into account the circumstances of the offender as well as the offence itself. For example, if a citizen of a lower rank lost in a civil case he had to pay fewer penalties than an aristocrat, though if he won he also was awarded less.

The laws set forth in Hammurabi's code were written by the King – a divinely inspired authority. Only the King could change such laws. This absolutism of power in the monarch was typical of legal systems until the time of the Greeks around 300 B.C.

Vocabulary

statement изложение, заявление, утверждение
paragraph пункт; статья закона
real property недвижимость
inheritance наследование
regulation норма; правило; постановление, положение; устав; регламент, предписание
false accusation ложное/ лживое обвинение
penalty наказание, взыскание, штраф
to inflict наносить
to ban запрещать
injury телесное повреждение, ушиб, рана; вред, ущерб
offence 1) посягательство; 2) правонарушение;
3) преступление
civil case гражданское дело
award, *n* присужденное наказание, решение (судей)
divinely inspired божественный, священный
to set forth излагать, формулировать

Text 2. Law in Ancient Greece and Rome

The absolutism of power in the monarch was typical of legal systems until the time of the Greeks around 300 B.C. Before the Greeks people believed that their laws were given to them by gods, represented by their kings. The Greek system emphasized that the law was made by man, for man, and could be changed by man. Instead of being an instrument of total social control of the whole population by a monarch, the law was to serve peace and prosperity of the people.

In the year of 621 B.C., Draco, Athenian lawgiver, drew up Greece's first written code of laws. This harsh legal code punished

both trivial and serious crimes in Athens with death. The word *draconian* is still used to describe repressive legal measures.

In 594 B.C. Solon, Athens' lawgiver, repealed Draco's code and published new laws, retaining only Draco's homicide statutes. He revised every statute except that on homicide and made Athenian law more humane. He also retained an ancient Greek tradition – trial by jury. Enslaving debtors was prohibited, along with most of the harsh punishments of Draco's code. Under Solon's law citizens of Athens could be elected to the assembly and courts were established in which citizens could appeal against government decisions.

The Greek ideals were carried over into the Roman system of laws. The Greeks have contributed to the Roman system of laws the concept of "natural law". Actually, natural law was based on the idea that certain basic principles are above the laws of a nation. These principles arise from the nature of people.

As the Roman Empire increased, a set of laws was codified to handle the more sophisticated legal questions of the day. This was done under the sponsorship of the Byzantine Emperor Justinian I (from AD 529 to 565). This collection of laws and legal interpretations was called *Corpus Juris Civilis* (Body of Civil Law) and also the *Justinian Code.*

French Emperor Napoleon made some modification of the Justinian Code at the beginning of the 19th century. Napoleon Code is still the model for the legal codes governing most of the modern nation-states of Europe today.

Vocabulary

Draco [ˈdreikəʊ] Драконт, афинский законодатель
trivial 1) обычный, тривиальный; 2) незначительный
to repeal аннулировать, отменять закон
statute статут, законодательный акт
homicide (*Am*) убийство *cf.* murder
sponsorship покровительство
Natural law естественный закон
trial jury суд присяжных
to enslave делать рабом, порабощать
to appeal обжаловать

corpus *лат.* свод законов, кодекс
Justinian Code Кодекс Юстиниана

Text 3 How the British Law Developed

In early medieval England, there was no written law. Each feudal lord or baron administered justice personally. Although these baronial courts had similarities, the laws were different in different places. Disputes were settled on the basis of local customs and the baron's judgment. In time, the king was able to establish a system of courts, which enforced a common law throughout England. The rules of law, which were stated in these early cases, became precedents (examples) for setting future, similar cases. In the beginning, few decisions were recorded, and so the early common law was sometimes known as "unwritten law". Finally, the principles and rules announced by the courts were preserved in writing. Thus, particular rules became fixed, and people knew what to expect if similar problems arose in the future. This resulted in what has come to be known as the Common Law – judge-made case law that has its origin in the traditions, customs, and trade practices of the people.

The English Common Law began to develop after the conquest of England by William the Conqueror in 1066. To keep order and peace, the Kings of England tried to create a uniform or "common" law to govern different regions of the British Isles. Circuit-riding judges and the use of the jury aided the Norman Kings in the consolidation of their kingdom.

In medieval England, sometimes there was no remedy available from a common law court to enforce certain rights or to correct certain wrongs. This was because in civil cases the court could give only monetary damages. A person who wanted any other kind of relief would appeal directly to the King. The King would refer the person to his chancellor, who was usually a clergyman of good conscience and fairness. The chancellor would hear the case without a jury and would then give appropriate relief. Such hearings developed into what came to be known as a separate system of Courts of Equity.

Vocabulary
medieval [ˌmediˈiːvəl] средневековый

feudal lord феодал

to administer justice отправлять, осуществлять, обеспечивать правосудие

Common Law общее право

circuit-riding judges выездная сессия суда

to enforce обеспечивать соблюдение, исполнение; принудительно приводить в жизнь; обеспечивать санкцией; принуждать

Court of Equity суд справедливости

equitable справедливый, объективный

relief 1) помощь; пособие; 2) средство судебной защиты; 3) освобождение (от уплаты, ответственности)

equitable relief средство судебной защиты по праву справедливости

Chancellor судья в суде лорда-канцлера

remedy средство судебной защиты, средство защиты права

wrong *n* правонарушение, преступление

clergyman священник

good conscience чистая совесть

precedent [‘presidənt] прецедент (решение суда, обязательное для решения аналогичных дел в будущем)

to sue [sju:] возбуждать дело, судиться

LESSON 2. KINDS OF LAW IN THE UNITED KINGDOM

Text 1. The UK Legal System

The United Kingdom of Great Britain and Northern Ireland consists of four countries with three major legal systems which have been developed *indigenously*. The three systems, each with their own legal rules, courts and legal professions, are based geographically and comprise:

England and Wales

These two areas form one jurisdiction. Although there is now to be *devolution* for Wales, Wales has not since early medieval times had a legal

system distinct from England. The national courts (High Court, Court of Appeal and House of Lords) are based in London, but there are local courts (Magistrates' Courts and County Courts) throughout the country and the Crown Court has many locations.

Northern Ireland

Northern Ireland has some unusual features in its system, which is centred in Belfast. Many relate to the political instability and violence which has been *endemic* in the Province since its establishment. One such feature is the absence of a jury in "terrorist" trials. But the legal system of Northern Ireland has otherwise grown very similar to that of England and Wales, especially since the imposition of "*Direct Rule*" under a British Secretary of State since mid-1972.

Scotland

Scotland had its own system of laws and courts (based in Edinburgh) before its union with England and Wales in 1707. The Acts of Union of 1707 expressly allowed these to continue, and so Scotland retains many distinctions from the English system. This might be further encouraged by devolution which is now to be implemented for Scotland.

The UK does not have a "written" constitution and its law system is made up of four main parts:

- statute law
- common law
- conventions
- works of authority.

Of these, statute law is the most important and takes precedence. Although the Queen is the Head of State, Parliament is regarded as the supreme law-making authority. Much of the relationship between the Sovereign and Parliament is based on tradition rather than statute. The Government has two legislative chambers: the House of Commons and the House of Lords. The House of Commons consists of elected members and the House of Lords consists of elected peers as well as those with inherited titles (currently undergoing reform).

In addition to statute law passed by Parliament, legal principles are also based on the decisions of judges interpreting statute law. These collected judicial decisions form the common law. Each of the three UK jurisdictions has developed its own common law or case law. Common law can be changed by legislation, but cannot *overrule* or change statutes. The last element of the UK constitution consists of *conventions* and *works of authority* which do not have statutory authority, but nevertheless have *binding force*.

The Court System of England and Wales

The lowest criminal courts or Magistrates' Courts deal with minor offences, with more serious cases being heard in the Crown Court, in front of a judge and jury. The Crown Court also hears cases appealed from the Magistrates' Courts on factual points. Cases can be appealed on points of law to the High Court (Queen's Bench Division) and appeals against *conviction* and *sentence* are made to the Court of Appeal (Criminal Division).

Civil cases are heard firstly in the County Courts or the High Court, which is divided into three divisions: Queen's Bench, Family and Chancery. The Chancery Division considers complex matters such as disputes about wills, trusts, bankruptcy, land law, intellectual property and corporate laws, and the Queen's Bench Division deals with other business matters including contracts, torts or land disputes. The Queen's Bench Division has some specialist sub-divisions, including a Commercial Court, which deals with large and complex business disputes. Cases may be appealed to the Court of Appeal (Civil Division) and can be appealed from the County Court

to the High Court. The House of Lords is the supreme court of appeal with its judicial functions separate from its legislative work.

In addition to the courts there are specialised Tribunals, which hear appeals on decisions, made by various public bodies and Government departments, in areas such as employment, immigration, social security, tax and land.

In England and Wales, unlike in many other countries, the role of a lawyer is divided into two clear and distinct *specialisms* – that of barrister and solicitor.

Solicitor

A solicitor's role is to give specialist legal advice and help, and they are the main advisers on all matters of law to the public. There are over 60,000 solicitors practising in England and Wales, and their work varies enormously. Generally, solicitors deal with all aspects of legal practice from drafting letters, to researching cases and providing legal advice. They usually qualify into, and practice in, a specialist area, i.e. family, commercial or media law. Most solicitors are employed by *a law practice* or firm which is a partnership of solicitors who offer services to clients. In private practice there are three broad types of firms:

- High street firms – these are usually small firms dealing with individuals with housing, employment and immigration problems.
- Medium sized firms – these firms may offer specialist advice on a niche area (e.g. media, family or IT), but others will offer a huge spectrum of services from corporate finance to private client.
- Large commercial firms – Magic Circle is a term that is used to refer to the top five UK law firms: Allen & Overy, Clifford Chance, Freshfields Bruckhaus Deringer, Linklaters and Slaughter and May. Last year, *The Lawyer* reported that the Magic Circle accounted for 32% of billings of the entire.

Opportunities also exist outside private practice in the UK Government and charitable organisations as well as with some large companies.

Barrister

Barristers usually qualify into, and practice in, a specialist area, but unlike solicitors will spend most of their time researching

the law and practising advocacy at the courts. Much of a barrister's work will involve court work, and highly developed presentation and interpersonal skills are essential. Barristers operate from Chambers, which are essentially a collective of barristers much like a firm, although barristers are self-employed and pay a proportion of their earnings to the chambers for space, etc.

Some comparative notes to remember:

1. There is no written English constitution (i.e., there is no one single document called the constitution); "constitutional law" concerns issues such as the role of the state, the protection of individual rights, etc. (see e.g., Anthony King, *The British Constitution*, KD3989 .K56 2007).

2. There is no official codification of English statutes.

3. Any statute passed by Parliament is by definition valid and not subject to review by the courts. Thus a statute's "constitutionality" is not an issue a court can address; Parliament alone may act to change a law.

Vocabulary

indigenously [in'didʒinəsli] *книжн.* исконно, по происхождению

devolution передача (обязанностей, функций); переход

endemic свойственный данной местности, местный

Direct Rule прямое правление

to take precedence иметь преимущество

to overrule 1) отменять; аннулировать; считать недействительным; 2) отклонять, отвергать; 3) отвергать решение по ранее рассмотренному делу с созданием новой нормы прецедентного права

(constitutional) convention (конституционный) обычай

works of authority законодательные инициативы

binding force обязательная сила

to convict объявлять виновным в вердикте присяжных/ решении суда; **conviction** обвинительный приговор

sentence 1) наказание; 2) приговор

specialism ['speʃə,lizəm] специализация

law practice юридическая консультация

Text 2. The Hierarchy of Courts in the United Kingdom

The court system in England and Wales can be considered as consisting of 5 levels:

Supreme Court (formerly the House of Lords) and the Judicial Committee of the Privy Council
Court of Appeal
High Court
Crown Court and County Courts
Magistrates' Courts and the Tribunals Service

There is a similar court system in Northern Ireland and a different court system in Scotland.

Judicial Committee of the Privy Council

The Judicial Committee of the Privy Council is the court of final appeal for Commonwealth countries that have retained appeals to either Her Majesty in Council or to the Judicial Committee. It is also the court of final appeal for the *High Court of Justiciary* in Scotland for issues related to devolution. Some functions of the Judicial Committee were taken over by the new Supreme Court in 2009.

Supreme Court (formerly the House of Lords)

In 2009 the Supreme Court replaced the House of Lords as the highest court in England, Wales and Northern Ireland. As with the House of Lords, the Supreme Court hears appeals from the Court of Appeal and the High Court (only in exceptional circumstances). It also hears appeals from the Inner House of the *Court of Session* in Scotland. Appeals are normally heard by 5 Justices (formerly Lords of Appeal in Ordinary, or Law Lords), but there can be as many as 9.

Court of Appeal

The Court of Appeal consists of 2 divisions, the Criminal Division and the Civil Decision. Decisions of the Court of Appeal may be appealed to the Supreme Court (formerly the House of Lords).

Civil Division

The Civil Division of the Court of Appeal hears appeals concerning civil law and family justice from the High Court, from Tribunals, and certain cases from the County Courts.

Criminal Division

The Criminal Division of the Court of Appeal hears appeals from the Crown Court.

High Court

The High Court consists of 3 divisions, the Chancery Division, the Family Division, and the Queen's Bench Division. Decisions of the High Court may be appealed to the Civil Division of the Court of Appeal.

Chancery Division**:** *Companies Court*

The Companies Court of the Chancery Division deals with cases concerning commercial fraud, business disputes, insolvency, company management, and disqualification of directors.

Chancery Division**:** *Divisional Court*

The Divisional Court of the Chancery Division deals with cases concerning equity, trusts, contentious probate, tax partnerships, bankruptcy and land.

Chancery Division**: Patents Court**

The Patents Court of the Chancery Division deals with cases concerning intellectual property, copyright, patents and trademarks, including passing off.

Family Division: *Divisional Court*

The Divisional Court of the Family Division deals with all matrimonial matters, including custody of children, parentage, adoption, family homes, domestic violence, separation, annulment, divorce and medical treatment declarations, and with uncontested probate matters.

Queen's Bench Division**:** *Administrative Court*

The Administrative Court of the Queen's Bench Division hears judicial reviews, statutory appeals and application, application for *habeas corpus*, and applications under the Drug Trafficking Act 1984 and the Criminal Justice Act 1988. It also oversees the legality of decisions and actions of inferior courts and tribunals, local

authorities, Ministers of the Crown, and other public bodies and officials.

Queen's Bench Division*: *Admiralty Court

The Admiralty Court of the Queen's Bench Division deals with shipping and maritime disputes, including collisions, salvage, carriage of cargo, limitation, and mortgage disputes. The Court can arrest vessels and cargoes and sell them within the jurisdiction of England and Wales.

Queen's Bench Division*: *Commercial Court

The Commercial Court of the Queen's Bench Division deals with cases arising from national and international business disputes, including international trade, banking, commodities, and arbitration disputes.

Queen's Bench Division*: *Mercantile Court

The Mercantile Court of the Queen's Bench Division deals with national and international business disputes that involve claims of lesser value and complexity than those heard by the Commercial Court.

Queen's Bench Division*: *Technology and Construction Court

The Technology and Construction Court of the Queen's Bench Division is a specialist court that deals principally with technology and construction disputes that involve issues or questions which are technically complex, and with cases where a trial by a specialist TCC judge is desirable.

County Courts

The County Courts deal with all except the most complicated and the most simple civil cases (including most matters under the value of £5000), such as claims for repayment of debts, breach of contract involving goods or property, personal injury, family issues (including adoption and divorce), housing issues (including recovery of mortgage and rent arrears, and re-possession), and enforcement of previous County Court judgments. Cases are heard by a judge, without a jury. Decisions of the County Courts may be appealed to the appropriate Division of the High Court.

Crown Court

The Crown Court deals with indictable criminal cases that have been transferred from the Magistrates' Courts, including hearing of serious criminal cases (such as murder, rape and robbery), cases sent for sentencing, and appeals. Cases are heard by a judge and a jury. Decisions of the Crown Court may be appealed to the Criminal Division of the Court of Appeal.

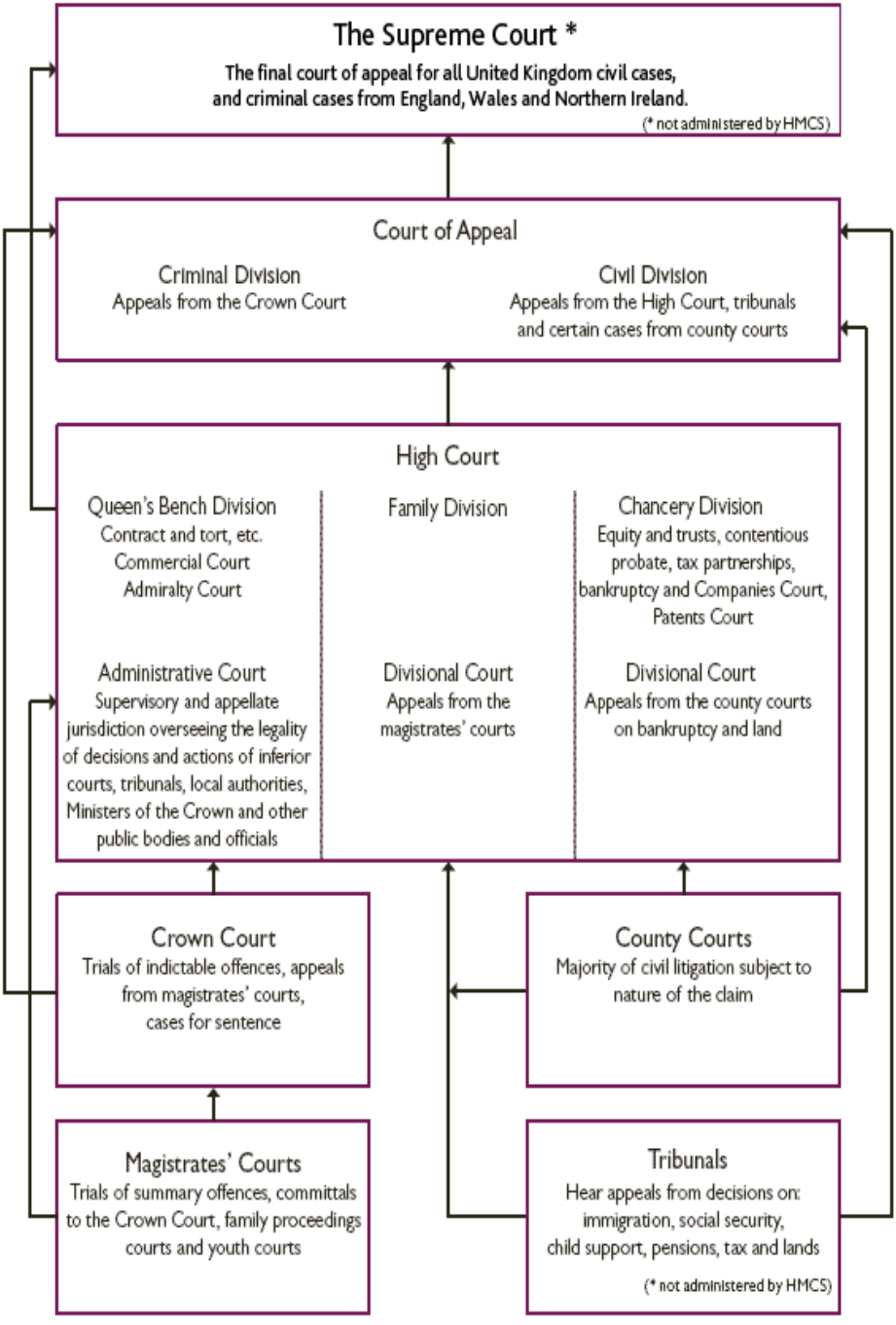
Magistrates' Courts

The Magistrates' Courts deal with summary criminal cases and committals to the Crown Court, with simple civil cases including family proceedings courts and youth courts, and with licensing of betting, gaming and liquor. Cases are normally heard by either a panel of 3 magistrates or by a District Judge, without a jury. Criminal decisions of the Magistrates' Courts may be appealed to the Crown Court. Civil decisions may be appealed to the County Courts.

Tribunals Service

The Tribunals Service makes decisions on matters including asylum, immigration, criminal injuries compensation, social security, education, employment, child support, pensions, tax and lands. Decisions of the Tribunals Service may be appealed to the appropriate Division of the High Court.

Court Structure of Her Majesty's Courts Service (HMCS)


The Supreme Court *
The final court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland.
(* not administered by HMCS)
Court of Appeal
Criminal Division
Appeals from the Crown Court
Civil Division
Appeals from the High Court, tribunals and certain cases from county courts
High Court
Queen's Bench Division
Contract and tort, etc.
Commercial Court
Admiralty Court
Family Division
Chancery Division
Equity and trusts, contentious probate, tax partnerships, bankruptcy and Companies Court, Patents Court
Administrative Court
Supervisory and appellate jurisdiction overseeing the legality of decisions and actions of inferior courts, tribunals, local authorities, Ministers of the Crown and other public bodies and officials
Divisional Court
Appeals from the magistrates' courts
Divisional Court
Appeals from the county courts on bankruptcy and land
Crown Court
Trials of indictable offences, appeals from magistrates' courts, cases for sentence
County Courts
Majority of civil litigation subject to nature of the claim
Magistrates' Courts
Trials of summary offences, committals to the Crown Court, family proceedings courts and youth courts
Tribunals
Hear appeals from decisions on: immigration, social security, child support, pensions, tax and lands
(* not administered by HMCS)

Vocabulary

High Court of Justiciary Высший уголовный суд Шотландии

to pass off *зд.* выносить решение, приговор

Inner House of the Court of Session Внутренняя палата (вторая инстанция) сессионного суда Шотландии

Privy Council Тайный совет; **Judicial Committee of the Privy Council** судебный комитет Тайного совета (орган, при участии и с согласия которого король решал дела, не проходящие через Парламент. При Тюдорах и у первых Стюартов был основным институтом управления. В настоящее время сохраняет формальные полномочия по выпуску королевских прокламаций и приказов. Члены кабинета министров автоматически становятся членами Совета. Возглавляет его лорд Председатель Совета.)

High Court Высокий суд

Chancery Division Канцелярское отделение (суд первой инстанции)

Companies Court Судебная палата для юридических лиц (при Регистрационной палате)

Divisional Court апелляционное присутствие отделения королевской скамьи (Высокого суда правосудия)

Patents Court суд по патентным делам

Family Court суд по делам семьи

Administrative Court административный суд

Admiralty Court адмиралтейский/ морской суд

Commercial Court коммерческий суд

Mercantile Court торговое право

Technology and Construction Court суд, призванный дать толкование документам

County Court суд графства

Crown Court Суд короны, Уголовный суд присяжных

Magistrates' Court магистратский/ мировой суд (магистрат – должностное лицо, осуществляющее правосудие)

Tribunal трибунал; суд; орган правосудия

LESSON 3. KINDS OF LAW IN THE UNITED STATES

Text 1. Law in the United States

There are 51 legal systems in the United States: the federal system and a separate system in each of the 50 states. Although these systems are mainly similar, they also have important differences. The basic reason for these differences is that each of the 13 original states was previously sovereign (independent).

The US law consists of the following:

1 The Constitution of the United States and of 50 states, and *charters* or constitutions for cities and counties;

2 The statutes enacted by elected representatives;

3 Administrative law;

4 Case law, as expressed in court decisions.

These four types of law are each created by federal and state governments. Local governments generally create only statutory and administrative laws.

1. Constitutional Law

Constitutions are the supreme sources of law. The federal Constitution of the United States is said to be “the supreme law of the land”. This means that any state law – including a part of a state constitution – is void to the extent that it conflicts with the federal Constitution.

The Supreme Court of the US is the final interpreter of the federal Constitution and each state supreme court is the final authority on the meaning of its state constitution.

The federal and state constitutions allocate powers:

1 Between the people and their governments,

2 Between state governments and the federal government,

3 Among the branches of the government.

The federal Constitution is the main instrument for *allocating powers* between persons and their governments. It does this with its first ten amendments to the constitution, called the Bill of Rights, which protect citizens from certain acts of their governments.

The federal Constitution allocates governmental powers to the federal government and certain other powers to the state governments.

State and federal constitutions allocate governmental powers among the three branches of government: the executive, the legislative, and the judicial. Constitutions do this to create a *system of checks and balances* among the branches so that no branch of government becomes too powerful.

2. Statutory Law

The Congress of the United States and federal legislatures are composed of elected representatives of the people. Acting on behalf of their citizens, these legislatures may enact new statutes.

All state legislatures have *delegated* some of their legislative *authority* to locale governments. Thus, towns, cities, and counties can legislate in their own geographic areas on matters over which the state has given them authority. This legislation is created by town or city council or by a county board or county commission. Legislation of this type is usually called an *ordinance* rather than a statute.

3. Administrative Law

The federal, state, and local legislatures all create administrative agencies.

Although they are created by legislatures, *administrative agencies* are usually operated by the executive branch of the government. Thus, the President, governor, or mayor will supervise the agency's activities. For example, the US Congress created the *Internal Revenue Service* (*IRS*) (an agency) and directed that the President appoint and supervise the staff of the agency.

The *rules* and *regulations* established by an administrative agency generally have the force of law. Like statutes, the regulations can be reviewed by courts to determine whether they are constitutional. In addition, the courts may *invalidate* a rule or regulation if it is beyond the scope of powers delegated by the legislature.

4. Case Law

Case law is created by the judicial branches of governments. Each state creates case law through its state courts. Similarly, federal courts establish federal case law. Case law is usually made after a trial has concluded and one of the parties has appealed the case. This may result in a review of parts of the trial by a higher court – a process called *appellate review.* When the appellate court publishes

its opinion on a case, that opinion may state, and thereby create, new case law.

The effectiveness of case law arises out of the doctrine of ***stare decisis*** *(Lat.*) according to which once case law is established, it must be followed by lower courts in other similar cases. *Stare decisis* generally does not strictly bind appellate courts because they can overturn their own case law when justified by new conditions or better understanding of the issues.

Vocabulary

statute статут, законодательный акт парламента

ordinance указ, декрет, постановление

to enact a law принимать закон; вводить закон

authority власть, полномочие

rules and regulations правила и нормативы

administrative agency правительственные учреждения

to invalidate лишать законной силы

void недействительный; не имеющий юридической силы

to allocate распределять

system of checks and balances система сдержек и противовесов

Statutory Law статутное право (право, выраженное в законах, «писаный закон»)

Case Law прецедентное право

stare decisis *букв.* «стоять на решенном» “to abide by, or adhere to decided cases”

to bind обязывать, связывать, ограничивать

issue предмет тяжбы

to delegate передавать (полномочия), поручать

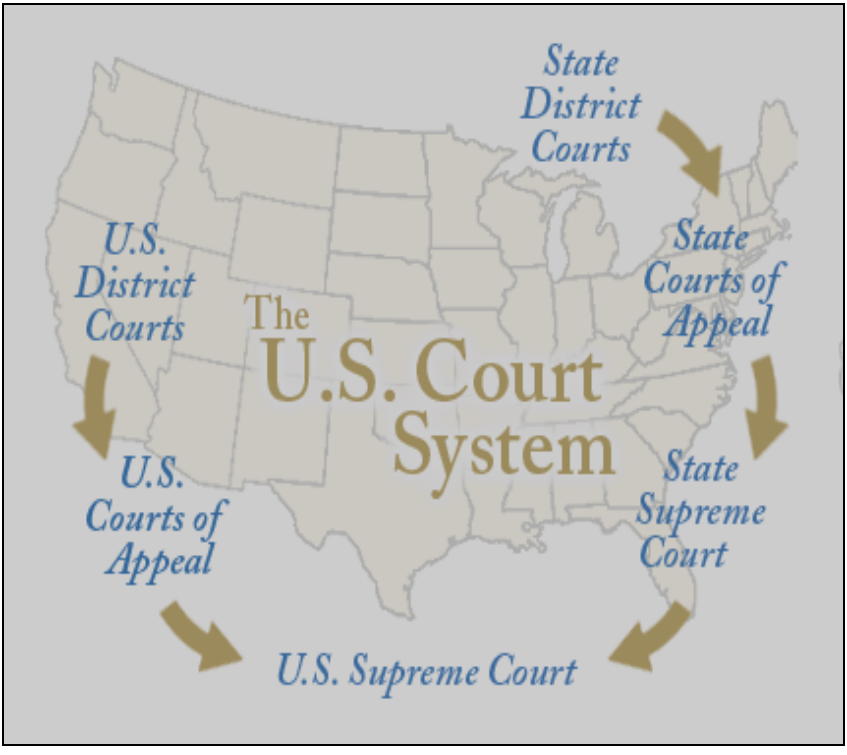
to overturn опровергать, отменять

IRS Internal Revenue Service налоговая служба/ инспекция

Text 2. An Overview of the Court System in the United States

The justice system in the United States is one of the most unique in the world. It consists of two separate levels of courts, state and federal, that can peacefully co-exist under the *concept of* federalism. The type of court that a *case is tried in* depends on the

Judges in the federal courts are appointed for life by the President. This allows the President to have a major impact on how laws will be analyzed and implemented by the courts.



U.S. District Courts

Almost all federal cases are initially heard in a district court. Each state has at least one district court; the larger states have more than one. The President appoints district court judges to life terms, as he does with the judges in the appellate courts and the justices on the Supreme Court. A case in a district court may be decided by a jury or solely by the appointed judge and can be appealed to the Court of Appeals for that circuit. In courts where the appointed judge makes the decision, his or her ruling, as with all federal judgeships, can have an enormous impact on the interpretation of federal law.

U.S. Courts of Appeal

The U.S. Courts of Appeal or appellate courts are organized into twelve circuits. Each circuit presides over cases from several states. For example, the Court of Appeals for the Fourth Circuit in Richmond hears cases from Maryland, Virginia, West Virginia, North Carolina, and South Carolina.

Usually, each case heard by a Court of Appeals is decided by a panel of three judges. The appellate court judges are appointed for life by the President, like the district courts and the Supreme Court. A final appeal can be made to the Supreme Court from the appellate courts. However, since the Supreme Court only hears a small number of cases, most decisions by the courts of appeal are final. Additionally, those decisions must be followed by all district courts in that circuit.

The U.S. Supreme Court

The Supreme Court hears appeals from the appellate courts and also from state supreme courts when the matter concerns a federal law or the Constitution. The justices of the Supreme Court choose cases based on the controversy of the issue and the need for a Supreme Court interpretation.

Significance of the Federal Court System

Since only a fraction of the cases heard in the district courts and appellate courts are ultimately heard in front of the Supreme Court, the lower court judges are the final arbiters of most judicial matters. While these decisions are not binding on courts outside of their jurisdiction, their opinions are considered persuasive and often set trends that other district courts and circuits follow.

Additionally, the Supreme Court will often make the final decision on a case to resolve differences between the different appellate courts and district courts to ensure that federal laws are interpreted consistently throughout the country.

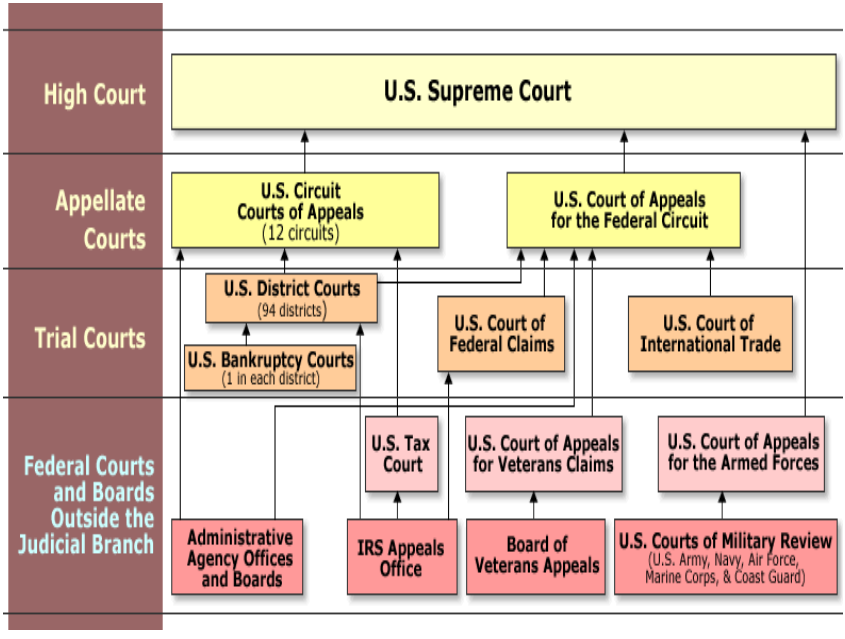
Types of Courts

There are several types of courts. The federal and state court systems consist of two levels of courts: Trial courts and Appellate courts. Cases are tried in trial courts. Appellate courts review the decisions of the trial courts.

The federal court system is divided into 13 judicial circuits. Eleven of the circuits are numbered. Each of the numbered circuits contains more than one state. The Ninth Circuit, for example, covers California, Oregon, Washington, Idaho, Nevada, Arizona, Alaska, and Hawaii. The 12th and 13th circuits are the District of Columbia Circuit and the Federal Circuit. The Federal Circuit handles appeals in patent cases and Claims Court cases.

Each federal circuit has one appellate court. These courts are known as Courts of Appeals or Circuit Courts. The Supreme Court reviews the decisions of the Courts of Appeals.

Each federal circuit is divided into judicial districts. A district can be as small as one city or as large as an entire state. The trial courts are known as the United States District Courts.



The image graphically describes the structure of the United States Judicial System. Keep in mind that this is the federal side of the system. Each of the 50 states then has its own structure as well. Most of them are similar to the basic structure of the federal courts,

i.e., trial courts at the bottom, an appellate level, then the state supreme court.

Vocabulary

to try a case рассматривать, расследовать дело

malicious intent злоумышленное, предумышленное намерение

negligence небрежность, халатность

trial court суд первой инстанции

Superior Court/ Supreme Court Trial Division Высший суд (промежуточная судебная инстанция в ряде штатов США между судебными учреждениями первой инстанции и Верховным судом штата)

Court of Appeals/ Supreme Court Appellate Division апелляционный суд

Writ [rit] **of Certiorari** приказ об истребовании дела (из производства нижестоящего суда в вышестоящий суд)

brief краткое письменное изложение дела с привлечением фактов и документов, представляемое адвокатом в суд

circuit court окружной суд

district court районный суд

bad (*call*) ненадлежащий, юридический необоснованный

to remand [rə'ma:nd] отсылать (дело) на доследование, возвращать в первоначальную инстанцию

bench trial судебный процесс без присяжных

court of equity суд системы «права справедливости»

police court полицейский суд, суд по делам о расследуемых полицией мелких преступлениях

probate ['prəʊb(e)it] суд по делам о наследстве

Court of Claims претензионный суд

Bankruptcy Court суд по делам о банкротстве

Court of International Trade федеральный суд по вопросам международной торговли

Tax Court налоговый суд

Court of Appeals for Veterans Claims претензионный суд по делам участников войны и бывших военнослужащих

Court of Appeals for the Armed Forces кассационный военный суд

Administrative Agency Offices and Boards правительственные учреждения (комиссии, ведомства, бюро, канцелярии)

IRS (Internal Revenue Service) Appeals Office апелляционная комиссия при налоговой инспекции/ службе

Board of Veterans Appeals кассационное управление по делам участников войны и бывших военнослужащих

Court of Military Review военный апелляционный суд

LESSON 4. BUSINESS LAW

Text 1. Business Law and a Contract

Business law (also known as Commercial law) covers rules that apply to business situations and transactions. Business law is largely concerned with civil law, especially with contracts. Some business law applies to torts (private wrongs against individuals, distinct from breaches of contract). For example, a tort may occur when a manufacturer makes a defective product that injures a user. Criminal law sometimes governs business-related activities, too. For example, criminal law would punish a firm that conspires with competitors to fix prices or an employee who steals company tools.

A contract is an agreement, which is enforced by law. This agreement normally results from an exchange of promises. For a contract to arise, the offerer (one who makes the offer) must make a definite offer, and the offeree (one to whom the offer is made) must accept the offer exactly as presented. Of course, the parties may negotiate additional details or the offeree may even reject the offer by demanding, for example, a lower price or earlier completion. In this case a counteroffer arises. Without both an offer and acceptance, there is no agreement. No particular language need be used. The intent of the parties is the important thing.

Vocabulary

transaction [trænz’ækʃən] сделка, операция

tort деликт, гражданское правонарушение

to enforce обеспечивать соблюдение/ исполнение; обеспечивать санкцией; принудительно осуществлять/ взыскивать в судебном порядке

private wrongs частные правонарушения

to negotiate договариваться (с кем-л. – with); обсуждать условия

offer оферта (предложение одного лица другому, сообщающее о желании заключить с ним договор)

offerer оферент (лицо, делающее предложение заключить с ним договор)

offeree адресат оферты (лицо, которому делают предложение заключить с ним договор)

counteroffer контрпредложение (ответ на предложение. содержащий новые условия и прекращающий первоначальное предложение)

acceptance акцепт, акцептирование (согласие, принятие)

Text 2. The Requirements of an Offer

An offer is a proposal by an offerer to do or not to do some specified thing in the future, provided the offeree agrees with stated terms (conditions). If the offeree accepts the proposal, a contract arises. Generally, to be an offer, a proposal must be:

1) intended to create a legal obligation;
2) definite;
3) communicated to the offeree.

1. An Offer Must Be Intended to Create a Legal Obligation

The offerer must intend to create a legal obligation if the proposal is accepted. People often make agreements that no one considers legally enforceable. For example, if two friends make a date to go to the movies, no contract is intended or formed. If either breaks the date, the other may be offended but cannot sue. There is no legal remedy (legal means to enforce the right). That is because social invitations are not intended to create legal obligations.

Before making a contract, parties will often discuss it. The parties often bargain to reach mutually acceptable terms. Sometimes one party may state tentative terms, inviting other parties to make offers. Advertisements in newspapers and magazines, on radio or TV, or in catalogues or direct mailings are generally invitations to others to make offers. They are not offers themselves. A person who advertises something for sale cannot be expected to sell to the thousands who theoretically might reply to the advertisement.

Perhaps the seller has only a limited number of items. However, most business firms attempt to deliver merchandise as advertised to all who want to buy.

Sometimes an advertisement is worded to give a reader reasonable cause to believe it is an offer rather than an invitation to make an offer. This is true in ads, which promise to pay a reward for a lost pet or jewel. It is also true in direct-mail advertisements sent to one or just a few prospects. For example, someone trying to sell a very expensive yacht mails a promotional letter to ten prospects. The letter describes the yacht and offers it for a stated price to the first person whose acceptance is received on or before a stated date. This letter would be an offer.

If a statement sounds like an offer but simply is a joke, the words cannot be transformed into a contract by acceptance. The person to whom the statement was made should realize that no offer was intended.

2. An Offer Must Be Definite

If a proposal is vague or incomplete, a court will not enforce it. The terms must be definite enough to allow the court (1) to determine what was intended by the parties and (2) to fix their legal rights and duties.

There are, however, some important exceptions to the requirement of definiteness. For example, medical, dental, and legal fees are often set after the work is completed. Many workers are employed on a payday basis; the actual length of employment remains uncertain. In contracts between merchants, when either the price or the credit and delivery terms are not specified, current market prices and trade customs may be used to provide such details.

In business, producers sometimes agree to sell their entire output to a single buyer during a specified period. Sometimes buyers agree to purchase all of certain materials they may need during a given period from a single supplier. In both cases, the actual amounts remain uncertain until the contracts are performed. The parties must act in good faith as to quantities delivered or demanded.

3. An Offer Must be Communicated to the Offeree

Example: Julia absentmindedly left her bag on the steps of her higher school. There was a pocket computer and other valuables in

it. After class she posted an ad on three boards/ offering $15 to anyone who would return her bag. Ms. Lehman, a teacher, who hadn't seen the ad, found the bag and returned it. Is she entitled to the reward? – No, she is not.

A person cannot accept an offer without knowing about it. That is because any action taken would not have been a response to the offer. Thus an offer that is made to certain persons or even to the general public cannot be accepted by someone who has never seen or heard of the offer. In such cases, the offerer may get what was sought, but most courts require that anyone who claims the prize or reward must have known of the offer and acted in response to it when performing the requested act.

Vocabulary

legal obligation правовая/ юридическая обязанность

vague нечеткий

legal remedy судебная защита

to bargain торговаться о цене; договариваться; вести переговоры

fee гонорар, плата

tentative пробный, экспериментальный

terms условия соглашения

merchandise товары

prospect потенциальный клиент

reward вознаграждение

act in good faith действовать добросовестно

output продукция

Text 3. How an Offer Is Ended

Once made, an offer does not last for ever. If it is not accepted, it ends without any contract arising:

1) at a prescribed time, if so stated in the offer;

2) at the end of a reasonable length of time if the offer does not state how long it will remain open;

3) by rejection of the offer by the offeree;

4) if the offeree makes a counteroffer;

5) if it is revoked (withdrawn) or modified by the offerer before the offeree accepts it;

6) by the death or insanity of the offerer or offeree.

1. An Offer Ends at the Time Stated in the Offer

In making an offer, the offerer may state how and when the offer must be accepted.

2. If the Offer Does Not State How Long It Will Remain Open, It Terminates at the End of a Reasonable Length of Time

What is a reasonable length of time depends upon all the surrounding circumstances. If, for example, Mr. Farmen offers to sell a truckload of blueberries, and his offer has not been accepted within an hour or possibly within minutes, it probably would terminate automatically. That is because blueberries are perishable produce, which must be marketed quickly.

In contrast, the offer to sell a truck, expensive, durable equipment, would not terminate until a longer time had elapsed, at least several days. Purchase of a truck would involve a long-term investment of funds. There would be only a limited number of prospective buyers in the immediate local market.

3. An Offer Ends If the Offeree Rejects It

If the offeree clearly rejects the offer, the offer is terminated. This occurs even if a time limit set by the offerer has not expired.

4. An Offer Ends If the Offeree Makes a Counteroffer

Generally an offeree who accepts an offer must accept it exactly as made. If the offeree changes the offer's terms in any important way, the result is a counteroffer. In making a counteroffer, the offeree says in legal effect, "I refuse your offer; here is my counteroffer." The original offer cannot be accepted by the offeree after a counteroffer has been made unless the original offer is renewed by the offerer. Thus, a counteroffer not only terminates the original offer, but also immediately becomes a new offer.

5. An Offer Is Usually Ended If It Is Revoked or Modified by the Offerer Before the Offeree Has Accepted It

Originally, an offer can be revoked or modified by the offerer at any time before it has been accepted. This is true even if the offerer said the offer would remain open for a definite longer time.

The right to withdraw an offer before it is accepted is known as *the right of revocation*. A modification or revocation is not effective until it is communicated to the offeree or received at the offeree's

mailing address. Until then, the offeree is free to accept the offer as originally made.

6. An Offer Is Terminated by the Death or Insanity of the Offerer or Offeree

Contracts are agreements voluntarily entered into by the parties and subject to their control. Death or insanity obviously eliminates such control. Therefore the law acts for these parties when they can no longer act and terminates their offers.

Vocabulary

to reject отвергать, отклонять, отводить, отказываться; **rejection** отказ; неприятие, отклонение

to revoke отменять (предложение), **revocation of offer** отзыв оферты

in legal effect с точки зрения закона

insanity 1) умопомешательство, душевная болезнь; 2) невменяемость

perishable скоропортящийся

durable equipment оборудование длительного пользования

long-term долгосрочный

to terminate кончать(ся), завершать(ся)

to expire закончиться, истечь (о сроках)

Text 4. How an Offer Can Be Kept Open

Generally an offerer is not obliged to keep an offer open for a specified time even if such a promise is made. The offeree has given nothing in exchange for the promise. However, if the offeree gives the offerer something of value (money) in return for a promise to keep the offer open, this *undertaking agreement* itself is a *binding contract.* It is called *an option*. The offer may not be withdrawn during the period of the option.

The offerer keeps the amount paid for an option. Usually, if the offer is accepted within the time allowed, the money paid for the option is applied to the purchase price. However, this must be agreed to in advance.

Statutes provide that a firm offer cannot be revoked within the stated period. A firm offer is *a binding offer* stating in writing how

long it is to be held open. Merchants selling or buying goods usually agree in a signed writing to keep an offer open for a definite time (not more than three months).

Vocabulary

option залоговый договор/ залог

firm offer твердая оферта

undertaking (agreement) принятая обязанность, обязательство, договоренность

underlying agreement основное соглашение

in a signed writing в письменной форме с подписями

binding offer/ contract оферта/ контракт, обязывающее обе стороны

Text 5. The Requirements of an Acceptance

Acceptance occurs when a party to whom an offer has been made agrees to the proposal or does what is proposed. To create an enforceable agreement, acceptance must be:

1) made only by the person or persons to whom the offer was made;
2) unconditional, and identical in terms with the offer;
3) communicated to the offerer.

1. An Acceptance Can Be Made Only by the Person(s) to Whom the Offer Was Made

An offer can be made to a particular group or to the public and not to an individual. For example, an offer of a reward may be made to the general public. Any member of the general public, who knows of the offer, may accept it by doing whatever the offer requires.

2. The Acceptance Must Be Unconditional and Identical with the Offer

The offerer may specify precisely when and how the acceptance is to be made. To complete the agreement, the offeree must then comply with such terms. Any change by the offeree in important terms of the offer results in a counteroffer. This is so even if the result would be more advantageous to the offerer. A counteroffer terminates the original offer.

Suggestions as to routine details of carrying out the contract, or other unimportant matters, do not kill the offer and affect the acceptance.

3. The Acceptance Must Be Communicated

An acceptance must be more than a mental decision. It must be communicated. Moreover, one is not obliged to reply to offers made by others. The offerer generally may not express an offer so that silence would appear to be acceptance.

Sometimes, in a continuing relationship, the parties may agree that silence is to be regarded as acceptance. For example, a food market may have a standing order to have a wholesaler ship a certain amount of fresh produce every day unless the retailer breaks the silence with some notice.

In certain transactions, only one of the parties makes a promise. Such transaction is called a *unilateral contract*. The offerer promises something in return for the performance of a certain act by the offeree. When the act requires substantial time and resources, sometimes the offer cannot be revoked until an offeree who has begun performance has had a reasonable amount of time to complete it.

In most cases, the agreement is a bilateral contract where both parties make promises. For example, a dog owner promises to pay someone $10 an hour to look for a lost dog. The fee is due for the time spent looking for the dog even if it is not found. Bilateral contracts require that the offeree make and communicate the requested promise to the offerer. Until this is done, there is no agreement.

An acceptance may be communicated orally, in person or by telephone. Or it may be communicated in writing and sent by mail or telegraph. The offerer may state which method the offeree is to use.

Vocabulary

standing order постоянный заказ

unilateral/ bilateral/ multilateral (contract) односторонний/ двусторонний/ многосторонний (о контракте)

to be due быть должным

Text 6. The Effect of Acceptance

A valid acceptance of a valid offer results in a contract – an agreement enforceable at law. A valid contract is legally effective and enforceable in court.

A void agreement (also called invalid) cannot be enforced in court by either party. It has no legal force or effect.

Under certain circumstances, only one of the parties has the power to compel legal enforcement. If that party chooses otherwise, or decides to withdraw from the transaction, then the contract will not be enforced. Such an agreement is a voidable contract. For example, when one party persuades the other to contract by means of fraud, as by saying a used car is new, the contract is voidable by the buyer.

The difference between a void agreement and a voidable contract is important. A voidable contract can be enforced or avoided by the injured party or by a legally incompetent party, such as a minor. A void agreement, on the other hand, cannot be enforced by either party. A valid contract sometimes becomes an unenforceable contract because the time limit for filing suit to enforce it has passed or because the defendant has gone bankrupt and a judgment against the person cannot be collected.

Vocabulary

valid contract законный контракт

void agreement недействительное соглашение

voidable contract контракт, который может быть аннулирован одной из сторон

to compel legal enforcement принудить в соответствии с законом

enforceable contract контракт, имеющий исковую силу, который может быть принудительно осуществлен в судебном порядке

unenforceable contract законный контракт, который не может быть принудительно осуществлен в судебном порядке

to collect востребовать

Translate into Russian

Reviewing Important Points

1. A contract is a legally enforceable agreement between two or more parties. It results from a valid offer and acceptance.

2. There can be no contract without mutual agreement.

3. Generally all persons who can understand the nature of a contract and its consequences have the capacity to contract. Such persons are said to be legally competent.

4. Minors, insane persons, seriously intoxicated persons, convicts, and aliens lack full capacity to contract.

5. An offer must be (a) made with the offerer's apparent intention to be bound by it, (b) definite, and (c) communicated to the offeree.

6. If not accepted, an offer is ended (a) at the time stated, (b) at the end of a reasonable time if no time is sated, (c) by rejection, (d) by counteroffer, (e) by the offerer's revocation or (f) by death or insanity of either of the parties.

7. Generally the offeree must accept the offer unconditionally and in the exact form and manner indicated by the offerer.

8. An acceptance must be communicated to the offerer. If it is sent by mail or wire, it is effective at the time it is properly sent unless the offerer specifies that it had to be received to be effective.

9. Agreements that are enforceable by the courts are valid contracts. Those that are not enforceable only by either party are void agreements. Contracts enforceable only by the injured or specially protected incompetent party are voidable at such party's option. Unenforceable contracts are those that are valid but cannot be enforced.

LESSON 5. LEGALITY OF AGREEMENTS

Text 1. Consideration

A contract is usually an agreement in which, in effect, one party says to another, "if you do this for me, I shall do that for you." Consideration is the promise or action that one person (the promisor) gives in exchange for the promise or action of another person (the promise).

Consideration may consist of some right or benefit to one party – the promisor, or some duty or detriment (cost) to the other party – the promisee. Thus consideration may consist of forbearance – that

is, refraining from doing what one has the right to do. Frequently, in simple “fender-bender” accidents, the guilty party pays the innocent party in return for a promise not to sue. Often the payment is made by the wrongdoer’s insurance company. The victim’s forbearance is consideration for the wrongdoer’s payment.

The consideration required to make a promise enforceable may consist of:

1) a return promise;
2) an act other than a promise;
3) forbearance;
4) a change in a legal relation of the parties;
5) money;
6) property.

Consideration is required to make a valid, enforceable contract. It must be mutual (also called *reciprocal*). This means that each party must give consideration, and each must receive consideration. The presence or absence of consideration is one test of whether a contract has been made. If no consideration is given and received by one of the parties, there may be a moral duty to keep the promise made. However, there is no legal obligation.

A gift is a voluntary transfer of the ownership of property without receiving consideration in return. Property actually transferred by gift cannot be recovered by the donor. The one who received the property by gift has *good title* or *ownership*.

Consideration is presumed to exist in contracts under seal. A seal may be any of the following:

1) an impression on the document;
2) a paper or wax affixed to the document (perhaps inscribed with a design);
3) the word “Seal” or the letters “L.S.” (an abbreviation for the Latin words meaning “place of the seal”) on the document.

Seals were used long ago when few people could read or write. Such persons who wished to bind themselves to some agreement would affix their seals to the writings. The seal was often a very elaborate wax impression. Sometimes a colorful ribbon was attached. These formalities indicated that the parties intended to be bound. Therefore the old Common law courts did not demand proof that

both parties had given and had received consideration. Today, however, the seal is not a substitute for consideration. The seal is still used, but it neither adds to nor takes away from the validity of the contract.

Consideration will be presumed if the promise is made by a merchant, is in writing, and is signed.

Vocabulary

consideration возмещение; встречное удовлетворение

promisor должник по договору (лицо, дающее обещание или обязательство)

promisee кредитор по договору (лицо, которому дают обещание)

return promise ответное обещание

forbearance воздержание от действия; отказ от принятия мер

benefit выгода; польза

donor [‘dəʊnə] даритель

seal печать

validity законность

detriment убыток

under seal с приложением печати

fender-bender accident мелкое ДТП

to presume предполагать, допускать; считать доказанным

elaborate [i’læbərit] тщательно, детально разработанный; искусно сделанный

to refrain воздерживаться

good title законный титул собственности

ownership право собственности

Text 2. Illegal Agreements

What makes an agreement illegal?

Even when parties are competent to form a binding agreement, they are not free to make any contract they want. Thus, for a contract to be valid, its formation, purpose, and performance must be legal. This means that the agreement must not be contrary to law.

Illegal agreements are generally unenforceable. Indeed, in some cases, one or both parties to an illegal agreement may be arrested and tried as criminals.

What types of agreements are illegal?

Agreements which are illegal and therefore void and unenforceable include the following:

1. Agreements That Obstruct Legal Procedures

Agreements that obstruct legal procedures are those, which delay or block the achievement of justice. Examples of such illegal agreements are:

a) promises by witnesses to give false testimony or not to testify at all;

b) promises to give jurors something of value to influence their votes;

c) payment of more than the regular fee to ordinary witnesses. Expert witnesses may legally charge their customary professional fees, which are high enough.

An example of an agreement that obstructs justice is compounding a crime. It involves accepting money or property in exchange for a promise not to prosecute or not to inform on one who has committed a crime. If the injured party independently and voluntarily decides not to press criminal charges against a criminal, then the criminal makes *restitution* by restoring the stolen property or its value to the owner.

2. Agreements That Affect Marriage Negatively

The family is the basic unit in society. Therefore agreements that violate the freedom and security of marriage are illegal. Such agreements are contrary to public policy, which encourages family life. An agreement in which one person promises not to marry is void. Likewise, an agreement in which a person promises to get a divorce is void.

3. Agreements to Commit Crimes or Torts

Any agreement to commit a crime or a tort is illegal. It would be foolish for the law to prohibit crimes and torts yet enforce agreements to commit such acts.

4. Agreements to Waive Certain Legal Rights

A *waiver* is the voluntary and intentional giving up of a legal right. Although many rights may be waived, some may not, such as the right to workers' minimum wages. Law forbids agreements to pay less than legally prescribed minimum wages. Workers injured on the job must be given necessary medical care without charge, as well as financial help. A person may not waive such a right.

5. Agreements Made Without a Required Competency License

Persons in specified occupations and businesses have a license or permit. Physicians, teaches, lawyers, plumbers, electricians, real estate brokers, insurance agents, and building contractors are among such persons. Licensing laws attempt to prevent incompetent and dishonest persons from harming the public. In any event, no agreement made by or with a person who lacks the required competency license may be enforced by the unlicensed person.

6. Agreements That Are Unconscionable

A court may find that a contract or a clause of a contract is unconscionable – that is, grossly unfair and oppressive. An unconscionable contract or contract clause offends an honest person's conscience and sense of justice. The terms need not be criminal nor violate a statute, but simply unethical.

Contracts of adhesion are more likely to be unconscionable. This is so because in such contracts one of the parties dictates all the important terms and the weaker party must take it as offered or not contract.

If a court decides that a clause of a contract is unconscionable, it may:

a) refuse to enforce the contract;

b) enforce the contract without the unconscionable clause;

c) limit the clause's application so that the contract is no longer unfair.

The law is not designed to relieve a person of a bad bargain. One may still be legally bound by the purchase of overpriced, poor quality, or unneeded goods.

7. Agreements to Pay Usurious Interest

Lenders of money may not charge more than a specified maximum rate of interest. This rate varies among the states from 12 percent to 18 percent a year that are common maximums.

The exact rate of interest agreed upon by borrower and lender in a particular loan is the contract rate of interest. This rate may not legally exceed the maximum rate. Lending money at a rate higher than the maximum rate is usury. The penalty for usury is generally that the lender cannot collect some or all of the interest, but the borrower must still repay the principal.

Sometimes a person borrows money for which interest is charged but no exact rate is stated. The rate to be paid is the legal rate of interest, which is specified by state statute.

Usury laws generally do not apply to the *carrying charges* added to the price of goods sold on credit. This is because the debtor is buying goods and not borrowing money. However, a minority of states regulate such charges as interest. They do this on the theory that the store – in effect – borrows money and relends it to the customer-debtor to finance the credit sale.

Many states permit licensed loan companies and pawnbrokers to charge a small loan rate of interest. This rate is typically 36 percent a year. The overhead cost per dollar loaned is high, and presumably the risk of loss from defaults is also high. This concession is made to protect people against criminal loan sharks, who illegally charge extremely high rates.

8. Agreements That Involve Illegal Gambling, Wagers, and Lotteries

Gambling is either forbidden or regulated by the state. Gambling involves an agreement with three elements: payment to participate; a chance to win, based on luck rather than on skill; and a prize for one or more winners. A wager, one of the most common forms of gambling, is a bet on any event which depends on chance or uncertainty.

Unless specifically permitted by law, the winners in illegal gambling agreements cannot enforce payment of their winning through court action.

9. Agreements That Restrain Trade Unreasonably

Agreements that unreasonably restrain trade are void. The economic system is based upon the concept of free and open competition, which benefits consumers by rewarding efficient producers. It seeks to ensure all business firms of an equal opportunity to trade. It tends to protect consumers in their search for quality goods at fair prices.

Vocabulary

legal procedures процессуальные нормы

unconscionable [Λn'konʃnəbl] **contract** недобросовестная сделка, незаконная сделка

waiver отказ (от права, требования)

compounding a crime соглашение о замене судебного преследования материальным вознаграждением

restitution возврат, возмещение убытков

building contractor строитель-подрядчик

contract clause пункт договора

contract of adhesion 1) договор на основе типовых условий; 2) договор присоединения

gambling азартная игра

concession уступка

(contract, legal) rate of interest (контрактная, легальная) процентная ставка

principal основная сумма

pawnbroker ростовщик; **loan shark** *разг.* ростовщик; **usury** ['ju:ʒʊri] ростовщичество

small loan rate of interest повышенная процентная ставка на небольшие займы

overhead costs накладные расходы

to benefit помогать, приносить пользу

carrying charge сумма, которую клиент платит при покупке в кредит

wager пари, ставка

Translate into Russian

Reviewing Important Points

1. The formation, purpose, and performance of an agreement must not be contrary to statutory or case law, contrary to public policy, or unconscionable.

2. Illegal agreements are usually void and therefore not enforceable by either party.

3. Among agreements which violate law or public policy and are therefore void and unenforceable are those which:

a) obstruct legal procedures;

b) injure public service;

c) threaten the freedom or security of marriage;

d) require committing a crime or tort;

e) waive certain legal rights;

f) are made without a required competency license;

g) involve payment of usurious interest.

LESSON 6. TYPES OF CONTRACTS

Text 1. Must Contract Be in Any Special Form?

Contracts may be oral or written. They may even be implied from conduct. Most contracts are oral. Many contracts are made by telephone. Some contracts are made and carried out in a single face-to-face conversation. For example, in the sale of goods, payment by buyer and delivery by seller often occur when the agreement is made. A person may take a job, rent an apartment, and enter many other business agreements without the formality of a written contract. Sometimes conduct alone is sufficient. For example, a person may stop a bus, board it, deposit the proper coins, and later get off. No words are spoken or written by either passenger or driver, yet there is a valid contract.

There are, however, certain important kinds of contracts which will not be enforced in court unless some properly signed writing proves their existence. For example, contracts to transfer an interest in real property (land or objects permanently attached to the land) must be in writing.

Even when a written contract is not required by law, it is often wise to put the agreement in writing and have a signed copy for each party. This is particularly true if the agreement is complex and contains many details, which could lead to later misunderstandings.

It is also important when large sums of money or long periods of time are involved. In such cases, it is advantageous for both parties to express their intentions with reasonable precision n written form. In this way, the agreement can be easily referred to or readily proved if necessary. The chance of later confusion or disagreement is greatly reduced. Neither party can effectively deny having agreed to particular terms. Also, the process of putting ideas into writing encourages the parties to anticipate and provide for problems that could arise later. It is usually easier to settle such matters before either party signs and while both parties are inclined to compromise in order to conclude the agreement. Later, each party tends to demand strict performance of the terms. To prepare or review important contracts one may seek the aid of a lawyer.

Text 2. Classification of Contracts

Contracts can be classified as either unilateral or bilateral, according to whether one or both parties make a promise. Contracts can be also classified according to enforceability *as valid, voidable* and *void* or *unenforceable.* The following classifications are also important:

1. Methods of Creation

The way a contract comes into being gives some ideas of its nature. Thus, there are *express contracts, implied contracts,* and *quasi contracts.*

Express contracts. In an express contract, the agreement is stated in words –written or spoken.

Implied contracts. In an implied contract, the agreement is not stated in words. Instead, the intent of the parties is shown by their conduct and by the surrounding circumstances. For example, a schoolboy buys some fruit juice in the high school cafeteria by inserting coins into a vending machine.

Quasi contracts. In a quasi contract, the parties are bound as though there were a valid contract even though technically there is none. For example, a doctor may voluntarily give first help to a person injured in an accident. There is no agreement. Yet a doctor may submit a bill and collect a charge reasonable for such a professional service. Thus, the law creates an obligation in an

absence of an actual agreement between the parties. This is done to prevent unjust enrichment of one party. Strictly speaking, no contract exists because some essential element is missing. Someone who is not a doctor could give similar first aid yet not be entitled to payment since the service is not done with the expectation of payment nor by licensed specialist.

2. Formality

A few contracts must meet strict requirements as to formality. They are called *formal contracts*. Most need not meet such requirements. They are called *simple contracts*.

Formal contracts. A formal contract is a written contract that must be in some special form to be enforceable. Examples are commercial papers and contracts under seal. Commercial papers, such as an ordinary check, must meet certain requirements to be valid. A *contract under seal* is one with a seal attached or with a similar impression made on the paper. Seals have always served to validate agreements.

Simple contracts. A contract that is not formal is a simple contract. This is true whether the contract is oral, written, or based on conduct.

An example of simple written contract

THIS AGREEMENT is made on May 10, 20___, between New Way Pavers, 17 Beacon Street, Boston, Massachusetts, and J. Clayton Jones, 742 Regent Circle, Brookline, Massachusetts.

New Way Pavers agrees to furnish all materials and to perform in a workmanlike manner all necessary labor required to remove present concrete walk in front of the residence at 742 Regent Circle from the building door to the public sidewalk; to replace the walk with red brick (of quality and grade as in sample) laid in a herringbone pattern, on a new concrete base 2,5"thick, in consideration for which Jones agrees to pay New Way Pavers or its assignee three thousand two hundred dollars ($3,200) upon completion of the work on or before August 10, 20___.

NEW WAY PAVERS
By *James G. Mason* *J. Clayton Jones*

3. Extent of performance

Contracts can be classified as either *executed* or *executory*, according to whether or not they have been completed. Many contracts are performed almost immediately; others require days, months, or years to complete. Many life insurance contracts are not completed for decades.

Executed contracts. An executed contract is one that has been fully performed. Both parties have done all they promised to do.

Executory contracts. An executory contract is one that has not been fully performed. Something as agreed upon remains to be done by one or both of the parties.

Vocabulary

real property недвижимость

assignee 1) правопреемник; 2) цессионарий; 3) уполномоченный; агент; назначенное лицо

valid contract законный контракт

voidable contract оспоримый договор

void contract недействительный договор

express contract положительно выраженный договор

contract under seal договор за печатью

implied contract договор на основе конклюдентных действий; подразумеваемый договор

quasi contract [ˈkwa:zi] частичный контракт

formal contract оформленный договор; формальный договор

simple contract простой договор, договор не в форме документа за печатью, неформальный договор

executed contract договор с исполнением в момент заключения

executory contract договор с исполнением в будущем

Text 3. The Statute of Frauds

An important purpose of business law is to protect and assist persons in their business dealings. One such way is to create awareness that certain types of agreements be evidenced by a signed writing in order to be enforceable. A writing is a more reliable proof of an executory agreement than is oral testimony based on memory.

Also, a writing is not affected by the death or absence of witnesses. In addition, a writing helps to prevent dishonest persons from intentionally misrepresenting the facts and it prevents honest but forgetful persons from innocently doing so.

Years ago, injustices arising from the failure of memory or from intentional misrepresentations were frequently found in cases involving certain kinds of important oral contracts. Sometimes parties would lie under oath – although *perjury* is a crime, it was difficult to prove. The Statute of Frauds and Perjuries required that certain agreements be in writing and be signed by the party against whom the contract was to be enforced in court: the defendant in the action. Now the name *statute of frauds* is used to designate statutes, which require more certain contracts to be evidenced by a signed writing in order to be enforceable in court.

Thus, you should always get the other party's signature on important contracts. Note that sometimes one party will wisely postpone signing to gain more time to think about the deal.

The statute of frauds does not prevent the voluntary performance of oral agreements that should have been in writing. It has no effect on oral agreements which have been fully performed. After all, contracts subject to the statute are not illegal if oral; they are simply not enforceable. Courts will not enforce oral contracts when the statute of frauds requires that they be in writing.

Vocabulary

dealings деловые отношения

Statute of Frauds закон, требующий, чтобы контракт имел письменную форму с подписью ответчика

perjury лжесвидетельство

voluntary performance добровольное исполнение

to misrepresent искажать

to postpone откладывать

Text 4. What Contracts Are Subject to the Statute of Frauds

To be enforceable under the Statute of Frauds, six important types of executory contracts must be in writing and signed by the party against whom the contract is to be enforced. As an alternative, the contract must be provable by some other writing, such as a letter

signed by such party. Obviously, since either party might later want to sue the other in case of breach, good business practice calls for both parties to sign.

Contracts subject to the Statute of Frauds include those to:

1) buy and sell goods for a price of $500 or more;
2) buy and sell real property or any interest in real property;
3) do something that cannot be performed within a year;
4) pay the debt or answer for a legal obligation of another person;
5) give something of value in return for a promise of marriage;
6) be personally liable for a debt of an estate of someone who has died.

1. A Contract for the Sale of Goods for $500 or More

To be enforceable, a contract for the sale of goods (tangible personal property) for $500 or more would usually have to be a signed writing or a signed agreement. The writing would need to be signed by the person against whom enforcement was sought.

2. A Contract to Sell or a Sale of Any Interest in Real Property

The transfer, or promise to transfer, of any interest in real property must be in writing to be enforceable. (Real property includes land, buildings, and other things permanently attached to land; personal property includes all other property.)

Thus, there should be written evidence of contracts to transfer title to the entire property. Leases also come under this classification. However, most states have special statutes which provide that oral leases for a period of one year or less are enforceable. In some states, an agreement authorizing or employing an agent to buy or sell land must also be in writing.

As an exception to the general rule, a court will enforce the oral contract if the buyer has also done all of the following:

a) made partial payment;
b) occupied or possessed the land;
c) made substantial improvements to the land.

3. A Contract That Cannot Be Performed Within One Year After Being Made

A contract which cannot be performed within a year from the time it is made will not be enforced by courts unless there is a signed writing or a signed memorandum of the agreement. The year is figured from the time the contract is made, not from the time performance is to begin.

This time provision does not apply to the agreement that can be executed within a year. This is true even if such agreements are not actually carried out within that time. The test is not whether the agreement is actually performed within a year but whether there is a possibility of performance within a year. For example, two persons shake hands and orally agree to be business partners. But they don't say for how long. Because either partner may legally quit within a year, their agreement need not be in writing. On the other hand, their partnership could last indefinitely.

Because the agreement was for an indefinite time, either partner could withdraw at any time, "at will", without liability to the other for breach of contract. Of course, it is always wise to prepare a contract to form a partnership very carefully and to put it in writing. That is because of the complexity of a partnership as well as the amount of money and potentially long time involved.

4. A Contract to Pay a Debt or Answer for the Legal Obligation to Another Person

One provision of the Statute of Frauds requires a writing for a promise to answer for the debt or default of another person.

Sometimes a third party is liable under an oral promise to pay another's debt, but only if the payment serves the promisor's own financial interest. Thus, a buyer of a house under construction wants to see it completed. He orally promises to pay a lumberyard for continuation of supplies when the general constructor falls behind in payments. The home buyer is legally bound, even though the constructor remains primarily liable.

5. A Contract for Which the Consideration Is Marriage

A writing is required for agreements in which marriage is the consideration for a promise to pay money or to give valuable consideration to the offeree or to some third party if the offeree marries as requested. It is sometimes made by a parent of the woman

or man *contemplating* marriage. It does not refer to mutual promises of persons to marry.

In some US states, mutual promises to marry are enforceable. But the trend is to ban such suits for damages. Generally, however, if the man breaches his promise to marry, the woman may keep the engagement ring. If the woman breaches, the ring must be returned. Ordinary gifts from one another need not be returned.

6. A Contract by an Executor or Administrator to Be Personally Liable for Claims Against the Estate of a Deceased Person

An executor (called *executrix* if female) is one named in a will to settle affairs of a deceased person. The executor pays the debts and distributes the rest of the estate according to the terms of the will. If there is no will, the court appoints an *administrator* (*administratrix*) to do the necessary work. The court also appoints someone if the will doesn't name an executor. Such personal representatives are not personally liable for debts of the deceased person unless they expressly agree in a signed writing to pay.

Vocabulary

provision условие договора

tangible personal property личное материальное имущество

to hold *зд.* обязывать

legally bound юридически обязанный

lease наем недвижимости, аренда, жилищный наем; сдавать/ брать в наем

to fall behind (in) задерживать

to owe быть должным

probate [ˈprəʊb(e)it] официальное утверждение завещания судом

deceased person умершее лицо

executor душеприказчик, исполнитель завещания

title правовой титул; правооснование; документ в правовом статусе

to contemplate ставить целью, иметь намерением

engagement ring обручальное кольцо

administrator попечитель над наследным имуществом, администратор наследства

Here are some meanings of the word ***hold:***

1) держать, владеть;
2) признавать, решать, выносить решение (о суде);
3) обязывать;
4) проводить (заседание, собрание, конференцию, выборы);
5) занимать (должность);
6) иметь силу; оставаться в силе.

Memorize the following word combinations:

to hold sb to his promise настаивать на выполнении кем-либо своего обещания

1) **to hold a brief** вести дело в суде в качестве адвоката;
2) **to hold a consultation** совещаться;
3) **to hold a session** проводить заседание;
4) **to hold against** обвинять;
5) **to hold an appointment** занимать должность;
6) **to hold office** занимать пост (должность);
7) **to hold to terms** настаивать на выполнении условий;
8) **to hold up** поддерживаться;
9) **to hold with** соглашаться;
10) **holder of estate** владелец недвижимости;
11) **to hold land** владеть землей;
12) **to hold** решать (о суде).

Text 5. The Type of Writing Required in Contracts

Usually *memorandum* (памятная записка, меморандум) satisfies the writing requirement of the Statute of Frauds for evidence of an agreement. Usually any words that clearly state the important terms of the agreement suffice. Note, however, that the memorandum is enforceable only against those who have signed it.

The memorandum need not be in any special form. Nor does it have to be a single writing. A series of writings, such as an exchange of letters or telegrams, is sufficient if it includes all

essential terms. Also, the later writings must refer to earlier writings in such a way that they are clearly part of the same agreement. The memorandum (memo) may be printed, typed, or written with pen and pencil. The signature may be written, stamped, engraved, or printed. It may consist of any mark that is intended as a signature. An adequate memo includes the following items:

1) date and place of the contract;
2) names of the parties;
3) all material terms of the agreement. These usually include the subject matter, price, and any special conditions, such as the time or method of delivery or terms of payment;

4 the signature of the party against whom the contract is to be enforced. This signature may be by an agent authorized to sign.

These items do not need to be in any particular order. If custom or business usage is well established, some items may be excluded. For example, such items as terms of payment and delivery, even price, are often omitted from orders for goods.

Text 6. The Parol Evidence Rule

The parol evidence rule applies whenever parties put their agreement in writing, whether or not a writing is required under the Statute of Frauds. With certain exceptions, under the parol evidence rule the writing itself is the only evidence allowed in court to prove the terms of a written contract if the writing appears to be the complete agreement between the parties.

The parol evidence rule bars evidence of prior or contemporaneous (made at the same time) oral or written agreement related to the written contract being disputed if these agreements were not mentioned or included in the written contract. Under the rule, such evidence is generally not allowed to add to, subtract from, or otherwise change the written contract. The court presumes that when the parties had their agreement to writing, they included all essential terms and intended to exclude all previous agreements. Accordingly, the written contract is held to be the only evidence of their intent.

In the interests of justice, however, the trial judge will sometimes permit parol evidence to be introduced to prove certain

things. These include mistake, fraud, illegality, custom and trade usage, clerical errors, and the meaning of terms. Also, when a contract is obviously ambiguous, parol evidence may be used to clarify terms to determine the true intent of the parties. Such evidence does not change the writing. Instead, it explains the meaning of the writing or shows that there never was any enforceable contract.

Vocabulary

to allege [ə'led3] заявлять, утверждать

trade usage узанс, торговое обыкновение

parol evidence rule правило, исключающее устные доказательства, изменяющие или дополняющие соглашение

ambiguous неясный, двусмысленный

contemporaneous [kən'tempə'reinjʊəs] одновременный

clerical error канцелярская ошибка

to bar исключать, не допускать, запрещать

Text 7. How to Interpret Written Contracts

Even when the parties put their contract in writing, something in the contract may not be quite clear or may require interpretation. This is frequently the case when standardized, printed order blanks are used. It also occurs when printed contract forms with blank spaces are used. In the completion of the forms, some contradictory terms may be added. Moreover, words do not always have the same meaning to different persons. One person may use a term that seems perfectly clear but which may mean something quite different to another party.

Annually, in millions of transactions, consumers buy, borrow, and lease goods and services. Usually the consumers are asked to accept and sign a printed form that is a contract of adhesion. These are contracts, such as *credit purchases* and *life insurance policies*, prepared by the stronger party with the help of their lawyers to favour their own interests. Generally such contracts are not subject to modification; the consumer must "take it or leave it".

Thus in disputes over the meaning of the language in such contracts, courts favour the party who did not prepare the document. Another helpful development is the requirement by statute that the

language of consumer contracts be clear, simple, and understandable to the average person.

Generally courts seek to determine and to enforce the intent of the parties by applying the following rules of interpretation to written contracts:

1. The Writing Is to Be Considered as a Single, Whole Document

Each clause is interpreted in the light of all other provisions of the contract. Words are interpreted as they are ordinarily used unless circumstances indicate a different meaning. Legal and other technical terms or abbreviations are given their technical meaning unless the contract as a whole shows that a different meaning is intended.

2. Where a Printed Form Is Used, Added Typed Provisions Will Prevail over Contradictory Printed Provisions, and Added Handwritten Ones Will Prevail over both Printed and Typed Ones

An individual's typing *supersedes* (replaces) printing because it presumably represents that person's most recent intentions. Similarly, handwriting prevails over both printing and typing.

It is, nevertheless, good preventive law practice to have both parties initial all changes and to do this on all copies of the contract.

3. If Words and Figures Are Inconsistent, the Words Will Prevail

One is less likely to make a mistake in writing out a number in words than writing it in figures. Thus, words prevail over figures.

Vocabulary

to supersede [ˌsju:pəˈsi:d] отменять, заменять собой
provision положение, условие (договора)
life insurance policy полис страхования жизни
typing впечатанное в готовую форму/ бланк
inconsistent противоречивый
validity действительность, законность
to initial подписывать инициалами, ставить инициалы
to prevail преобладать
contingency случайность, случай; непредвиденное обстоятельство

Read and translate into Russian

When You Enter a Contract

1. If a contract is complex or involves much time or money, put it in writing when not required by Statute of Frauds. Be sure the words are understandable. Cover all important contingencies, and clearly reflect your intensions. When appropriate, consult a qualified lawyer.

2. If a prepared contract is presented to you for signature, read it carefully, especially if it is a contract of adhesion.

3. Insist on definition and explanation of any terms of the contract which you do not understand. Make necessary changes, or reject the entire contract.

4. Make sure that all changes are written into the contract on all copies as well as on the original, and that all changes are initialed by both parties.

5. Be sure your entire agreement is included in the writing. The parol evidence rule may bar evidence of all prior and contemporaneous oral or written agreements.

6. When any payments have been made in cash, be sure to get a receipt if payment is not acknowledged in the contract. (If payments are made by check, indicate the purpose on the face of the check. The canceled check will serve as your receipt.)

Reviewing Important Points

1. Unless required by law, contracts need not be in writing.

2. An express contract is stated in words, written or spoken. An implied contract is shown by conduct of the parties and by surrounding circumstances.

3. A formal contract must be in some special, written form. All contracts which are not formal contracts are simple contracts.

4. An executory contract has not been fully performed. An executed contract has been completed by both parties.

5. A quasi contract exists when some element of a valid contract is missing, yet the arrangement is enforced as if it were a contract. This is done to prevent unjust enrichment of one party.

6. To be enforceable, the following contracts must be in writing (or evidenced by some other written proof) and signed by the party against whom enforcement is sought:

a) contracts to buy and sell goods for a price of $500 or more;

b) contracts to buy and sell real property or any interest in real property;

c) contracts that cannot be performed within one year after being made;

d) contracts to pay a debt or answer for a legal obligation of another person;

e) contracts having marriage as the consideration;

f) contracts of an executor or administrator to be personally liable for the debts of an estate.

7. A memorandum of an agreement need not be in any special form. However, it must contain all the material facts and must be signed by the party against whom the contract is to be enforced.

8. The terms of a written contract may not be changed by parol evidence unless the writing is clearly ambiguous. Parol evidence may also be used to show that a written agreement is not binding because of mistake, fraud, or illegality.

LESSON 7. VOID OR VOIDABLE AGREEMENTS

Text 1. What Makes an Agreement Void or Voidable

A valid (legally effective) offer and acceptance generally result in an enforceable contract. However, sometimes the agreement may be void or voidable because one of the parties lacked capacity to contract or failed to give consideration. The contract also may be void or voidable because one of the parties failed to genuinely assent to the agreement. *Genuine assent* exists when consent is not clouded by fraud, duress, undue influence, or mistake. Generally, if genuine assent is lacking, the victim may cancel or *disaffirm* the contract.

Disaffirmance is a refusal to carry out or comply with the terms of a voidable contract, without any liability to pay damages. Disaffirmance is permitted in certain cases when the offer and acceptance were not given freely and voluntarily in a spirit of honesty and fairness. If a court decides that a person who used reasonable care and judgment was nevertheless deceived or misled

about an important fact, that person may disaffirm (or avoid) the contract. A person who was compelled to enter into a contract against his or her free will may also disaffirm.

Vocabulary

void недействительный, не имеющий силы

voidable 1) могущий быть аннулированным; 2) оспоримый

to assent дать согласие, соглашаться

consent согласие

genuine assent подлинное согласие

fraud обман; мошенничество, жульничество

duress [djʊəˈres] принуждение, давление

to disaffirm аннулировать, расторгать (соглашение)

disaffirmance отмена, взятие обратно согласия; отказ в подтверждении

to comply with the terms выполнить условия

to compel заставлять, вынуждать, принуждать

to mislead вводить в заблуждение

to deceive обманывать, вводить в заблуждение

Text 2. Fraud

The basis of fraud is false representation or concealment of a material fact. However, not every misrepresentation or concealment is a fraud. All of the following elements must be present for fraud to exist:

1. The False Representation or Concealment of a Present or Past Fact Must Be Deliberate

Fraud results from deliberate lies. It also results from deliberate concealment of unfavourable facts which otherwise could be noticed by a reasonable person. Generally neither seller nor buyer is obliged to reveal all good or bad facts about the subject matter of the contract. Courts would have trouble trying to define what must be known and disclosed in every case. Moreover, buyers are free to ask questions as they investigate before they buy. The seller must answer the questions honestly. If the seller refuses to answer a question, the buyer need not enter the contract. In addition, the seller must not give false information or act to prevent the other party from learning important facts.

To constitute fraud, the misrepresentation or concealment must be deliberate. Normally silence is not blameworthy. But sometimes fraud arises when the party has a duty to speak yet does not. For example, honesty requires a seller to tell about a concealed defect not readily discoverable by a buyer.

If a seller innocently misrepresents a material fact, the buyer may avoid the contract or collect compensatory damages for the injury suffered. However, no tort has been committed, so the buyer is not entitled to *punitive damages*. On the other hand, one may not claim fraud when the means were available for determining the truth, as by simply reading a paper before signing.

The false representation or concealment must be of a present or past fact. This does not include opinions of value or predictions. For example, if someone tells you that a certain article "will pay for itself", "is a bargain", "is the best on the market", or "is a super value", you have no legal right to rely upon such remarks. They are usually no more than statements of personal opinion (personal belief or judgment), not statements of fact. Opinions, which prove to be wrong, normally do not constitute fraud.

2. The Misrepresented or Concealed Fact Must Be Material

To be fraudulent, a statement must be a false representation or concealment of a present or past material fact. A fact is material, regardless of its apparent importance, if it influences the other person's decision to enter into the agreement. Misrepresentation or concealment of such a fact usually means that the person who was misled would not have entered into the contract if he or she had known the truth.

3. The Person Who Makes the False Representation Must Know It to Be False or Make It Recklessly without Regard to Its Truth

Fraud clearly exists when a person deliberately makes a false statement or conceals a material fact. Fraud also exists if a person makes a statement of fact rashly, without determining its truth or falsity. This is especially true if that person should know the facts.

4. The Misrepresentation Must Be Made with the Intention of Influencing the Other Person to Act upon It

For a statement to be fraudulent, the person making the statement must intend that it be relied upon and acted upon. Generally the false statement is made directly to the intended victim. However, this is not essential. A person may tell something with the intent that the statement will be passed on to another, whose conduct is to be influenced.

Text 3. The Rights of the Defrauded Party

Contracts entered into as a result of fraud are voidable by injured party. Thus, a defrauded party may *repudiate* (disaffirm) the agreement. Normally when one decides to disaffirm a contract, anything that has been received must be returned. A deceived party who has performed part of the contract may recover what has been paid or given under its terms.

If sued on the contract, the defrauded party can plead fraud as a defense. In either case, the victim may sue in tort and collect damages caused by the fraud.

A defrauded person may choose not to disaffirm but instead to ratify the agreement. Either party may then enforce it. However, a defrauded party who decides to ratify an agreement may seek *reimbursement* (financial compensation) for any loss suffered.

Vocabulary

prospect предполагаемый клиент
insolvent неплатежеспособный
deliberate намеренный, предумышленный
fraudulent обманный; мошеннический
defrauded обманутый; потерпевший от мошенничества
concealment сокрытие
to induce побуждать; склонять
to cancel [‘kænsl] аннулировать, отменять; отказываться
reckless опрометчивый
disregard пренебрежение, игнорирование
blameworthy заслуживающий порицания
to disaffirm (cancel) a contract расторгать договор
to ratify утверждать, ратифицировать
to repudiate отказываться от соглашения
reimbursement возмещение, компенсация
to plead fraud ссылаться на обман

Text 4. Duress, Undue Influence and the Effect of Mistake

An agreement is said to be made under duress if one person compels another to enter into it through *coercion* (threat of force or an act of violence) or by *illegal imprisonment* (unlawful arrest or detention). The victim in such cases has been denied the *exercise of free will.* Therefore he or she may disaffirm the resulting contract.

The threatened or actual violence may be to the life, liberty, or property of (1) the victim, (2) the victim's immediate family, or (3) the victim's near relatives.

A person usually is not guilty of duress when the act or threat is to do something the person has a legal right to do. Thus, to persuade another to contract under threat of a justifiable civil lawsuit is permissible. To threaten to have another arrested if the contract is not signed would be duress and possibly criminal coercion.

Undue influence occurs when one party overpowers the free will of the other, taking unfair advantage to get the other to make a contract that is unfavourable.

It is more likely to be present when a relationship of trust, confidence, or authority exists between two parties. Thus, undue influence is presumed to exist in unfavourable contracts between attorney and client, husband and wife, parent and child, guardian and ward, physician and patient. When a contract is made as a result of undue influence, the contract is voidable by the victim.

A charge of undue influence can be overcome by proving that the contract is fair and benefits both parties. To forestall a claim on undue influence, the stronger party should act with honesty, fully disclose all important facts, and insist that the other party talk to independent counsel before contracting.

Normally the relations between a landlord and a tenant would not involve undue influence.

When there is *a unilateral mistake*, one of the parties has an incorrect idea about the facts of a contract. Such a mistake generally does not affect the validity and enforceability of the contract.

Frequently a party to a contract has erroneous expectations of high profits. For example, suppose a building contractor bids to do a job for $10,000. Actual cost runs up to $12,000. The mistaken contractor suffers the loss. This is the unilateral mistake.

Failure to read a contract before signing, or a hurried or careless reading of it, may also result in assuming obligations that a person had no intention to do. In making contracts, persons are ordinarily bound by what they outwardly do and say, regardless of what they may inwardly think, understand, or intend. The resulting unilateral mistakes generally do not affect the contract. However, if the mistake was recognized but not disclosed by one party alone, who apparently hoped to gain an advantage by remaining silent, courts may grant relief by declaring the agreement void.

When there is a *mutual mistake* (also called *a bilateral mistake*) of material fact, both parties are wrong about some important facts. In such a case, either party may disaffirm.

Vocabulary

violence насилие

coercion[kəʊ'z:ʃn] принуждение, насилие, применение силы

to be denied the exercise of free will быть лишенным свободы выбора

undue influence чрезмерное влияние

guardian опекун

ward опекаемый; подопечный

to forestall предотвращать

counsel адвокат

unilateral/ multilateral mistake одностороннее/ обоюдное заблуждение

bilateral mistake одинаковая ошибка, допущенная обеими сторонами, не сговариваясь, касающаяся содержания контракта. В этом случае контракт может либо признаваться недействительным, либо его условия переформулируются.

to assume obligations принимать обязательства

Translate into Russian

Reviewing Important Points

1. An offer and its acceptance must be made with genuine assent.

2. Fraud exists when deliberate false representation or concealment of a material fact is intended to and does influence the action of another, causing injury. Contracts induced by fraud are voidable by the victim.

3. Duress consists of either coercion or illegal imprisonment, which induces the victim to make an unwanted contract. Such contracts are voidable by the victim.

4. Undue influence exists when one person, because of trust, confidence, or authority, uses an overpowering influence over another, depriving the victim of freedom of will in making a contract. The contract is voidable by the victim.

5. Generally a unilateral mistake of fact does not affect a validity of a contract.

6. Generally a mutual (bilateral) mistake of material fact (as to identity or existence of the subject matter) makes the agreement void. Sometimes, if the mistake concerns the applicable law, the contract may be valid.

LESSON 8. RIGHTS AND DUTIES UNDER A CONTRACT

Text 1. Can Rights under a Contract Be Transferred?

Persons frequently have contractual rights, which they wish to transfer to others. Such a transfer of contractual rights is called *an assignment*. The party who makes the assignment is the *assignor*. The party to whom the assignment is made is the *assignee.*

Generally unless prohibited by statute or by the contract creating the right, a party may assign any rights to another, provided performance will not be *materially changed. Performance* is the fulfillment or accomplishment of the agreement. A right to collect a debt is assignable because performance remains the same after assignment.

Rights may not be assigned if doing so makes performance of the contract substantially more difficult. Rights which may not be transferred, include:

1) claims to damages for personal injuries;

2) rights to personal services especially of a skilled nature, and when personal trust and confidence are involved.

Assignment of contractual rights is usually made voluntarily by the assignor. Assignment may also occur automatically by operation of law, as when one of the contracting parties dies. Then the *decedent's* (deceased person's) rights are assigned to the executor or administrator of the estate. Assignment also occurs by operation of law when a trustee in bankruptcy receives title to a debtor's assets, including contractual claims against third persons.

Ordinarily, no particular form is required for an assignment. It may be oral or written. However, statutes sometimes require certain assignments to be in writing.

Text 2. Delegation of Duties under a Contract

Routine contractual duties may be delegated (turned over) to another party. However, a person cannot delegate to another any duty where performance requires unique personal skill or special qualifications.

A delegation of duties is not an assignment of the contract. The original party to the contract is till obligated and liable for proper performance even though someone else may actually do the work. Thus, a general contractor who agrees to build a house is responsible for providing the finished structure as promised. However, the general contractor almost always delegates most of the work to subcontractors. Subcontractors are specialists who lay foundations and do masonry, carpentry, plumbing, electrical, painting, and other work. The general contractor makes individual contracts with them and pays them as agreed. The subcontractors are responsible to the general contractor for proper performance. But the general contractor remains responsible to the buyer for the finished job. The general contractor, in a separate contract, may also assign to bank the right to collect all or a percentage of the purchase price from the buyer. This is often done even before construction has begun so that the general contractor can buy materials and pay for labour.

Sometimes a contracting party will both assign rights and delegate duties.

It is possible for the party entitled to receive performance under a contract to release the other party from the duty to perform

and to accept a substitute party. This is neither assignment nor delegation of duties. It is referred to as *a novation;* in effect, a new contract is formed.

Text 3. The Rights of an Assignee

Assignee receives exactly the same contractual rights and duties as the assignor – no more and no less.

To protect newly acquired rights, the assignee should promptly notify the obligator of an assignment. The *obligor* is the *debtor* – the one who owes the money or other obligation. This notification may be done orally or in writing. Until notified, the obligor has no reason to assume that the contractual obligations have been changed and may continue to pay the original creditor. After notification, however, the obligor is liable to the assignee for performance.

In making an assignment, the assignor does not promise to make good if the obligor fails to perform, unless this is specially required by the assignment. However, the assignor does guarantee that there is a right to assign, and that the assigned right is legally enforceable.

Vocabulary

to assign передавать (права, акции и т.п. в отличие от недвижимости) другому лицу

assignment (of a contract) передача права по контракту, переуступка контракта

assigner *BE* [ə'sainə], **assignor** *AmE* [æsi'no:r] *цедент*, сторона, передающая права по контракту

assignee [ˌæsai'ni:] *цессионарий*, правопреемник; уполномоченный, агент, назначенное лицо; сторона, которой передаются права по контракту

materially changed существенно изменены

performance (accomplishment) исполнение (соглашения)

to delegate (to turn over) duties передавать договорные обязательства другой стороне

novation *новация;* передача прав по обязательству (замена стороны, создающая новый контракт)

obligation обязательство

obligor [,obli'go:] лицо, принявшее на себя обязательство; должник; *дебитор*

obligee лицо, по отношению к которому принято обязательство; *кредитор*

decedent покойный

foundation фундамент

masonry ['meisnri] каменная кладка

carpentry плотничные работы

plumbing сантехнические работы

to make good выполнять

Text 4. Discharge of Contract

When a contract is made, the parties take on certain duties and obligations. Discharge of contract (termination of obligations) occurs when the parties perform the contract as promised. Or it occurs when the parties are released from their responsibilities by action of the other party or by law. Generally contracts are discharged by performance; most parties do perform as they have promised. Partial performance does not discharge the obligation.

Frequently, complex contracts are discharged by *substantial performance*. This occurs when there is only a minor modification or failure to fulfill all terms of the contract. The performance is incomplete but substantial.

An appropriate *allowance* is made in the price to cover the deviation. If the deviation is deliberate, the victim may treat it as a breach.

Failure to perform in accordance with the contractual terms is a *breach of contract*; this gives the other party the right to cancel. Sometimes a party who *defaults* (fails to perform) notifies the other party to a contract before the time of performance has arrived that he or she will not perform. This is called an anticipatory breach of contract. The victim may wait until the promised time of performance, or the victim may treat the default as a breach of contract and immediately sue for damages.

Breach of contract by one party may give the other party the right to treat his or her obligation as discharged or terminated. When

one party terminates a sales contract because of a breach of the other party, the word *cancellation* is used.

A contract that calls for payment in money requires payment of the exact amount on the specified date. The one to whom the money is owed need not accept anything else.

Frequently a check is given in payment of a debt that is payable in money. *Acceptance* of the check merely *suspends* the debt while the check is being processed in the banking system for *collection.* The debt is not discharged until the check is paid by the bank on which it was drawn.

When a contract states that performance must be completed on or before a specified date, and that "time is of essence", failure to perform by that date, is generally regarded as a breach of contract. However, if no loss is caused by a delay, time is not critical. In such cases, the "essence" clause may be ignored by the courts. When no precise date is specified, performance within a reasonable time suffices.

Vocabulary

discharge of contract прекращение договорных обязательств; исполнения договора

to suspend приостанавливать

allowance скидка

proceeding преследование судебным порядком

to default не выполнять своих обязательств (по контракту, соглашению, долгу)

acceptance 1) принятие, признание; 2) акцептирование, приемка (например, счета или векселя) к оплате

substantial performance исполнение всех существенных условий договора

breach of contract нарушение контракта

cancellation аннулирование; отмена

collection получение денег (по векселям); взыскание; инкассирование

anticipatory breach of contract нарушение договора до наступления срока исполнения

Text 5. Other Ways to Discharge Contract

In addition to discharge by complete or substantial performance, a contract may be discharged by:

1) agreement;
2) impossibility of performance;
3) operation of law.

1. By agreement

When the parties prepare their contracts, they may agree that it will terminate:

a) on a specified date or upon the expiration of a specified period of time;

b) upon the happening of a specified event;

c) upon the failure of a certain event to happen;

d) when one partner decides to retire from business and gives the required notice.

The parties who have made a contract may later mutually agree to change either the terms of the contract or the nature of their relationship. They may do so without any liability for breach.

By rescission the contracting parties may agree to terminate the existing contract entirely, returning any consideration received and placing the parties in their original positions. Or they may agree that the present contract is not what they want, and so they may replace it with a new one. This is *discharge by substitution.* The parties may also agree to change the obligation required by the original contract. An agreement to make such a change is known as an *accord.* Performance of the new obligation is called a *satisfaction.* A compromise of a disputed claim or a *composition* of creditors is an accord. Carrying out the new agreement is the satisfaction. Thus, the previous obligation is discharged by an *accord* and *satisfaction.* Also, a contract can be terminated, and a new one formed, through novation.

2. By Impossibility of Performance

As a general rule, a contract is not discharged when some unforeseen event makes performance more costly or difficult for one of the parties. For example, increased prices of needed supplies, a strike of needed workers, difficulty in obtaining materials or equipment, or some natural disaster such as a flood or earthquake

may delay performance. But, generally, these events do not discharge the contractual obligations; they should be *anticipated* as possibilities when the contract is made. A party who fails to perform because of these events could be held liable for breach of contract.

However, the parties may, and commonly do, include *"escape clause"* in the contract. It permits modification, or even termination of performance without liability for damages in the event of inability to perform on schedule because of specified conditions such as foul weather and labour strikes.

Under unusual circumstances a contract for goods may be discharged by conditions, which make performance impracticable. But a possibility not thought of by the parties, such as a surprise war or an unexpected *embargo* (legal stoppage of commerce) may suffice. Even a shutdown of major supply sources could discharge the contract if it prevented the seller from getting supplies or if it caused an extreme increase in cost beyond what could be reasonably anticipated.

Other situations in which a contract is discharged by impossibility include:

Destruction of the subject matter. Sometimes performance depends upon the continued existence of some specific thing. The destruction of that thing terminates the contract if the destruction was not the fault of the party who is sued for nonperformance.

The result of destruction of the subject matter is different if the seller has many sources of supply and the parties did not specify one and only one source as acceptable. For example, suppose a wholesale broker of lumber loses one supply source, perhaps because of a fire. However, the broker has access to other sources of lumber. In addition, the broker's contract does not specify any one source. Thus, the broker is required to perform at no higher price to the buyer. This is true even if the resulting cost is much higher to the broker.

Performance declared illegal. If a contract, which is legal when made, later becomes illegal, it is discharged. Illegality might be caused by a new statute, by a court ruling, or by an administrative decision.

Death or disability. If the contact requires personal services, the death or the disability of the party who was to provide such services terminates the agreement. This rule would not apply when other persons are available to perform, as in partnerships or corporations which continue to do business. Likewise, it would not apply where the contract simply called for payment of money, delivery of goods, or transfer of title to land by the decedent. In each such case, the decedent's personal representative is required to perform.

3. By Operation of Law

A contract may be discharged or the right to enforce it may be barred by operation of law. This happens when the promisor's debts are discharged in bankruptcy. It also happens when the *statute of limitations* has run (the time allowed by statute for enforcement of the contract has elapsed).

Alteration of a written agreement also usually discharges the agreement by operation of law. Alteration is a change in the terms of a contract without consent of the other party. To discharge the contract, the alteration must be:

a) material, thus changing the obligation in an important way;
b) made intentionally, and not by accident or mistake;
c) made by a party to the agreement, or by an authorized agent;
d) made without consent of he other party.

Vocabulary

rescission [ri'si3n] аннулирование, отмена, прекращение
substitution замена одного контракта другим
accord согласие изменить обязательства по контракту
composition компромиссное соглашение должника с кредиторами
satisfaction исполнение новых обязательств по контракту
accord and satisfaction соглашение о замене исполнения
escape clause пункт договора, предусматривающий отказ от взятого обязательства
good faith добросовестность
alteration изменение; внесение изменений
to hold liable обязывать

due подлежащий выплате
material существенный, важный
to draw выписывать (чек), выставлять (тратту)
clause пункт, статья, условие договора
to anticipate ожидать, предвидеть
impracticable невозможный, невыполнимый
court ruling судебное решение
conditional on payment при условии выплаты
statute of limitations закон об исковой давности
discount скидка
subject matter предмет обсуждения
authorized agent уполномоченный агент
to elapse проходить, истекать (о времени)
court action судебный иск

Translate into Russian

Reviewing Important Points

1. A party may generally assign rights under a contract as long as the performance will not thereby be materially changed. One is not released from contractual duties by making an assignment. Some duties may be delegated. They may not be delegated when they involve personal judgment or skill, as with artists and professional experts. When duties are delegated, the original party remains liable for proper performance.

2. An assignee acquires only such rights as the assignor has under the contract.

3. Until notification of assignment is received, the obligor is justified in believing that performance may still be properly made to the original contracting party.

4. Contracts are usually discharged by performance or by substantial performance.

5. A breach of contract generally permits the other party to regard his or her obligation to perform as discharged. The same is true in anticipatory breach of contract. In either case, the victim may seek relief in court.

6. Discharge by agreement of the parties may be accomplished by doing any of the following:

a) including provisions for termination in the contract;

b) rescinding the existing contract;

c) substituting a new contract;

d) replacing a party through novation;

e) making an accord and satisfaction.

7. Difficulty of performance or unforeseen high costs generally do not relieve a promisor of the obligation to perform. However, contractual duties may be discharged because of actual impossibilities when:

a) the subject matter is destroyed;

b) a change in the law makes performance illegal;

c) either party dies or becomes disabled, if the contract required the personal services of the individual.

8. The obligation of one party is discharged when a written contract is materially and intentionally altered by the other party without the consent of the former.

LESSON 9. RIGHTS UNDER A CONTRACT

Text 1. Who Has Rights under a Contract

In general, a person who benefits from something such as an insurance policy or other contract is called a *beneficiary*. Every person benefits directly from countless contracts executed by other people over the years. The machinery of agriculture and industry, the warehouses and stores of commerce, and the planes, trains, and ships of transport are the result of a mass of interrelated contracts. All persons who use these facilities or enjoy their products and services are incidental beneficiaries. An *incidental beneficiary* is the one who benefits from a contract (for example, from any of the underlying contracts), yet is not a party to the contract and may not enforce it.

As a general rule, only parties who have entered into a contract have *enforceable rights* under it. This is true even though other persons may gain some advantage by having the contract performed. There are two important exceptions to this rule:

1) most enforceable rights that arise under a contract can be transferred to a third person by assignment and can then be forced by that person;

2) when a contract is made with the primary intention of benefiting a third person, that person is entitled to enforce the agreement.

Contracts made specifically for the benefit of a third party can usually be enforced by that person. The third party beneficiary, then, is the one for whose benefit such a contract is made. Life insurance contracts are the most common form of third party beneficiary agreements. Parents, for example, in contracts with insurance companies, often name their children as beneficiaries.

Vocabulary

legal injury гражданский вред

insurance policy страховой полис

to benefit извлекать пользу; приносить пользу

incidental beneficiary [ˌbeni'fiʃəri] бенефициарий, выгодоприобретатель без осуществления прав (сторона, которая по условиям контракта не должна получать)

third party beneficiary побочный бенефициарий (третья сторона, не участник контракта, но получающая выгоду)

enforceable rights права, имеющие исковую силу

Text 2. Remedies the Injured Party Has

When one party to a contract refuses to perform or fails to perform properly, the other party suffers a legal injury. The injured party is entitled to be "made whole" and to get "the benefit of the bargain" as made. Accordingly, such a party may seek any one of several remedies for the breach. A *remedy* is the means to enforce a right or to compensate for an injury. Remedies vary with the type of contract and differ in effect or result.

Sometimes one party may not wish to enforce a contract or a provision in it. When one intentionally and voluntarily gives up a contractual right, the right is said to be *waived.* Reasons for waivers are many in number: the damages may be very limited; the victim may be glad to be free of any obligations; the legal cost of suing may be prohibitive; the outcome of a lawsuit may be too uncertain; or the defendant may be judgment-proof.

Remedies for breach of contract include the following:

1) rescission of the contract, either voluntarily or by court order;

2) cancellation of the contract (in cases of sales of goods);

3) recovery of monetary damages;

4) *specific performance* or an *injunction.*

1. The Injured Party Has the Right of Rescission

If one party breaches the contract by failure to perform, the other party may usually consider any obligation as discharged.

This remedy is the *right of rescission*. Each party returns any consideration received and gives credit for what cannot be returned. The entire contract must be rescind, not just a part of it. It may be done by voluntary agreement of the parties, or it may be done by court order at the request of the injured party. Neither party gets damages.

2. The Injured Party May Have the Right of Cancellation

Cancellation is a variation of rescission. It exists only for breach of contract for the sales of goods. The injured party – either buyer or seller – may cancel the contract and return consideration received.

When a breach of contract occurs, the injured party is entitled to be in the same position he or she would have been in if the contract had been performed. The parties frequently negotiate a settlement directly or with the help of their lawyers. If they do not reach a settlement, the injured party may sue to recover damages – money awarded by the court for loss or injury caused by incomplete performance or failure to perform.

However, the victim of the breach of contract is required to *mitigate* damages. This means that damages must be reduced by any means reasonable under the circumstances. For a victimized buyer it might require buying substitute goods elsewhere possible or getting someone else to perform the service. For an employee unfairly discharged, it could require promptly seeking and accepting similar employment elsewhere.

3. The Injured Party May Compel Specific Performance or Get an Injunction

Sometimes money damages are not an adequate remedy for breach of contract. Therefore a court may give the injured party a form of special relief termed specific performance. *Specific performance* is the actual completion of the agreement as promised. The court simply orders the defaulting party to perform as agreed.

Generally, money damages suffice as a remedy for breach of contract in cases involving the sale of personal property. The victim may use the money to buy similar property from someone else. If the property is unique, however, so that it cannot be obtained elsewhere, specific performance may be awarded. An example would be a rare work of art. This remedy is also generally available when the contract is for the sale of real property because every parcel of land is unique.

In some cases, when money damages or specific performance would not be appropriate, the court may order rescission or grant an injunction to prohibit specified acts.

Vocabulary

recovery of damages возмещение ущерба/ убытков

remedy средство судебной защиты

rescission [ri'si3n] аннулирование, ликвидация, отмена

to rescind [ri'sind] аннулировать, расторгать, отменять (договор)

cancellation аннулирование, отмена (при покупке товаров)

to mitigate уменьшать возмещение убытков

specific performance исполнение договора в натуре

injunction судебный запрет

waiver отказ от права, требования

judgment-proof не подчиняющийся судебному постановлению

Text 3. How Damages Are Measured

In awarding damages for breach of contract, the court tries to place the injured party in approximately the position that party would have been in, had the breach not occurred. The amount awarded as *compensatory damages* is usually determined by the extent of the injury. One party is not permitted to increase the damages by

continuing to perform the contract after notice of the other's breach or intention to cancel. The injured party is also required to mitigate damages if reasonably possible. Failure to perform a duty under a contract is a legal wrong. Therefore courts will award *nominal damages* – token amount awarded when rights have been violated, but there is no actual injury. This could happen when, after a breach, the plaintiff finds a satisfactory product at lower price. Nominal damages are granted in recognition of the rights that have been violated.

At the time of entering into a contract, the parties may agree upon an amount of money that, in case of default, is to be paid by the person who breaches. This sum is known as *liquidated damages.* This arrangement is common when actual damages would be difficult to prove. It is enforceable if the amount is reasonable. If damages are not reasonable, the court will not enforce the agreement but will award reasonable damages if proved.

Under certain circumstances, such as when a tort is involved in a breach of contract, the court will award *exemplary or punitive damages.* Such damages are awarded in addition to the actual damages. The purpose of exemplary or punitive damages is to punish and to make an example of the defendant. This could happen, for example, when a defendant seller defrauds a plaintiff buyer.

Vocabulary

arrangement соглашение

compensatory damages компенсаторные, реальные, фактические убытки

nominal damages номинально-символические убытки

token amount символическая сумма

liquidated damages заранее оцененные убытки

punitive damages [‘pju:nitiv] 1) штрафные убытки; 2) денежное возмещение в виде наказания ответчика для примера

to enforce a contract осуществлять, приводить в исполнение контракт

Translate into Russian

Reviewing Important Points

1. As a general rule, one who is not a party to a contract has no rights or duties under the contract. However, a third party beneficiary may enforce a contract made for such party's benefit. An assignee may also acquire rights or assume duties under another party's contract.

2. In case of a breach of contract, the injured party has various remedies. An injured party may: a) rescind or cancel the contract, b) recover the amount of loss through damages, and c) in certain cases, require specific performance.

3. After default, the injured party usually may recover the amount already spent in carrying out the obligations incurred as part of the contract. But the injured party should not increase the damages. Instead, the damages should be mitigated – that is, reduced if reasonably possible.

4. Generally a party to a contract has the option of breaching it. The courts will not punish such action by awarding punitive or exemplary damages unless a tort is involved. Rather, the court will award compensatory damages. Sometimes the court will award either liquidated or nominal damages.

5. When the legal remedy of damages is not adequate, the court may grant the equitable remedy of specific performance, or it may prohibit specified acts.

6. At the time of entering into a contract, the parties may agree to pay a specified, reasonable amount of damages if actual damages would be difficult to prove in case of default. Such damages are known as liquidated damages. The amount must not be so excessive that it would constitute a penalty.

LESSON 10. TYPES OF SALE

Text 1. A Sale

A sale is a contract in which *ownership* of (also known as *title* to) goods transfers immediately from the seller to the buyer for a price. Goods are *tangible*, movable, personal property, such as a jet pane, clothing, growing crops, or the unborn young of animals. By definition goods do not include the following:

1 money (except rare currency or rare coins);

2 intangible property (such as rights under a contract, which are transferred by assignment rather than by sale);

3 patents and copyrights;

4 real estate (although the transfer of title to real property is commonly called a sale, it is technically a conveyance).

A contract to sell is a contract in which ownership of goods is to transfer in a sale in the future. In both types of transactions, the seller is known as the *vendor*. The buyer is known as the *vendee* (also called the *purchaser*). The transaction involving a vendor and a vendee is called a "sale" by the seller and is called a "purchase" by a buyer. A sales contract may be made in any manner sufficient to show agreement, and the contract suffices if the parties by their actions recognize the existence of a contract.

The price for the goods may take the form of money, services, or other goods. However, when the parties to a sale exchange only goods for goods, without involving money or services, the sale is known as a *barter*.

Payment occurs when the buyer delivers the agreed price and the seller accepts. Receipt of goods means that the buyer takes physical possession or control of them. Receipt usually involves actual delivery. However, delivery may be *constructive,* as when one gets the keys to a car or receives a warehouse receipt for stored goods.

Acceptance of goods means that the buyer has agreed, by words or conduct, that the goods received are satisfactory. Acceptance is shown when the goods are used, resold, or otherwise treated as if they were owned by the buyer. Acceptance may also be indicated when a buyer fails to reject the goods within a reasonable time, if the buyer has had adequate opportunity to inspect them.

The price for goods is usually fixed in the contract. However, the parties may indicate that the price is to be set in a certain way at a later date. This method is especially used in long-term contracts when considerable instability of prices is expected. Ordinarily, when nothing is said about the price, a contract results if all other essentials are present, and provided the parties do not express a contrary intent. In such a case, the buyer is required to pay the price that is reasonable at the time of delivery.

In many situations, the contract is primarily for personal services. Such contracts are not sales because any goods supplied are merely *incidental.*

A *merchant* is a seller who deals *regularly* in a particular kind of goods or otherwise claims to have special knowledge or skill in a certain type of sales transaction. A *casual seller* is one who sells only occasionally and does not meet the definition of merchant. For example, you would be a casual seller if you sold your private automobile. A used-car dealer selling the same car would be a merchant.

Vocabulary

intangible property нематериальное имущество, «неосязаемое» имущество, имущество в правах

movable property движимое имущество

real estate недвижимое имущество, недвижимость

conveyance передача правового титула

acceptance of goods приемлемость товара для покупателя

to deal торговать

warehouse receipt квитанция на товар, принятый на хранение

vendor продавец

vendee покупатель

merchant 1) коммерсант; 2) оптовик

casual seller случайный продавец

constructive юридически подразумеваемый

incidental побочный, случайный

Text 2. Must Delivery and Payment Be Made Simultaneously?

In the basic *sales transaction,* payment, *delivery* (transfer of possession), and transfer of *title* take place simultaneously at the seller's place of business. Even if payment and delivery, or both, take place later, title still passes when the buyer selects and agrees to buy the goods in the seller's store. Thus, unless it is otherwise agreed or is the *custom of the trade,* the seller may retain the goods until the buyer makes payment in full. Similarly, the buyer may refuse to pay

the price until the seller delivers all the goods. The buyer is entitled to a receipt when payment is made.

A bill of sale is a receipt that serves as written evidence of the transfer of ownership of (title to) goods. Neither a bill of sale nor a sales contract need identify the parties or explain the terms of the transaction. If a bill of sale is signed by the seller, buyer, or both, it can satisfy the requirements of the Statute of Frauds for a signed writing.

When goods are lost, stolen, or destroyed, as in fire, the document can be used to help prove value for insurance purposes. If the owner borrows money and uses the goods as *security*, the bill of sale ensures the creditor that the debtor owns the goods pledged.

Most sellers may extend credit to qualified buyers. Retailers may sell to customers who use credit cards or bank accounts, or who pay by installments.

Vocabulary

delivery передача владения

title правовой титул, право собственности; **transfer of title** передача права собственности

bill of sale купчая

security обеспечение; гарантия; залог

pay by installments выплачивать частями

goods pledged заложенные вещи

custom of trade торговый обычай

Text 3. Other Types of Sales Transactions

1. Cash-and Carry Sales

When the buyer in a sales contract is a consumer who pays cash and takes immediate delivery, title passes to the buyer at the time of the transaction. This is the most common type of transactions when the goods are groceries or footwear. *Risk of loss* passes upon the buyer's receipt of the goods from a merchant.

The seller may insist on payment in *legal tender*. Checks are commonly used but are not legal tender. Acceptance of a check by the seller is not considered payment until the check is paid at the bank. But use of a check by a consumer does not affect the timing of the transfer of title or risk of loss.

2. Sales on Credit

The fact that a sale is made on credit does not affect the passing of title or risk of loss. A credit sale is simply a sale, which, by arrangement of the parties, calls for payment for the goods at a later date. Ownership and risk of loss may pass even though the time of payment or delivery is delayed.

3. COD Sale

Goods are often shipped COD, which means, "collect on delivery". The carrier collects the price and transportation charges upon delivery and transmits this amount to the seller. If the buyer does not pay, the goods are not delivered. Thus, in effect, the seller retains control over the possession of the goods until the price is paid. In a COD arrangement, the buyer loses the right otherwise available to inspect the goods before payment.

4. Sale or Return

When goods are delivered to a merchant buyer in a *sale or return*, the ownership and risk of loss pass to the buyer upon delivery. This is true whether the sale is made for cash or on credit. However, the buyer has a right to return the goods to the seller. Such a transaction is a true sale, but if the buyer returns the goods within the fixed or a reasonable amount of time, ownership and risk of loss pass back to the seller. The returned goods must be in their original condition.

5. Sale on Approval (Try &Buy)

Sometimes goods are delivered to the buyer in a *sale on approval*, "on trial", or "on satisfaction". In such a case prospective ownership and risk of loss do not pass until the prospective buyer approves of the goods. This may be done by words, by payment, by any conduct indicating approval, or by retention of the goods beyond a specified or reasonable time. While in possession of the goods, of course, the prospective buyer is liable for any damage to them caused by his or her negligence. Normally the prospective buyer may reject for any reason.

6. Auctions

An *auction* is a public *sale* to the highest bidder. When an auctioneer decides that no one will bid any higher for the goods on sale, the bidding is closed by letting the "hammer fall", or by another

appropriate signal. In doing so, the auctioneer accepts the bid on behalf of the owner of the goods, and ownership passes to the buyer at that time. Risk of loss passes whenever the auctioneer acknowledges the buyer's right to possess the goods.

Auction sales are "with reserve" unless specifically announced in advance to be "without reserve". "With reserve' means that if nothing to the contrary is stated in the conditions of the sale, an auctioneer may withdraw the goods anytime before announcing completion of the sale. If "without reserve", the goods must be sold to the person who makes the highest bid even if it is ridiculously low.

Vocabulary

legal tender законное платежное средство

COD продажа с оплатой при доставке

arrangement договоренность

cash-and-carry продажа за наличный расчет без доставки

sale on return соглашение, по которому торговец имеет право вернуть непроданные товары

sale on approval продажа с сохранением права покупателя отказаться от товара

bidder лицо, выступающее на торгах, покупщик

to bid 1) предлагать цену; 2) набавлять цену; **bid** предложенная цена (на аукционе); ставка (в пари); заявка (на торгах)

LESSON 11. CREDITS

Text 1. Debtors and Creditors and Laws Protecting Them

A debtor is a person or a business that owes money, goods, or services to another. Whatever is owed is generally called the debt. The *creditor* is the one to whom the debt is owed. A legally enforceable debt normally arises out of a contract where something of value has been exchanged for a promise to provide money, goods, or services.

During the Middle Ages, charging and interest on loans was illegal; today it is legal and borrowing is considered beneficial to growth and productivity. As a consequence, the debtor/ creditor relationship is encouraged and protected by laws.

The law provides a number of ways in which a creditor can be protected.

1. Laws Allowing Secured Debts

The most important of the laws protecting creditors allows the creditor to acquire a legal interest in (a right in or claim to) some specific property of the debtor. This interest is enforceable if the debtor defaults (fails to pay according to the terms of the agreement) and is called *a security interest*. The debt is referred to as a *secured debt.* A creditor, who holds a security interest, is *a secured creditor*.

When a creditor has a security interest in specific property, there is *a lien* against that property. A lien gives the creditor the right, if necessary, to sell the property and to use the proceeds from the sale to pay the debt.

Usually, the debtor keeps possession of the liened property as long as the debt is not in default. Mortgages on homes are very common examples of this type of secured debt. However, if there is a default, the creditor is allowed to peacefully repossess the secured property if it is movable.

Some secured debt arrangements permit the creditor to have possession of the property until the debt is paid. One such lien is the *pledge*, which arises when personal property is given to a creditor as security for the payment of a debt, or for the performance of an obligation. The property may be either goods or documents representing property rights (e.g. corporate stock). The *pledger* voluntarily gives up possession of the property. The *pledgee* receives possession.

In the pledge, the pledgee must treat the property with reasonable care. The property may be *repledged* to a third party on terms which do not *impair* the debtor's right to get the property back. In the event of default by the pledger, the pledgee may sell the property after proper notice to the pledger. The pledgee has the right to make either a public or a private sale. However, the pledgee must act in good faith and in a manner, which is commercially reasonable. If the amount received, after the deduction of expenses and interest, is more than the amount of the debt, the excess must be paid to the pledger. If the amount is less, the difference still must be paid by the

pledger. Upon performance of the obligation, the pledger has the right to the return of the property.

A pawn is a pledge of tangible personal property, usually of small size and high value. *A pawnbroker* is a person in the business of lending money at interest who requires such tangible personal property as security.

Goods that are pawned must be held for a certain length of time after the loan is due before they can be sold. Sometimes ownership passes to the pawnbroker at the end of a specified time.

2. Laws Allowing Garnishment of Wages

The other method for creditor protection is the *garnishment of wages.* Once a creditor's claim is shown to be legally valid and fair in a court hearing, the creditor may receive a portion of the debtor's wages directly from the debtor's employer.

Laws protecting debtors are:

1. Laws Setting Maximum Interest Rates

Laws that set maximum interest rates are called *usury laws.* Usually such laws apply only to transactions involving the lending of money, not the buying of goods on credit. Also, the usury laws do not protect corporations because they are considered to be adequately protected by the abilities of their professional managers.

2. Laws Requiring Clear and Complete Disclosure of Loan Terms

A consumer loan arises when a person borrows money primarily for personal, family, household, or agricultural purposes. It is often called a personal loan to distinguish it from a business or commercial loan.

The creditor must make a full report of interest and finance charges. *The finance charge* is the total added cost when one pays in installments for goods or services. The creditor must also declare the true equivalent annual interest rate.

A credit rating is an evaluation of one's ability to pay debts. If credit is denied because of information in a credit report, the company denying credit must tell the applicant. The applicant may then demand that the reporting agency disclose the general nature of the contents of its file (except medical information) and the names of parties who were given this information. Names of those who

provided the information need not be disclosed, however. If there is any error, the credit reporting agency must correct the record.

Vocabulary

loan заем, ссуда

secured debt долг, обеспеченный залогом (вид долгового обязательства, при котором лицо, берущее ссуду, оставляет что-либо под залог, для того чтобы дающий ссуду располагал некоторой гарантией непотери одолженной суммы денег)

legal interest 1) признаваемый правом интерес;
2) законные проценты, установленные законом проценты

security обеспечение, гарантия; залог

security interest право кредитора вступить во владение собственностью, предложенной в качестве обеспечения

secured creditor кредитор, получивший обеспечение в виде залога

legal status правовой статус

lien [liən] право удержания; право наложения ареста на имущество должника

pledge закладывать, отдавать в залог; залог, заложенная вещь

pledger залогодатель

pledgee залогодержатель

to impair уменьшать; повредить

specified time определенный срок

commercially reasonable справедливый с коммерческой точки зрения

pawn [po:n] ломбардный залог

pawnbroker ростовщик

garnishment of wages наложение ареста на заработную плату

interest rate ссудный процент

consumer loan потребительский кредит

finance charge стоимость всех элементов кредита; финансовый расход

usury law закон против ростовщичества

credit rating оценка кредитоспособности

discharge прекращение обязательств по долгу вследствие банкротства

LESSON 12. SECURED TRANSACTIONS

Text 1. A Secured Transaction and a Security Interest

All purchases are made either by cash or by credit. No debt is involved in a cash transaction. In a credit transaction, however, payment is delayed and a debt, owed by the buyer to the seller, is created.

In a credit transaction, the buyer may agree to allow the creditor to have a superior position over other creditors of the buyer. This normally is done by giving the seller (creditor) a *security interest* in the goods sold. When a security interest is granted, the transaction is referred to as a *secured transaction.* Security interest may allow the creditor, upon debtor's default, to sell the goods and use the proceeds of the sale to pay the debt. If there is any money left over, it goes to the other debtor's creditor or to the debtor. This is true even if the debtor goes through the legal steps of bankruptcy. Therefore, the secured creditors, because of the priority of their claims brought about by the security interest, are much more likely to be paid.

In contrast, a creditor with an unpaid, *unsecured* claim must bring suit, get a court judgment, and then execute (put into force) that judgment against the debtor's property. Other creditors of the debtor may have equal rights in that property.

Secured transactions are the only legal means of giving a creditor a security interest in another's property. The creditor in such a transaction is the *secured party,* and the personal property subject to the security interest is the *collateral.* Only *personal property* can be a collateral. Contracts involving *real property* as security, such as mortgages and deeds of trust, are still governed by other laws.

A *security interest* can be created only with the agreement of the debtor. This agreement can be expressed either orally or in writing, depending upon which one of two basic types of secured transactions is being used.

1. When the Creditor Retains Possession of the Collateral

In the first type, the creditor retains possession of the collateral. This transaction, which may be based upon an oral or written agreement, is called a pledge. The debtor may be buying the property, or the property may already be owned by the debtor but is now being put up as security for a loan of money.

Upon default of the debtor in a pledge, the creditor has a right to sell the property. The creditor applies the proceeds of the sale to the debts. Any *surplus* is returned to the debtor. Any deficit remains an obligation of the debtor and may be collected through a lawsuit.

2. When the Debtor Retains Possession of the Collateral

In the second type of secured transaction, the debtor retains possession of the collateral. In such cases, the secured party enters into a written contract with the debtor. This contract creates or provides for the security interest. Such a contract is called a *security agreement.* In addition to being in writing, the security agreement must be signed by the debtor and contain sufficient information to identify the collateral reasonably.

It is this second type of secured transaction, which enables a consumer to buy automobile, major kitchen appliances, or other costly items on credit. The debtor gets immediate possession and use of the goods. But the seller or finance company has the right to take them back if a payment is missed or if the contract is breached in any manner.

In a similar way, a merchant can buy goods on credit and sell them to customers. The merchant gets money to pay the debt. The creditor-seller is protected by retaining a security interest in the unsold goods.

This type of secured transaction is not limited to buying on credit. It is also used in borrowing money. Suppose one wants to borrow funds from a bank. By giving a bank a security interest in a car, the debtor's promise to repay is strengthened by the car's value. If the bank approves the loan, which it is likely to do with the added security, the borrower obtains the desired money and still has the use of the car.

Vocabulary

secured transaction обеспеченная сделка

to repossess изымать за неплатеж

pledge залог (*syn*. bail, bond, collateral, guarantee, security)

collateral гарантия, обеспечение в виде личного имущества

security interest обеспечение; право кредитора вступить во владение собственностью, предложенной в качестве обеспечения

secured party кредитор в обеспеченной сделке

default неисправность должника; невыполнение обязательств, отказ выплачивать долги, дефолт

security agreement письменный договор обеспечения

to put up выставлять на продажу

legal step правовая мера

surplus [ˈsɜ:pləs] избыток, излишек, остаток, прибавочная стоимость

deed of trust акт передачи на хранение

to file обращаться с заявлением(обращением), подавать какой-либо документ

Text 2. Perfection of a Security Interest

It is possible for a debtor to give many different creditors a security interest in the same goods. Nevertheless, the first creditor to perfect a security interest has priority over all the others. The first creditor is allowed to take as much of the *proceeds* from the sale of the collateral as necessary to completely satisfy the amount owed to him by the debtor. *A perfected security interest* results when the creditor gives proper notice of the existence of the security interest to all other potential creditors. Such notice may be given in a number of ways, for example, a creditor in possession of the collateral, as in a pledge.

When the debtor has the goods, it may be necessary for the creditor to *file a financing statement* to perfect the creditor's interest.

A financing statement is a brief, written notice of the existence of a security agreement. It usually includes the names and addresses of both the debtor and the creditor, the signature of the debtor (and the creditor, as a rule) and the statement describing the items of collateral.

When *tangible property* is used as collateral, the procedure for perfecting the creditor's security interest depends on whether the goods are consumer goods, farm products, *inventory* or equipment.

Goods can be in only one of these four classes at a given time. A security interest in one of the four classes of goods is perfected by filing or by taking possession of the goods upon default. Nevertheless, filing is not always required.

The second major classification of collateral, *intangible property,* represents real value in rights to money, goods, or *contractual performance.* Intangible property generally is evidenced by documents and writings. It includes the accounts receivable of a business, the rights to performance under a contract, bills of lading or air bills, warehouse receipts, commercial papers, and bonds or stocks.

As with tangible property, the procedure used in perfecting a security interest in intangible property varies with the classification of that property. A security interest in accounts receivable or contractual rights which cannot be possessed in a physical sense must be perfected by filing. For documents the creditor may either file a financing statement or take possession on the goods upon default.

Vocabulary

to perfect выполнять, завершать

to perfect security interest приобрести право удержания имущества за долги

perfected security interest защищенное имущественное право (когда кредитор владеет залогом)

proceeds доход, вырученная сумма

financing statement письменное заявление о наличии обеспеченного договора

inventory товарно-материальные запасы

warehouse receipt квитанция на товар, принятый на хранение; складская расписка

bill of lading накладная, коносамент

filing of a security interest подача заявки о наличии собственности, предложенной в качестве обеспечения

stock (*certificate*) акция

bonds облигации

tangible property материальное имущество

intangible property нематериальное имущество, имущество в правах

Text 3. Termination of a Secured Transaction

Most secured transactions are terminated by the debtor's paying the debt in full and the creditor's releasing the security interest in the collateral. If the creditor has filed the financing statement, this release is made when the creditor files an acknowledgment of the full payment, called a *termination statement,* with the governmental statement. Filing the termination statement is a way to inform the potential buyers and creditors that the property is no longer collateral.

When the debtor fails to pay as promised, the secured creditor who does not have possession of it. Then the creditor may sell, lease, or otherwise dispose of the collateral. This right of sale also applies to the secured creditor who has retained possession of the property.

The proceeds from sale are applied to the reasonable expenses of retaking, holding, preparing for resale, and reselling. They are applied also to payment of reasonable attorney's fees and other legal expenses incurred. What remains of the proceeds then goes to pay off the secured remains of the proceeds then goes to pay off the secured debt. In some cases, other creditors may have *subordinate (or secondary) security interests* in the collateral, and these are now paid off if proper claims have been made. Finally, if any *surplus* remains, it goes to the debtor. If there is any *deficiency,* the debtor is obliged to pay it unless otherwise agreed. If the proceeds fail to equal the balance due, including all costs of repossession and resale, the debtor is liable fro the deficiency unless otherwise agreed. In the unlikely event that a surplus exists, it belongs to the debtor.

As an alternative to resale, the secured creditor may retain the collateral in full statement of the debt.

Even when in default, the debtor does not *forfeit* all rights.

Additional protection is given to consumers who have paid 60% or more of the debt. In this case the creditor may not keep the collateral in *satisfaction of the debt* unless the consumer agrees in

writing. This law seeks to protect consumers in situations where the value of the goods exceeds the amount of the debt.

Vocabulary

termination statement заявление о признании выплаты обеспеченного долга

to release the security interest отказываться от права на обеспечение

settlement расчет, уплата

proceeds (*from sale*) доход (от продажи)

balance due недостающая сумма

subordinate interests второстепенные интересы

deficiency недостаток, недостаточность, отсутствие

payoff выплата; время выплаты

to forfeit rights лишаться права; потерять право

satisfaction of debts уплата долга

repossession изъятие за неплатеж

LESSON 13. COMMERCIAL PAPERS (DOCUMENTS)

Text 1. Types of Commercial Papers

Commercial paper is an unconditional written order or promise to pay money. The most common form of commercial paper is the personal cheque (*Am.* check). It was developed hundreds of years ago to serve as a safe substitute for money.

Instead of carrying their gold and silver with them, merchants left their money at the bankers. Then, when merchants wanted to pay a seller for goods they were buying, they wrote an order addressed to the bank. The order directed the bank to deliver a specified amount to the person or the place of the seller's choice. The bank compared the merchant's signature (and perhaps a seal) on the order with the signature left at the bank. The bank would comply with such written orders because, once the merchant had made a deposit, the bank was legally indebted to the depositor for that amount.

The same is still true today. Cheques are still known as demand instruments because they allow depositors to get their money out of banks or have it paid in accordance with the depositor's order.

Today commercial papers can be grouped into two broad categories.

The first is composed of unconditional orders to pay money. In this category are the *draft* and the *cheque.* A cheque is a special kind of draft.

The second category is composed of unconditional *promises* to pay money. In this category are the *promissory note* and the *certificate of deposit* (COD).

The word *unconditional* means that the legal effectiveness of the order or promise is not dependent on any other event. IOU (I owe you) is not a commercial paper.

1. Drafts

A draft is an unconditional written order by which one party directs a second party to pay to the order of a third party or to the bearer a certain sum of money on demand or at a definite time. A draft is also known as a ***bill of exchange (B/O).***

A draft initially involves three parties – the *drawer*, the *drawee*, and the *payee*. The drawer is the person who executes or draws the draft and orders that payment be made. The drawee is the person directed to pay the draft. The payee is the party to whom this commercial paper is made payable.

There are two types of drafts – *a sight draft* and *a time draft.* A sight draft is payable at sight or on demand, i.e. when it is presented to the drawee by the one holding the draft. A time draft is payable at a specified time, or at the end of a specified period after sight or after the date of the draft.

2. Cheques

A cheque is a special type of draft by which a bank depositor orders the bank to pay money, usually to a third party. Cheques are usually written on special forms provided by bank for a fee. The forms are usually magnetically encoded. However, cheques may be written on blank sheets of paper, forms or other materials and are still legally payable. The drawee, though, must always be a bank for the instrument to qualify as a cheque.

The bank *honours* (pays when due) each cheque as long as sufficient funds remain in the depositor's account. Of course, the bank will retain a sizable percentage of all funds deposited so that it can pay cheques when they are presented.

A person, who deliberately issues a cheque with the knowledge that the funds in the account will be insufficient to pay the cheque, is guilty of a crime. In this case the bank will dishonour the instrument and it will be impossible to get any money from that source.

3. Promissory Notes

A promissory note is an unconditional written promise by one person to pay to the order of another person or to the bearer a certain sum of money on demand or at a definite time.

Promissory notes initially involve only two parties – the maker and the payee. The maker is the one who executes or makes a promissory note and promises to pay. If two or more parties join in executing the note, they are *comakers* and are equally liable for payment.

Personal property may be pledged to secure performance – that is, to insure payment – of a note. When this fact, together with a description of the property, is stated on the face of the note, the paper is a *collateral note.* A collateral note typically provides for the sale of the security by the payee if the note is not paid when due.

When real property is a security for payment, the note is a *mortgage note.* The payee can force a sale of the real property and use the proceeds for payment if the payment is not made when due.

4. Certificates of Deposit

A certificate of deposit (CD) is a written acknowledgement by a bank of receipt of money, with an unconditional promise to repay it. The stated amount is payable with interest at a definite future time, normally ranging from several months to several years.

Banks do not pay out CD's or other long-term deposits *before maturity.* A penalty is a sharp reduction in the amount of interest payable on the funds. This inhibits depositors from withdrawing funds *prematurely*. As a consequence, interest rates on CD's are significantly higher than on savings or chequeing accounts, where the depositors are far more likely to withdraw from an account.

Vocabulary

commercial paper оборотные кредитно-денежные документы (векселя)

unconditional безусловный, не ограниченный условиями, безоговорочный

to comply (*with*) исполнять, подчиняться

instrument 1) документ; 2) средство

draft тратта (платежное поручение); синоним переводного векселя. Этот термин употребляется в определенных контекстах, связанных, например, с долговыми требованиями.

promissory note простой вексель, долговое обязательство

certificate of deposit депозитный сертификат

IOU долговая расписка

bill of exchange переводная тратта

to charge to account поставить на счет

drawer трассант (лицо, выставившее тратту)

drawee трассат (лицо, на которое выставлена тратта)

payee 1) получатель денег; 2) предъявитель чека/ векселя

to honour a draft 1) оплатить чек/ тратту; 2) акцептировать

sight draft вексель на предъявителя

time draft срочная тратта

form бланк

fee плата, сбор

to retain удерживать

sizeable значительный, существенный

to dishonour 1) отказывать в акцепте (векселя); 2) отказывать в платеже (по векселю)

due срок платежа

comakers совместные векседатели

to execute the note оформлять (документ)

collateral note обеспеченный вексель

prematurely преждевременно

mortgage note ипотечное обязательство; письменное обязательство возвращения долга (обязательство, обеспеченное залогом собственности, является доказательством займа и оговаривает условия его возврата)

before maturity до наступления срока

to inhibit сдерживать

to withdraw 1) аннулировать; 2) отзывать, отменять; 3) изымать

Text 2. Specialized Forms of Commercial Paper in Use

Certain variations of the forms of commercial paper are available for specialized needs. These include *certified cheques, cashier's cheques, bank drafts, money orders, traveller's cheques.*

Certified Cheques

A personal cheque that has been accepted by a bank in advance of payment is known as a certified cheque. At the time of certification, the bank draws sufficient funds from the depositor's account and sets them aside in a special account to pay the cheque when it is presented. In addition, the bank marks the front of the cheque with "accepted" or "certified", the date, and the bank's signature.

Cashier's Cheques

A cheque that a bank draws on itself and which is issued by an authorized bank officer is a cashier's cheque. Such cheques are used by banks to pay their own obligations. They also may be purchased from a bank by persons who wish to send *remittances* (payments) but who either have no personal chequeing account or do not wish to use their personal cheques.

Bank Drafts

A draft drawn by a bank on funds that it has on deposit with another bank is a bank draft. Thus, such a document is a draft drawn by one bank on a second bank. Banks use these drafts in their own transactions. If the seller refuses to accept cheques of customers whose credit is not established he or she may use bank drafts purchased from a bank.

Money Orders

Money orders are often used by persons who do not have chequeing accounts. A money order is a draft issued by a post office, bank, express company, or telegraph company for use in making payment or transferring funds upon the credit of the user. Money orders serve the same purpose as cheques.

Traveller's Cheques

Hotels and retailers around the world understandably prefer to take cheques only from persons they know and can trust. At the same time travelers do not want to carry cash on journeys. To meet the needs of both the traveler and the merchant, traveller's cheques have

been devised. A traveller's cheque is a cheque drawn by a reliable financial institution, such as *Bank of America* or *American Express Company*, on itself or its agent. At the time traveller's cheques are purchased, each is signed by the buyer. When cashing the traveller writes in the name of the payee and again signs her or his name as originally is written on the cheque. This is done in the presence of the payee who can compare the signatures. Although traveller's cheques are still used, the greatly expanded use of credit cards throughout the world has reduced the need for them.

Vocabulary

chequeing account специальный счет, с которого снимаются деньги по чекам клиентов; счет, позволяющий в любой момент снимать и вносить деньги (до востребования)

remittance денежный перевод

certified cheque удостоверенный чек

cashier's cheque банковский чек

bank draft 1) банковский счет; 2) тратта, выставленная банком на другой банк

money order денежный почтовый перевод

traveller's cheque туристский чек

express company компания по доставке грузов

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