

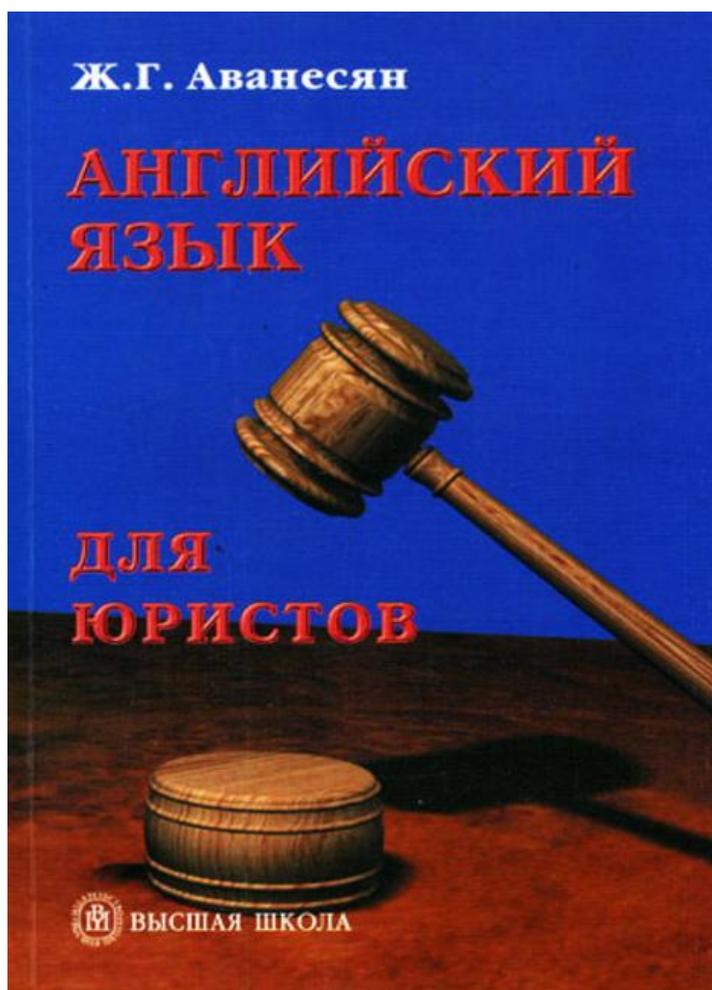
**Ж.Г. Аванесян**

**для юристов**

**АНГЛИЙСКИЙ ЯЗЫК**

*Рекомендовано Министерством образования*

*Российской Федерации в качестве учебного пособия для студентов высших учебных заведений, изучающих английский язык*



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## Рецензенты:

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Основная цель пособия - обучение чтению и переводу юридической литературы, а также расширение активного и пассивного словарного запаса в области юридической терминологии. Пособие содержит систему упражнений и заданий, нацеленных на развитие навыков ведения дискуссии и профессионально-ориентированной устной беседы.

В качестве текстов использованы материалы курса лекций проф. У. Бонтрегера, специалиста по правовой системе США, прочитанного им для студентов юридического факультета Московского государственного открытого университета.

Пособие содержит 12 уроков-тем, практические задания, представляющие собой проблемные задания из юридической практики, экзаменационный тест и глоссарий Юридических терминов с их определениями и русскими эквивалентами.

*Для студентов юридических факультетов и вузов.*

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## *ПРЕДИСЛОВИЕ*

Предлагаемое учебное пособие предназначено для студентов старших курсов юридических факультетов.

Основная цель настоящего учебного пособия - обучение чтению и переводу юридической литературы на основе развития необходимых навыков, а также расширение активного и пассивного словарного запаса в области юридической терминологии. Кроме того, учебное пособие нацелено на развитие навыков ведения дискуссии и профессионально-ориентированной устной речи.

В качестве текстов использованы материалы курса лекций профессора У. Бонтрегера, специалиста по юриспруденции США, прочитанного им в 1994 году для студентов юридического факультета Московского государственного открытого университета. Текстовые материалы пособия позволяют ознакомить студентов с основными положениями американской правовой системы и юридическим подязыком. Таким образом, данные тексты представляют ценность как по содержанию, так и по языку.

Настоящее учебное пособие рассчитано на 140 часов аудиторной работы и состоит из трех частей:

1. Essential Course («Основной курс»)(Units 1-12);
2. Activities («Практические задания»)(Units 1-11);
3. Examination Test («Экзаменационный тест») и Приложения, включающего ключи к экзаменационному тесту и Glossary of Law Terms («Словарь юридических терминов»).

Первая часть пособия «Основной курс» представлена уроками-темами. Каждый урок-тема включает текст, глоссарий и упражнения. Глоссарий содержит не только перевод терминов, но и их толкование, взятое из наиболее авторитетных специальных словарей. Упражнения нацелены как на расширение активного и пассивного словаря, так и на развитие навыка перевода.

Вторая часть «Практические задания» нацелена на развитие навыка ведения профессионально-ориентированной беседы или дискуссии. В ней представлены проблемные ситуации из юридической практики, различные пути решения спорных вопросов, конкретные случаи из судебной практики. Студентам предлагается высказать свою точку зрения по той или иной проблеме, выступить в качестве судьи, обвиняемого, защитника, свидетеля, задать вопросы присяжным заседателям, спрогнозировать вердикт и приговор.

В пособие включен «Экзаменационный тест», позволяющий студенту проверить свои знания по терминологии и по юриспруденции США. В тест включены основные понятия правовой системы США и их определения (более 100 одно- и многословных терминов).

Апробация пособия в течение четырех лет на 3 и 4 курсах юридического факультета Московского государственного открытого университета показала эффективность его применения в учебном процессе.

Автор выражает искреннюю благодарность проф. У. Бонтрегеру за разрешение использовать материалы лекций в качестве учебных текстов пособия.

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# PART I. LAW IN THE USA

## UNIT 1. THE QUESTION OF LAW

Jurisprudence is the philosophy of law, or the science which deals with positive law and legal relations. The study of jurisprudence asks questions such as: What is law? Where does it come from? Why do we have it? When do we first meet it? Where have you met it? In my opinion, no nation that does not have an informed populace in jurisprudence can be strong and free.

Fundamentally, law may be called rules governing behavior between people.

Purposes for law include: to regulate human relations; to determine ownership/control of property; to fix parameters of freedom in community and relationships by restraining anarchy (for without law there is only anarchy); to produce justice. But so long as we agree and live out our agreements, we do not need written law. But when we disagree, we must have a system designed to restore us to agreement or decide between us so we do not fall into blood feuds. To have a system we must recognize need for a Rule of Law.

But who decides what is or is not justice? A legislature passing laws? Public opinion directing legislators? Judges? Juries? Money? Lawyers? Yes, but No - each individual will decide, inside him, when in conflict, whether he will accept the outcome as justice or not.

Law can be spoken of in many different ways: Political, Criminal, Civil, and Equitable, *or* Constitutional, Statutory and Procedural. Or case precedent (*stare decisis*) or local custom (tradition); or in a vertical manner - international, then national, then district, then city, etc.; or repressive, democratic, autonomous, common, etc. Yet all law will, at times, seem arbitrary and capricious. That is because people make the decisions, not the law - the law is not self-acting. Rule of Law asks the question: "Are these decisions of people made in a framework of law, or a framework of no law?"

The problem always was, and is: What is an adequate base for law? What is adequate so that a human desire for freedom can exist without anarchy and yet be gentle enough to provide a form that will not become arbitrary tyranny?

Jurisprudence has to do with administration, or weighing of justice, or right values. All pronouncements of right and wrong are moral concerns, at their base religious. In recent years we have witnessed numerous marches on Washington in which one group or another demanded new "rights"; not freedom from state control but entitlement to state action, protection, or subsidy. In creating rights a state inevitably enlarges its bureaucracy. As a state creates new rights, it necessarily diminishes some rights for others. The modern secular view holds that individuals have just such rights as laws give them. Rights must have a reference point and specific context or they are meaningless; reference point determines the nature of the right exercised, defines who possesses it and sets limits to others who must respect it.

When we fail to live at peace, we need compulsion - so the law exists to compel. It does this by punishment.

Man's methods of law place two people in combat against each other, using advocates (lawyers) who, in the normal setting, keep the parties separate from one another. In this, we say that we search for the truth of the case.

## GLOSSARY

**jurisprudence** - юриспруденция, правоведение

The science of law that treats the principles of law and legal relations. Its function is to ascertain the principles on which legal rules are based. The study of the structure of legal systems and the principles, underlying these systems. A collective term denoting the course of judicial decisions; sometimes it is a synonym for law.

**rule of law** - принцип господства права, правовая норма, законность

A legal principle, of general application, sanctioned by the recognition of authorities. Called a "rule" because in doubtful or unforeseen cases it is a guide or norm for their decision.

**legislature** - законодательная власть, законодательный орган

The department, assembly, or body of persons that makes statutory laws for a state or nation. At the federal level, and in most states, the legislature is bicameral in structure, i.e. upper house (Senate) and lower house (House of Representatives).

Legislative bodies at the local levels are variously called **city councils**, **boards of aldermen**, etc.

**legislator** - законодатель

One who makes laws, a member of a legislative body, a senator, representative, assemblyman.

**Constitutional Law** - конституционное право

; That branch of the public law of a nation or state which treats of the organization, powers and frame of government, the distribution of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered.

**Statutory Law** - право, выраженное в законодательных кодифицированных актах, статутное право

The body of law created by acts of the legislature.

**statute** - закон в письменном виде, принятый законодательной властью, в отличие от неписанных законов и прецедентных решений судов - устных и письменных

An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; statutes are enacted to prescribe conduct, define crimes, create inferior government bodies, etc.; the word is used to designate the legislatively created laws in contradistinction to court decisions or unwritten laws.

**Procedural Law** - процессуальное право

That which prescribes methods of enforcing rights; machinery for carrying on procedural aspects of civil or criminal action, e.g. Rules of Civil, Criminal and Appellate Procedure.

*stare decisis (Lat.)* - судебный прецедент, обязывающая сила прецедентов, букв. «стоять на решенном»

Latin term meaning "to stand by that which was decided". To abide by, or adhere to, decided cases. Doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same.

**Political Law** - государственное право

That branch of jurisprudence which treats of the science of politics, or the organization and administration of government.

**Criminal Law** - уголовное право

It is that law, which for the purpose of preventing harm to society (a) declares what conduct is criminal, and (b) prescribes the punishment to be imposed for such conduct. It includes, the definition of specific offenses and general principles of liability. Substantive criminal laws are commonly codified into criminal or penal codes. The term "criminal" denotes something done with malicious intent, with a disposition to injure persons or property. It denotes also one who has been convicted of violation of the criminal laws.

**Civil Law** — гражданское право

That body of law which concerns with civil or private rights and remedies, as contrasted with criminal laws, and as distinguished from the Common Law of England and the Canon Law. The law concerned with noncriminal matters.

**probation** - проба́ция, система испытания — вид уголовного осуждения

System of allowing a person convicted of some offense to avoid imprisonment, under a Suspension of sentence, during good behavior, and generally under the supervision of a probation officer. An act of grace and clemency which may be granted by the trial court. The status of a convicted person who is allowed his freedom after conviction subject to the condition that for a stipulated period he shall conduct himself in a manner approved by a special officer to whom he must make periodic reports.

**precedent** - преце́дент

A precedent is a previously decided case that is recognized as an authority for the disposition of future cases.

**action** - иск; судебное преследование, обвинение перед судом

The legal demand for one's rights to be asserted in court.

**Equitable Law** - право справедливости

That portion of remedial justice which is exclusively administered by courts of equity. More generally speaking, the Equitable Law treats of the rules, principles, and maxims which govern the decisions of a court of equity, which administers justice and decides controversies in accordance with precedents of equity.

**plea bargaining** — попытка подсудимого выговорить себе более мягкий приговор

The process in which defendant seeks a lesser sentence in return for plea of guilty; or an attempt to plead guilty to lesser included offense, which carries a less severe penalty.

**International Law** - международное право

The law which regulates the intercourse of nations; the law which determines the rights and regulates the intercourse of independent nations in peace and war.

**conviction** - обвинительный приговор

The result of a legal proceeding in which the guilt of a party is ascertained and upon which sentence or judgment is founded; the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged.

**acquittal** - оправдательный приговор

A legal finding that an individual charged with a crime is not guilty and is therefore set free. The legal and formal certification of the innocence of a person who has been charged with crime; setting free a person from a charge of guilt; finding of not guilty.

**prudence** - предусмотрительность, осторожность

Carefulness, precaution, attentiveness, and good judgment; as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. This term, in the language of

the law, is commonly associated with "care" and "diligence" and contrasted with "negligence".

[**juris (Lat.)** - справедливый, законный Of right; of law.

**secular** - светский

Not spiritual; not ecclesiastical; relating to affairs of the present (temporal) world.

**transgression** - нарушение закона, норм права, правонарушение The action of trespass, an unlawful interference with one's person, property, or rights.

**warning** - предостережение, предупреждение

A pointing out of danger. Also a [protest against incurring it. The purpose of a "warning" is to apprise the party of the existence of danger of which one is not aware to enable one to protect oneself against it.

**reformation** - исправление документа, преступника

Reformation means doing over to bring about a better result, correction or rectification. Correction of an offender or a document. If by mistake of fact as to the contents of a written agreement, the writing does not conform to the agreement of the parties to it, writing can be reformed to accord with the agreement.

**restraint** - мера пресечения Confinement, abridgment, or limitation. Prohibition of action; holding or pressing back from action. Hindrance, confinement, or restriction of liberty.

**retribution** - воздаяние, кара Something given or demanded in payment. In criminal law, it is punishment based strictly on the fact that every crime demands payment in the form of punishment.

**general deterrent** - общая правовая санкция, сдерживающее средство

Anything in general which impedes or has a tendency to prevent; e.g., punishment is a "deterrent" to crime.

**specific deterrent** - конкретная правовая санкция, конкретное сдерживающее средство

Anything in particular which impedes or has a tendency to prevent; e.g., specific punishment is a "deterrent" to crime.

## EXERCISES

4. Translate the following words and word combinations or find Russian equivalents:

case precedent; rules governing behavior between people; nature of crime charged; to account for our actions which hurt others; law is the rule of action; regulation of human relations; legislature passing laws; public opinion directing legislators; reformation; restraint; retribution; general deterrent; specific deterrent; transgression; probation.

5. Translate the following sentences into Russian:

5. No nation which does not have an informed populace in jurisprudence can be strong and free.

5. Law may be regarded as rules governing behavior between people.

5. Purposes for law include: (a) to regulate human relations; (b) to determine ownership/control of property; (c) to fix parameters of freedom in community and relationship by restraining anarchy.

5. Legislature passes laws; public opinion directs legislators.

5. Law can be spoken of in many different ways: political, criminal, civil, and equitable are recognized divisions.

5. Legal theories define jurisprudence as science of the law. It encompasses more than this. The Latin term *juris* means just or right. *Prudentia*, also Latin, means practical skill in the management of business affairs.

5. Purposes for law: (a) equality of treatment; (b) protection of rights; (c) protection of property; (d) freedom to pursue happiness; (e) equality of process; (f) and existence of a problem solver.

5. When we fail to observe the rules of law, we need compulsion. The Law does it by punishment, with five justifications: reformation, restraint, retribution, general deterrent, specific deterrent.

3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.

civil, adversarial, judicial, criminal, legislative, jurisprudence, jurisdiction, International Law, Procedural Law, autonomous, Statutory Law, political, executive, prudence, warning

1. The study of the philosophy of law is called *Jurisprudence*, but the study of what court can enter a full faith and credit judgment in your case is a study of the *jurisdiction* of a court.

1. Our legal system is considered to be *adversarial* and *judicial*.

1. The three major branches of the law are *criminal*, *civil*, and *procedural*.

4. The three branches of the Federal Government in the United States are *legislative*, *executive*, and *judicial*.

5, *jurisprudence* is the body of law created by acts of the legislature.

5. The law which prescribes methods of enforcing rights, machinery for carrying on procedural aspects of civil or criminal action is \_\_\_\_.

5. The law which regulates the intercourse of nations, determines the rights and regulates the intercourse of independent nations in peace and war is

#### **4. Find English equivalents for the following Russian expressions and words:**

принцип господства права; статутное право; законодательный орган; обязывающая сила прецедентов (лат.); право справедливости; попытка подсудимого выговорить себе более мягкий приговор; обвинительный приговор; оправдательный приговор; нарушение закона; предупреждение, предостережение; исправление документа, преступника; лишение Свободы; кара; общая правовая санкция; конкретная правовая санкция.

#### **| 5. Translate the following sentences from Russian into English:**

\* 1. Юриспруденция является юридической наукой и/или правовой системой; данный термин происходит от двух латинских слов: *juris* ("of right, of law") and *prudence* ("care" and "diligence").

і 2. Неуклонное и точное соблюдение законности (правовых норм) является обязательным для соблюдения всеми органами государства, должностными лицами, общественными организациями и всеми гражданами, всеми юридическими и физическими лицами.

Г 3. Гражданское право регулирует имущественные и связанные с ними личные неимущественные отношения, устанавливает принципы и нормы ответственности участников коллизий, не относящихся к уголовному праву.

| 4. Уголовное право устанавливает принципы уголовной ответственности, применения наказаний за преступления, определяет конкретные составы преступлений и меры наказания за них.

\ 5. Конституция - основной закон государства, определяющий общественное и государственное устройство страны.

## UNIT 2. HISTORICAL DEVELOPMENT OF ANGLO-AMERICAN LAW

Before the Norman Conquest of England in 1066 AD, law had moved away from blood feud to trial by combat because of pressures from the barons and community. But there was no uniformity in the country.

Under the Normans, the king began to appoint reeves in each shire (sheriff) to hear and decide disputes among the people and to enforce the king's interests. The king took to sending judges about the country to hear appeals. Thus developed a "Common Law" for all of England.

The Common Law is a case-by-case process of development of three branches of law (Criminal, Civil, and Equity) and of three sub-branches of Civil Law (Property, Torts, and Contract). For a nation with little or no Civil Law, knowledge of historical Common Law development allows a person harmed to bring a case not under limited statutory law of a nation at the moment, but under the ancient concepts of the Common Law, arguing cases from England and the US. Though the Common Law will have no binding effect (precedent), you hope a judge will listen, consider, and adopt the truths presented. So you would actually create Common Law for the future of your nation.

In 1215 AD, the barons forced the king to submit to the law of the land by the Magna Charter. By this, the rule of law became established, that is, "no man is above the law and all are equal before the law".

With time, the reeves and judges bound themselves to the prior decisions by a concept of *stare decisis*, the prior case holds or precedent. Soon the system became so bound that justice seemed lost. People began to petition the king through his chief religious officer, the Chancellor, for relief. Thus developed the Equity Courts.

Civil courts handled matters of torts (personal wrongs resulting from breach of duty), crimes (breaches of the king's peace), property violations, and contracts and used the jury trial. Equity did not use the jury.

To America came a well-developed law and system, and a commitment to rule of law as a means to have and preserve freedom. The colonists also came as commercial units used to private property ownership and ownership of the means of production. And they came with a belief in religious liberty and a high distrust of governmental power. They saw rights and power as bestowed by God to people. In turn, people would have to delegate some of their powers to government to make rule of law work. Our form of government is:

1. Constitutional; there is a central document which defines government;

2. Separated; in types of branches and within a given branch (a horizontal concept);

3. Federated; not all power is at any one level (a vertical concept);

4. Delegated; the people delegate somebody to the States and the States delegate to the National;

5. Representational.

I The more complex the governmental system, the more laws needed; a dictatorship needs less laws than democracy. The US has multiple levels of legal systems: International; Federal; State; County; City. Each has its own laws and system subject to some control by next higher level; higher levels may be limited by lower levels if not all State authority was "delegated" to Federal.

The US has three branches of government:

**Executive** (enforces laws; contains the bureaucracy or employees of the executive branch): president; governor; mayor, manager, or council.

**Legislative** (writes laws). In counties and municipalities, legislative branch often called Council or Commissioners. **Judicial** (interprets the law). Municipalities do not always have courts.

**Jurisdiction** is the word which defines the types of cases any particular court may process: territorial (by the place of the act or by place of residence of one or more of the parties); subject matter (limitation of dollar amount, punishment level, or type of case); *in rem* or *in personam* (over property or a person). Jurisdiction is defined by statutes or Constitutions.

Judges may be elected or appointed and, with rare exceptions, must be lawyers.

The issue is not what is the law as much as it is what is the result. (Result is a combination of a process, the way in which the game is played, and an individual sense of how the matter ended (justly or un-justly).

## GLOSSARY

**reeve - судья**

An ancient English officer of justice. He was a ministerial officer appointed to execute process and put the laws in execution. He witnessed all contracts and bargains, brought offenders to justice and delivered them to punishment, took bail for such as were to appear at the county court, and presided at the court.

**Common Law** - общее право; обычное право; неcodифицированное право в отличие от статутного права

As distinguished from law created by the enactment of legislatures the Common Law comprises the body of those principles and rules of action which derive their authority solely from usages and customs of immemorial antiquity or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. Common Law is understood as contrasted with or opposed to "Statutory" Law.

**relief** - средство судебной защиты; удовлетворение требования, правопритязания

The public or private assistance or support, pecuniary or otherwise, granted to indigent persons.

**equity** - справедливость, право справедливости; право, основанное на нормах справедливости; справедливое требование

Equity generally means justice or fairness. Historically, equity refers to a separate body of law developed in England in reaction to the inability of the common law courts, in their strict adherence to rigid writs and forms of action, to consider or provide a remedy for every injury. The king therefore established the court of chancery to do justice between parties in cases where the Common Law would give inadequate redress. The principle of this jurisprudence is that equity will find a way to achieve a lawful result when legal procedure is inadequate. Justice administered according to fairness as contrasted with the strictly formulated rules of Common Law. The term "equity" denotes the spirit and habit of fairness, justness, and right dealing which would regulate the intercourse of men with men. Equity is a body of jurisprudence, or field of jurisprudence, differing in its origin, theory, and methods from the Common Law; though procedurally, in the federal courts and most states courts, equitable and legal rights and remedies are administered in the same court. A system of jurisprudence collateral to, and in some respects independent of "law"; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect, or by exercising certain branches of jurisdiction independently of them. Equity and law courts are now merged in most jurisdictions, though equity jurisprudence and equitable doctrines are still independently viable.

**tort** - деликт, гражданское правонарушение

A wrong; a private or civil wrong or injury resulting from a breach of a legal duty that exists by virtue of society's expectations regarding interpersonal conduct, rather than by contract or other private relationship. It is other than breach of contract, for which the court will provide a remedy in the form of an action for damages. The essential elements of a tort are existence of a legal duty owed by the defendant to the plaintiff, breach of that duty, and a causal relationship between the defendant's conduct and the resulting damage to the plaintiff. A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual; (2) the infraction of some public duty by which special damage accrues to the individual; (3) the violation of some obligation by which like damage accrues to the individual.

**testimony** - свидетельское показание, данное под присягой или скрепленное торжественной декларацией

Evidence given by a competent witness under oath or affirmation, a solemn and formal declaration. It is a statement made by a witness usually related to a legal or legislative hearing; evidence as distinguished from that derived from writing and other sources.

**to compel** - заставлять, вынуждать, принуждать

To compel is to urge forcefully; under extreme pressure (to be subjected to some coercion, fear, terror, inducement, trickery or threat, either physically or psychologically, blatantly or subtly).

**double jeopardy** - риск дважды понести ответственность за одно и то же преступление

Prosecution or punishment twice for the same offense. Common Law and constitutional prohibition are against a second prosecution after a first trial for the same offense. Such prohibition is provided by the US Constitution and by many state constitutions.

**self-incrimination** - самообвинение, самооговор; дача невыгодных для себя показаний

Acts or declaration either as testimony at trial or prior to trial by which one implicates himself in a crime. Privilege against self-incrimination is the constitutional right of a person. The Fifth Amendment, US Constitution, as well as provisions in many constitutions and laws, prohibit the government from requiring a person to be a witness against himself involuntarily or to furnish evidence against himself. It is the burden of the government to accuse and to carry the burden of proof of guilt.

**Fifth Amendment** - 5-я поправка к Конституции США  
The amendment to the US Constitution, part of the Bill of Rights, that establishes certain protections for citizens from actions of the government.

***in personam* (.Lat.)** - в отношении конкретного лица

Action seeking judgment against a person involving his personal rights as distinguished from a judgment against property (i.e. *in rem*). Type of jurisdiction which a court may acquire over the defendant himself in contrast to jurisdiction over his property.

***in rem* (Lat.)** - в отношении самой вещи

A term used to designate proceedings or actions instituted "against the thing", in contradistinction to personal actions, which are said to be *in personam*. *Res* is a Latin term meaning a thing. The subject matter of actions that are primarily *in rem*, that is, actions that establish rights in relation to an object, as opposed to a person. For example, in an action that resolves a conflict over title to real property, the land in question is the *res*. Tangible personal property can also be a *res*.

**redress** - 1. возмещение, удовлетворение, сатисфакция; 2. предъявление регрессного иска, взыскание в порядке регресса

Satisfaction for an injury or damages sustained. Damages or equitable relief.

**search warrant** - ордер на обыск

An order in writing issued by a justice or other magistrate in the name of the state and directed to a sheriff, constable, or other officer, authorizing him to search for and seize any property that constitutes evidence of the commission of a crime, contraband, the fruits of crime, or things otherwise criminally possessed, or property designed, or intended for use, or which is or has been used as the means of committing a crime. A warrant may be issued upon an affidavit or sworn oral testimony.

**EXERCISES**

**6. Translate the following words and word combinations or find Russian equivalents:**

relief; *in rem*, Common Law; testimony; double jeopardy; search warrant; reeve; equity; to compel; tort; self-incrimination; *in personam*; redress; to abridge.

**Translate the following sentences into Russian:**

1. Under the Normans, the king began to appoint reeves to hear and decide disputes among the people and to enforce the king's interests.

6. In 1215 AD, the barons forced the king to submit to the law of the land by the Magna Charter.

6. With time, the reeves and judges bound themselves to the prior decisions by a concept of *stare decises* (the prior case holds) or precedent. Soon the system became so bound that justice seemed lost. People began to petition the king through his chief religious officer for relief. This developed the Equity Courts.

6. Three branches of US governmental system are: *executive* (enforces laws; contains employees of the executive branch: President, Governor, Mayor find others), *legislative* (writes laws) *Judicial* (interprets the law).

6. Jurisdiction is defined by statutes or constitutions.

6. Judges may be elected or appointed and, with rare exceptions, must be lawyers.

6. Legislative Power: US Congress consisting of the Senate and the House of Representatives. Members of the House are elected every two years and are distributed on population basis; 1/3 of the Senate is elected every two years; each state gets two Senators.

6. President has a veto check on legislature; Congress can override the veto with 2/3 majority.

6. Executive power: President - four years in the office, faithfully executes laws; can be impeached via Congress.

6. Judicial power: Supreme Court and such inferior courts as Congress may establish.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.**

self-incrimination, search warrant, due process, *stare decisis*, chancellor, self- incrimination, precedent, tort, double jeopardy, equity

1. The concept that prior decisions are binding upon the present is called (two words) \_\_\_\_\_ , or \_\_\_\_\_ .

2. The \_\_\_\_\_ was the officer of the king to whom the king first began referring cases in .

3. This term \_\_\_\_\_ , brought into the U.S. Constitution all of the Common Law of England.

6. Prosecution or punishment twice for the same offense is \_\_\_\_\_ .

6. . \_\_\_\_ is a testimony by which one implicates himself in a crime.

**4. Find English equivalents for the following Russian expressions and words:**

риск дважды понести уголовную ответственность за одно и то же преступление; «в отношении конкретного лица»; «в отношении самой вещи»; ордер на обыск; право справедливости; свидетельское показание, данное под присягой; самообвинение; деликт, гражданское правонарушение; общее право, неcodифицированное право; средство судебной защиты, удовлетворение требования.

**5. Translate the following from Russian into English:**

7. Общее право является совокупностью правил поведения и обычаев, сложившихся в обществе в результате их неоднократного традиционного применения и признаваемых судами при принятии решений. Суды, рассматривая конкретные дела, делают ссылки на ранее принятые судебные решения по аналогичным обстоятельствам.

8. Принцип «разделения властей» предполагает, что для эффективного функционирования государства в нем должны существовать независимые друг от друга власти: законодательная (парламент), исполнительная (правительство) и судебная (система судов разных инстанций).

9. Законодательная власть в США представлена Конгрессом, состоящим из Сената и Палаты представителей.

10. Каждые два года в США переизбираются члены Палаты Представителей и 1/3 Сената.

Президент США обладает правом вето по отношению к законодательной власти - Конгрессу. Однако Конгресс большинством в 2/3 голосов может отвергнуть, не принять во внимание вето Президента и может возбудить применение против Президента процесса импичмента.

## UNIT 3. CRIMINAL LAW: The Issue of Public Wrongs

At earliest English law, because of a lack of legislative law and because of a lack of a place and process to turn to, people were left to blood feuds for resolution of conflict. You hurt me, I killed you. Then your uncle killed me, so my dad killed your dad, etc.

The community got tired of this. The local baron was worried about (he drain on his fighting force. And local religious leaders had a hard time putting a feud into theologically permissive behavior.

So, a "local law" began to appear, with an incentive to people to settle cases by compensation. People in conflict were "invited" to come and sit with others of a community to seek resolution of the conflict.

When the parties could not agree and no one could prove "truth", they were left without a remedy. To have a law is wonderful. To have a process is better. But no remedy means a law or process is of little value.

To determine truth, trial by "ordeal", "combat", or "oaths" was instituted. In "combat", each party got a sword, and fought it out under the theory that God would protect the innocent one. If a person was found "guilty", he, or his heirs, paid something to the injured party and sometimes something to the local baron.

With the Norman Conquest, the new king, intent upon consolidating power, established "King's Courts". Here an injured person (plaintiff) brought action against a wrongdoer (defendant). But all monies (fines) went to the king rather than to the victim; the king had to pay judges, keep an army (the police) fed and clothed, etc. Thus developed Criminal Law, the key components of which are:

I The king (state, people) is seen as victim. Crime is considered to be an act which the public desires not to be done, and which the public is willing to punish if it is done. It is a public wrong.

' Because the remedy is punishment, some protections of the accused become necessary; we do not want to punish an innocent person. Thus, there can be no crime without a statute, and acts done before there is a statute are not criminal (*ex post facto*). The statute must set forth every material element of the criminal conduct (no punishment without a "knowledge"). However, we are all presumed to know the law.

I The state must prove the defendant did the necessary acts (*actus reus*) beyond a reasonable doubt. This means that the balance scales

must tip to their near maximum. Since punishment is the remedy, we want to be certain that we only punish the guilty, not the innocent.

Defendant must have done the acts with a level of knowledge (*mens rea*, guilty mind) declared in the statute. Over time, and in order of importance today, this necessary mental state was determined to be: intentional, reckless, or negligent conduct, or strict liability.

After conviction, the question is asked: What punishment should be to carry out the five purposes for punishment: reformation; restraint; retribution; and deterrence (individual or general).

Crime has three major parts: crime against person; crime against property; and crime against the public order.

A crime against person always involves force or threat of force against the body of another (murder, battery, rape, robbery, extortion, kidnapping, etc.).

Crimes against property are distinguished by an absence of force against a person and loss of property is the key (theft, embezzlement, false pretenses, forgery, burglary, arson, etc.).

Crimes against public order include rioting, treason, and most of the "victimless" crimes (prostitution, sale of pornography, drug deals, and, until recently, abortion). Violence to person or loss of property may or may not be present. What is present, is behavior seen harmful to the integrity of community to such an extent as to call for criminal punishment. Sometimes we see these as "moral crimes".

Intent has its own set of definitions:

**Specific intent:** Defendant has a determination of mind to commit at least one of the required elements of a criminal offense. *Example:* first degree murder normally requires proof of premeditation, which is a matter of intent found to be existent before picking up the gun, to do an act (shoot the gun) and bring about a result (kill the person).

**Transferred intent** convicts a person of a result, which they did not intend, but which was a result of the illegal act. *Example:* I intend to kill by shooting, but miss and kill *B*, whom I love and would never kill. My intent to kill *A* is transferred to *B*; I am guilty of murder.

**Implied intent:** We are rational people, intelligent and understanding; so intent to do an act may be implied from doing of the act.

**Strict liability:** Here there is no need for a mental status. We are liable for doing the act without defense. *Example:* sexual intercourse

with a female under a specified age (statutory rape). Your belief concerning her age (even a reasonable belief) is no defense.

Let's look at some of the common criminal defenses. First, there are mistakes of fact. I take a bag of yours at the airport thinking it is mine; we can say mistake of fact, but it really is lack of intent to steal. Or I buy an item not knowing it to be stolen, no intent, no crime. However, if its value is \$100 and I pay \$1 and the transaction is on a street corner, maybe I am unable to make the defense work for me. Any mistake of I net must be honest and reasonable.

Can my voluntary intoxication be a defense? Generally, no; it is an net of choice, negligent or reckless in character, so it is not allowed as a defense, involuntary intoxication may be a defense.

Another category of defenses is called *justification*. It includes self- defense, defense of others, defense of property, acts done under apparent authority, and consent. Self-defense is viewed from the mind and the person claiming the defense, not from the mind of a reasonable person. What this means is: we cannot second-guess the action after the fact; if there may have been several reasonable responses, and this was one of them then the defense is good. But the force I use in defense must be proportionate to the force you use against me. An aggressor cannot claim self-defense unless he terminates the conflict and then finds he must defend against the continuing attack of the other. Defense of others normally requires a prior relationship between the person being attacked and the person claiming the defense. Defending one, who later proves to have been the aggressor, means you cannot claim the defense because that person could not claim the defense. Defense of property is very limited as to the amount of force you can use.

Acts done under apparent authority is a defense allowing public officials (and those acting under their oversight) to possibly commit a crime and not be punished, if it was reasonably necessary to doing their job. Consent is a defense where the consent to act would have been illegal, for example, I consent to your battery of me in a boxing match.

Another set of defenses is called *excuse*. Infancy, necessity entrapment and insanity are classic examples. Historically, infancy defense was available to anyone under the age of 7; they were presumed incapable of forming the intent needed for a criminal act. From 7 to 14 it was presumed they could not, but the presumption could be overturned upon a showing of sufficient age and understanding. Above 14 they were presumed capable. Today, in the U.S., we use Juvenile Courts to deal with people under the age of 18; however, for certain crimes, and at certain ages, youth can be removed from the juvenile system to the adult system.

Necessity (including compulsion, duress, coercion) is a defense where the act is acknowledged, and the criminality of the act is known in advance, but the person claims that they have no choice. The defense is not available in a homicide, very limited in crimes against persons, and normally only found in property offenses. There is involved a sense of emergency response to a situation, and the harm being prevented by the illegal act must be greater than the harm the illegal act causes.

Insanity only became a defense in 1843. It is a direct outgrowth of the issue of intent as is the defense of infancy. When first allowed it was only if one could not understand the difference between right or wrong, or did not have the ability to understand that an act was wrong because of mental disease or defect. It has since expanded to matters such as diminished capacity and irresistible impulse.

## GLOSSARY

**remedy** - средство правовой защиты; предоставлять средство правовой защиты

The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated.

***ex post facto (Lat.)*** - после факта, после события  
Latin term meaning "after the fact".

Canon Law - каноническое право

A body of Roman ecclesiastical jurisprudence compiled in the twelfth, thirteenth and fourteenth centuries from the epistles and bulls of the Holy. One of a body of rules to guide the interpretation of statutes, ordinances, etc. In ecclesiastical law a rule primarily concerning the clergy, but also at times embracing lay members of a congregation.

**Plaintiff-истец**

A person who brings an action; I the party who complains or sues in a I civil action and is so named on the record. A person who seeks remedial relief for an injury to rights is designated a *complainant*.

**Defendant** - ответчик; обвиняемый

The person defending or denying; the party against whom relief or I recovery is sought in an action in a| criminal case.

**public wrong** - нарушение I общественного правопорядка

Violations of public rights and duties which affect the whole community; crimes and misdemeanors.

**wrong** - правонарушение, деликт, вред

A violation of the legal rights of another. It usually signifies injury to person, property; in more extended sense includes violation of contract.

**wrongdoer** - правонарушитель, преступник  
One who commits an injury; a tortfeasor.

**tortfeasor** - правонарушитель A wrongdoer; one who commits <>r is guilty of a tort.

**actus reus** (*Lat.*) - виновное действие

A wrongful deed which renders the actor criminally liable if combined with *mens rea*, a guilty mind.

**mens rea** (*Lat.*) - «виновная моля»; преднамеренная вина

A guilty mind; a guilty or wrongful purpose; a criminal intent, guilty knowledge and willfulness.

**strict liability** - строгая ответственность; объективная ответственность

One which imposes criminal sanction for an unlawful act without requiring a showing of criminal intent.

**larceny** - хищение The felonious taking and carrying away of the personal property of another, without the person's consent by someone who is not entitled to possession, with intent to deprive the owner of the property and to convert it to the use of the taker or another person, other than the owner. Larceny is sometimes classified as either *grand larceny* or *petite (petty) larceny*, according to the value of the property taken or the method employed.

**deterrence** - средство удержания устрашением от совершения преступных действий

Anything which impedes or has a tendency to prevent; e.g., punishment is a "deterrence" to crime.

**felony** - фелония, категория тяжких преступлений

A crime of a graver or more serious nature than those designated as misdemeanors. Statutes often define felony as an offense punishable by imprisonment for more than one year „or by death. The original common law felonies were felonious homicide, mayhem, arson, rape, robbery, burglary, larceny, prison breach (escape) and rescue of a felon.

**homicide** - лишение человека жизни, убийство

The killing of one human being. A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently

causes the death of another human being. Homicide is not necessarily a crime. There are other cases in which homicide may be committed without criminal consequences, as where it is done in the lawful execution of a judicial sentence, in self-defense, or as the only possible means of arresting an escaping felon.

**battery** - избивание Criminal battery is defined as the unlawful application of force to the person. It may be unlawful touching of or use of force on another person willfully or in anger. Battery may be considered either a tort, giving rise to civil liability for damages to the victim, or a crime.

**extortion** - вымогательство The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. Extortion is used interchangeably with blackmail and is commonly punishable as a felony.

**false pretenses** - мошеннический обман

False pretenses, a statutory crime, which consists in most jurisdictions of these elements; a false representation of a material, present or past fact which causes the victim to pass title to his property to the wrongdoer who (a) knows his representation to be false and (b) intends thereby to defraud the victim.

**transferred intent** - преступное намерение, перенесенное на другую цель

If a person intentionally directs force against one person wrongfully but, instead, hits another, his intent is said to be transferred from one to the other and he is liable to the other though he did not intend it in the first instance.

**misdemeanor** - «мисдиминор», категория наименее опасных преступлений, граничащих с административными правонарушениями

A class of criminal offenses less serious than felonies and sanctioned by less severe penalties; offenses generally punishable by fine or imprisonment. Under federal law, and most state laws, any offense other than a felony is classified as a misdemeanor.

**entrapment** - предоставление лицу возможности совершить преступление, которое он не замыслил

The act of officers or agents of the government in inducing a person to commit a crime not contemplated by him, for the purpose of instituting a criminal prosecution against him.

**duress** - принуждение

Refers to conduct that has the effect of compelling another person to do what he or she need not otherwise do. It is a recognized defense to

any act, such as a crime, contractual breach or tort, all of which must be voluntary to create liability. A condition where one is induced by wrongful act or threat of another. One who, under the pressure of an unlawful threat from another human being to harm him (or to harm a third person), commits what would otherwise be a crime and under some circumstances may be justified in doing what he did.

**offender** - правонарушитель

Commonly used in statutes to indicate person implicated in the commission of a crime and includes person guilty of a misdemeanor or traffic offense.

**offense** - правонарушение, преступление A felony or misdemeanor; a breach of the criminal laws. The word *offense*, while sometimes used in various senses, generally implies a felony or a misdemeanor infringing public as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty.

## EXERCISES

11. Translate the following words and word combinations or find Russian equivalents:

public wrong; remedy; civil law; transferred intent; plaintiff; defendant; strict liability; battery; deterrence; felony; homicide; *mens rea* (*hat.*).

12. Translate the following sentences into Russian:

12. Crime is considered to be an act which the public desires not to be done, and which the public is willing to punish if it is done. It is a public wrong.

12. An injured person (plaintiff) brings action against a wrongdoer (defendant).

12. Since punishment is the remedy we want to be certain that we only punish the guilty, not the innocent.

12. The five purposes for punishment are: reformation, restraint, retribution and deterrence (individual or general).

12. Crimes against person include crime which involves the death of another person (homicide, murder, manslaughter) or crime involving force or threat of force against the body of another but does not result in death (battery, rape, robbery, extortion, kidnapping).

12. Crimes against property are distinguished by an absence of force against a person; loss of property is the focus (theft, embezzlement, false pretenses, forgery, burglary, arson).

12. Crimes against public order include rioting, treason, and most of the "victimless" crimes (prostitution, sale of pornography, drug deals).

12. Justification in criminal cases, includes self-defense, defense of others, defense of property, acts done under apparent authority.

12. Entrapment means that the person doing the act is led into it by someone in authority and would not have done the act otherwise.

12. Insanity of the person who committed the crime can be a defense. It is only if the one could not understand the difference between right or wrong or did not have the capacity to understand that the act was wrong.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.**

justice of the peace, plaintiff, wrongdoer, procedure, tortfeasor, defendant, trustee, remedy, felony

1. To have law is good. However, without \_\_\_\_\_ and \_\_\_\_\_ , our laws have no value.

1. There are two township officials listed: one is \_\_\_\_\_ and the other is \_\_\_\_\_

2. A person who commits an injury is a \_\_\_\_\_ or a \_\_\_\_\_ .

3. A person applying for relief against another person or suing in a civil action is a \_\_\_\_\_ .

Si is a person against whom court proceedings are brought.

**1. Find English equivalents for the following Russian expressions and words:**

средство удержания устрашением от совершения преступных действий; тяжкое преступление; преступное намерение, перенесенное на другую цель; лишение человека жизни; избиение; общественное правонарушение; мошеннический обман; средство судебной защиты; истец; ответчик.

## 2. Translate the following from Russian into English:

a. «Мисдиминор» относится к категории менее опасных преступлений, чем уголовные, т.е. граничит с административными правонарушениями.

b. При совершении уголовного преступления оправдывающим обстоятельством может быть самозащита, защита других, защита собственности.

c. Преступления против личности включают случаи убийства, нанесения увечья, избиения, изнасилования, ограбления, вымогательства, похищения людей и др.

d. Преступления против собственности включают случаи воровства, ограбления, лишения собственности путем подлогов и подделок документов, растраты, мошеннические обманы, взломы и поджоги.

Преступления против общественного порядка включают погромы, супружеские измены, торговлю наркотиками, порнографической продукцией, проституцию.

## UNIT 4. CRIMINAL PROCEDURE

In both criminal and civil proceedings, a document (Pleading) must be filed with the court to start a proceedings - called an Information in Criminal Law. The papers are filed for the *State* by a *Prosecutor*. To an Information is attached an *Affidavit To Show Probable Cause*, under oath. The documents name a defendant, set forth the facts constituting the offense, the statute which has been violated, and the source of the information (confession, eyewitness, etc.).

The judge then issues a bench warrant to the sheriff for arrest of a defendant. The court cannot proceed further until the defendant is *served with* warrant plus information and affidavit service results in arrest, and the defendant is taken into custody.

Upon arrest, a day for the defendant to appear in court is set normally within one week. At arrest, the defendant will be advised of: (1) the charge; (2) right to an attorney; (3) right to an appointed attorney at state expense if he can't afford an attorney; (4) does not have to say anything without an attorney present; (5) anything said can be used against him in court; and (6) right to bail, amount of bail, and way to post it. The defendant is allowed free phone calls to tell people where he is, and to arrange bail.

The defendant may be arrested before papers have been filed when the officer has probable cause to believe he has committed a crime. Then he will be told these same rights, except bail. But if a warrant is not secured from a judge filed within 72 hours, he must be released (he can be rearrested later, however).

At the first court hearing (arraignment) the court will:

Ask the defendant (1) if he has an attorney, intends to employ an attorney, *or* needs attorney appointed for him; (2) if he is prepared to enter a plea of guilty or not guilty; (3) advise defendant of his right to jury trial; (4) if the defendant says he wants to waive any right, court will examine him to see if he understands rights and effect of a waiver;

12. reconsider the matter of bail possibly by a *pre-trial release report*\

12. possibly set the matter for preliminary hearing or for *omnibus hearing* and/or set the case for trial.

\ If the defendant remains silent court will enter a plea of not guilty, set the case for jury trial, and appoint an attorney to meet and consult with the defendant. Between arraignment and trial, the defendant has the right to discovery: to see investigatory file of prosecutor, take depositions of witnesses, view physical evidence, have

special investigators appointed or expert witnesses hired to examine evidence and testify, right to compel people to come and testify (subpoenas), or produce tangible evidence, etc. He must tell prosecutor names and addresses of his witnesses, and certain *special defenses* (as alibi or self-defense). If the defendant is *indigent all necessary costs of defense* will be paid by the state.

Between arraignment and trial, the prosecutor and defense attorney will engage in *plea* and/or *sentence bargaining*. There may be special pre-trial hearings on issues of the *admissibility of evidence* (such as a confession, evidence seized by a search warrant, etc.). There may be a *preliminary hearing* requested by the defendant to test the existence of *probable cause*. Court may set *omnibus hearing* with prosecutor and defense attorney to discuss if case is ready for trial. In criminal cases the judge keeps the case moving; in civil cases, the lawyers do.

If the defendant pleads guilty or is convicted at trial the court sets *sentencing hearing* and *pre-sentence report* (normally prepared by Probation Department). The report will contain: criminal, educational, family and work histories of the defendant; statement of facts of the crime charged; and drug or psychological evaluations. The defendant gets to view report before hearing and can introduce evidence at hearing. Victims are often invited to hearing, and can give input on what they believe should happen. However, the court may be bound by a form of *mandatory sentence*.

If sentenced to prison, the defendant is sent to the Department of Corrections, which selects the actual prison. When released from prison he is placed on *parole* (like *probation* - periodic reporting to officer).

A purpose of jury was to keep citizenry informed about rightness of the law as a check against tyranny of the law. That protection is breaking down because of (1) inability of the jury to nullify the law; (2) failure of the jury to know the penalty; (3) the dramatic increase of plea-bargaining; (4) the development of Administrative Law where there is no right to a jury trial. At the same time, confrontation of the offender is breaking down. Confrontation means: This is what you did; It was wrong; You chose to do it; Here is the hurt you caused; Here is what you must do to make the wrong right; Don't do it again. Without confrontation there is little chance of reformation.

Problems are:

(1) lack of speed in the process; (2) plea bargaining; (3) lack of direct confrontation by victim; (4) prosecutor discretion; (5) change in defense attorney from counselor to upholder of rights rules, and process; (6) Juvenile Justice System; and (7) highly adversarial nature of the process.

Results are: excuse, justification, rationalization and blame-casting of defendant rather than repentance.

## GLOSSARY

**pleadings** - исковые заявления; состязательные бумаги, которыми обмениваются стороны на предварительной стадии судебного разбирательства

The formal allegations by the parties of their respective claims and defenses. Statements, in logical and legal form, of the facts that constitute plaintiffs cause of action and defendant's ground of defense. Pleadings are either allegations by the parties affirming or denying certain matters of fact, or other statements in support or derogation of certain principles of law, which are intended to describe to the court or jury the real matter in dispute.

**information** - заявление об обвинении

An accusation exhibited against a person for some criminal offense. A written accusation made by a public [prosecutor. The information may be used to bring a person to trial. The purpose of an information is to inform the defendant of the charges against him or her and to inform the court of the factual basis of the charges.

prosecutor - прокурор One who prosecutes another for a crime in the name of the government. One who instigates a prosecution by making affidavit charging a named person with the commission of a penal offense on which a warrant is issued. One who instigates the prosecution upon which an accused is arrested.

**affidavit** - письменное показание с целью выдачи ордера на арест A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. It is a written statement made before an officer of the court or a notary public.

**probable cause** - возможная причина, основание для возбуждения судебного дела против правонарушителя  
Reasonable cause; having more evidence for than against. A reasonable ground for belief in the existence of facts warranting proceedings. An apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or, in a civil case, that a cause of action existed.

**bench warrant** - распоряжение, приказ суда, судебный ордер

Document issued by the court for arrest of a person or to bring in a witness who does not obey the subpoena. Bench warrant is commonly issued to compel a person's attendance before the court to answer a charge of contempt or if a witness or a defendant fails to attend after a subpoena has been duly served.

**subpoena** - вызов в суд, повестка

It is a command to appear at a certain time and place to give testimony upon a certain matter.

**to take into custody** - взять под стражу, под охрану

Custody is the care and control of a thing or person. The term may mean actual imprisonment or physical detention.

**charge** - обвинение

An accusation. In criminal law it is accusation of a crime by a formal complaint, information or indictment. In trial practice, an address delivered by the court to the jury at the close of the case, telling them the principles of law they are to apply in reaching a decision. The charge may also include instructions given during the trial for the jury's guidance.

**attorney** - адвокат, юрист, поверенный

In the most general sense this term denotes an agent or substitute, or one who is appointed and authorized to act in the place instead of another. An agent, or one acting on behalf of another. It is one under applicable law to practice law.

**bail** - денежный залог

Money deposited to free a prisoner until trial.; to **bail** - выдавать на поруки, под денежный залог

To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a certain day and a place in the court.

**to investigate** - расследовать, проводить дознание

To follow up step by step by patient inquiry or observation. To trace track; to search into; to examine with care and accuracy; the taking of evidence.

**to plead** — заявлять, отвечать на обвинения в суде

To deliver in a formal manner the defendant's answer to the plaintiff's declaration, complaint or to the indictment, as the case may be.

**indictment** – обвинительный акт

An accusation in writing, a charge which must be proved at trial before a defendant may be convicted.

**arraignment** - предъявление обвинения

An initial step in the criminal process in which the defendant is formally charged with an offense. Procedure where by the accused is brought before the court to plead to the criminal charge. The defendant is given a copy of the complaint, indictment, information or other accusatory instrument, and informed of his constitutional rights, including the pleas he may enter. The charge is read to him and he is asked to plead "guilty" or "not guilty".

**plea of "guilty" or plea of "not guilty"** - заявление подсудимого о

13. признании или непризнании себя виновным

The defendant's response to a criminal charge (guilty, not guilty), a

14. confession in open court.

**jury trial - суд присяжных** Trial of matter or cause before { jury as opposed to trial before judge.

15. The right to "jury trial" implies a trial by an impartial and qualified

jury. Function of jury is to determine issues of fact in civil and criminal cases and to reach a verdict in conjunction with those findings. While the number of jurors has historically been twelve, many states now permit six-member juries in civil cases, and some states permit six-member juries to hear criminal cases as well.

**to waive one's right** - отказаться от права, заявить суду отказ от права

To abandon, throw away, renounce, repudiate a right, a privilege, or the opportunity to take advantage of something. To give up right voluntarily. A person is said to waive a benefit when he abandons the remedy which the law gives him. In order for one to "waive" a right, he must do it knowingly and be possessed of the facts.

**deposition** - письменное показание под присягой и приобщение к материалам дела документов, вещественных доказательств

A method of pre-trial discovery that consists of a testimony of a witness taken in writing, under oath or affirmation before some judicial officer in answer to questions or interrogatories and to be used upon the trial of a civil action or criminal prosecution. All the documents are to be duly authenticated.

**to testify** - давать показания ,To give evidence as a witness; to make a solemn declaration under oath or affirmation, in a judicial inquiry, for the purpose of establishing or proving some fact.

**indigent** - неимущий In general sense, one who is needy and poor, or one who has not sufficient property to furnish him/her a living.

**plea bargaining** - сделка о признании вины в наименее тяжком из вменяемых обвинением преступлений

The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi- count indictment in return for a lighter sentence than that possible for the graver charge.

**omnibus hearing** - слушание различных вопросов

Hearing at which there are many unrelated matters on the agenda for discussion and consideration.

**mandatory sentence** - обязательное по закону наказание

Statutes in some jurisdictions require a judge to sentence a convicted defendant to a penal institution and furnish no room for discretion. The statutes generally provide that the sentence may not be suspended and that no probation may be imposed, leaving the judge with no alternative but commitment.

**on parole** - условное освобождение; отпустить на поруки

Release from jail, prison or other confinement after actually serving part of sentence. A conditional release of prisoner, generally under supervision of a parole officer. Such may be revoked if he fails to observe the conditions provided in parole order.

**confrontation** - очная ставка In criminal law, the act of setting a witness face to face with the prisoner, in order that the latter may make any objection he has to the witness or that the witness may identify the accused.

## EXERCISES

15. Translate the following words and word combinations or find Russian equivalents:

arraignment; depositions of witnesses; to take into custody; affidavit; prosecutor; plea bargaining; information; pleadings; the existence of probable cause; to introduce evidence at hearing; mandatory sentence; to be placed on parole; confrontation of the offender; jury trial; subpoena.

15. Translate the following sentences into Russian:

15. In both criminal and civil proceedings, a document (pleading) must be filed with the court to start a proceeding. In criminal law it is called an information.

15. The papers are filed for the state by a prosecutor. To an information is attached an affidavit to show probable cause, under oath.

15. At time of arrest, a defendant will be advised of: (a) the charge; (b) right to an attorney; (c) right to appointed attorney at state expense if he can't afford an attorney; (d) that he does not have to say anything without attorney present;

e) that anything said can be used against him in court; and (f) right to bail, amount to bail, and way to post it.

15. The judge issues a bench warrant to the sheriff for arrest of defendant.

15. At the first court hearing the court advises the defendant of his right to [jury trial and if defendant says he wants to waive any right, court will examine him to see if he understands rights and effect of a waiver.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.**

prosecutor, subpoena, deposition, indigent, pleading indictment information, j custody, public defender, interrogatory, bench warrant, affidavit to show probable I cause, confrontation, omnibus hearing, request for admission, testimony, bail

1. Documents filed in any court case are called \_\_\_\_\_.

2. To begin a criminal case, the \_\_\_\_\_ files \_\_\_\_\_ either \_\_\_\_\_ an \_\_\_\_\_ together with \_\_\_\_\_ an \_\_\_\_\_; or an \_\_\_\_\_ as a result of actions of a Grand Jury.

15. This document, issued by a judge in a criminal case, causes you to be wrested: .

15. This document, in either a civil or a criminal case, orders you to appear I and testify: .

15. If a person is taken into \_\_\_\_\_ without a court order, the police may I only hold him for 72 hours.

Three types of discovery are: \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_.

15. In a criminal case, if the defendant is \_\_\_\_\_, he is often represented by K a \_\_\_\_\_.

15. In a criminal case to see if a case is ready for trial, a judge meets with I the attorneys in an \_\_\_\_\_.

15. In Criminal Law the act of setting a witness face to face with the accused is called \_\_\_\_\_.

**15. Find English equivalents for the following Russian expressions:**

заявление об обвинении; письменное показание с целью выдачи ордера на арест; приказ суда, судебный ордер; взять под стражу; выдавать на поруки, освобождать из-под стражи под залог; предъявление обвинения; отказываться от права; обязательное, по закону, наказание; условное

16. освобождение; очная ставка; прокурор; вызов в суд по повестке; обвинительный акт; суд присяжных; давать показания.

**■ Translate the following sentences from Russian into English:**

1. Судебное дело о привлечении к уголовной ответственности за совершение преступления возбуждает прокурор.

16. Судья выдает шерифу ордер на арест обвиняемого.

16. Во время ареста обвиняемому сообщается следующее: (а) обвинение; (б) что он имеет право воспользоваться адвокатом; (в) что он имеет<sup>1</sup> право на адвоката за государственный счет, если у него нет средств оплатить услуги своего адвоката; (г) что он имеет право не отвечать на вопросы в отсутствие своего адвоката; (д) что все сказанное им может быть использовано против него в суде и (е) что он имеет право быть отпущенным под залог.

16. Обвиняемый имеет право быть ознакомленным с показаниями свидетелей.

16. Потерпевшие часто приглашаются на слушание дела.

## UNIT 5. TORTS: The Issue of Private Wrongs

Because the victims were soon forgotten in the king's system, they turned back to the local courts, filing cases against offenders who had caused them a harm. These actions were first known as trespass; later torts; "A complex machine for shifting human losses from one who sustained loss to someone else."

At first, there were three varieties of trespass:

16. Trespass with force of arms against the person:

Assault: Acts placing plaintiff in reasonable apprehension of an imminent battery taking place. Words are never enough but may be with some action. There must be present apparent ability of defendant in plaintiff's perception to carry out the threat.

Battery: Intentional touching of the person of another in a rude, insolent or angry manner. "Person" includes things attached to him at the time, and the touching can be by an agency set in motion.

False imprisonment: plaintiff must be aware that he is not free to move about at will as a result of the acts of defendant. Confinement must be total and without freely given consent.

16. Trespass against the personal, private property of another by carrying away theft (exerting unauthorized control over property of another with intent to deprive the owner of the use and enjoyment) and

16. Trespass against real estate; breaking the close. In burglary an historic statutory element is "breaking and entering".

All three trespasses require proof of a specific intent to do the act which caused the harm; that is, that the act of the defendant was volitional as opposed to a reflex. But it was not necessary to prove that a harm was intended or that harm even resulted. Trespass began in strict liability, at the opposite end of Criminal Law!

But the original law was insufficient. Defendant throws a log towards the road, hitting plaintiff who is walking past. Plaintiff, being harmed, has an action in trespass against defendant, because he was directly touched by the agency set in motion by defendant. But what if, instead of hitting plaintiff, the limb lays in the highway and plaintiff, in the dark, stumbles over it and is injured. What then?

Local courts developed actions on the case. Trespass became the action for direct and immediate harm without actual damages. Actions on case were for consequential or indirect harm where actual damage! did have to be proven.

But in actions on the case you also had to prove a fault that the defendant did the act with some mental culpability, but not necessarily with *mens rea*. Gradually fault became the doing of an act negligently] recklessly, or intentionally.

Negligence means to do an act, which a reasonably prudent person would, in same or similar circumstances, not do, or to refrain from doing an act, which a reasonably prudent person would do. You were held to a mythical community standard of conduct. The community, in the form of the jury, determined its standards case by case.

Reckless means doing an act with a heedless disregard for the safety of others, where the actor knows, or has every reason to know that a very high risk of harm is being created.

Intentional means the act was done knowingly and volitionally, but the result of the act may not have been intended or even foreseeable.

These definitions are, for all practical purposes, the same when used in the Criminal Law, but in reverse order of importance. That is intent is the most important question in Criminal Law, with negligence least; in tort, negligence is most important, with intent the least.

At first tort had a problem with liability for any negligent inaction. Eventually it developed the theory that since the tortfeasor is in the best position to reduce or eliminate the risks of his behavior, he may be held responsible for failing to do so provided that he had a duty to act.

The interest and power of the king in Criminal Law soon swallowed up the tort actions of assault, battery, false imprisonment, theft, burglary, arson, murder, mayhem, etc. Tort Law for a time lost its character of strict liability, except for trespass on real property. It later develops some strict liability in manufacture, possession or use of dangerous items (dynamite), stored water on the premises, etc.

Tort Law became the way to address a private wrong, while Criminal Law addressed public wrongs. But the same acts could be a crime! and a tort! Today, although not at first, a person might be sued at both Criminal Law and Tort Law for the exact same acts.

Tort Law asks: (1) Was there duty owed by the defendant to the plaintiff? (2) Was this duty *breached*? (3) Was the behavior negligent! reckless, intentional, or under strict conduct? (4) Did damage *proximately* result? (5) Is the proof sufficient to tip the scales of justice?! (6) What compensation is proper?

*Proximate cause* means two things:

16. *Cause in fact: the plaintiff's injury wouldn't have occurred but for defendant's act;*

16. *Legal cause: a reasonable relationship between act done and the risk created (foreseeability).*

Tort is considered to have several purposes: (1) compensate people for wrongs suffered; (2) place the cost of compensation upon those who, in justice, ought to bear it; (3) prevent future loss and harm (general and specific deterrence); (4) vindicate the person wronged; and (5) to deter victims from making an individual retaliation for wrongs done.

The difference between crime and tort is seen in the matter of to whom the fault must be acknowledged: to the state (in Criminal Law) or a victim (in Tort Law). There is also a difference in the response of the law: punishment in Criminal Law and compensation to victim in Tort Law.

Many of the defenses at Criminal Law are available in such as self-defense, necessity, infancy, insanity. The difference is that you are working in the field of preponderance of the evidence rather than preemption of innocence: tort liability is easier to prove and harder to defend against. What truly happens is that the jury tends to pragmatism as it looks at these defenses, both in crime and in tort.

The defense, which you most frequently encounter in Tort Law, is *contributory negligence* or *comparative negligence*. Under the former, the historical approach to torts, if I drove slowly through a red light while you sped through the green light, and we crashed, your negligence (speeding) would prevent you from recovery against my negligence (red light violation). The rule said that if there was any contributory negligence, regardless of how slight, it prohibited recovery. In fact, juries probably weighted the degrees of negligence, and altered the damage award accordingly.

But, because of the question of fairness, the law in the U.S. is now almost totally comparative negligence: that is, the jury decides the percentage of fault of each party, determines the damage due the plaintiff, and then judge applies a formula which reduces the damages by the percentage of contributing fault of the plaintiff.

Some other defenses in tort actions, which are really just variations on the contributory negligence concept, are: last clear chance; assumption of risk; abuse/misuse of product. The first would apply in our car collision: you, if driving reasonably, would have seen my driving slowly through the red light and stopped as you had the last clear chance to avoid the collision.

Assumption of risk says you knew there was a risk to your behavior and you chose to go ahead. If you are then hurt by the anticipated risk, there is no recovery. Abuse/misuse of product is a variation of this in product liability cases: you use the product in a way, in which it was not intended, then you cannot complain if the product fails and you are hurt.

And, of course, foreseeability, mentioned earlier, is a form of defense. Just keep in mind that in our system it is the jury, which is going to determine all of these issues. Hopefully they have some common sense, which they bring to the process.

## GLOSSARY

**intentional tort** - преднамеренное правонарушение

Tort or wrong perpetrated by one who intends to do that which the law declared wrong as • contrasted with negligence in which- the tortfeasor fails to exercise that degree of care in doing what is otherwise permissible.

**personal tort** - деликт против личности

One involving or consisting in an injury to the person or to the reputation or feelings as distinguished from an injury or damage to real or personal property called a "property tort".

**trespass** - причинение вреда; нарушение владения; посягательство

An unlawful interference with one's person, property or rights. Trespass comprehends any misfeasance, transgression or offense, which damages another person's health, reputation or property.

**misfeasance** - ненадлежащее совершение правомерных действий; злоупотребление властью

The improper performance of some act which a man may lawfully do.

**assault** - нападение Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason for fear or expect immediate bodily harm constitutes an assault.

**confinement** - лишение свободы State of being confined; shut in; imprisoned. Confinement may be by either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person.

17. volition – волеизъявление, преднамеренное, волевое решение

The act or the power of making a choice or decision; a choice or decision made.

**actions on the case** - иск о взыскании убытков, главным образом из деликта, но также и из нарушения договора

The recovering of damages by I the judgment of a court, as the result **K of an action brought for that purpose.**

**culpability** - виновность Blameworthiness; *culpable* means deserving of moral blame or punishment; having acted with indifference to consequences and to the rights of I others.

**negligence** - небрежность; халатность

Negligence is the failure to use I such care as a reasonably prudent and careful person would use under similar circumstances. The term refers to conduct that falls below the standard established by law for the K protection of others against unreasonable risk of harm.

**recklessness** - опрометчивость, грубая неосторожность

The state of mind accompanying I an act, which either pays no regard to its probably or possibly injurious K consequences, or which, though K foreseeing such consequences, persists in spite of such knowledge. Recklessness is a stronger term than mere or ordinary negligence.

**inaction** - бездействие

Lack of activity; idleness.

**arson** - поджог

The willful and malicious burning of the house of another. Sometimes it is expanded by statute to include acts similar to burning (such as exploding) or the destruction of property, other than dwellings.

**mayhem** - нанесение увечья

Willful and permanent crippling, mutilation, or disfigurement of a person.

**to sue** - предъявлять иск

To commence or to continue legal proceedings for recovery of a right. To commence and carry out legal action against another.

**breach** - нарушение (*закона, прав и т.п.*)

The breaking or violating of a law, right, obligation, duty, or engagement, either by commission or omission. Exists where one party

to contract fails to carry out term, promise, or condition of the contract.

**proximate cause** - непосредственная причина

That which is nearest in the order of responsible causation. The proximate cause of an injury is the cause that produces the injury and without the accident could not have happened.

**foreseeability** – предсказуемость. The ability to see or know in advance; hence, the reasonable anticipation that harm or injury is a likely result of acts or omissions.

preponderance of evidence -  
перевес доказательств

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

contributory - способствующий (*чему-л.*), делающий долевым  
взносом

Joining in the promotion of a given purpose; lending assistance to the promotion of a given result.

## **EXERCISES**

17. Translate the following words and word combinations or find Russian equivalents:

confinement; culpability; recklessness; personal tort; negligence; intentional tort; mayhem; preponderance of evidence; proximate cause; misfeasance.

17. Translate the following sentences into Russian:

17. Trespass or tort is unlawful interference with the person, property, or rights of another.

17. Battery is intentional touching of another person in a rude, insolent or angry manner. "Person" includes things attached to him at the time and the touching can be by an agency set in motion.

17. Trespass requires proof of a specific intent to do the act which has caused the harm, that is, that the act of a defendant is volitional.

17. Burglary is "breaking and entering".

17. Negligence means to do an act, which a reasonably prudent person would, in some or similar circumstances, not do, or to refrain from doing an act which a reasonably prudent person would do.

17. Reckless means doing an act with heedless disregard for the safety of others where the actor knows, or has every reason to know, that a very high risk of harm is being created.

17. Intentional means the act was done knowingly and volitionally, the result of the act may not have been intended or even foreseeable.

17. The intent is the most important question in Criminal Law, with negligence the least; in Tort Law, negligence is most important, with intent the least.

17. Tort Law became the way to address a private wrong while Criminal Law addressed public wrongs. But the same act could be a crime and a tort. Today, a person might be sued at both Criminal Law and Tort Law for the exact same set of acts.

10. Tort is considered to have several purposes: (a) compensate people for wrongs suffered; (b) place the cost of compensation upon those who, injustice, ought to bear it; (c) prevent future loss and harm (general and specific deterrence); (d) vindicate the person wronged; (e) to deter victims from making an individual retaliation for wrongs done.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.**

beyond a reasonable doubt, strict liability, probation, intent, assumption of risk, reckless, bond, trespass, set off, bail, negligence, battery, preponderance of evidence, tort, recklessness, on parole

17. The failure to do what a reasonable person would have done under the circumstances (or doing what a reasonable person would not have done) is

While in a criminal case proof must be \_\_\_\_\_, in a civil case it must be  
by a \_\_\_\_\_.

17.. \_\_\_\_\_ or \_\_\_\_\_ is unlawful interference with the person, property or right of another.

17. Intentional touching of another person in a rude, insolent or angry manner is .

17.. \_\_\_\_\_ means doing an act with heedless disregard for the safety of others, where the actor knows, or has every reason to know, that a very high risk of harm is being created.

17. If a defendant is convicted in a criminal case and not sent to prison, he is placed upon .

17. A defendant in a criminal case may be released from custody while waiting for the trial if he posts a \_\_\_\_\_ .

17. \_\_\_\_ . says you knew there was a risk to your behavior and you chose to go ahead.

An example of an affirmative defense in a civil case is \_\_\_\_ .

10. The issue of fault in the United States, is determined under the following four concepts: \_ \_\_\_\_\_ ; \_\_\_\_\_; and \_\_\_\_\_ .

#### **4. Find English equivalents for the following Russian expressions:**

строгая ответственность; опрометчивость, грубая неосторожность; бездействие; нанесение увечья; непосредственная причина; преобладание, перевес доказательств; намерение; деликт, гражданское правонарушение; преднамеренное правонарушение; нападение; нарушать чужое право владения; поджог; нарушать.

#### **5. Translate the following sentences from Russian into English:**

18. Гражданские правонарушения включают нарушения прав личности, права владения собственностью, нарушения других прав.

19. Нападение на человека, избивание его означает нарушение прав личности.

20. Воровство и ограбление человека со взломом помещения означает нарушение права владения собственностью.

21. Небрежность, халатность означает осуществление конкретным человеком таких действий, которые другие благоразумные лица на его месте не совершили бы в аналогичных или сходных обстоятельствах.

22. Опрометчивость, грубая неосторожность означает совершение определенных действий без учета того, являются ли эти действия безопасными для других, при этом тот, кто эти действия совершает, знает или имеет все основания полагать, что его действия создают ситуацию, когда возникает большой риск нанесения вреда другим лицам.

## UNIT 6. CIVIL PROCEDURE

To start a civil case, a *pleading* must be filed with the court, called a *complaint*, naming the party against whom the case is brought (*the defendant*). The person or organization filing the case is called the *plaintiff*. Most civil cases are prepared and filed by an attorney paid for by the plaintiff. The complaint must *state a cause of action* (there must be enough set forth that a defendant can know what he is accused of having done). Only some civil cases must be *verified* (sworn to), and there is a *court cost* payable at the time of filing a civil case.

Next a *summons* is issued, inviting defendant to come to court. The summons tells the defendant how many days he has to *appear* and *file an answer*. If he does not, a *default judgment* may be entered against him. A defendant can defend without a lawyer.

Both parties have a right to jury trial but they must file a paper asking for a jury or they lose the right. There is not, generally, a right to speedy trial in civil cases.

In the U.S., the first question in civil procedure is: "What court do I [ want?" As we have 50 state law and procedure systems plus one federal system picking the right court is a problem. Today there is little, if any, need for this diversity, we could easily have one law and procedure for the entire nation. You select the court based upon jurisdiction: General, Special, and Exclusive (within each of which is *in personam*, *in rem*, and *quasi in rem*).

*General Jurisdiction* means that a court can consider any type of [ case. *Special Jurisdiction* means that a court only handles one type of case: maybe juvenile; family (divorces, adoptions, etc.); criminal; bankruptcy. *Exclusive Jurisdiction* means that this is the only court in which the type of case may be filed.

*In personam jurisdiction* means that the court has power over the I person. It is the highest and best form of jurisdiction for the reason that if you win judgment, it has full *faith and credit* in all other states and [ can be easily enforced.

*In rem jurisdiction* means the court has jurisdiction over property (real or personal) of the other party. Thus a judgment can be entered effecting that property and be binding against the defendant even if the defendant is not in the jurisdiction of the court (*in personam*).

*Quasi in rem* means that jurisdiction over the property is used to create *in personam* jurisdiction if certain other factors are present called *substantial contacts* with the jurisdiction.

A suit filed in a state court may be removed to federal court in certain circumstances, and a federal court may send a case to a state court in certain circumstances. A state court in county *A* may order a case transferred to a state court in county *B* under *non convenes forum* doctrine, but one state cannot send to another state. If we had one uniform law for the entire nation, only the question of *non convenes forum* would exist, all other questions of jurisdiction would disappear. The issue of jurisdiction grows out of state sovereignty: which state has sufficient contacts to be able to exercise control over the citizen of another state.

Picking the right court is important; because if you pick the wrong court, your judgment may have little, or even no, value. And while you are searching for the right court, the *statute of limitations* might expire and you would have no case anywhere.

Once served with summons, a defendant must appear and file an answer and *admit, deny, claim lack of information, or request to make more specific* each allegation of the complaint.

Defendant may file a *counter-claim* against plaintiff for any other claim, even if totally unrelated to plaintiff's case (even a tort action countering a contract action). Defendant may file a *cross-claim* against another defendant or a single one of multiple plaintiffs. A defendant can file a *third-party claim* against someone not a party to the case who defendant says will be liable to defendant if plaintiff wins. Defendant can request the court for permission to *interplead* a party, who defendant thinks may be affected by the case and whose presence is needed for a full and final determination. Defendant can also file *affirmative defenses*: such as *set-off*. In some cases if defendant has an affirmative defense, counter-claim, or cross-claim, and does not file it, he loses that claim for all time.

At any time before trial, either party may file a *motion for judgment on the pleadings* or *motion for summary judgment*. The first allows the court to look at the pleadings and say if a case exists. The second allows the court to look at the pleadings plus evidence submitted by *discovery* or *affidavit* (a sworn statement of a person).

At any time after a case has begun, parties may commence discovery of what the evidence is. Discovery is self-governing in that the court does

nothing unless a party objects to some form of discovery proposed by another party. Types of discovery are: *depositions*; *deposition by written interrogatories*; *interrogatories*; *request for admissions*; *mental or physical examination*; or *request for production, examination or copying*.

Prior to the trial, the judge will hold a *pre-trial conference* with the attorneys (and sometime the parties). At the end of the hearing, an *order* will be entered, listing the issues for the trial. Any and all issues listed in the pleadings are merged into this order which then controls the rest of the case. The judge can also take the various cross and counter cases and create entire new cases for them so that they are tried separately.

The vast majority of all civil cases in the U.S., like the vast majority of all criminal cases, are not tried - they are *settled*. The problem is that the parties rarely face each other: all bargaining is done by the attorneys. Thus, the parties have no ownership in the settlement, even though they approve the settlement, and they never get to speak to each other, so all their feelings and emotions are still inside them, eating at them. As in criminal cases, we need face to face confrontation of the parties in civil cases for any true resolution of conflict, or healing, to take place.

## GLOSSARY

***quasi in rem*** (*Lat.*) - «Как если бы...»

As if; almost as it were; analogous to. This term is used in legal phraseology to indicate that one subject resembles another with which it is compared in certain characteristics, but there are intrinsic and material differences between them. It is often prefixed to English words, implying mere appearance or want of reality.

**cross-claim** - встречный иск

A defendant may file a cross-claim against any party who filed the complaint against him.

**interplead** - возбуждение процесса в целях определения прав третьих лиц на спорный предмет; иск для установления права собственности на имущество, на которое претендуют несколько лиц

When two or more persons claim the same thing (or fund) of a third, and he, laying no claims to it and fearing he may be prejudiced against to recover it, he may join such claimants as defendants and

require them to interplead their claims so that he may not be exposed to double or multiple liability.

**set-off** - зачет требований

A counter-claim demand which defendant holds against plaintiff. A deduction by which a given claim may be lessened or cancelled. It may be defined as a claim that serves to counterbalance or to compensate for another claim.

**interrogatories** - письменный опрос сторон или свидетелей

A set or series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case. The answers to the interrogatories are usually given under oath. Interrogation is the process by which suspects are rigorously questioned by police.

**to serve** - вручать судебный документ

To communicate a document notifying a person named that an action has been commenced against him in the court; to serve the person with the notice; to serve a warrant.

**default judgment** - принятие судебного решения вследствие неявки ответчика

A judgment against a defendant who has failed to respond to a plaintiff's action, or to appear at the trial or hearing. When a party against whom a judgment is sought has failed to appear in court to plead (i.e. answer) or otherwise defend, he is in default and judgment by default may be entered either by the clerk or the court. A judgment rendered in consequence of the non-appearance of the defendant. One entered upon a failure of a party to appear or plead at the appointed time.

**pre-trial** - досудебный

Something that is done prior to trial, e.g. pre-trial conference may be used prior to trial to narrow issues to be tried, to secure stipulations as to matters and evidence to be heard, and to take all other steps necessary to aid in the disposition of the case. Such conferences between opposing attorneys may be called at the discretion of the court.

**complaint** - жалоба The original or initial pleading by which an action is commenced. The complaint, together with the summons, is required to be served on the defendant. In criminal law, a charge that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. In some instances "complaint" is interchangeable with "information". The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon

oath. If it appears from the complaint that probable cause exists, that the person named in the complaint committed the alleged crime, a warrant for his arrest will be issued.

**verification** - подтверждение, в том числе под присягой

Confirmation of correctness, truth, or authenticity, by affidavit, oath or deposition. Verification is to assure good faith in averments or statements of party.

**summons** - вызов в суд An order requiring the appearance of the defendant under penalty of having a judgment entered against him for failure to appear. The object of the summons is to notify the defendant that he has been sued. It is notification of the person named that an action has been commenced against him in the court and that he is required to appear, on a day named, and answer the complaint in such action.

**civil procedure** - гражданский процесс

Legal method; machinery for carrying on the suit, including pleading, process, evidence and practice. The term thus refers to the mechanics of the legal process, the body of rules and practice by which justice is meted out by the legal system rather than the substance and content of the law itself. It is body of law concerned with methods, procedures and practices in civil litigation.

**proceeding** - судебное разбирательство, судопроизводство, судебная процедура

The succession of events in the process of judicial action; the form in which actions are to be brought and defended, the manner of intervening in suits, or conducting them; the mode of deciding them, of opposing and of executing judgment.

## **EXERCISES**

23. Translate the following words and word combinations or find Russian equivalents:

cross-claim; civil procedure; summons; default judgment; to serve; set-off; verification; complaint; pre-trial; interpleader.

24. Translate the following sentences into Russian:

24. General Jurisdiction means that a court can consider any type of case. Special Jurisdiction means that a court only handles one type of case: maybe juvenile; family (divorces, adoptions); criminal; bankruptcy. Exclusive Jurisdiction means that this is the only court in which the type of case may be filed.

24. To start a civil case, a pleading must be filed with the court. The pleading is called a complaint, naming the party against whom a case is brought.

24. The person or organization filing the case is called the plaintiff. Most civil cases are prepared and filed by an attorney.

24. A court cost is payable at the time of filing a civil case (but not a criminal case).

24. A suit filed in a State Court may be removed to Federal Court in certain circumstances, and a Federal Court may send a case to a State Court in certain circumstances.

24. Once served with summons, defendant must appear and file an answer. Defendant may file a counter-claim against plaintiff. Defendant may file a cross-claim against another defendant. Defendant can request the court for permission to interplead.

24. At any time after a case has begun, parties may commence discovery, discovering what the evidence is.

24. Prior to the trial, the judge will hold a pre-trial conference with the attorneys (and sometime the parties).

24. Most states (in the U.S.) today have one or more "long-arm statutes" which allow them to exert jurisdiction over a non-resident for acts done in the state or connected to the state, or having an impact in the state.

10. There are 50 state law and procedure systems in the U.S. plus one Federal System. Picking the right court is important because if you pick the wrong court, your judgment may have little, or even no value. And while you are searching for the right court, the statute of limitations might expire and you would have no case anywhere.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use. There are expressions which you may use twice.**

plaintiff, complaint, private wrong, plea bargain, *in personam*, public wrong, summons, pre-trial conference, default judgment, verification, settlement, *in rem*, cross-claim, defendant, *quasi in rem*

1. In a civil case, the \_\_\_\_\_ starts the case by filing a \_\_\_\_\_ against the

2. The document, in a civil case, which invites you to appear and defend is

25. To see if a case is ready for trial, a judge, in a civil case, meets with the attorneys in a \_\_\_\_\_.

Most of our criminal cases are disposed of by \_\_\_\_\_ while most civil cases are disposed of by \_\_\_\_ .

26. \_\_\_\_\_ A tort is considered to be a \_\_\_\_\_ while a crime is considered to be a \_\_\_\_\_

6. \_\_\_\_\_ jurisdiction means that the court has power over the person.

4. \_\_\_\_\_ means that the court has jurisdiction property (real or personal) of the other party.

4. \_\_\_\_\_ means that jurisdiction over the property is used to create *in personam* jurisdiction if certain other factors are present.

4. Jurisdiction may be \_\_\_\_\_ or \_\_\_\_\_ or \_\_\_\_\_ .

10. If the defendant doesn't make his appearance at the trial or hearing \_\_\_\_\_ may be entered against him.

#### **4. Find English equivalents for the following Russian expressions:**

принятие судебного решения вследствие неявки ответчика; подтверждение под присягой; возбуждение судебного процесса в целях определения прав третьих лиц на спорный предмет; иск для установления права собственности на имущество, на которое претендуют несколько лиц; вызов в суд; встречный иск; письменный опрос сторон или свидетелей; жалоба; гражданский процесс; досудебный; вручать судебный документ.

#### **I 5. Translate the following sentences from Russian into English:**

1. Гражданский процесс есть установленный нормами гражданского процессуального права порядок разбирательства и разрешения судом гражданских дел, исполнения решений и постановлений судов.

2. Гражданский процессуальный кодекс есть закон, в котором систематизированы нормы гражданского процессуального права.

3. Суд общей юрисдикции может рассматривать судебные дела любой категории.

4. Суд специальной юрисдикции может рассматривать судебные дела только одной категории, например: только дела о банкротстве, дела семейных отношений - развод, усыновление, удочерение и др.

## UNIT 7. PROPERTY LAW:

### The Issue of Rights

Law may be broken into *Criminal Law* and *Civil Law*. Civil Law may be broken into *Property Law*, *Contract Law* and *Tort Law*. Each of these three may be broken into *law* and *equity* components. But it is Property Law which brings a need for the other many types of Civil Law. It is the right of private property ownership ("mine, not yours") which gives the need for Property Law. If there is no right to private property, then the king owns everything and punishes any who violates the laws he makes to protect what is his.

Well, if two of the actions in trespass were based upon injury to property or to property rights, a law of property would be required so that we could determine who owned what, or had what rights in what property. If you damage my property, we need *Tort Law*; if I want to sell the land to you we need *Contract Law*; if I want you to get my property when I die, we need *Inheritance Law*; if I want to pay by check, we need *Negotiable Instruments Law*; if we want to be merchants or manufacturers of products, we need *Merchant Law*; we need *remedies* and *procedure* to make law work for us when someone breaches the law.

Thus Property Law asks:

What are the respective rights: ownership - possession - use, present or future, contingent or certain, etc. of competing parties (that is, whose rights are the higher)?

Is the proof sufficient to tip the scales?

What needs to be done to uphold, or protect the rights?

Because of the importance attached to ownership of property and the means of production as well as the right to peaceable enjoyment, damages did not need to be shown to bring and win a case in Property Law. The earliest cases were all strict liability: volitionally do an act and you are liable without regards to the state of your mind. However, the state of your mind might effect the damage question.

Now for some of the words of Property Law:

**Real, personal, and mixed (fixtures) property:**

tangible and intangible property; legal and equitable interests.

**Ownership, possession, and use of property:**

5 claims for damage: nuisance, trespass; defenses: estoppel, laches  
length of time of claim: privity; tacking.

**Private, public, and common property rights (interests):**

current, future, and contingent property rights;  
some types: remainder and reversion; conditions subsequent; life  
estate; trusts; dower; equitable servitudes; termination: surrender  
or abandonment.

**Rights on, above, and under property:**

g examples: easements; covenants; license; support; upper and  
lower riparian water rights; issues in determining: burden or  
benefit; dominant or servient; issues relative to you and the  
government: zoning; eminent domain.

**Transfer of property:**

bargain and sale; gift; equitable conversion; inheritance; adverse  
possession.

**Issues of conveyance:**

deed; grant; recording; statute of fraud; quit claim deed; delivery;  
warranty (express or implied); consideration; marketable title;  
risk of loss; breach; specific performance; mortgages and equity  
of redemption.

**Forms of ownership:**

joint tenancies, common tenancies, and tenancies by entireties;  
issues between owners: partition; severance; rents;  
profits; expenditures for improvements.

**Landlord and tenant:**

types: fixed; periodic; at will or at sufferance; tenant "rights":  
quiet enjoyment; assignment or sublease; holding over; forcible  
detainer; landlord issues: eviction; waste; joint issues: liabilities  
for injuries to others; mitigation of damages.

**GLOSSARY**

**Property Law** - право собственности, вещное право

A law which refers to any type of right to specific property  
whether it is personal or real property, tangible or intangible.

**dominion** - собственность и владение

Generally accepted definition of "dominion" is perfect control in  
right of ownership.

**to make restitution** - восстановить первоначальное  
положение Restitution is an act of restoration of anything to its

rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. In the law of commercial sales, the buyer's rights to restitution are governed by Uniform Commercial Code (U.C.C.).

**Contract Law** - договорное право, договорно-обязательственное право

It is a body of the law which regulates relations arising out of binding agreement between the parties, natural persons or legal entities. Contract is an agreement which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

**negotiable** - оборотный, могущий быть переуступленным; могущий быть предметом переговоров

Legally capable of being transferred by endorsement or delivery. Usually it is said of checks and notes and sometimes of stocks and bearer bonds.

**Negotiable Instruments Law** - закон об оборотных документах

It regulates transactions of documents which can be legally transferred to another owner. To be negotiable within the meaning of the Uniform Commercial Code an instrument must be, among others, a writing signed by the maker or drawer; it must contain an unconditional promise or order to pay a certain sum in money; it must be payable on demand or at a definite time.

**Merchant Law** - торговое право

The term to designate the body of law applicable to the rights, intercourse, and relations of legal entities and natural persons engaged in commerce, trade, or mercantile pursuits.

**procedure** - судопроизводство

The mode of proceeding by which a legal right is enforced. That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions. Procedure is machinery for carrying on suit including pleading, process, evidence and practice.

**contingent** - зависящий от обстоятельств

Possible but not assured; doubtful or uncertain; synonymous with *provisional*. This term may imply that no interest exists at present time, and that whether such interest or right ever will exist depends upon a future uncertain event.

**real property** - недвижимое имущество

Land, and generally whatever is erected or growing upon or affixed to land, property which, on death of the owner, passes to his heir. *Real* means immovable property: *real estate*.

**personal property** - движимое имущество, в отличие от недвижимого имущества; личная собственность, имущество

In broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate. It is sometimes designated as *personality* when real estate is termed *realty*. Personal property includes money, goods, chattels. Personal property is devisable into (a) Corporeal personal property, which includes movable and tangible things, such as animals, furniture, merchandise, etc.; and (b) incorporeal personal property, which consists of such rights as personal annuities, stocks, shares, patents and copyrights.

**mixed (fixtures) property** -

смешанная собственность, движимая, соединенная с недвижимой собственностью, то, что не может быть отъединено от недвижимой собственности

Property which is personal in its essential nature but has certain characteristics and features of real property (e.g. fixtures).

**fixtures** - движимость, соединенная с недвижимостью

That which is fixed or attached to realty permanently as an appendage, and not removable.

**tangible property** - материальная собственность, имущество, в отличие от нематериальной, например интеллектуальной, собственности

That which may be felt or touched, and is necessarily corporeal, although it may be either real or personal.

**intangible property** - нематериальная собственность

It is a "right" rather than a physical object. Examples would be patents, stocks, bonds, goodwill, trademarks, franchises, and copyrights.

**legal interest** - признаваемый правом интерес

That rate of interest prescribed by law as the highest which may be lawfully contracted for or exacted. Term may also be used to distinguish interest in property or in claim cognizable at law in contrast to equitable interest.

**equitable interest** - интерес по праву справедливости

The interest of a beneficiary under a trust is considered equitable as contrasted with interest of the trustee, which is a legal interest because the trustee has legal as contrasted with equitable title.

**laches** - ссылка на промедление, просрочка

Unconscionable, undue, unexcused, unexplained or unreasonable delay in assertion of right which works disadvantage to another. Conduct of party which has placed other party in a situation where his rights will be imperiled and his defenses embarrassed is a basis of laches. Knowledge, unreasonable delay, and change of position are essential elements. Laches requires an element of estoppel or neglect which has operated to prejudice of defendant.

**privity**.- наличие общего интереса

Mutuality of interest. In its broadest sense, "privity" is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right. Thus, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor.

**remainder** - последующее имущественное право

The property that passes to a beneficiary after expiration of an intervening income interest. If, for example, *G* places real estate in trust with income to *A* for life and remainder to *B* upon *A's* death, *B* has a remainder interest.

**reversion** - право на возврат

As used in opinions, judgments and mandates, changing to the contrary the decision of a lower court or other body.

**abandonment** - отказ от права притязания

The intentional giving up of rights or property with no future intention to regain title or possession.

**easement** - сервитут

A right created by an express or implied agreement to make lawful and beneficial use of the land of another. Such use must not be inconsistent with any other uses already being made of the land.

**warranty** - гарантия, ручательство

An assurance by one party to a contract of the existence of a fact upon which the other party may rely. ;

**will** - воля, завещание . A person's declaration of how he desires his property to be disposed of after his death. A will may also contain other declarations of the testator's desires.

**Testator** - завещатель, наследодатель; **testatrix** - завещательница, наследодательница

One who makes and executes a testament or will. *Testator* applies to a man, *testatrix* to a woman.

**mortgage** - ипотечный залог, закладная

It is a pledge or security of particular property for the payment of debt or the performance of some other obligation, whatever form the transaction may take. A mortgage is an interest in land created by a written instrument providing security for the performance of duty or the payment of debt. In common law, a conveyance of, or granting of a lien upon, real property of a debtor to his creditor, intended as a security for the repayment of a loan, usually the purchase price (or a part thereof) of the property so conveyed or encumbered.

**equity of redemption** - право выкупа заложенного имущества  
The right of the mortgagor of an estate to redeem the same upon paying the amount of debt, interest and Costs. A right a mortgagor is given to redeem his property from default.

**Forcible detainer** - насильственное удержание земли или жилища

A summary, speedy and adequate statutory remedy for obtaining possession of premises by one entitled to actual possession.

**summary** - осуществляемый в упрощенном порядке; без участия присяжных

Short; concise; immediate; offhand; without a jury. The term as used in connection with legal proceedings means a short, concise, and immediate proceeding.

**estoppel** - лишение права возражения, лишение стороны права ссылаться на какие-либо факты или оспаривать какие-либо факты о стороне по делу

**Estoppel** means that party is prevented by his own acts from claiming a right to detriment of other party.

## EXERCISES

27. Translate the following words and word combinations or find Russian equivalents:

mortgage; laches; merchant law; procedure; intangible property; tangible [property; contract law; to make restitution; legal interests; easement; warranty; [remainder; real property; privity; testator.

**28. Translate the following sentences into Russian:**

28. A Law of Property would be required so that we could determine who owned what, or had what rights in what property.

28.If you damage my property, we need Tort Law; if I want to sell the land to you, we need Contract Law; if I want you to get my property when I die, we need Inheritance Law; if I want to pay by check, we need Negotiable Instruments Law; if we want to be merchants or manufacturers of products, we need Merchant Law; we need remedies and procedure to make the law work for us when someone breaches the law against us.

28. Civil Law grows out of the need for Property Law.

28.All law may be broken into Criminal Law and Civil Law.

28. Civil Law may be broken into Property Law, Contract Law, and Tort Law and each of these may be broken into law and equity components.

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use.**

Property Law, real, laches, procedure, Contract Law, personal, contingent, remedies, mixed, reversion

It is the need for \_\_\_\_\_ which brings about a need for all of the many types of Civil Law.

29.We need \_\_\_\_\_ and \_\_\_\_\_ to make the law work for us when someone breaches the law against us.

30.Property may be \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_.

31.Neglect and unreasonable, unexplained delay in enforcing an equitable right is.

31.\_\_\_\_\_. is a body of the Law which regulates relations arising out of binding agreement between the parties, persons or legal entities.

**31.Find English equivalents for the following Russian expressions:**

судопроизводство; торговое право; право оборотных документов; восстановить первоначальное положение; ипотечный залог, закладная; недвижимое имущество; движимое имущество; ссылка на промедление, просрочка; договорное право; смешанная собственность; право выкупа заложенного имущества; признаваемый правом интерес; право собственности; материальная собственность; нематериальная собственность.

**31. Translate the following sentences from Russian into English:**

31. Объектом вещного права является конкретная вещь.

31. Все законодательство может быть разделено на гражданское и уголовное.

31. Гражданское законодательство может быть разделено на вещное право, договорное право и деликтное право.

31. Если будет нанесен ущерб собственности юридических и физических лиц, то может быть использовано деликтное право.

31. При необходимости продажи земли может быть использовано договорное право.

31. Для передачи наследства используется наследственное право.

31. Для регулирования платежных операций используется право оборотных документов.

31. Торговое право регулирует коммерческую и производственную деятельность.

31. В случае нарушения законов необходимо использование средств судебной защиты и судопроизводства.

10. Интеллектуальная собственность относится к категории нематериальной собственности.

## UNIT 8. CONTRACT LAW: The Issue of Vows

As tort actions on the case developed, Contract Law began to be based on dealings in land and between merchants. The first of these were based upon contracts under seal. There was a written document signed by the parties to which they had affixed their personal wax seals - thus the term. As between merchants, some rules of behavior were becoming so taxed that contracts were implied to exist even when there was nothing under seal. But the Law Merchants did not, at first, help normal buyers because of the doctrine of *caveat emptor* - "let the buyer beware".

But what was to be done when someone promised to do a service for another, like build a barn, but verbally and not in writing? Then he builds negligently: the barn falls on the owner's cattle, injuring the cattle (which are personal property). Thus we have two parts of trespass: damage to personal property as a result of negligence. But the property is not attached to plaintiff (trespass force of arms), it is not removed (trespass by taking), the harm is not direct (it is like the log laying in the highway) and it rose out of agreement (contract). To solve this new problem, local courts created under Tort Law, a field called *assumpsit*.

Soon came an action on the case in contract for deceit. *Assumpsit* became the complaint for direct harm while action on the case was for indirect harm. And very quickly implied promises of good workmanship were imposed upon those who offered their services or wares to the general public. Eventually, *assumpsit* and its related concepts split (off from torts and became what we now call Contract Law. Today we have added, under a warranty portion of Contract Law, strict liability in contract for defective products. Etc., etc., etc. The law is never static; it is always in change, growing or retreating, which also effects notions of justice, and the need for some absolutes.

Now to look at the terms of Contract Law:

### **Mutual Assent (Offer and Acceptance):**

revocable and irrevocable (consideration to hold open is needed) | offers; unilateral (performance response) or bilateral (promise response); knowledge of offer required to accept; communication of acceptance to offeror required; certainty of terms needed; offer is personal to offeror and to offeree.

**Consideration:**

legal detriment (to do what need not do, or not to do what may do) by each (mutuality) and adequate (not a fake); promissory estoppel (anticipated reliance upon a promise, reasonably done by offeree, with harm resulting to offeree, will make a contract though offeror did not intend contract).

**Legal Capacity:**

infants (under 21) and the mentally infirm may avoid contract after incapacity no longer exists (exception for necessities).

**Form and Interpretation:**

statute of frauds (what contracts must be in writing); course of dealing or of trade (to aid in interpretation of terms); parole evidence rule (no oral testimony from events prior to execution of a contract allowed to contradict terms). ?

**Conditions, Performance and Breach:**

anticipatory repudiation; substantial performance (may remove from statute of frauds); excuse of performance; tender of performance; warranties.

**Defenses:**

impracticability; risk of casualty loss; frustration; illegality; discharge of duties.

**Remedies:**

avoidance or revocation; duress, undue influence, misrepresentation, fraud; mutual mistake of fact (or of law); unconscionability (issue of lack of mutuality); ratification after performance.

**Third Party Beneficiaries:**

may they benefit; may they enforce.

**Assignment (of Rights) and Delegation (of Duties):**

Contract Law came to ask these questions:

Was there a contract? This meant an offer (promise) by one with an acceptance (promise) by another.

Was there an adequate consideration (a legal detriment, giving up a legal right; agreeing to do what one was not legally required to do) to support each promise?

Did each party have the legal capacity to contract (an issue of age, mental infirmity, or marital status if a woman)?

Was the contract valid? This included matters such as duress, fraud, misrepresentation, etc.

What were the conditions of the contract, and were they "certain"? That is, can we readily determine what it was that the parties agreed so that a proper remedy may be ordered? In the Merchant Law, the contract was examined from the standpoint of the "hypothetical reasonable merchant".

Has the contract been breached?

Was the breach material?

Is the proof sufficient to tip the scales of justice?

What needs to be done to restore the injured to the position they occupied prior to the breach, or otherwise to make right for the wrong done by the breach?

## GLOSSARY

**vow** - клятва, торжественное заявление

A solemn promise or pledge to fulfil some engagement; pledge of fidelity; promise to speak the truth in the court. It is an oath in any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.

*caveat emptor (JLat.)* - «пусть покупатель будет бдителен»

"Let the buyer beware." This Latin phrase expresses the rule of law that the purchaser buys at his or her own risk. The maxim summarizes the rule that a purchaser must examine, judge, and test for himself. This maxim is more applicable to judicial sales, auctions, and the like than to sales of consumer goods where strict liability, warranty, and other consumer protection laws protect the consumer/buyer.

*assumpsit (Lat.)* устное или не скрепленное печатью письменное обязательство сделать что-то или выплатить какую-то сумму, простой договор

"He undertook; he promised." A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal.

**deceit** - обман, намеренное введение в заблуждение

A fraudulent and deceptive misrepresentation, artifice, or device used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. The tort or fraudulent representation of a material fact made with knowledge of its falsity, or recklessly, or without reasonable grounds for believing its truth and with intent to induce reliance on it.

**revocable** - могущий быть аннулированным, отозванным

Susceptible of being revoked, withdrawn or cancelled; e.g., revocable letter of credit. *To revoke* means to annul or make void by recalling or taking back; to cancel, rescind, repeal, or reverse. *Revocation* is the recall of some power, authority, or thing granted.

**irrevocable** - неотменяемый, безотзывный

That which cannot be revoked or recalled; e.g., irrevocable letter of credit.

**false** - обманный, фальшивый Not true. Term also means: artificial, assumed or designed to deceive; contrary to fact; counterfeit; deceitful; deliberately and knowingly false; not genuine or real.

**fraud** - обман, мошенничество Intentional deception, resulting in injury to another. It usually consists of misrepresentation, concealment or nondisclosure of a material fact, or at least misleading conduct, devices or contrivance. It is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.

**legal capacity** - правоспособность и дееспособность

Right to come into court, to be accountable for actions.

**mentally infirm** - умственно неполноценный; слабый, морально неустойчивый, например свидетель The term refers to capacity or condition of one's mind as for ability to do or not to do a certain act. The term contemplates the ability to understand the nature and effect of the act in which a person is engaged and the business he or she is transacting. *Infirm* means weak, feeble, lacking moral character or weak of health.

**legal detriment** - юридический вред, ущерб

*Detriment* is any loss or harm suffered in person or property, also loss suffered by the promisee who has, in return for the promise, forborne some legal right which he otherwise would have been entitled to exercise, or that he has given up something which he had a right to keep, or done something which he had a right not to do.

**offeror** - лицо, сторона, делающая предложение

In contracts the party who makes the offer and looks for acceptance from the offeree.

**offeree** - лицо, сторона, которой делается предложение

In contracts, the person to whom an offer is made by the offeror.

**anticipatory repudiation** -

ожидаемое заранее расторжение

*Repudiation* is rejection; disclaimer; renunciation. The act of a buyer or seller in rejecting a contract of sale either partially or totally. Repudiation of a contract means refusal to perform duty or obligation owed to other party. Such consists in such words or actions by contracting party as indicate that he is not going to perform his contract in the future. Repudiation of contract is in nature of anticipatory breach before performance is due. Such occurs when the promisor before he has committed a breach makes a positive statement to promisee indicating he will not or cannot perform his contractual duties.

**statute of frauds** - закон против обмана и мошенничества

The statutory requirement is that certain contracts be in writing to be enforceable. It is a celebrated English statute passed in 1677, which has been adopted, in a more or less modified form, in the US. Its chief characteristic is the provision that no suit or action shall be maintained on certain classes of contracts or engagements unless there shall be a note or memorandum thereof in writing signed by the party to be charged or by his authorized agent. Its object was to close the door to the numerous frauds and perjuries.

**unconscionable** - недобросовестный, бессовестный, незаконный, односторонний

An *unconscionable* bargain or contract is one which no man in his senses, not under delusion, would make, on the one hand, and which no fair and honest man would accept, on the other.

**liquid funds** - наличные деньги Cash or assets immediately convertible to cash.

**excuse of performance** - оправданное неисполнение

*Performance* is the fulfillment or accomplishment of a promise, contract, or other obligation according to its terms. *Excuse* is a reason

alleged for doing or not doing a thing. A matter alleged as a reason for relief or exemption from some duty or obligation.

**tender of performance** - предложение к исполнению

Offer to perform, which is commonly necessary to hold the defaulting party to a contract liable for breach.

**defaulting party** - сторона, не выполняющая своих обязательств  
The party failing to fulfil its obligations.

**frustration** - расстройство, утрата договором своего смысла

Frustration of purpose doctrine excuses a promisor in certain situations when the objectives of contract have been utterly defeated by circumstances arising after formation of agreement, and it is excused under this rule even though there is no impediment to actual performance.

## EXERCISES

32. Translate the following words and word combinations or find Russian equivalents:

*assumpsit*; revocable; irrevocable; legal capacity; offeror; offeree; deceit; false; vow; *caveat emptor* (Lat )\ discharge of duties; unconscionable; assignment of rights; parole evidence; breach of contract.

33. Translate the following sentences into Russian:

33. Contract Law comes to ask these questions.

33. Was there a contract? This means an offer (promise) by one with an acceptance (promise) by another.

33. Was there an adequate consideration to support each promise?

33. Did each party have the legal capacity to contract (an issue of age, mental infirmity, or marital status)?

33. Was the contract valid? This includes matters such as duress, fraud, misrepresentation, etc.

33. What were the conditions of the contract, and were they "certain"? That is, can we readily determine what it was that the parties agreed so that a proper remedy may be ordered?

3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use. There are expressions which you may use twice.

offer, irrevocable, statute of frauds, acceptance, consideration, parole evidence rule, legal capacity

To make a contract, we need two things: first, \_\_\_\_\_ and then \_\_\_\_\_.

There are two forms of interpretation which effect what evidence a court may hear in a contract case: \_\_\_ and \_\_\_\_ .

33. The statutory requirement that certain contracts be in writing to be enforceable is \_\_\_\_\_ .

33. • \_\_\_ states that no oral testimony from events prior to execution of a contract is allowed to contradict terms.

33. In Contract Law, legal detriment is another term for \_\_\_\_ .

**33. Find English equivalents for the following Russian expressions:**

правоспособность и дееспособность; юридический вред, ущерб; устное или не скрепленное печатью письменное обязательство сделать что-то или выплатить какую-то сумму денег; умственно неполноценный; лицо, делающее предложение; лицо, которому делается предложение; передача прав; нарушение договора; потерпевший; недобросовестный; устные доказательства; клятва, торжественное заявление; обман; договорные гарантии; делегирование полномочий.

**33. Translate the following sentences from Russian into English:**

33. Для заключения контракта необходимо взаимное согласие сторон: существование предложения и принятие этого предложения сторонами.

33. Контракт требует определенности и конкретности условий.

33. Стороны в контракте должны быть правоспособными.

33. Контракт предусматривает договорные гарантии.

33. Контракт, заключенный по принуждению и обманным способом, подлежит расторжению.

## UNIT 9. EQUITY: The Issue of Fairness

I think that by now you can see the propensity for the law to pile rules upon rules upon rules. This can produce a certain form of a strait-jacket, which is exactly what happened.

To compound matters, in the fields of tort, contract and property, the courts developed the doctrine of *stare decisis* - "precedent". It is a commitment to the rules, procedures, principles, and holdings of prior cases. The courts saw themselves as bound to these past cases, and were unable to change to meet new situations. As time went by, more and more people began to bring disputes, so more and more "unusual" situations were faced.

Bound by *stare decisis*, the law began to stagnate.

And, the remedies available, that is, "I won; so what?" at law were proving too inflexible to meet the "peculiar" needs of new victims and new cases. So people began to petition the king for extraordinary relief outside of law. As it was extraordinary, the king referred the cases to his religious officer (chancellor), for a review of the moral issues involved. From this developed the chancery courts and equity, with its own set of requirements, remedies, defenses, and rules of proof.

Once you proved a basic case under tort, contract, or property law and you had to make that proof before asking for equitable remedies - you only needed to ask the following additional questions:

Was your remedy at law adequate? If not, then equity would act.

Did you come to the court with "clean hands"? Since you are asking for justice, and for an extraordinary remedy, you may not do so if you have some fault in the matter.

Have you been guilty of laches? That is, have you slept on your rights, allowing the other party to change their position in reliance upon your silence, to their detriment?

What is fair? What should be done?

Because the remedies available in equity were very powerful, the judges were concerned that skillful lawyers might manipulate a jury to an unjust result. To avoid such potential abuses, the jury was denied in equity.

For a number of years, the two fields of law, law and equity, developed side by side, even fighting one another for power. Today we have merged the two systems into one, with our judges having the ability to move from one field to the other during the process of a case. Where both issues are involved, we will have a bifurcated trial: the jury

hears the part dealing with law, while the judge decides the matters of equity.

Today we consider remedies as a part of the issue of "I won; so I what?". Common Law remedies were *compensatory damages* and *restitution*.

Compensatory damages were designed to make good the loss, they substituted for a tangible thing. Damages may be *general*, *special*, *punitive*, or *nominal*.

General damages are considered to flow directly from a proven wrong. It is not necessary to prove that a damage is reasonably foreseeable by the defendant; only that they are natural and incidental to the harm, and flow from it. In contract cases, general damages seek to restore the plaintiff to where he would have been if the contract had not been breached, for the loss of the benefit of the bargain.

Special damages must be reasonably related to the injury (but for), reasonably certain in amount (not speculative) and reasonably foreseeable.

Punitive damages were like a fine, with the money going to the plaintiff and not the state, to punish the defendant to deter him from doing such acts again, and to deter other possible defendants. It requires that the defendant has gone beyond bounds of decency in his conduct. Showing bad faith or malice will help establish such damages, as will grossly reckless conduct or conduct which shows massive indifference to the potential for harm.

Nominal damages are at the opposite end: there is no specific harm involved, but a right has been determined, they are normally granted after proof of the right has been made and after the court has determined that no compensatory damages have been established.

Restitution, in comparison to compensatory damages, does not aim to restore the loss sustained by the plaintiff; it transfers from the defendant to the plaintiff any unjust enrichment, secured by the defendant by his improper acts which it would not be right for him to retain.

There were times when the remedies of the Common Law just were not good enough. That is where equity came in with: *rescission*; *reformation*; *injunction*; *specific performances* *equitable receiverships* *interpleader* *sequestrations* and *declaratory judgment*.

But in tort and property cases in equity, plaintiff had to prove that his remedy at law was inadequate and face a question of balancing the hardships. In contract actions, plaintiff also had to

prove that there were: a mutuality of conditions; no outstanding conditions; and an enforceable contract.

Balancing the hardships meant that the court would look at the hardship and issue an order against a defendant which may cause defendant versus the hardship to plaintiff if the order is not entered. If an order against defendant then seems "unjust", only money damages will be awarded the plaintiff.

Defendants at equity could also raise two additional defenses: laches and "unclean hands". Laches is a question of how much time has elapsed since plaintiff knew of the problem and during which he did nothing and what harm the delay caused the defendant. Unclean hands is the recognition that the plaintiff is asking the court to "do justice" and cannot ask for that if he has, in the matter at issue, been guilty of "injustice".

Rescission may often involve restitution by both sides, for it attempts to end the relationship between the parties as though it had never been begun. Grounds for rescission are: fraud *or* material misrepresentation; mistake (mutual or by one, but known to the other who takes advantage of the mistake rather than warning about it); duress; illegality; impossibility of performance; or failure of consideration/ Generally, the party seeking to rescind must tender back any thing he gained in the process. At law the act of tender and the notice of intent to rescind rescinds the contract at that instant.

Reformation proceeds on the theory that the parties did reach an agreement but that, in reducing it to writing, something went wrong, through mistake or fraud, and thus they signed what they did not agree. Here the request is made for the court to reform a document to the original intent of the parties. An additional defense here is ratification if the plaintiff learns of the mistake and then continues to act as in the contract.

Specific performance is limited to contract actions. It orders a defendant to do what he promised he would do. It is here that the terms *mutuality of conditions*, *no outstanding conditions*, and *enforceability* arise.

If the contract is so one-sided as to be unconscionable, it will not be ordered against a weaker party. If one asking for enforcement has not fulfilled his part, he will not be allowed to order the other to fulfill his part in advance. If the contract has an illegal act, which makes it unenforceable, the court will not order enforcement.

Injunction is an order to a defendant, which may proceed on its own without any damage, or as a part of a damage case. It orders defendant to do, or not to do, specific things, and can come at three stages of a case:

*temporary restraining order\ preliminary injunction; and /or permanent injunction.* Bonds are normally required before an injunction is ordered.

Temporary restraining orders are issued without a chance for the defendant to respond. They are not favored, are very carefully scrutinized, require the plaintiff to post a bond, and may lead to a claim against I plaintiff for damages if the order is subsequently found to have been inappropriate. There must be a hearing within 10 days of issuance of the order, with notice to the defendant required.

Preliminary injunctions are entered for the length of a case, although they can be removed before that time.

Permanent injunctions are good until revoked.

Equitable receivership is where the court takes property at issue between the parties from both parties and places it in the hands of a I third party to manage until the case is determined.

Interpleader is when someone with property, which he knows is not his own, is faced with more than one person claiming the property, I brings the property into court and the judge orders all the conflicting parties against the property to come and state their cases, while the one who had the property may get to go home.

Sequestration is when an officer of the court is ordered to take possession of some property of the defendant and then either deliver it to the plaintiff or sell it and give the proceeds to the plaintiff.

Declaratory judgment asks a court to look at a contract, a statute, or I a situation before a conflict has erupted, and declare the meaning of the thing reviewed so that the parties may proceed without conflict.

Finally, both law and equity also offered a remedy of contempt of court. Contempt of court is a remedy of the court rather than of a party, but a party may ask the court to make a finding of contempt. It is the matter of the court upholding the honor of the law, legal process, and I position of the judge.

## GLOSSARY

**courts of chancery (equity courts)** - «суды справедливости»

*Chancery* is the jurisprudence that is exercised in a court of equity; synonymous with equity or equitable jurisdiction. *Chancellor* in English

law is the name of the chief judge of the court of chancery. In American law, a judge in a court of chancery.

**rules of proof** - правила доказательства, правила судопроизводства.

Rules that govern the procedure in all proceedings in the courts establishing facts by evidence. *Proof* is the result or effect of evidence, while *evidence* is the medium or means by which a fact is proved or disproved.

**specific performance** - реальное исполнение, конкретное исполнение

The fulfillment or accomplishment of a specific promise, contract, or other obligation according to its terms.

**equitable receivership** - управление имуществом банкрота

*Equitable* means conformable to the principles of justice and right; existing in equity; available or sustainable in equity, or upon the rules and principles of equity. *Receivership* is legal or equitable proceeding in which a receiver - a ministerial officer, agent, creature, a temporary occupant and caretaker of the property - is appointed by a court, and he is the medium through which the court acts. *Receiver* is a person appointed by a court to manage property in litigation or the affairs of a bankrupt.

**sequestration** - конфискация

In general, the process by which property or funds are attached pending the outcome of litigation.

**to attach** - накладывать арест на имущество, задерживать лицо

Seizure of property under a writ of attachment, the act or process of taking or seizing persons or property.

**writ** - судебный приказ

A legal order issued by an authority and in the name of the state to compel a person to do something therein mentioned. It is issued by a court or other competent tribunal and is directed to the sheriff or other officer authorized to execute it. In every case the writ itself contains directions for doing what is required.

**rescission** - аннулирование, расторжение

A *rescission* amounts to the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination, and it may be effected by mutual agreement of partners, or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground therefore exists, or by applying to courts for a decree of rescission.

**injunction** - судебный запрет A judicial remedy awarded to restrain a particular activity; first used by courts of equity to prevent conduct contrary to equity and good conscience. The *injunction* is a preventive measure to guard against future injuries rather than one that affords a remedy for past injuries. It is a prohibitive remedy issued by a court at the suit of a party complainant and directed to a party defendant, forbidding the latter to do some act injurious to the plaintiff.

**contempt of court** - неуважение к суду

An act or omission tending to interfere with orderly administration of justice, or to impair the dignity of the court or respect for its authority.

## EXERCISES

34. Translate the following words and word combinations or find Russian I equivalents:

equitable receivership; rescission; sequestration; rules of proof; abuse; in- I junction; declaratory judgment; specific performance; courts of chancery 1 (courts of equity); contempt of court.

35. Translate the following sentences into Russian:

35. Both law and equity offer the remedy of contempt of court. Contempt of court is a remedy of the court rather than of a party. It is the matter of the court upholding the honor of the law, legal process, and position of the judge.

5. Sequestration is when an officer of the court is ordered to take possession of some property of the defendant and then either deliver it to the plaintiff or sell it and give the proceeds to the plaintiff.

3. Equitable receivership is where the court takes property at issue between the parties from both parties and places it in the hands of a third party to manage until the case is determined.

4. For a number of years, the two fields of law - law and equity - developed side by side, even fighting one another for

power. Today the two systems have merged into one with the judges having the ability to move from one field to the other during the process of a case. Where both issues are involved, we will have a bifurcated trial - the jury hears the part dealing with law, while the judge decides the matters of equity.

5. Common Law remedies are: compensatory damages and restitution. Compensatory damages are designed to make good the loss; they substitute for a tangible thing.

6. Damages might be general, special, punitive, or nominal. General damages are considered to flow directly from the proven wrong. It is necessary to [prove that the damages flow from the wrong. In contract cases, general damages seek to restore the plaintiff to where he would have been if the contract had not been breached, for the loss of the benefit of the bargain.

7. Special damages must be reasonably related to the injury, reasonably certain in amount (not speculative) and reasonably foreseeable.

8. Punitive damages are like a fine, with money going to the plaintiff and not the state, to punish the defendant, to deter him from doing such acts again, and to deter other potential defendants.

9. Nominal damages are considered to be due where no specific harm is involved. They are normally granted after proof of the right has been made and (after the court has determined that no compensatory damages have been established.

10. Restitution, in comparison to compensatory damages, does not aim to restore the loss sustained by the plaintiff but at transferring from the defendant to the plaintiff any unjust enrichment secured by defendant by his improper acts which it would not be right for him to retain.

11. Defendants at equity can raise two additional defenses: laches and "unclean hands". Laches is a question of how much time has elapsed since plaintiff knew of the problem and during which he did nothing and what harm the delay may have caused the defendant. "Unclean hands" is the recognition that the plaintiff is asking the court to "do justice" and cannot ask for that if he has, in the matter at issue, been guilty of "injustice".

**3. Fill the gaps in the sentences below with the words and expressions from the box. There are two expressions which you don't need to use. There are expressions which you may use twice.**

rescission, sequestration, general, laches, special, bifurcated, specific performance, punitive, reformation, remedy at law inadequate, compensatory damages, balancing hardships, nominal, contempt of court, injunction, restitution, unclean hands

1. If you want to recover from the other party the unjust enrichment which the other party received, the remedy you request is \_\_\_\_\_.
2. If you want to be put back as though no contract ever existed, the remedy you want is \_\_\_\_\_.
3. A judicial remedy awarded to restrain a particular activity of the defendant is called \_\_\_\_\_.
4. \_\_\_\_ If one part of a case is in equity, and one part in law, we will have a trial.
5. In a case at equity, the defendant has three additional defenses he can raise: \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_.
6. In a case at equity, the plaintiff has one additional burden: \_\_\_\_.
7. \_\_\_\_ is fulfillment or accomplishment of a specific promise, contract, or other obligation according to its terms.
8. Common Law remedies were \_\_\_\_ and \_\_\_\_\_.
9. Compensatory damages might be \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.
10. \_\_\_\_ is needed when the parties signed by mistake or fraud what they did not agree.

**4. Find English equivalents for the following Russian expressions:**

правила доказательства; правила судопроизводства; конфискация; судебный запрет; аннулирование, расторжение; неуважение к суду; реальное, конкретное исполнение; злоупотребление; управление имуществом банкрота, регулируемое правом собственности; «суды справедливости».

**5. Translate the following sentences from Russian into English:**

35. Судебный запрет (injunction) является предписанием суда ответчику осуществить что-либо или не осуществлять чего-либо.

35. Конфискация (sequestration) есть изъятие должностным судебным лицом в соответствии с полученным от суда предписанием определенной части собственности ответчика с последующей ее передачей истцу или продажей ее и передачей истцу полученных при продаже денежных сумм.

35. В течение ряда лет две области права - писанные действующие законы и законы справедливости развивались параллельно, даже боролись между собой за преобладание в обществе. В настоящее время эти две системы права слились в одну систему, при которой судьи имеют возможность

переходить из одной области в другую в ходе разбирательства судебного дела.

35. Обычное право предусматривает такие формы судебной защиты, как возмещение компенсаторных (реальных, фактических) убытков, так и восстановление первоначального правового положения (реституция).

35. Возмещение убытков может иметь характер: а) генеральный (когда убытки являются необходимым прямым следствием вреда безотносительно к особым обстоятельствам дела), б) фактический (когда убытки являются реальными, фактическими), в) штрафной (когда убытки рассматриваются в качестве штрафа с ответчика в пользу истца) и г) номинальный (когда не уточняется конкретный ущерб, а подтверждается право на возмещение).