

1 The practice of law

PART I: THE LEGAL SYSTEM

1 Reading A: Bodies of law

1.1 Read the excerpts below from the course catalogue of a British university's summer-school programme in law and answer these questions.

- 1 Who is each course intended for?
- 2 Which course deals with common law?
- 3 Which course studies the history of European law?

A

LAW 121: Introduction to English law

This course provides a general overview of English law and the common-law system. The course will look at the sources of law and the law-making process, as well as at the justice system in England. Students will be introduced to selected areas of English law, such as criminal law, contract law and the law of torts. The relationship between the English common law and EC law will also be covered.

The course is designed for those international students who will be studying at English universities later in the academic year. Other students with an interest in the subject are also welcome to attend, as the contact points between English law and civil law are numerous. The seminars and all course materials are in English.

B

LAW 221: Introduction to civil law

More individuals in the world solve their legal problems in the framework of what is called the civil-law system than in the Anglo-Saxon case-law system. This course will introduce students to the legal systems of Western Europe that have most influenced the civil-law legal systems in the world. It aims to give students an insight into a system based on the superiority of written law. The course will cover the application and development of Roman law in Europe to the making of national codes all over the world.

The course is intended to prepare students who are going to study in a European university for the different approaches to law that they are likely to face in their year abroad.

1.2 Match these bodies of law (1-3) with their definitions (a-c).

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|-----------------------|--|
| 1 civil law | a area of the law which deals with crimes and their punishments, including fines and/or imprisonment (also penal law) |
| 2 common law | b 1) legal system developed from Roman codified law, established by a state for its regulation; 2) area of the law concerned with non-criminal matters, rights and remedies |
| 3 criminal law | c legal system which is the foundation of the legal systems of most of the English-speaking countries of the world, based on customs, usage and court decisions (also case law, judge-made law) |

1.3 Complete the text on the next page contrasting civil law, common law and criminal law using the words in the box.

based on bound by codified custom disputes legislation
non-criminal precedents provisions rulings

The term 'civil law' contrasts with both 'common law' and 'criminal law'. In the first sense of the term, civil law refers to a body of law **1)** written legal codes derived from fundamental normative principles. Legal **2)** are settled by reference to this code, which has been arrived at through **3)** Judges are **4)** the written law and its **5)**

In contrast, common law was originally developed through **6)**, at a time before laws were written down. Common law is based on **7)** created by judicial decisions, which means that past **8)** are taken into consideration when cases are decided. It should be noted that today common law is also **9)**, i.e. in written form.

In the second sense of the term, civil law is distinguished from criminal law, and refers to the body of law dealing with **10)** matters, such as breach of contract.

1.4 Which body of law is the basis of the legal system of your jurisdiction?

2 Reading B: The adversarial and inquisitorial systems

A further difference between the civil-law system and the common-law system lies in the way proceedings are conducted.

2.1 Read the text below comparing the two systems and answer these questions.

- 1 Which system is characteristic of common-law countries?
- 2 How does the way evidence in a trial is gathered and presented differ in the two systems?
- 3 What is the role of the attorney in each system?
- 4 In your opinion, which system is best suited for arriving at the truth?

The inquisitorial system, which is employed in most civil-law jurisdictions, can be defined by comparison with the adversarial system used in the United States and Great Britain. In the adversarial system, two or more opposing parties gather evidence and present it, and their arguments, to a judge or jury. The judge or jury knows nothing of the litigation until the parties present their cases to the decision-maker. Furthermore, in a criminal trial, for example, the defendant is not required to give testimony.

In the inquisitorial system, the presiding judge is not a passive recipient of information. Rather, he or she is primarily responsible for supervising the gathering of the evidence necessary to resolve the case. He or she actively steers the search for evidence and questions the witnesses, including the respondent or defendant. Attorneys play a more passive role, suggesting routes of inquiry for the presiding judge and following the judge's questioning with questioning of their own. Attorney questioning is often brief because the judge tries to ask all relevant questions. The goal of both the adversarial system and the inquisitorial system is to find the truth. But the adversarial system seeks the truth by pitting the parties against each other in the hope that competition will reveal it, whereas the inquisitorial system seeks the truth by questioning those most familiar with the events in dispute. The adversarial system places a premium on the individual rights of the accused, whereas the inquisitorial system places the rights of the accused secondary to the search for truth.

2.2 Underline the verbs in the text above that appear with the nouns below (1-3). Then combine the verbs in the box with the three nouns to make word partnerships. Some of the verbs go with more than one noun.

dismiss	gather	give	hear	present	provide	recant
reject	support	uncover				

1 evidence 2 testimony 3 arguments

2.3 Make sentences about the role of the judge in the inquisitorial system and the role of the attorney in the adversarial system using some of the verb-noun collocations from Exercise 2.2.

3 Reading C: Types of law

The word *law* refers generally to legal documents which set forth rules governing a particular kind of activity.

3.1 Read these extracts, which each contain a word used to talk about types of law. Where did each appear? Match each extract (1-5) with its source (a-e).

1 The new EU Working Hours **Directive** is reported to be causing controversy amongst the medical profession.

2 When a **statute** is plain and unambiguous, the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be.

3 The purpose of this **Ordinance**¹ is to regulate traffic upon the Streets and Public Places in the Town of Hanville, New Hampshire, for the promotion of the safety and welfare of the public.

4 These workplace safety and health **regulations** are designed to prevent personal injuries and illnesses from occurring in the workplace.

5 Mr Speaker, I am pleased to have the opportunity to present the Dog Control Amendment **Bill** to the House. It is a further milestone in meeting the changing expectations we have about what is responsible dog ownership.

¹(UK) by-law/bye-law

- a** court ruling **c** newspaper **e** brochure for employees
b local government document **d** parliamentary speech

3.2 Find words in the extracts in Exercise 3.1 which match these definitions.

- 1** rules issued by a government agency to carry out the intent of the law; authorised by a statute, and generally providing more detail on a subject than the statute
- 2** law enacted by a town, city or county government
- 3** draft document before it is made into law
- 4** legal device used by the European Union to establish policies at the European level to be incorporated into the laws of the Member States
- 5** formal written law enacted by a legislative body

3.3 Complete the sentences below using the words in the box.

bill directive ordinance regulations statutes

- 1** The Town Council will conduct a public hearing regarding a proposed concerning property tax.
- 2** According to the concerning working time, overtime work is work which is officially ordered in excess of 40 hours in a working week or in excess of eight hours a day.
- 3** Early this year, the government introduced a new on electronic commerce to Parliament.
- 4** A number of changes have been made to the federal governing the seizing of computers and the gathering of electronic evidence.
- 5** The European Union on Data Protection established legal principles aimed at protecting personal data privacy and the free flow of data.

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4 Speaking A: Explaining what a law says

There are several ways to refer to what a law says. Look at these sentences:

The law **stipulates that** corporations must have three governing bodies.

The law **provides that** a witness must be present.

The patent law **specifies that** the subject matter must be 'useful'.

These verbs can also be used to express what a law says:

The law **states / sets forth / determines / lays down / prescribes that ...**

~~Choose a law in your jurisdiction that you are familiar with and explain what it says using the verbs listed in the box above.~~

5 Reading D: Types of court

Courts can be distinguished with regard to the type of cases they hear.

Match each of these types of court (1-9) with the explanation of what happens there (a-i).

- 1 **appellate court** (or court of appeals, appeals court)
- 2 **crown court**
- 3 **high court**
- 4 **juvenile court**
- 5 **lower court** (or court of first instance)
- 6 **magistrates' court**
- 7 **moot court**
- 8 **small-claims court**
- 9 **tribunal**

- a This is where a person under the age of 18 would be tried.
- b This is the court of primary jurisdiction, where a case is heard for the first time.
- c This is where small crimes are tried in the UK.
- d This is where law students argue hypothetical cases.
- e This is where a case is reviewed which has already been heard in a lower court.
- f This is where cases involving a limited amount of money are handled.
- g This is where serious criminal cases are heard by a judge and a jury in the UK.
- h This is where a group of specially chosen people examine legal problems of a particular type, such as employment disputes.
- i This is usually the highest court in a jurisdiction, the court of last resort.

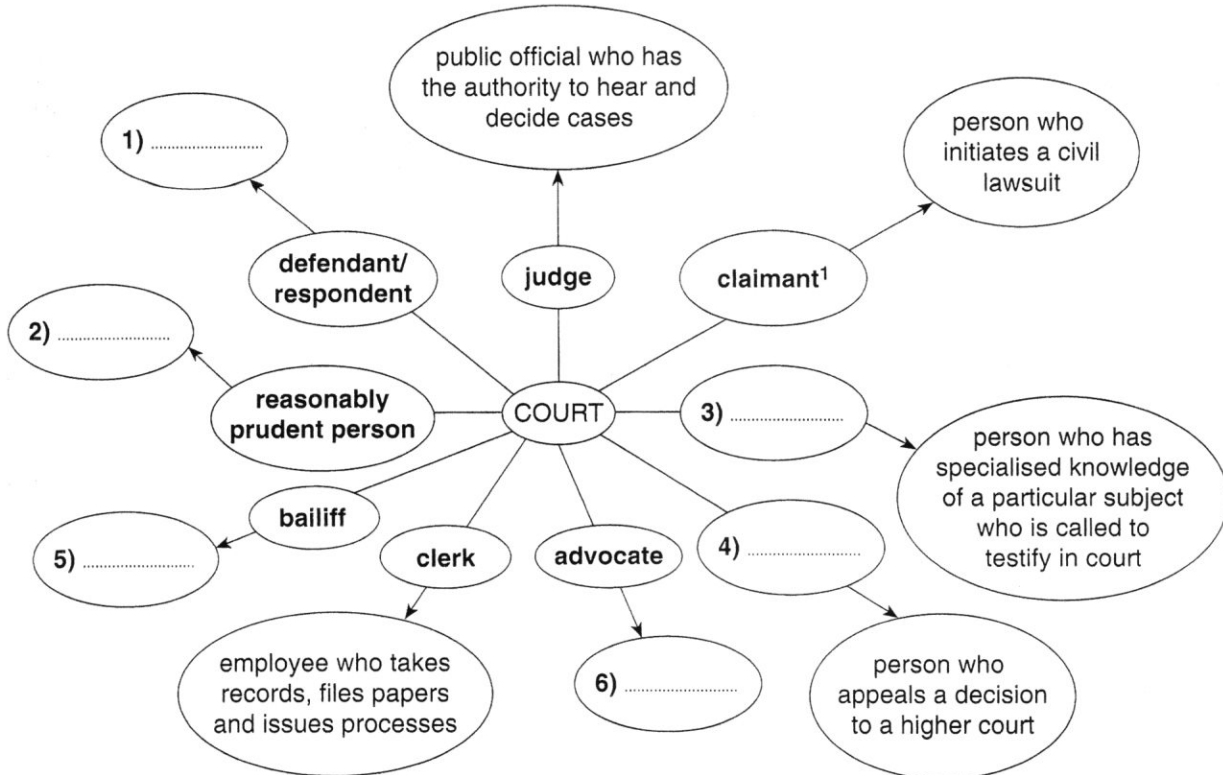
6 Speaking B: Civil-court systems

~~Work in small groups and discuss these questions.~~

- 1 Describe the different types of court in your jurisdiction and the areas of law they deal with.
- 2 Select one type of court in your jurisdiction and explain what kinds of case it deals with.

7 Reading E: Persons in court

Complete this diagram with the words and definitions below (a-f).



- a expert witness
- b appellant²
- c person who is sued in a civil lawsuit
- d officer of the court whose duties include keeping order and assisting the judge and jurors
- e person who pleads cases in court
- f hypothetical person who uses good judgment or common sense in handling practical matters; such a person's actions are the guide in determining whether an individual's actions were reasonable

¹ (US) usually plaintiff
² (US) also petitioner

8 Listening A: Documents in court

8.1 Listen to a lawyer telling a client about some of the documents involved in his case and answer these questions.

- 1 What claim has been filed against the client?
- 2 What does the lawyer need from the client to be able to prepare his defence?
- 3 Will the case go to trial?

8.2 Match these documents (1-9) with their definitions (a-i).

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|----------------------------|--|
| 1 affidavit | a a document informing someone that they will be involved in a legal process and instructing them what they must do |
| 2 answer | b a document or set of documents containing details about a court case |
| 3 brief | c a document providing notification of a fact, claim or proceeding |
| 4 complaint | d a formal written statement setting forth the cause of action or the defence in a case |
| 5 injunction | e a written statement that somebody makes after they have sworn officially to tell the truth, which might be used as proof in court |
| 6 motion | f an application to a court to obtain an order, ruling or decision |
| 7 notice | g an official order from a court for a person to stop doing something |
| 8 pleading | h in civil law, the first pleading filed on behalf of a plaintiff, which initiates a lawsuit, setting forth the facts on which the claim is based |
| 9 writ ¹ | i the principal pleading by the defendant in response to a complaint |

¹ Since the 1999 reform rules, the term *claim form* is used in the UK.

8.3 Listen again and tick the documents that the lawyer mentions.

- | | | |
|---|--|--|
| 1 affidavit <input type="checkbox"/> | 4 complaint <input type="checkbox"/> | 7 notice <input type="checkbox"/> |
| 2 answer <input type="checkbox"/> | 5 injunction <input type="checkbox"/> | 8 pleading <input type="checkbox"/> |
| 3 brief <input type="checkbox"/> | 6 motion <input type="checkbox"/> | 9 writ <input type="checkbox"/> |

8.4 Match each verb used by the lawyer (1-5) with its definition (a-e).

- | | |
|---|--|
| 1 to draft a document | a to deliver a legal document to someone, demanding that they go to a court of law or that they obey an order |
| 2 to issue a document | b to produce a piece of writing or a plan that you intend to change later |
| 3 to file a document with an authority | c to deliver a document formally for a decision to be made by others |
| 4 to serve a document on someone (or to serve someone with a document) | d to officially record something, especially in a court of law |
| 5 to submit a document to an authority | e to produce something official |

8.5 Decide which of the documents in Exercise 8.2 can go with these verbs. The first one has been done for you.

- 1** draft *an answer, a brief, a complaint, a motion, a pleading*
- 2** issue
- 3** file (with)
- 4** serve (on someone)
- 5** submit