest: detention of the plaintiff, without his/her permission, under the falsely asserted authority of the defendant.

○ False imprisonment: wrongful use of force, physical barriers, or threats of force to restrain the plaintiff's freedom of movement.

○ Intentional infliction of mental (emotional) distress: disturbance of the plaintiff's peace of mind by the defendant's outrageous conduct. Although damages are not limited to bodily injury, usually some physical harm must be shown.

○ Invasion of privacy: interference with a person's right to be left alone. The right to solitude can be invaded in four different ways: (i) public disclosure of private facts; (ii) publication of information placing a person in a false light; (iii) intrusion upon a person's private life; or (iv) unauthorized appropriation of name or likeness (e.g., picture) for commercial purposes.

b) **Interference with property**

○ Conversion: unauthorized, unjustified exercise of control over another's personal property. There are two requirements: defendant must (1) appropriate the property to his/her own use, and (2) indefinitely withhold its possession from the plaintiff or destroy it. Examples: acts of arson, robbery, or embezzlement, taking someone else's umbrella, coat, or other personal property and keeping it after discovering that fact.

o Trespass: the unjustifiable and direct interference with another's rights to property, which can take two forms:

(i) trespass to land (real property) - including entry upon land, throwing objects on to land or remaining on land after the right to entry has been withdrawn; and

(ii) trespass to goods (personal property).

All forms of trespass are actionable *per se*, i.e. without the necessity of showing that damage has been suffered by the plaintiff.

o Nuisance: the unlawful interference with another's use and enjoyment of land or some right over or in connection with land. In contrast to trespass the interference is indirect and includes: (i) interference with a right to light; (ii) interference with the enjoyment of land generally, such as smoke, smells or noise; or (iii) obstruction of rights of way. Proof of damage is necessary in order to bring an action for nuisance.

c) **Other intentional torts**

o Abuse of process: the use of a court process (e.g., attachment, injunction) for a purpose for which it was not intended. Example: attachment on excessive amounts of X's property in one case so as to force X to dismiss an unrelated lawsuit.

o Defamation: the publication of a false statement about another person which infringes his right to the reputation he enjoys among his fellow men. Defamation takes two forms:

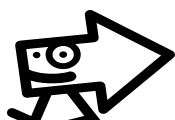
(i) libel, which is in a permanent form such as writing, painting, broadcasting; and

(ii) slander, which is in a fleeting form - spoken words or gestures.

Libel is actionable *per se*. With a few exceptions, slander requires proof of damage.

o Fraud (deceit, misrepresentation): a deceitful conduct designed to manipulate another person to give something of value by lying or by concealing a fact from the other party which may have saved that party from being cheated.

o Infringement of intellectual property rights: civil wrongs in the sphere covered by copyrights, patents, trademarks and industrial secrets.



LEXIS

proximate - непосредственный (о причине), ближайший
foreseeable - предвидимый, предсказуемый, прогнозируемый

suffer damages - понести ущерб, получить повреждение

expressly - в явной форме, специально, словесно, в прямой форме

implicitly - по смыслу, косвенным образом, в неявной форме, молчаливо; подразумеваемым образом; в порядке презумпции

intended - намеренный; умышленный
attempt - попытка, проба; покушение
verbal threat - словесная угроза
battery - нанесение удара; нанесение побоев, избиение
false arrest - незаконное задержание, имитация ареста
detention - задержание, арест, заключение под стражу; заключение в арестный дом; предварительное заключение; содержание под стражей
asserted - утверждаемый, заявляемый, предполагаемый
false imprisonment - незаконное лишение свободы
restrain - 1) ограничивать 2) запрещать; пресекать 3) принуждать
intentional infliction - умышленное, преднамеренное нанесение, причинение (личного или имущественного вреда)
mental distress - психическое расстройство
emotional distress - эмоциональное расстройство
disturbance - нарушение; повреждение; волнение; беспокойство; нарушение
peace of mind - душевный покой, психическое равновесие
outrageous - жестокий, возмутительный; оскорбительный; вопиющий, скандальный
solitude - одиночество; уединение, изоляция (о человеке)
intrusion - вторжение, насильственное проникновение, вмешательство; нарушение; посягательство
appropriation - обращение в свою собственность; конфискация; присвоение
conversion - незаконное присвоение имущества, незаконное использование чьего-л. имущества в собственных целях
unjustified - необоснованный; несправедливый, неоправданный
indefinitely - в течение неопределенного времени; бесконечно, беспредельно, безгранично
withhold - удерживать, сдерживать, приостанавливать
entry - вход, въезд; проход
abuse of process - злоумышленное использование одной стороной процессуальных законов во вред противной стороне, предъявление явно недобросовестного иска
attachment - наложение ареста
injunction - судебный запрет, судебное предписание (предпринять какие-л. действия или воздержаться от каких-л. действий)
dismiss - отклонять исковое заявление
fellow men - коллеги, сотрудники, сослуживцы, соотечественники
libel - квалифицированная клевета, письменная клевета
permanent form - фиксированная, устойчивая форма
slander - клевета (в устной форме), злословие, клеветнические измышления

fleeting form – скоротечная, нестабильная, мимолетная форма существования

deceit - обман, уловка, трюк, хитрость, мошенническая проделка

misrepresentation - введение в заблуждение; искажение фактов

concealing - утаивание, умолчание

cheat - жульничать, мошенничать, ловчить, "надувать"



9.6. QUESTIONS

1. What do most torts arise from?
2. What are the four things that the plaintiff must show in a tort case arising out of negligence?
3. What are the constituents of an intentional tort?
4. Classify intentional torts. Give different examples, trying to define each of them.



9.7. AGREE OR DISAGREE

1. Verbal threats do not constitute assault.
2. Any tort is a criminal offence.
3. All forms of trespass are actionable per se.
4. The right to solitude can be invaded in three different ways.
5. Proof of damage is not necessary in an action for nuisance.
6. Libel requires proof of damage.



9.8. DISTINGUISH between liability in tort and liability in contract. Pay attention to prerequisites, judicial proceedings and legal remedies.

9.9. KEY WORDS

abuse of process
actionable per se
assault
award of damages
balance of probabilities
battery
be liable
conversion
defamation
direct interference
false arrest
false imprisonment

fraud
indirect interference
injured party
intentional tort
invasion of privacy
negligence
nuisance
tort
tortfeasor
trespass to goods
trespass to land
violation of a legal right



9.10. MAKE A REPORT on the topic “Law of Tort”, paying attention to the following points in your speech:

- tort as a legal concept;
- a tort distinguished from a crime;
- tortious liability distinguished from contractual liability;
- classification of torts.

Unit 10. Evidence and Investigation



10.1. BEFORE READING learn the following words and phrases which are essential on the topic:

arraignment - формальное предъявление обвинения

arrest - арест; наложение ареста, задержание | арестовывать, накладывать арест, задерживать

booking - регистрация протокола, заполнение протокола

burden of proof - "бремя доказательства" (в суде)

charge with an offence – предъявлять обвинение в совершении преступления

circumstantial evidence - косвенные доказательства или улики

confession - признание в совершении преступления; признание вины; покаяние

conviction - обвинение, осуждение, обвинительный приговор

corroboration - подтверждение (дополнительными фактами); подкрепление (одного доказательства другим), дополнительное доказательство

criminalistics - криминалистика; теория и техника расследования преступлений

defendant - ответчик по делу в суде, подсудимый, обвиняемый

detective - детектив, сыщик; сотрудник сыскной, уголовной полиции | детективный, сыскной, уголовный (о полиции)

direct evidence - прямое свидетельское показание, прямое [непосредственное] доказательство

documentary evidence - документально подтвержденное свидетельство

indictment - обвинительный акт, обвинительное заключение; вердикт большого жюри о привлечении к уголовной ответственности и передаче дела в суд

instrumentation - применение технических средств; оснащение инструментальными средствами; средства проведения расследования

interrogation - допрос (свидетелей и подозреваемых)
investigative tools - следственный инструментарий, средства и способы расследования преступлений
investigator - следователь (лицо, ведущее расследование)
locate - устанавливать, определять, обнаруживать точное местонахождение
oral evidence - устные свидетельские показания
plaintiff - истец (лицо, подающее иск), жалобщик
prosecution - судебное преследование; уголовное преследование; сторона обвинения
real evidence = exhibit - вещественное доказательство
scene of the crime - место совершения преступления
testify - давать показания, показывать, свидетельствовать, заявлять, утверждать; быть свидетельством, доказательством
trace evidence - трассеологические доказательства, следовая улика
unsworn evidence - показание, не скреплённое присягой
witness - свидетель, понятой; свидетельство, свидетельское показание | давать свидетельские показания; свидетельствовать; подписывать в качестве свидетеля



10.2. SCANNING

Probable Cause and Other Levels of Proof

1. Before the various steps of the criminal justice system can be initiated - arrest, booking, indictment, arraignment and sentencing - different levels of proof are required. The levels of proof recognized by law are as follows:

2. Suspicion is the lowest level of proof justifying a police action. Suspicion may occur when a police officer has only slight evidence to believe that a crime has been or is in the process of being committed. It permits a police officer to initiate an investigation.

3. Another level of proof is reasonable belief as a specific and reasonable conclusion drawn from observable facts. Reasonable belief permits the police to stop and search a person when they have reason to believe they are dealing with armed and dangerous persons.

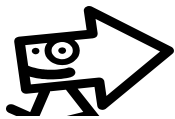
4. Probable cause is a higher level of proof that occurs when one has sufficient and reliable information that a crime has been committed and that the accused has committed that crime. It is the standard used for arrest, search and arraignment.

5. Preponderance of evidence as a level of proof means that the weight of evidence is greater for one side than for the other. This is sufficient for making a judgment in civil cases, but not enough to convict in criminal cases.

6. *Beyond a reasonable doubt*: This level of proof exists when, after examining the evidence presented, a reasonable person would rely on it. It is the standard needed to convict in a criminal case according to the doctrine of "presumption of innocence".

7. It is difficult to distinguish between each of the levels of the proof described above. Yet the different levels of proof serve as a good illustration of how society attempts to deal with the problem of protecting the state from crime while at the same time guaranteeing and protecting an individual's liberty. The aim is to limit police actions that are unreasonable or discriminatory while at the same time making it possible for the police to enforce the law. Mere suspicion is not enough to put someone in jail, and the proof beyond a reasonable doubt is needed to prove criminal guilt.

8. Thus no person can be found guilty of a criminal offence without proof "beyond a reasonable doubt", but a person can be arrested and searched, and formally charged with a crime on the basis of evidence that is less than that required to convict him.



LEXIS

proof - доказательство; свидетельство

suspicion - подозрение, сомнение

reasonable belief - обоснованное предположение

observable - заметный, различимый, поддающийся наблюдению

probable cause - вероятная причина; правдоподобное основание

preponderance of evidence - наличие более веских доказательств, перевес доказательств

rely on - полагаться на, основываться

doctrine - теория, принцип; учение

unreasonable - неумеренный, чрезмерный; необоснованный

discriminatory - избирательный, селективный, предвзятый, тенденциозный, дискриминационный

enforce the law - обеспечивать соблюдение закона



10.3. QUESTIONS

1. What are the steps of a criminal justice proceeding?

2. What levels of proof do you know? Can you characterize each of them?

3. What aims do different levels of proof serve?

4. What level of proof is sufficient for making a judgment in civil cases?



10.4. AGREE OR DISAGREE

1. Suspicion is the highest level of proof justifying a conviction.

2. It is suspicion that permits the police to stop and search a person.
3. For reasonable belief one needs some observable facts.
4. Reasonable belief is the standard used for arrest, search and arraignment.
5. Preponderance of evidence is a maxim of criminal trials.
6. The levels of proof are easily distinguishable.



10.5. SCANNING

Evidence

1. The term "evidence" as used in English law means statement made by witnesses in court in relation to matters of fact under inquiry (oral evidence), and items produced for the inspection of the court (real and documentary evidence). The weight of evidence has no necessary relation to the number of witnesses who testify to the same thing but depends on credibility of witnesses.

3. Evidence can be divided into direct and circumstantial one. "Direct evidence" proves that the accused was seen committing the crime with which he is charged, that is, evidence of the fact in issue. "Circumstantial" means evidence of facts relevant to the issue from which, taken alone or together with other facts, an inference may be drawn that the crime was committed by a particular person. It is a mistake to consider circumstantial evidence to be weaker than direct evidence and that a man should not be convicted on it.

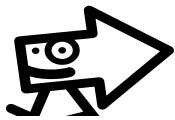
Criminals are very often convicted on circumstantial evidence or exhibits, for they naturally tend not to commit crimes when someone who could later give direct evidence is watching. This form of evidence may indeed be stronger than direct evidence as a witness can lie but circumstances cannot.

4. Trace evidence is an example of circumstantial evidence which links a person (the suspect or defendant) with a place (the scene of the crime) or an object. The link may be direct or indirect. The guiding principle in criminalistics is "Every contact leaves a trace". Identification of the trace may provide evidence of the contact and it is most frequently necessary in such crimes as theft and burglaries. In this case, the following items are to be examined:

- fingerprints;
- footprints and impressions reproducing the shape of the objects which made them;
- pieces of wood, metal, glass, etc., which are broken off in committing the crime;
- pieces of clothing, hairs, etc.;
- stains and traces of materials, such as paint, oil, etc.

5. The transfer of traces is often a two-way process. Traces from the crime scene may be carried away on the person, clothing, etc., and at the same time, traces may be left at the crime scene by the criminal.

6. However, the help which the expert can give is limited if no one in particular is suspected or if no arrest has been made, i.e. if only the scene of the crime is available for the examination. But even in this case the detective must make a thorough examination which may help him to discover what size and type of footwear, or what colour and material of clothing the criminal was wearing.



LEXIS

former - первый из упомянутых ранее

credibility – убедительность, правдивость, надёжность

fact in issue - факт, являющийся предметом судебного спора; предмет доказывания

inference - вывод, заключение, умозаключение

exhibits - вещественные доказательства

lie - лгать, обманывать, быть обманчивым

footprint - отпечаток ступни, след

impression - отпечаток, оттиск, след; слепок

stain - пятно, пятнышко

transfer - перенос, перенесение; перемещение

two-way process - двусторонний процесс

footwear - обувь

clothing - одежда, платье, костюм



10.6. QUESTIONS

1. What does the term "evidence" mean in English law?

2. Is there any relation between the weight of evidence and the number of witnesses?

3. What is "corroborative evidence"?

4. What is the difference between direct and circumstantial evidence?

5. What do we refer to as "trace evidence"?



10.7. AGREE OR DISAGREE

1. The evidence of one witness without corroboration is not sufficient for a conviction.

2. Direct evidence is stronger than circumstantial evidence.

3. The transfer of traces is a two-way process.

4. Efficiency of an expert in criminal cases is limited.



10.8. SCANNING

Investigation

1. A criminal investigator is a person who collects facts to accomplish a threefold aim: to identify and locate the guilty party and to provide evidence of his guilt. Thus the objectives of the investigator provide a convenient division of the investigation into three phases:

- (i) the criminal is identified;
- (ii) he is traced and located; and
- (iii) the facts proving his guilt are gathered for court presentation.

2. Most crimes can be solved. The investigation will be considered successful if the available physical evidence was competently handled, the witnesses intelligently interviewed, the suspect effectively interrogated, all logical leads properly developed, and the case comprehensively, clearly, and accurately reported to the court.

3. The tools of the investigator are, for the sake of simplicity, referred to as the three "i's", namely, information, interrogation, and instrumentation. By the application of the three "i's" in varying proportions the investigator gathers the facts which are necessary to establish the guilt of the accused in a criminal trial.

4. **Information.** The word "information" is used here to describe the knowledge which the investigator gathers from other persons. The success of "information" depends on the intelligent selection of informative sources. According to its sources there are basically two kinds of information. The first type of information is acquired from regular sources such as conscientious and public-spirited citizens, company records, and the files of other agencies. The second type, which is of particular interest to the criminal investigator, is the knowledge which the experienced investigator gathers from cultivated sources such as paid informants, former criminals, bartenders, taxi drivers, or room attendants.

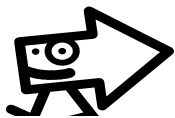
5. **Interrogation**, the second "i", includes the skilful questioning of witnesses as well as suspects when they are reluctant to divulge information. The effectiveness of interrogation varies with the craft, logic, and psychologic insight with which the investigator questions a person who is in possession of information relevant to the case. In this regard we should differentiate interrogation from an ordinary interview. The term "interview" means the simple questioning of a person who is co-operating with the investigator, while "interrogation" is used to describe the intensive questioning of those who are reluctant to turn in information.

6. **Instrumentation.** The third "i" means the application of the instruments and methods of the physical sciences to the detection of

crime. Physics, for example, offers such aids as microscopy, photography, and the optical methods of analysis. Biology and pathology are particularly important in crimes of physical violence.

7. The sum of these sciences insofar as they are applied to crime detection is called criminalistics. Their utility is associated mainly with physical evidence. By their means a part of the *corpus delicti* may be established in certain crimes - the cause of death in a homicide or the nature of the drug in a narcotics violation. They may be used to link the suspect to the scene of the crime by showing that clue materials found at the scene possess the same constituents as materials associated with the suspect. The same procedure is employed in identifying the criminal by tracing a substance found at the scene to a source that can be immediately associated with the suspect.

8. Instrumentation, however, embraces rather more than criminalistics. It includes also all the technical methods by which the fugitive is traced and examined and, in general, the investigation is advanced. Thus, fingerprint systems, modus operandi files, the lie detector, communication systems, surveillance equipment, searching apparatus such as the X-ray unit and the metal detector, and other investigative tools are contained within the scope of the term.



LEXIS

accomplish - совершать, выполнять; достигать

threefold - тройной, триединый

objective - цель; задача; проблема

competently - квалифицированно

handle - обращаться с, прорабатывать; обсуждать, разбирать (вопрос); управляться, справляться с кем-л., чем-л.

intelligently - с толком

interview - проводить опрос, расспрашивать

interrogate - опрашивать, допрашивать

lead - ключ (к разгадке чего-либо); подсказка

conscientious - добросовестный, сознательный, честный

public-spirited - движимый заботой об интересах общества, проникнутый духом гражданственности

experienced - опытный, знающий; квалифицированный

cultivated - специально созданный, поддерживаемый

paid informant - информатор, осведомитель, доносчик

former criminal - ранее судимый, отбывший своё наказание

craft - мастерство, умение, искусство; сноровка

insight - интуиция, понимание, проницательность

in possession of information - владеющий информацией, информированный

room attendant - горничная

skilful questioning - искусное опрашивание
 reluctant – противодействующий; делающий что-л. с большой неохотой, по принуждению; сопротивляющийся
 turn in information - дать сведения, сообщить информацию
 physical sciences - естественные науки
 utility - полезность, практичность; эффективность
 clue materials - ключевые предметы, наиболее существенные улики
 constituents - компонент, состав, составная часть
 substance - вещество; материал
 embrace - включать, заключать в себе, содержать
 advance - двигаться вперед, продвигаться
 modus operandi file - картотека преступных "почерков"
 lie detector - детектор лжи (полиграф)
 surveillance equipment – средства для идентификации, технические средства наблюдения
 X-ray unit - рентгеновская установка



10.9. QUESTIONS

1. What are the objectives of an investigator?
2. What makes the investigation successful?
3. Which tools are available for an investigator?
4. What are the two kinds of information that the investigator is interested in?
5. What physical sciences are associated with “instrumentation”?
6. Give the examples of investigative tools being used by an investigator.



10.10. AGREE OR DISAGREE

1. Every crime is soluble.
2. Instrumentation is regarded to be the same as criminalistics.
3. Information acquired from regular sources is of particular interest to the criminal investigator

10.11. KEY WORDS

arraignment	interrogation
arrest	investigator
circumstantial evidence	levels of proof
criminalistics	modus operandi file
cultivated sources of information	oral evidence
detective	regular sources of information
direct evidence	scene of crime
documentary evidence	surveillance equipment

exhibits
fingerprints
instrumentation

testify
trace evidence
witness



10.12. MAKE A REPORT on the topic “Evidence and Investigation”, paying attention to the following points in your speech:

- levels of proof;
- direct and circumstantial evidence;
- phases of investigation;
- tools of the investigator: information, interrogation, instrumentation.

Unit 11. Judiciary



11.1. BEFORE READING learn the following words and phrases which are essential on the topic:

acquit - оправдать, признать невиновным (в совершении преступления) | оправданный

acquittal - оправдание; судебное решение об оправдании; оправдательный вердикт, приговор

court of appeal = appeal court = appellate court = court of appellate jurisdiction - апелляционный суд (вторая инстанция)

court of cassation = cassational court = court of review - кассационная инстанция, кассационный суд

court of trial = court of original jurisdiction = trial court = court of first instance - суд, в котором дело рассматривается по первой инстанции; суд, рассматривающий дело по существу

court session = sitting of the court = hearing - судебное заседание

equity - право справедливости; субъективное право, основанное на нормах права справедливости (система законодательных актов, существующая наряду с обычными законодательными актами и замещающая их в случае несоответствия их друг другу; такая система действовала в Англии с 14 в., и раньше разбирательства на основе норм права справедливости осуществлялись в специальных судах, отдельно от разбирательств на основе общего права)

general jurisdiction - общая юрисдикция

higher court = court of superior jurisdiction = superior court - суд вышестоящей инстанции, вышестоящий суд

judge = adjudicator = bench = bencher = justice - судья

judicial review - судебный контроль; судебный надзор; судебный пересмотр, обзор судебной практики

judiciary - суд; судебная власть; судебная система, судоустройство; лица судебной профессии; судьи; судейский корпус

justice - справедливость, вознаграждение по заслугам; правосудие; юстиция, судья; отправление правосудия

lower court = minor court = inferior court = court of inferior jurisdiction - суд низшей инстанции, нижестоящий суд



11.2. SCANNING

Kinds of Cases

1. Civil cases are usually disputes between or among private citizens, corporations, governments, government agencies, and other organizations. Most often, the party bringing the suit is asking for money damages for some wrong that has been done. For example, a tenant may sue a landlord for failure to fix a leaky roof, or a landlord may sue a tenant for failure to pay rent. People who have been injured may sue a person or a company they feel is responsible for the injury.

2. The party bringing the suit is called the plaintiff; the party being sued is called the defendant. There may be many plaintiffs or many defendants in the same case. It is up to the plaintiff to prove the case against the defendant. In each civil case the judge tells the jury the extent to which the plaintiff must prove the case. This is called the plaintiff's burden of proof, a burden that the plaintiff must meet in order to win. In most civil cases the plaintiff's burden is to prove the case by a preponderance of evidence, that is, that the plaintiff's version of what happened in the case is more probably true than not true.

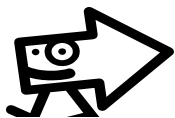
3. A criminal case is brought by the state or by a city or county against a person or persons accused of having committed a crime. The state, city, or county is called the plaintiff; the accused person is called the defendant.

4. Since the outcome of a criminal trial may result in the defendant's loss of liberty or even life, the courts evolved a rule which casts upon the prosecution a heavy burden of proof. No rule of criminal law is of more importance than that which requires the prosecution to prove the defendant's guilt and not for the latter to establish his innocence; he is presumed innocent until the contrary is proved.

5. In criminal cases the plaintiff cannot succeed on a mere balance of probabilities. If there is any reasonable doubt whether the accused is guilty, he must be acquitted. An acquittal therefore either means that the jurors believe the accused and are satisfied of his in-

nocence, or that, while not satisfied that he is innocent, they do not feel sure of his guilt. In England there is no middle verdict such as the Scottish verdict of "not proven" to cover this sort of situation; "not guilty" is the only alternative to a conviction.

6. The heavier burden of proof required in criminal trials can also be seen to operate in the rules which provide that in certain cases corroboration is necessary. In some instances the rule is one of law and the absence of corroboration is a bar to conviction. For example, the unsworn evidence of a child must be corroborated. A jury cannot convict on such evidence alone, for the law does not consider it sufficiently reliable to warrant a conviction. In a charge of perjury the jury may not by law convict the accused on the uncorroborated evidence of one witness alone. The falsity of the defendant's evidence cannot be established by the evidence of only one witness, for if this were allowed, it would be merely a case of oath against oath.



LEXIS

tenant - наниматель, арендатор; временный владелец
landlord - арендодатель; владелец дома, квартиры или
земельного участка, сдаваемых внаем

extent - мера, степень, рамки, пределы

meet - удовлетворять, соответствовать

outcome - исход, итог, последствие, результат

evolve - развивать; образовывать

cast upon - подвергать, возлагать на

latter - последний (из двух названных)

not proven - невиновен за отсутствием доказательств

bar to conviction - препятствие для обвинительного приговора

warrant a conviction - подтверждать обвинительный приговор,
признавать виновным

falsity - обманчивость; ложность, неверность, неправильность,
ошибочность



11.3. QUESTIONS

1. What does the party bringing the suit ask for in a civil trial?
2. Who is called "the plaintiff" in criminal cases?
3. Is there a difference of the plaintiff's burden of proof in civil and criminal cases?
4. What does an acquittal mean in criminal cases?



10.4. AGREE OR DISAGREE

1. Civil cases are disputes between private citizens.
2. In a civil trial there may be only one plaintiff in the

same case.

3. In criminal cases the plaintiff can succeed on a mere balance of probabilities.
4. If there is any reasonable doubt whether the accused is guilty, he or she must be acquitted.
5. In all parts of Great Britain "not guilty" is the only alternative to a conviction.
6. The evidence of a child isn't sufficiently reliable to warrant a conviction.



11.5. SCANNING

What Happens During the Trial?

1. Events in a trial usually happen in a particular order, though the order may be changed by the judge. The usual order of events is set out below.

*Step One: **Selection of the Jury.*** From a large group of potential jurors 12 are chosen by counsels for the parties and sworn in.

2. *Step Two: **Opening Statements.*** The lawyers for each side discuss their views of the case that the court is to hear and also present a general picture of what they intend to prove about the case. What the lawyers say in their opening statements is not evidence and, therefore, does not help prove their cases.

3. *Step Three: **Presentation of Evidence.*** All parties are entitled to present evidence. The testimony of witnesses who testify at trial is evidence. The questioning of your own witness under oath is called examination-in-chief. Each party may also question the other's witnesses - it is a "cross-examination". Evidence may also take the form of physical exhibits, such as a gun or a photograph. On occasion, the deposition - written testimony of people not able to attend the trial - may also be evidence in the case.

4. Many things presented during the trial are not evidence. For example, what the lawyers say in their opening and closing statements is not evidence. Physical exhibits offered by the lawyers, but not admitted by the judge are also to be disregarded, as is the testimony that the judge orders stricken of the record.

5. Many times during the trial the lawyers may make objections to evidence presented by the other side or to questions asked by the other lawyer. Lawyers are allowed to object to these things when they consider them improper under the laws of evidence. It is up to the judge to decide whether each objection was valid or invalid, and whether, therefore, the evidence can be admitted or the question allowed. If the objection was valid, the judge will sustain the objection. If

the objection was not valid, the judge will overrule the objection. These rulings do not reflect the judge's opinion of the case or whether the judge favours or does not favour the evidence or the question to which there has been an objection.

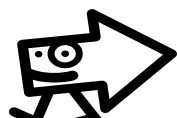
6. It is the duty of a jury to decide the weight or importance of evidence allowed by the judge. Jurors are also the sole judge of the credibility of witnesses, that is, of whether their testimony is believable. In considering credibility, the jury may take into account the witnesses' opportunity and ability to observe the events about which they are testifying, their memory and manner while testifying, the reasonableness of their testimony when considered in the light of all the other evidence in the case.

7. *Step Four: **The Instructions***. Following presentation of all the evidence, the judge instructs the jury on the laws that are to guide the jury in their deliberations on a verdict. A copy of the instructions is sent to the jury room for the use of jurors during their deliberations. Evidence in the form of documents or physical objects is also sent to the jury room.

8. *Step Five: **Closing Arguments***. The lawyers in the closing arguments summarize the case from their point of view. They may discuss the evidence that has been presented or comment on the credibility of witnesses. The lawyers may also discuss any of the judge's instructions that they feel are of special importance to their case. These arguments are not evidence.

9. *Step Six: **Jury Deliberation***. The jury retires to the jury room to conduct the deliberations on the verdict in the case they have just heard. The jury first elects a foreman who will see to it that discussion is conducted in a sensible and orderly fashion, that all issues are fully and fairly discussed, and that every juror is given a fair chance to participate.

10. *Step Seven: **Adjudication***. When a verdict has been reached, the foreman signs it and informs the bailiff. The jury returns to the courtroom, where the foreman presents the verdict. The judge then discharges the jury from the case and passes his sentence.



LEXIS

counsel for the party - адвокат стороны

swear in - приводить к присяге

examination-in-chief - главный опрос, первоначальный опрос или допрос свидетеля выставившей стороной

cross-examination - перекрёстный допрос (свидетеля противной стороны)

deposition - письменное показание под присягой; приобщение к материалам дела

disregard - не обращать внимания, не придавать значения, игнорировать, пренебрегать
 stricken of the record - изъятый из протокола заседания суда
 it is up to - (что-либо) зависит, исполняется, делается (кем-то)
 sustain the objection - поддерживать возражение, протест
 overrule the objection - отклонить протест, возражение
 believable - вероятный, возможный, правдоподобный
 reasonableness - справедливость (довода); обоснованность
 sensible and orderly fashion - целесообразный и последовательный способ проведения
 fair chance - равный шанс
 discharge - освобождать от (выполняемых) обязанностей

11.6. QUESTIONS



1. What is the usual order of events during a trial? What happens at each of these steps?
2. What can cause lawyers to make objections during the trial? Whose duty is it to decide whether each objection was valid or invalid?
3. Who can decide the weight of evidence and the credibility of witnesses?

11.7. AGREE OR DISAGREE



1. Events in a trial usually happen in a particular order, which may never be changed.
2. At the stage of selection 20 persons are chosen from a large group of potential jurors.
3. Everything the lawyers say in their opening statements is evidence.
4. Many things presented during the trial are not evidence.
5. In considering credibility, the jury may not take into account the witnesses' opportunity and ability to observe the events about which they are testifying.
6. It is the judge who provides that discussion is conducted in a sensible and orderly fashion.
7. After presenting the verdict the jurors also participate in the deliberation and passing the sentence.

11.8. SCANNING



Judicial Systems in Different Countries

1. In all legal systems there are institutions for modifying, interpreting and applying the law. Usually these take the form of a hierarchy of courts as a branch of government established to administer justice. The role of each court and its capacity to make decisions is

strictly defined in relation to other courts. There are two main reasons for having a variety of courts. One is that a particular court can specialize in particular kinds of legal actions (for example, family courts). The other is that a person who is not satisfied with the decision of a lower court can appeal to a higher court for reassessment. The decisions of a higher court are binding upon lower courts.

2. The structure of judicial system in our country and the sphere of activities of its various parts are determined by the Constitution and federal constitutional laws. There are three main elements within this system:

- the Constitutional Court of the RF interprets the country's Constitution;

- the Supreme Court is the highest judicial body of the four-tiered system of courts of general jurisdiction: civil, criminal, administrative and military cases;

- the Higher Arbitration Court is the supreme judicial body within the system of courts competent to settle economic disputes.

3. Judiciary in England and Wales is represented by two distinct divisions of courts with civil and criminal jurisdiction. The lowest courts in civil actions are county courts which deal with claims within a general limit of 25,000 pounds.

4. Cases involving larger amounts of money are heard by one of the divisions of the High Court. This court has unlimited civil jurisdiction and consists of three branches: the Queen's Bench Division, the Chancery Division, and the Family Division.

5. There are two main types of English court with criminal jurisdiction:

- magistrates' courts (or courts of first instance) with unpaid lay magistrates or Justices of the Peace, usually sitting in groups of three; these courts deal with about 95 per cent of criminal cases; and

- Crown Courts for more serious or indictable offences where hearing is held before a jury; the main function of the jury is to determine the guilt or innocence of the defendant; professional judges preside over the Crown Court and pass a sentence (if the defendant is found guilty).

6. Appeals from the High Court and county courts are heard in the Court of Appeal (Civil Division) and petitions of appeal against sentences of the Crown Court are examined in the Court of Appeal (Criminal Division). The highest court in the land is the Supreme Court of the United Kingdom which consists of 12 judges appointed by the Monarch.

8. Courts of general jurisdiction in the United States are subdivided into two principal systems: the federal courts, or United States courts, and the state courts.

9. Federal Courts have the power to rule on both criminal and civil cases. Judges of federal courts are appointed for life by the president with the approval of the Senate. The Supreme Court of the United States is the highest court in the nation. It interprets the laws and reviews them to determine whether they conform to the U.S. Constitution. All lower courts follow the rulings of the Supreme Court.

10. There are two other levels of federal courts:

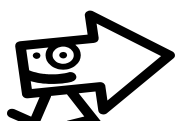
- the courts of appeals in each of the 11 federal *judicial circuits* and in the District of Columbia;

- the US district courts in each of 94 federal judicial districts.

11. Each state has an independent system of courts operating under the constitution and laws of the state. The character and names of the courts differ from state to state but as a whole they have general jurisdiction and handle criminal and other cases that do not come under federal jurisdiction. Between the lower courts and the supreme appellate courts, in a number of states, are *intermediate* appellate courts. Courts of last resort, the highest appellate tribunals of the states in criminal and civil cases and in law and equity, are generally called Supreme Courts.

12. In some states, judges are publicly elected, in others they are appointed, by state governors or by special bodies such as judicial councils. Some judges *hold office* for fixed periods, but others are *installed* for life or up to a *retiring age*.

13. *Whatever the country* a trial court has its *staff* which usually consists of *legally qualified judges*, *clerks* and *bailiffs*. The participants of the legal procedure may be the following: a plaintiff – the party bringing a lawsuit, a defendant – a party being sued, a jury – a group of ordinary people summoned to pass a verdict, a *prosecutor* – the *lawyer* for the plaintiff in a criminal case, an *advocate* – a lawyer for defence or just a *legal counsel* in civil cases, witnesses – people who give testimony, experts – they express their own opinions.



LEXIS

modifying – изменение, доработка

saracity – возможность, способность, компетентность

be fairly treated – быть рассмотренным должным образом

reassessment – пересмотр ранее вынесенного решения

binding decision – решение суда, имеющее обязательную силу для
нижестоящих судов

interpret – объяснять, толковать, интерпретировать

four-tiered system – четырёхуровневая система

county court – суд графства, окружной суд

round – фунт стерлингов

High Court – Высокий суд, Высокий суд правосудия

Queen's Bench Division - Отделение Королевской Скамьи
 Chancery Division - Отделение Лорда Канцлера
 Family Division – Отделение по делам семьи
 magistrates' court - суд магистрата, мировой суд
 first instance - первая инстанция
 unpaid lay magistrates - не получающий платы мировой судья без
 юридического образования
 pass a sentence - выносить приговор
 Crown Court - уголовный суд присяжных
 Court of Appeal - апелляционный суд
 state court - суд штата
 judicial circuit - судебный округ
 intermediate - промежуточное звено | промежуточный; средний
 hold office - занимать пост, занимать должность
 install - официально вводить в должность
 retiring age - возраст, установленный для выхода в отставку
 whatever the country – вне зависимости от страны
 staff - штат служащих; служебный персонал; личный состав
 legally qualified judge - судья с юридическим образованием
 clerk - секретарь суда
 bailiff - судебный пристав, бейлиф; служащий, в обязанности ко-
 торого входит следить за порядком в зале суда
 prosecutor - лицо, возбуждающее и осуществляющее уголовное
 преследование; прокурор
 lawyer - юрист; адвокат; юрисконсульт
 advocate - адвокат, защитник
 legal counsel - юрист-консультант, юрисконсульт



11.9. QUESTIONS

1. What does the judiciary administer?
2. What are the reasons for having a variety of courts?
3. What is the legal basis for the activities of our judicial system?
4. What does the jurisdiction of the RF Constitutional Court cover?
5. What is the highest tribunal in the system of general jurisdiction courts in Russia?
6. What Russian courts deal with economic issues?
7. What is a typical composition of court?
8. Who participates in legal procedures?
9. What is the lowest English court in a civil action?
10. What is the general limit of a County Court jurisdiction?
11. What is the composition of the High Court?
12. What is the basic judicial organ for criminal cases in England?
13. Are lay magistrates legally qualified?

14. What English court deals with indictable offences?
15. What can you say about jurors?
16. How many levels is the US Judiciary divided into?
17. Whom are all federal judges appointed by?
18. What is the jurisdiction of the US Supreme Court?
19. How many district and circuit courts are there on the federal level?
20. Are most state judges appointed for life?
21. What is the hierarchy of state courts?



11.10. AGREE OR DISAGREE

1. There are four main components within the judicial system of the Russian Federation.
2. The general limit in cases heard before the county court is £5,000.
3. The High Court has unlimited civil and criminal jurisdiction.
4. Magistrates' courts deal with about 50 per cent of criminal cases.
5. The rulings of the Supreme Court are binding for all lower courts.
6. Some of the states in the USA have their own independent systems of courts.
7. In all states in America judges are elected and hold office for fixed periods.

11.11. KEY WORDS

adjudicate
 adjudication
 administer justice
 appellate court
 bailiff
 clerk
 closing arguments
 Constitutional Court
 county court
 court of first instance
 Crown Court
 district court
 general jurisdiction
 hierarchy of courts
 High Court

higher court
 interpret
 judge
 judicial circuit
 judiciary
 jurisdiction
 Justice of the Peace
 lawyer for defence
 lower court
 magistrates' court
 opening statements
 prosecutor
 reverse the original sentence
 Supreme Court
 trial court



11.12. MAKE A REPORT on the topic “Judiciary”, paying attention to the following points in your speech:
 - civil and criminal litigation;

- stages of court proceeding;
- judicial system in our country;
- English judiciary;
- courts in the United States.

Unit 12. Legal Profession



12.1. BEFORE READING learn the following words and phrases which are essential on the topic:

adviser - советник, консультант; референт (лицо, дающее советы и рекомендации по определенным вопросам, предлагающее варианты выбора в конкретной ситуации, предоставляющее запрашиваемую информацию)

attorney - адвокат; юрист; атторней, уполномоченный, доверенный; поверенный (в суде); прокурор (в системе судебной власти США)

bar association = the Bar - ассоциация адвокатов (имеющих право выступать в суде); в США - организация практикующих профессиональных юристов; такие организации существуют как на уровне штатов, где они принимают экзамены (bar examination) на право заниматься адвокатской практикой или отстраняют от нее (to disbar), так и на общенациональном уровне

barrister - барристер; адвокат, имеющий право выступать в высших судах (отличается тем, что не ведет дело с самого начала, а получает все материалы незадолго до суда); адвокат высшего ранга

brief - 1) краткое письменное изложение дела с привлечением фактов и документов, ссылок на законодательные акты и юридические прецеденты, с которыми сторона намерена выступать в суде; 2) записка по делу, представляемая солиситором барристеру | резюмировать, составлять краткое изложение; поручать (адвокату) ведение дела в суде; давать инструкции адвокату

College of Advocates = Bar = Chamber of Advocates = Faculty of Advocates - коллегия адвокатов

conveyancer - нотариус по операциям с недвижимостью; юрист, ведущий дела по передаче имущества; адвокат, готовящий документы о передаче прав собственности

counsel - юрисконсульт; советник, поверенный; участвующий в деле адвокат; барристер

drafter - 1) составитель документа, 2) автор документа, законопроекта, законодательного акта

in-house counsel - штатный юрист, работник юридического отдела компании

Inns of Court - "Судебные инны" (четыре корпорации барристеров в Лондоне; существуют с 14 века; в школах при этих корпорациях готовят барристеров)

jurisdiction - юрисдикция; сфера полномочий; орган власти; территория в подведомственности органа власти; подведомственная область; подсудность; судебная практика

jurist - 1) юрист, учёный юрист; писатель по вопросам права; цивилист; законовед, правовед, 2) адвокат, судья, 3) студент юридического факультета 4) преподаватель права, юриспруденции

Law Society - Общество юристов (профессиональный союз солиситоров; может привлекать своих членов к ответственности за нарушение профессиональной этики, исключать из числа солиситоров)

lawyer - юрист; адвокат; консультант по вопросам права, юрисконсульт, юрист-практик

legal executive - судебный исполнитель, должностное лицо суда

negotiator - 1) лицо, ведущее переговоры; сторона в переговорах; сторона в договоре; 2) посредник, уполномоченный

notary - 1) нотариус 2) нотариальные конторы

practice law - заниматься юридической практикой, быть юристом

solicitor - солиситор, адвокат (дающий советы клиенту, подготавливающий дела для барристера и выступающий только в судах низшей инстанции); поверенный; стряпчий

trial lawyer - адвокат, выступающий в суде первой инстанции; защитник в суде

12.2. SCANNING



Legal Profession

1. Lawyer is a general term for a person who is qualified to advise people about the law, to prepare legal documents for them and/or to represent them in a court of law. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who hire lawyers to perform legal services.

2. A lawyer often has several functions: investigator, drafter, negotiator, advisor, and advocate. As a professional the lawyer is usually permitted to carry out the following duties:

3. **Oral argument in the courts.** Arguing a client's case before a judge or jury in a court of law is the traditional province of trial

lawyers who specialize in trying cases in court.

In some countries litigants have the option of arguing pro se, or on their own behalf. It is common for litigants to appear unrepresented before certain courts like small claims courts; indeed, many such courts do not allow lawyers to speak for their clients, in an effort to save money for all participants in a small case.

4. **Research and drafting of court papers.** Often, lawyers brief a court in writing on the issues in a case before the issues can be orally argued. They may have to perform extensive research into relevant facts and law while drafting legal papers and preparing for oral argument.

5. **Legal advice** is the application of abstract principles of law to the concrete facts of the client's case in order to advise the client about what they should do next. In many countries, only a properly licensed lawyer may provide legal advice to clients for good consideration. Therefore, even conveyancers and corporate in-house counsels must first get a license to practice, though they may actually spend very little of their careers in court. Failure to obey such a rule is the crime of unauthorized practice of law.

6. **Negotiating and drafting contracts.** In some countries, the negotiating and drafting of contracts is considered to be similar to the provision of legal advice, so that it is subject to the licensing requirement explained above. In other countries, notaries may negotiate or draft contracts.

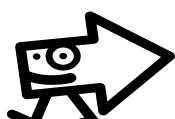
7. **Conveyancing** is the drafting of the documents necessary for the transfer of real property, such as deeds and mortgages. In some countries, all real estate transactions must be carried out by a lawyer.

8. **Carrying out the intent of the deceased.** In many countries, only lawyers have the legal authority to do drafting of wills, trusts, and any other documents that ensure the efficient disposition of a person's property after death. In the United States, the estates of the deceased must be administered by a court through probate. American lawyers have a profitable monopoly on dispensing advice about probate law.

9. **Prosecution and defense of criminal suspects.** In many civil law countries, prosecutors are trained and employed as a part of the judiciary; they are law-trained jurists, but may not necessarily be lawyers in the sense that the word is used in the common law world. In common law countries, prosecutors are usually lawyers holding regular licenses who simply happen to work for the government office that files criminal charges against suspects. Criminal defense lawyers specialize in the defense of those charged with any crimes.

10. **Judicial functions.** Members of judiciary as a rule are chosen among experienced lawyers. In the decision-making process,

judges are expected to be independent and to act without any restriction, interference, improper influence, inducement, pressure or threats. Those who are entrusted to administer justice have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges are not obliged to report on the merits of their cases to anyone outside the judiciary.



LEXIS

advance - успешно представлять, защищать

litigant - судящаяся сторона, сторона в гражданском процессе (относится как к истцам, так и ответчикам)

pro se - за себя

extensive research - обширные исследования, большая исследовательская работа

draft - составлять проект документа

oral argument - выступление в прениях сторон в суде

good consideration – соответствующее денежное вознаграждение

contemplate - предполагать, рассматривать, предусматривать

provision - обеспечение, предоставление

subject to – подвергаемый; подлежащий

conveyancing - составление актов передачи прав собственности на недвижимость

carry out the intent of the deceased - исполнять волю покойного, исполнить завещание

will - завещание

trust - доверенность; документ о передаче в доверительное управление

disposition - распоряжение, управление (имуществом)

probate - доказывание завещания; утверждение завещания

dispense - готовить и предоставлять

civil law country – страна с континентальной (цивильной) системой права

common law country - страна с системой, основанной на общем (англо-саксонском) праве; страна-незаконодатель

decision-making process - процедура принятия решения

interference – вмешательство, помеха

inducement – побуждение, поощрение

unfettered freedom - не ограниченная свобода

impartially – беспристрастно, справедливо

conscience – совесть, сознательность

in pursuance - во исполнение, согласно

on the merits - по существу



12.3. QUESTIONS

1. What functional roles are traditionally associated with lawyers?
2. Why are lawyers not allowed to speak for their clients in some small claims courts?
3. What does it mean "to brief a court in writing on the issues in a case"?
4. What is the difference between civil and common law countries in respect of criminal prosecutors?
5. What is a traditional province of trial lawyers?
6. How are the estates of the deceased administered in the United States?



12.4. AGREE OR DISAGREE

1. It is the crime of unauthorized practice of law for conveyancers and corporate in-house counsels to practice even though they have got a license for it.
2. In all countries negotiating and drafting of contracts is subject to the licensing requirement.
3. Conveyancing is a synonym to probating.
4. One of the maxims of legal procedure is that litigants may never argue *pro se*.



12.5. SCANNING



The Legal Profession in England

1. England is almost unique in having two different kinds of lawyers, with separate jobs in the legal system. The two kinds of lawyers are **solicitors** and **barristers**.

2. In the English legal system solicitors have traditionally dealt with any legal matter apart from conducting proceedings in courts, except minor criminal cases tried in Magistrates' Courts and small value civil cases tried in county courts, which are almost always handled by solicitors.

3. There are over 90 000 solicitors nowadays. Most of them are employed in private practice, either alone or in a partnership firm. Others are employed in the public service, industry, and commerce.

4. Practicing solicitors are consulted by, and receive instructions from clients on a wide variety of matters both civil and criminal, such as making of wills; buying, selling and mortgaging land; family matters; the formation of companies; drawing up of documents; conveyancing; and the criminal offences of all kinds. In cases of unusual difficulty or where a trial is to take place in the superior courts, the

solicitor takes his instructions from the client, prepares a brief and approaches a barrister to give an «opinion» or represent the client at the trial.

5. The relationship between a solicitor and his client is based on professional confidence, and a solicitor cannot be compelled to disclose in court communications made in a professional relationship. Nor is a solicitor liable for defamation in respect of statements made in court during the course of a trial. A solicitor is, however, liable to be sued for damages for negligence in the conduct of his profession: e.g. where he has carelessly lost documents entrusted to him.

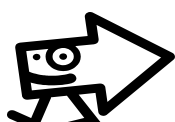
6. Solicitors in England and Wales are regulated by the Solicitors Regulation Authority, an independently administered branch of the Law Society of England and Wales. Moreover, solicitors must pay the Law Society a practising fee each year in order to keep practicing. If they do not do this they are 'non-practising' and may not give legal advice to the public (although they can start practicing again at will, unlike those who have been struck off the roll).

7. The profession of barrister in England and Wales is a separate profession from that of solicitor. The practical difference of barrister from solicitors may be seen in the following:

- o Barristers have a more specialised knowledge of case-law and precedent. It is relatively common for a barrister to only receive a "brief" from an instructing solicitor to represent a client at trial a day or two before the hearing.

- o A barrister has rights of audience in the higher courts. In this regard, the profession of barrister corresponds to that part of the role of legal professionals found in the civil law countries relating to appearing in trials or pleading cases before the courts.

9. All in all there are about 11,000 barristers and they are members of one of the Inns of Court, which have traditionally educated and regulated barristers. There are four Inns of Court: The Honourable Society of Gray's Inn, The Honourable Society of Lincoln's Inn, The Honourable Society of the Middle Temple, and The Honourable Society of the Inner Temple. All are situated in central London, near the Royal Courts of Justice.



LEXIS

apart from - кроме, не считая

conduct proceedings – участвовать в судебных разбирательствах

handle – решать, регулировать, разбирать, заниматься

partnership firm - товарищество, партнёрство

drawing up - составление

confidence – доверие; уверенность, конфиденциальность

communication - информация

practicing fee - членский взнос занимающихся практикой

strike off the roll - лишать адвоката права практики

disbar - лишать звания адвоката, лишать права адвокатской практики

right of audience - право выступать в суде

correspond - соответствовать; согласовываться, соотноситься

plead a case - представлять (чьи-либо) интересы по делу

Gray's Inn - Греевская школа (последний из четырёх по времени создания "Судебный инн"; по имени первого владельца здания школы)

Lincoln's Inn - "Инн Линкольна" (готовит барристеров Канцлерского отделения Высокого суда правосудия; по имени первого владельца здания инна Томаса де Линкольна)

Middle Temple - "Средний темпл" (один из четырёх "Судебных иннов", действующих в Лондоне)

Inner Temple - "Иннер темпл", "Внутренний темпл" (самый старейший и известный из четырёх "Судебных иннов")

12.6. QUESTIONS



1. What legal matters do solicitors deal with?
2. What is the basis of relationship between a solicitor and his client?
3. Under what circumstances may a client sue his solicitor?
4. What legal profession does the Law Society of England and Wales regulate?
5. What happens if a solicitor doesn't pay the Law Society a practicing fee?
6. Is it possible for a person to be a solicitor and a barrister at the same time?
7. How do barristers differ from solicitors in practicing law?
8. What institution must a barrister belong to?
9. How many Inns of Courts are there in England and Wales?
10. Where are all these Inns of Court situated?

12.7. AGREE OR DISAGREE



1. No solicitor is allowed to argue a client's case before a judge or jury in a court of law.
2. In difficult or complicated cases a barrister prepares a brief and approaches a solicitor to represent the client at the trial.
3. Solicitors are liable for defamation in respect of statements made in court and for negligence in the conduct of their profession.
4. As a rule a barrister should receive a "brief" from an instructing so-

- licitor a month or two before the hearing.
5. All Inns of Court are dispersed all over the country for administrative purposes.
 6. Solicitors and barristers can't be employed in companies as 'in-house' counsels.



12.8. SCANNING

The US Attorney

1. In order to practice law in the USA, one must first be "admitted to the bar" in an individual state. This entails passing the state bar exam. The bar exam covers the law particular to that state and is approximately 6 hours in length. Thus attorneys in America are licensed to practice only in their home states. If they wish to practice in another state, they must fulfill that state's requirements - such as taking test on the specific features of that state's law (a part of the bar examination) before they can practice. Fortunately, there are some states that have reciprocity agreements when two or more states honor each other's rights or privileges, such as practicing law.

2. Generally, state bar examiners require evidence of three qualities in exam candidates: sufficient general education at the undergraduate level; sufficient US legal education; and sufficient knowledge of local bar requirements. Each state bar administration sets its own criteria for permission to sit the state bar exam.

3. In addition to the state bar exam, almost all states also require the Multistate Bar Exam (MBE). The MBE covers general legal knowledge in areas such as contracts, torts, constitutional law, criminal law, evidence and real property. It is a 6-hour, multiple-choice exam made up of 200 questions.

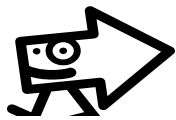
4. A typical second day of testing includes series of timed essay exams on a variety of subjects. This portion may be comprised of two other multistate exams: the Multistate Essay Exam (MEE) and the Multistate Performance Test (MPT).

5. A part of the licensing process involves the assessment by bar examiners of an applicant's character and fitness to engage in the practice of law. Currently, most states also require law students to pass the Multistate Professional Responsibility Examination (MPRE). The MPRE tests knowledge of the American Bar Association codes on professional responsibility and judicial conduct. The MPRE is a 2-hour, multiple-choice exam.

6. Upon admission to practice, an attorney is licensed to serve as both advocate and legal counselor. There is no division of the profession between barristers and solicitors, as in England.

7. At the same time on the federal level there exists the American Bar Association (ABA), which was founded in August 21, 1878 as a voluntary national organization of the legal profession. The activities of the association include maintenance of high ethical standards for the profession. The most current version of these standards, the Model Rules of Professional Conduct, was adopted in 2000.

8. The American Bar Association also accredits law schools under the authority of state high courts and the United States Department of Education, and according to standards developed by the association. Policies of the association are determined by a house of delegates representing the legal profession and administered by a board of governors. The ABA holds an annual meeting, which is the largest annual gathering of lawyers in the world, and is attended by approximately 12,500 international lawyers.



LEXIS

cover - включать, содержать, охватывать

in length - продолжительностью

reciprocity agreement - соглашение, основанное на взаимности

honor - уважать, соблюдать

examiner - экзаменатор, эксперт

undergraduate level - уровень начальной стадии высшего образования

sit an exam - сдавать экзамен

multistate – общий для определенного количества штатов

multiple-choice exam – экзамен, представляющий возможность выбора из предоставленных ответов

essay exam - сочинение-рассуждение

performance test - функциональный тест

professional responsibility - профессиональная ответственность

code - кодекс; система правил (поведения, чести, морали и т. д.)

judicial conduct - беспристрастное поведение, поведение юриста

current - современный, популярный, широко распространенный

accredit - признать высшее учебное заведение правомочным выдавать дипломы и присваивать учёные степени

house of delegates - палата депутатов

board of governors - совет управляющих

12.9. QUESTIONS



1. What must a person do if he wishes to practice law in the USA?

2. How may reciprocity agreements between states be connected with legal profession?

3. What qualities of candidates are evaluated by state bar examiners?

4. How many days does testing usually last? How many exams do applicants have to pass?
5. What areas of law does the MBE cover?
6. What should you learn in order to pass the MPRE?
7. What activities does the ABA carry out?
8. How are the policies of the ABA determined and administered?



12.10. AGREE OR DISAGREE

1. In order to practice law in the United States, one must be admitted to the ABA.
2. The criteria for permission to sit the state bar exam are the same all over the USA.
3. The state bar exam in most states is also known as the Multistate Bar Exam.
4. America has the same division of the profession between barristers and solicitors, as in England.
5. All members of the state bars are automatically admitted to the American Bar Association.



12.11. EXERCISE. Look at this list of legal occupations. All of these people work in law. We call all of the people who work in these jobs, 'the legal profession'. Match the jobs with one of the descriptions.

attorney barrister lawyer solicitor

1. This person is a lawyer who gives legal advice and opinions to solicitors. He or she passed the exams of the Bar Council of England & Wales at the end of his or her studies.
2. This person is a lawyer who gives legal advice to individuals and companies. He or she passed his or her exams in the USA at the end of his or her studies and is usually a member of the American Bar Association.
3. This person is a lawyer who gives legal advice to individuals and companies. He or she passed the exams of the Law Society of England & Wales at the end of his or her studies.
4. This is the general job title that we use for people who work as a solicitor, barrister or attorney.



12.12. EXERCISE. Read the text about legal profession. Decide if the statements below are TRUE or FALSE.

1. *There are two types of lawyers practising in America.*
2. *Last year I finished my training contract and I started working for a large international law firm. I am now a qualified solicitor.*

3. *Many solicitors work together in partnerships but barristers don't.*
4. *In the USA and England lawyers can take a special exam to be a judge.*

There are two types of lawyers who practise in England: barristers and solicitors.

In the USA and most other countries, lawyers don't make this division - a lawyer is simply known as an attorney at law, or an attorney.

In both England and the USA, it is not possible to take a special exam to be a judge. If you decide that you want to be a judge, you must get a lot of experience as a lawyer first, and then apply to be a judge and wait to see if you are chosen.

Most law students in England become solicitors. When they finish their university studies they do a one year legal practice course and then a two-year training contract with a law firm. After that, they are qualified solicitors. Many solicitors work for a legal practice, which is usually a partnership of solicitors who work together. Solicitors practise in many areas of law, although each solicitor usually chooses to specialise in one particular area. They represent their clients both in and out of court. We often describe this as acting for a client. The process of making a claim in the civil court is called litigation.

Barristers are self-employed lawyers and don't work in partnerships in the way that solicitors do. They are specialists in advocacy, which is the skill of speaking for someone in court. We call this pleading a case. They also give opinions on areas of law to solicitors and the solicitors' clients.

12.13. AGREE OR DISAGREE



1. Society can do without lawyers.
2. The law is a profession of words.
3. People who love sausage and people who believe in justice should never watch either of them made.
4. A lawyer is a gentleman that rescues your estate from your enemies and then keeps it to himself.
5. One law should be for the rich and another for the poor.



12.14. ADVANCED LEVEL ASSIGNMENT

TASK 1. Make a speech persuading school leavers either to become or not to become lawyers.

TASK 2. Who may become a judge in the Russian Federation? How does one become a judge in the Russian Federation?

TASK 3. If you were to abolish one law what law would it be?

TASK 4. Write down a list of qualities necessary for a lawyer.

TASK 5. Write down a list of do's and don'ts for a lawyer.

TASK 6. Make a presentation about one of the famous lawyers.

12.15. KEY WORDS

admit to the bar

American Bar Association

attorney

barrister

code of professional ethics

disbar

in-house counsel

Inn of Court

jurist

Law Society

lawyer

multiple-choice exam

Multistate Bar Exam

practice law

professional association of lawyers

qualify

Queen's Counsel

right of audience

self-employed lawyer

solicitor

specialize

state bar exam



12.16. MAKE A REPORT on the topic “Legal Profession”, paying attention to the following points in your speech:

- ordinary functions and duties of lawyers;
- professional responsibility of lawyers;
- legal profession in England: solicitors and barristers;
- legal profession in the USA;
- legal education.

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. . . , . . .

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