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ТЕОРИЯ И ПРАКТИКА УСТНОГО И ПИСЬМЕННОГО ЮРИДИЧЕСКОГО ПЕРЕВОДА

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Целью настоящего пособия является выработка и развитие навыков устного и письменного перевода в рамках юридической тематики.

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ЮРИДИЧЕСКОГО ПЕРЕВОДА**

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ВВЕДЕНИЕ

Владение английским языком стало в современном мире обязательным условием успешности профессиональной деятельности специалиста в любой области знаний. Не является исключением и сфера права. Более того, англо-американская правовая система, выработавшая в результате своего многовекового развития четкую и стройную систему подъязыка права, установила строгие соответствия между правовыми реалиями и терминами, их выражающими. Именно поэтому знание специальной терминологии играет столь значительную роль в процессе профессионально-ориентированного использования языка в данной области.

В этой связи подготовка юристов-международников требует введения в рамках курса английского языка специального аспекта, целью которого является обучение языку специальности и формирование умений и навыков, необходимых для выполнения профессиональной деятельности на английском языке: умения свободно ориентироваться в текстах юридического содержания, делать сообщения и вести беседу по профессиональной тематике, составлять юридические документы, осуществлять письменный и устный перевод.

Целью настоящего учебного пособия является:

1) выработка и развитие навыков устного последовательного двустороннего перевода в рамках профессионально-ориентированной тематики (Часть 1);

2) анализ основных трудностей письменного перевода с английского языка на русский текстов юридического характера (Часть 2).

Предваряя работу с **Частью 1** настоящего пособия, следует обозначить навыки и умения, необходимые каждому, кто выполняет функции устного переводчика, помимо адекватного владения английским языком:

1) умение параллельно с восприятием текста вести его смысловой анализ, т.е. преобразовывать текст с целью его последующего воспроизведения средствами другого языка. Смысловой анализ предполагает умение «видеть» высказывание говорящего в целом, важнейшую информацию, мысль, заключенную в нем, а не механически запоминать, а затем переводить слова в предложении по мере их произнесения говорящим. Смысловой анализ предполагает умение преобразовывать воспри-

нимаемый текст с целью нахождения наиболее емкого, краткого, а иногда простого способа выражения его средствами другого языка. Наиболее удобные для перевода формулировки могут достигаться, в частности, путем:

- а) трансформации лексического материала за счет его сокращения;
- б) выбора слов с наибольшей семантической нагрузкой, так называемых «смысловых вех»;
- в) выбора слов с яркой экспрессивно-эмоциональной окраской, хорошо запоминающихся и легко «раскручивающих» содержание.

2) умение одновременно вести краткую запись уже переработанного таким образом текста, т.е. владеть вспомогательным средством для памяти при устном последовательном переводе, если высказывание говорящего велико.

Собственно говоря, умение проводить смысловой анализ и экономно записывать переработанную информацию уже само по себе является основным принципом ведения записи. К этому необходимо добавить умение рельефно, точно и наглядно организовывать свои записи графически. В немалой степени этому способствует вертикальное расположение записей, при котором ввиду своей семантической значимости на первое место выдвигается группа подлежащего, на второе — группа сказуемого, а далее идут второстепенные члены предложения (при той, однако, оговорке, что в некоторых случаях именно обстоятельства времени или места действия и т.п., т.е. второстепенные члены предложения, могут нести основную информативную нагрузку). Тем не менее, процесс осмысления воспринимаемого текста заключается именно в выделении субъекта и предиката как составляющих стержень информации.

При ведении записи допустимо буквенное сокращение слов в разумных пределах. Кроме того, с первых же занятий обучаемым рекомендуется начать выработку удобных для себя условных обозначений наиболее часто встречающихся в данной области понятий. Создание условных обозначений, т.е. символов, которыми будет удобно пользоваться в дальнейшей работе, — процесс сугубо индивидуальный, зависящий от особенностей образного мышления каждого человека, и практика показала, что вряд ли можно предложить какую-то единую систему условных обозначений, которой было бы удобно пользоваться всем. Существует, конечно, небольшая группа универсальных знаков, но таковых немного.

Вопрос о том, на каком языке вести записи, также не имеет однозначного ответа. Некоторые исследователи этой проблемы считают, что вести записи при устном последовательном двустороннем перево-

де следует только на родном языке независимо от языка воспринимаемого текста. Но это означает в случае перевода с английского языка не только параллельное восприятию осмысление текста для последующего перевода, но и одновременный с осмыслением поиск средств выражения воспринимаемого текста на языке оформления, т.е. русском языке.

Практика показала, что большинство обучаемых устному последовательному двустороннему переводу стремится либо вести записи на языке воспринимаемого текста и, поскольку речь идет о двустороннем переводе, чередует в ходе перевода записи на английском и русском языках, либо записывать некоторые элементы предложения по-русски, а некоторые по-английски независимо от языка воспринимаемого текста. Как представляется авторам данного пособия, самая эффективная система та, которая складывается индивидуально у каждого переводчика в ходе длительной работы в этом направлении и в результате становится настоящим подспорьем в практической деятельности.

3) умение строго выдерживать временные рамки перевода, задаваемые самим темпом ведения беседы (деловой встречи или переговоров) с помощью быстрой реакции, быстрого переключения с одного языка на другой и хорошо тренированной краткосрочной памяти.

Необходимо воспитание ответственного отношения при переводе к фактору времени, ибо основными требованиями, предъявляемыми к устному последовательному двустороннему переводу, являются не только его адекватность оригиналу, но и осуществление перевода в определенную единицу времени, что требует от переводчика быстрой реакции, быстрого переключения с одного языка на другой и хорошо тренированной памяти в дополнение к владению вспомогательным средством для нее — умению вести краткую запись.

Для устного перевода беседы с ее живым, динамичным, спонтанным характером скорее простительны стилистические шероховатости, чем затянутый по времени, медлительный и тем самым наносящий ущерб эмоциональной атмосфере беседы перевод.

4) умение привлекать фоновые знания, углублению которых способствует систематический и регулярный перевод диалогического материала, в частности представленного в данном пособии, иллюстрирующего ключевые понятия и категории основных отраслей и институтов международного публичного права, а также основных институтов гражданского, уголовного и финансового права США и Великобритании, при параллельном наращивании лексико-терминологической базы.

Часть 2 настоящего пособия посвящена анализу основных трудностей письменного перевода с английского языка на русский текстов юри-

дического характера и, в первую очередь, грамматических проблем, занимающих важное место в теории и практике юридического перевода.

В английском языке, как и во многих других языках так называемого аналитического строя, очень большую роль наряду с порядком слов играют служебные слова. Многие из них омонимичны и в зависимости от выполняемых функций имеют разное значение и, следовательно, разный перевод. В разделе 1 рассмотрены служебные слова, вызывающие наибольшие затруднения при переводе и часто встречающиеся в юридических текстах на английском языке.

Кроме того, в английском языке есть некоторые синтаксические конструкции, весьма частотные в текстах права, перевод которых также может вызвать определенные затруднения, связанные со сложностью подбора адекватных русских эквивалентов, а в ряде случаев с необходимостью существенной трансформации всей структуры предложения. Эти случаи проанализированы в разделе 2.

Помимо вышеуказанных трудностей грамматического характера в пособии затрагиваются проблемы перевода некоторых типов слов и словосочетаний, представляющих интерес с точки зрения их лексических особенностей (раздел 3).

Качество любого перевода определяется степенью его эквивалентности оригиналу. Однако в своем стремлении добиться эквивалентности переводчику необходимо избегать двух крайностей: как буквализма (того, что принято называть «дословным переводом»), так и переводческого произвола («вольного перевода»), поскольку перевод — это не механический процесс перекодирования информации из одной знаковой системы в другую и не создание самостоятельного произведения, более или менее тематически связанного с оригиналом. Перевод — это акт межъязыковой коммуникации, включающий в себя не только языковые формы и языковое видение ситуации общения, с одной стороны, но и широкий спектр внеязыковых факторов, определяемых обще- и национально-культурными понятиями, с другой.

В зависимости от характера исходного текста перевод может не пугаться в глубоких лексических или грамматических трансформациях, в результате чего подбор эквивалентов происходит в значительной степени автоматически. Однако в случае более сложного текста перевод характеризуется более сложной работой, предполагающей сущностное соотношение структур языка оригинала и языка оформления с целью выбора оптимальных трансформационных моделей для корректного перенесения информации с одного языка на другой, и представляет собой подлинно творческий процесс, требующий от переводчика не только переводческого, но и писательского мастерства.

В заключение необходимо особо отметить, что перевод как вид деятельности в любой области знаний, в данном случае юриспруденции, имеющей отношение к разным системам права, предполагает:

- а) свободное владение языком оригинала и совершенное владение языком оформления;
- б) профессиональное владение специальной юридической терминологией;
- в) наличие соответствующей компетенции в области сравнительного правоведения.

Кроме того, несмотря на параллельное выполнение переводчиком нескольких операций одновременно, в его работе над текстом отчетливо прослеживаются следующие *составляющие*, дающие конкретное представление о технике перевода такого рода текстов:

1. Общий профессионально-смысловой анализ текста с целью определения его тематической принадлежности в ходе предварительного этапа подготовки текста к переводу.
2. Выделение опорно-ключевых терминов, составляющих информационную суть текста, предлагаемого для перевода.
3. Экспертиза понятийно-смысловой стороны выделенных терминов на предмет выявления различия в значении между сходными терминами, относящимися к разным правовым системам (русской и англо-американской).
4. Использование метода передачи смысла путем разъяснения, а не прямого перевода с учетом фактора отсутствия понятийного тождества между терминами двух разных правовых систем.
5. Анализ лексико-грамматических и синтаксических трудностей текста.
6. Окончательная редакция текста с целью коррекции его ритмико-стилистического рисунка.

Это лишь краткое описание некоторых проблем, с которыми неизбежно сталкивается переводчик, стремящийся адекватно передать содержание юридического текста, добиваясь его максимальной точности и эквивалентности перевода оригиналу, содействуя тем самым взаимопониманию и сотрудничеству представителей одной профессии, говорящих и думающих на разных языках.

Раздел «Введение» написан И.Г. Федотовой. Часть 1 учебного пособия написана И.Г. Федотовой, Н.В. Старосельской и Г.П. Толстопятенко. Часть 2 написана И.Г. Федотовой и И.В. Резник (теория); И.Г. Федотовой, Н.В. Старосельской и Г.П. Толстопятенко (подбор и перевод примеров).

ОГЛАВЛЕНИЕ

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Часть 1

МАТЕРИАЛЫ ДЛЯ УСТНОГО ПОСЛЕДОВАТЕЛЬНОГО ДВУСТОРОННЕГО ПЕРЕВОДА

INTERNATIONAL PEACE AND SECURITY

Международный мир и безопасность

Vocabulary

dispute settlement

урегулирование споров

UN Charter

Устав ООН

member-state

государство-член ООН

endanger

подвергать опасности

refrain from the threat or use of force

воздерживаться от применения силы или угрозы применения силы

bring a dispute before the Security Council / bring a dispute to the attention of the Security Council

вынести спор на рассмотрение Совета Безопасности

peaceful settlement

мирное урегулирование

UN Secretary-General

Генеральный секретарь ООН

good offices

добрые услуги

mediation

посредничество

fighting

вооруженное столкновение

issue a ceasefire directive

принять директиву о прекращении огня

hostilities

военные действия

deploy military observers or a peaceful force to an area of conflict

направить военных наблюдателей или силы по поддержанию мира в зону конфликта

preventive measures

меры превентивного характера

armed conflict

вооруженный конфликт

prevent the recurrence of conflict

предотвратить повторение конфликта

preventive diplomacy

превентивная дипломатия

preventive deployment

превентивное дислоцирование

contain conflicts

сдерживать конфликты

preventive disarmament

превентивное разоружение

conciliation

примирение

area of tension

зона напряженности

small arms

стрелковое оружие

conflict-prone region

район, подверженный вооруженным конфликтам

command / direct peacekeeping operations

руководить операциями по поддержанию мира

Force Commander

командующий силами по поддержанию мира

Chief Military Observer

главный военный наблюдатель

illegal arms flow

незаконные поставки оружия

drug trafficking

оборот наркотиков

refugee flows

потоки беженцев

environmental degradation

ухудшение состояния окружающей среды

resort to sanctions

прибегнуть к санкциям

mandatory sanctions

принудительные санкции

enforcement tool

инструмент принуждения

arms embargo

запрет на ввоз оружия

have adverse impact on

отрицательно сказаться на

smart sanctions

целевые санкции, точечные санкции

reduce humanitarian costs

снизить затраты на гуманитарную помощь

freeze financial assets

заморозить финансовые активы

block financial transactions

блокировать финансовые операции

entity

юридическое лицо (*самостоятельная компания, организация*)

trigger

приводить в действие

A.: *Какой механизм урегулирования споров предусматривает Устав ООН?*

B.: The UN Charter obligates member-states to settle their disputes by peaceful means, in such a manner that international peace and security, and justice are not endangered. Member-states are to refrain from the threat or use of force against any state, and may bring any dispute before the Security Council.

A.: *Какую роль играет Совет Безопасности в этом процессе?*

B.: When a dispute is brought to its attention the Council usually urges the parties to settle their dispute by peaceful means. It may make recommendations to the parties for a peaceful settlement. It may appoint spe-

cial representatives or ask the Secretary-General to use his good offices. In some cases the Council itself undertakes investigation and mediation.

A.: *А если спор перерастает в вооруженное столкновение?*

B.: When a dispute leads to fighting, the Council seeks to bring it to an end as quickly as possible. Often the Council issues ceasefire directives that are instrumental in preventing wider hostilities. In support of a peace process, the Council may deploy military observers or a peacekeeping force to an area of conflict.

A.: *Использует ли ООН меры превентивного характера?*

B.: The main strategies for preventing disputes from escalating into armed conflicts, and for preventing the recurrence of conflict, are preventive diplomacy, preventive deployment and preventive disarmament.

A.: *Что стоит за этими понятиями?*

B.: Preventive diplomacy refers to action to prevent disputes from arising, to resolve them before they escalate into conflicts or to limit the spread of conflicts when they occur. It may take the form of mediation, conciliation or negotiation.

Preventive deployment is intended to provide a "thin blue line" to help contain conflicts by building confidence in areas of tension.

Preventive disarmament seeks to reduce the number of small arms in conflict-prone regions.

A.: *Кто руководит операциями по поддержанию мира?*

B.: Peacekeeping operations are established by the Security Council and directed by the Secretary-General, often through a Special Representative; depending on the mission, the Force Commander or the Chief Military Observer is responsible for the military aspects.

A.: *Означает ли это, что ООН имеет собственные вооруженные силы?*

B.: The United Nations has no military forces of its own, but member-states provide, on a voluntary basis, the personnel equipment and logistics required for the operation. Member-states carefully negotiate the terms of their participation and retain ultimate authority over their own military forces. Peacekeepers wear their country's uniform: they are identified as peacekeepers only by a United Nations blue helmet or beret and a badge.

C.: *Кто финансирует операции по поддержанию мира?*

D.: Peacekeeping operations are financed by the international community. Participating states are compensated at a standard rate from a special peacekeeping budget.

A.: *Как оценивается деятельность сил по поддержанию мира?*

B.: The role of peacekeeping forces was internationally recognized in 1988, when the United Nations Peacekeeping Forces received the Nobel Peace Prize.

A.: *Изменился ли характер вооруженных конфликтов?*

C.: Conflicts today are a complex mix: their roots may be essentially internal, but they are complicated by cross-border involvement, either by states or by economic interests. In addition, the consequences of conflicts can quickly become international because of illegal arms flow, terrorism, drug trafficking, refugee flows and environmental degradation.

A.: *Вправе ли Совет Безопасности прибегнуть к санкциям?*

B.: The Council resorts to mandatory sanctions as an enforcement tool when peace is threatened and diplomatic efforts have failed. The range of sanctions includes comprehensive economic and trade sanctions, or more specific measures such as arms embargoes, travel bans and financial or diplomatic restrictions.

A.: *Что такое "smart sanctions"?*

B.: Many states and humanitarian organizations have expressed concerns at the possible adverse impact of sanctions on the most vulnerable segments of the population, such as women and children. The so-called "smart sanctions" seek to pressure those in power rather than the population at large, thus reducing humanitarian costs.

A.: *В чем могут выражаться такие санкции?*

B.: Smart sanctions may for instance involve freezing the financial assets and blocking the financial transactions of élites or entities whose behavior triggered sanctions in the first place.

INTERNATIONAL ORGANIZATIONS

Международные организации

Vocabulary

United Nations (UN)

Организация Объединенных Наций (ООН)

UN Charter

Устав ООН

signatory

государство, подписавшее договор

constituting instrument

учредительный документ

member-state

государство-член ООН

sovereign equality of states

суверенное равенство государств

prohibition of the use of force in international relations

запрет на применение силы в международных отношениях

maintain international peace and security

поддерживать международный мир и безопасность

develop friendly relations among nations

развивать дружеские отношения между государствами

promote and encourage respect for human rights

поощрять и развивать уважение к правам человека

fundamental freedoms

основные свободы

harmonize actions

согласовывать действия

attainment of common ends

достижение общих целей

good faith fulfilment of obligations

добросовестное исполнение обязательств

commitment to settle international disputes by peaceful means

обязательство разрешать международные споры мирными средствами

endanger international peace and security

подвергать угрозе международный мир и безопасность

membership

членство

peace-loving nation

миролюбивое государство

General Assembly

Генеральная Ассамблея

admit new members

принимать новых членов в Организацию

Security Council

Совет Безопасности

suspension of the rights and privileges of membership

приостановление прав и привилегий членов Организации

expulsion of members

исключение из Организации ее членов

violation of principles

нарушение принципов

original member

первоначальный член

Economic and Social Council (ECOSOC)

Экономический и Социальный Совет

principal organ

главный орган

Trusteeship Council

Совет по Опек

International Court of Justice (ICJ)

Международный суд

Secretariat

Секретариат

deliberative organ

совещательный орган

budgetary matters

бюджетные вопросы

two-thirds majority

большинство в две трети голосов

simple majority

простое большинство

complaint

жалоба

undertake investigation and mediation

проводить расследование и осуществлять посредничество

UN Secretary-General

Генеральный секретарь ООН

good offices

добрые услуги

dispute

спор

fighting

вооруженное столкновение

issue a ceasefire directive

принять директиву о прекращении огня

dispatch military observers

направить военных наблюдателей (*в зону конфликта*)

peacekeeping forces

силы по поддержанию мира

enforcement measures

принудительные меры

economic sanctions

экономические санкции

arms embargo

запрет на ввоз оружия

collective military action

коллективные военные действия

specialized agency

специализированное учреждение

substantive session

основная сессия

high official

высокое должностное лицо

United Nations Development Programme (UNDP)

Программа ООН по развитию

United Nations Environmental Programme (UNEP)

Программа ООН по окружающей среде

6498-ОН



United Nations Children's Fund (UNICEF)

Детский фонд ООН

Food and Agriculture Organization (FAO)

Продовольственная и сельскохозяйственная организация (ФАО)

World Health Organization (WHO)

Всемирная организация здравоохранения (ВОЗ)

International Labour Organization (ILO)

Международная организация труда (МОТ)

United Nations Educational, Scientific and Cultural Organization (UNESCO)

Организация Объединенных Наций по вопросам образования, науки и культуры (ЮНЕСКО)

trust territories

территории, находящиеся под опекой ООН

self-government

самоуправление

amend rules of procedure

вносить поправки в правила процедуры

judicial organ

судебный орган

settle legal disputes

разрешать правовые споры

advisory opinion

консультативное мнение

Statute of the International Court of Justice

Статут Международного Суда

sustainable development

устойчивое развитие

issues of worldwide concern

глобальные проблемы

A.: Когда была создана Организация Объединенных Наций?

B.: The United Nations officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States and a majority of other signatories. United Nations Day is celebrated on 24 October each year.

A.: Таким образом, уставу ООН принадлежит ключевая роль в создании Организации?

B.: The Charter is the constituting instrument of the Organization, setting out the rights and obligations of member-states and establishing the United Nations organs and procedures. The Charter, being an international treaty, codifies the major principles of international relations – from sovereign equality of States to the prohibition of the use of force in international relations.

A.: Какие основные цели ставит перед собой Организация?

B.: The main purposes of the United Nations, as set forth in the Charter, are:

- to maintain international peace and security;

- to develop friendly relations among nations;
- to cooperate in solving international problems and in promoting respect for human rights and fundamental freedoms;
- to be a centre for harmonizing the actions of nations in attaining these common ends.

A.: Исходя из каких принципов, Организация осуществляет свою деятельность?

B.: Some of the most important principles of the United Nations are: sovereign equality of all its members; their good faith fulfilment of the Charter obligations; and their commitment to settle international disputes by peaceful means and without endangering international peace and security.

A.: На каких условиях принимаются в Организацию новые члены?

B.: Membership in the United Nations is open to all peace-loving nations which accept the obligations of the Charter and are willing and able to carry out these obligations.

The General Assembly admits new member-states on the recommendation of the Security Council. The Charter provides for the suspension or expulsion of a member for violation of the principles of the Charter, but no such action has ever been taken.

A.: Сколько членов насчитывает Организация в настоящее время?

B.: In 2002 there were 191 members in the UN, which shows a dramatic increase in membership as compared to the 51 original members in 1945.

A.: Какие языки считаются официальными языками ООН?

B.: Under the Charter, the official languages of the United Nations are Chinese, English, French, Russian and Spanish. Arabic has been added as an official language of the General Assembly, the Security Council and the Economic and Social Council.

A.: Какова структура Организации?

B.: The Charter established six principal organs of the United Nations, which are: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat. The United Nations family, however, is much larger, encompassing 15 agencies and several programmes and bodies.

A.: А как построена работа Генеральной Ассамблеи?

B.: The General Assembly is the main deliberative organ. It is composed of representatives of all member-states, each of which has one vote.

Decisions on important questions, such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority. Decisions on other questions are by simple majority.

A.: *Какие обязанности возлагаются на Совет Безопасности?*

B.: The Security Council has primary responsibility for the maintenance of international peace and security.

Under the Charter, all Members of the United Nations agree to accept and carry out the decisions of the Security Council. While other organs of the United Nations make recommendations to governments, the Council alone has the power to take decisions which member-states are obligated to carry out.

A.: *Какие действия предпринимает Совет Безопасности в случае возникновения угрозы миру?*

B.: When a complaint concerning a threat to peace is brought before it, the Council's first action is to recommend the parties to reach agreement by peaceful means. In some cases, the Council itself undertakes investigation and mediation. It may dispatch a mission, appoint special representatives or request the Secretary-General to use his good offices.

A.: *А если спор перерастает в вооруженное столкновение?*

B.: When a dispute leads to fighting, the Council's first concern is to bring it to an end as soon as possible. The Council may issue ceasefire directives, dispatch military observers or a peacekeeping force to help reduce tensions. Under Chapter VII of the Charter, the Council may decide on enforcement measures, including economic sanctions, arms embargoes or collective military action.

A.: *Какова роль Экономического и Социального Совета?*

B.: The Charter established the Economic and Social Council as the principal organ to coordinate the economic, social and related work of the United Nations and the specialized agencies and institutions – known as the United Nations family of organizations. The Council has 54 members, who serve for three-year terms. Voting in the Council is by simple majority; each member has one vote.

A.: *Как осуществляется деятельность Экономического и Социального Совета?*

B.: The Council holds several short sessions throughout the year to deal with the organization of its work, as well as one four-week substantive session in July, alternating between New York and Geneva. The session includes a high-level segment, attended by Ministers and other high officials, to discuss major economic, social and humanitarian issues.

A.: *В чем заключается координационная роль Экономического и Социального Совета?*

B.: The Council cooperates with and to a certain extent coordinates the work of the United Nations programmes (such as UNDP, UNEP, UNICEF) and the specialized agencies (such as FAO, WHO, ILO, UNESCO), all of which report to the Council and make recommendations for its substantive sessions.

A.: *Какие функции сохраняются в настоящее время за Советом по Опекке?*

B.: By 1994, all Trust Territories had attained self-government or independence. The last to do so was the Trust Territory of the Pacific Islands, which became the 185th member-state.

Its work completed, the Trusteeship Council has amended its rules of procedure to meet as and where occasion may require.

A.: *Какие вопросы находятся в ведении Международного Суда?*

B.: Located at the Hague, the Netherlands, the International Court of Justice is the principal judicial organ of the United Nations. It settles legal disputes between states and gives advisory opinions to the United Nations and its specialized agencies. Its Statute is an integral part of the United Nations Charter.

A.: *Как работает Секретариат?*

B.: The Secretariat carries out the diverse day-to-day work of the Organization. Its duties are varied ranging from administering peacekeeping operations to mediating international disputes, from surveying economic and social trends to preparing studies on human rights and sustainable development.

Secretariat staff also inform the world's media about the work of the United Nations; organize international conferences on issues of world-wide concern; and interpret speeches and translate documents into the Organization's official languages.

HUMAN RIGHTS

Права человека

Vocabulary

Universal Declaration of Human Rights
Всеобщая декларация прав человека

International Human Rights Day
Международный день прав человека

enjoy rights
обладать правами

International Covenant on Civil and Political Rights

Международный пакт о гражданских и политических правах

International Covenant on Economic, Social and Cultural Rights

Международный пакт об экономических, социальных и культурных правах

International Bill of Human Rights

Международный билль о правах человека

Optional Protocol
факультативный протокол

right to work
право на труд

just and favourable conditions of work
справедливые и благоприятные условия труда

right to social protection
право на социальное обеспечение

right to an adequate standard of living
право на достаточный уровень жизни

right to the highest attainable standard of physical and mental health
право на наивысший достижимый уровень физического и психического здоровья

right to education
право на образование

right to enjoy the benefits of scientific progress
право на пользование результатами научного прогресса

Committee on Economic, Social and Cultural Rights

Комитет по экономическим, социальным и культурным правам

enter into force
вступать в силу

right to freedom of movement
право на свободу передвижения

right to equality before the law
право на равенство перед законом

right to a fair trial
право на справедливое судебное разбирательство

right to the presumption of innocence
право считаться невиновным

right to freedom of thought, conscience and religion
право на свободу мысли, совести и религии

right to freedom of opinion and expression
право придерживаться своего мнения и свободно его выражать

right of peaceful assembly
право на мирное собрание

deprivation of life
лишение жизни

torture, cruel or degrading treatment or punishment
пытки, жестокое или унижающее достоинство обращение или наказание

slavery and forced labour
рабство и принудительный труд

arbitrary arrest or detention
произвольный арест или содержание под стражей

arbitrary interference with privacy
произвольное вмешательство в личную жизнь

war propaganda
пропаганда войны

advocacy of racial or religious hatred
пропаганда расовой или религиозной ненависти

recourse procedure
процедура обращения за помощью к суду

individual
физическое лицо

extend the right of petition
предоставить право подачи петиций

abolition of death penalty
отмена смертной казни

UN Commission on Human Rights
Комиссия ООН по правам человека

observance of human rights
соблюдение прав человека

nongovernmental organization (NGO)
неправительственная организация

working group
рабочая группа

Special Rapporteur / Representative
специальный представитель

UN High Commissioner for Human Rights

Верховный комиссар ООН по правам человека

be mandated / authorized
быть уполномоченным

violations of human rights
нарушения прав человека

A.: В каком году была принята Всеобщая декларация прав человека?

B.: It was adopted on 10 December 1948, the day now observed worldwide as *International Human Rights Day*. Its 30 articles spell out basic civil and political, as well as economic, social and cultural rights that all human beings in every country should enjoy.

- A.:** Таким образом, в Декларации говорится о двух категориях прав?
- B.:** That's right. The rights set forth in the Declaration fall into two general categories: civil and political rights, and economic, social and cultural rights.
- The two groups of rights were the basis for the General Assembly's adoption in 1966 of two treaties: the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.
- A.:** А что такое Международный билль о правах человека?
- B.:** The Universal Declaration of Human Rights together with the two International Covenants on Human Rights and their Optional Protocols, comprise the *International Bill of Human Rights*.
- A.:** Сколько стран подписали Пакт об экономических, социальных и культурных правах?
- B.:** The International Covenant on Economic, Social and Cultural Rights entered into force in 1976, and has 143 states-parties (the figures as of December 2000).
- A.:** Какие права защищает Пакт?
- B.:** The human rights that the Covenant seeks to promote and protect are of three kinds:
- the right to work in just and favourable conditions;
 - the right to social protection, to an adequate standard of living and to the highest attainable standard of physical and mental health;
 - the right to education and the enjoyment of benefits of scientific progress.
- A.:** Как ООН контролирует соблюдение прав, предусмотренных Пактом?
- B.:** The Covenant requires states-parties to submit periodic reports to the Committee on Economic, Social and Cultural Rights on how they have been implementing the provisions of the Covenant. This 18-member body of experts studies these reports, discusses them with representatives of the governments concerned bringing to their attention deficiencies in reports and procedures, and makes recommendations to states-parties based on its review of their reports.
- A.:** Когда вступил в силу Пакт о гражданских и политических правах?
- B.:** The International Covenant on Civil and Political Rights and the First Optional Protocol to that Covenant both entered into force in 1976. The Covenant has 147 states-parties; the Protocol – 98.

- A.:** О каких правах говорится в Пакте?
- B.:** The Covenant deals with such rights as freedom of movement; equality before the law; the right to a fair trial and presumption of innocence; freedom of thought, conscience and religion; freedom of opinion and expression; peaceful assembly.
- A.:** Запрет на какие действия провозглашает Пакт?
- B.:** It prohibits deprivation of life; torture, cruel or degrading treatment or punishment; slavery and forced labour; arbitrary arrest or detention and arbitrary interference with privacy; war propaganda, and advocacy of racial or religious hatred.
- A.:** Что предусматривают Протоколы?
- B.:** The Covenant has two Protocols. The First Optional Protocol provides for recourse procedures that extend to individuals the right of petition. The Second Optional Protocol (1989) aims at the abolition of the death penalty and has 43 states-parties.
- A.:** Какова роль Комиссии ООН по правам человека?
- B.:** The UN Commission on Human Rights provides overall policy guidance, studies human rights problems, develops and codifies new international norms and monitors the observance of human rights around the world. It is authorized to examine information on human rights from states, NGOs and other sources.
- A.:** Какие действия может предпринять Комиссия, если рассматриваемая ситуация вызывает беспокойство?
- B.:** If a particular situation is deemed sufficiently serious, the Commission may order an investigation by either a group of independent experts (working group) or an individual (Special Rapporteur / Representative). Based on information received from these experts, the Commission then calls upon the government concerned to bring about needed changes.
- A.:** Какие функции возлагаются на Верховного комиссара ООН по правам человека?
- B.:** The UN High Commissioner for Human Rights is the UN official with principal responsibility for United Nations human rights activities. Appointed for a four-year term, the High Commissioner is charged with many tasks from promoting and protecting the effective enjoyment by all of all human rights to promoting ratification of human rights treaties. The High Commissioner is also mandated to respond to serious violations of human rights and to undertake action to prevent violation.

Vocabulary

United Nations Convention on the Law of the Sea (LOS Convention) Конвенция ООН по морскому праву	ocean pollution загрязнение морской среды
comprehensive instrument всеобъемлющий документ	fishing рыболовство
framework основа	shipping судоходство
legitimacy легитимность, законность	nautical mile морская миля
acceptance of the Convention принятие конвенции	territorial sea территориальное море
ratification of the Convention ратификация конвенции	coastal state прибрежное государство
accession to the Convention присоединение к конвенции	exclusive economic zone (EEZ) исключительная экономическая зона
adhere to the Convention and its provisions соблюдать конвенцию и ее положения	continental shelf континентальный шельф
scope сфера действия	establish exclusive rights устанавливать исключительные права
freedoms of navigation and overflight свободы судоходства и полетов	explore, exploit, conserve and manage living and nonliving resources проводить разведку, разрабатывать, сохранять и управлять природными ресурсами как органическими, так и неорганическими
resource exploration разведка природных ресурсов	exercise limited jurisdiction осуществлять ограниченную юрисдикцию
resource exploitation разработка природных ресурсов	
ocean conservation сохранение морской среды	

establishment and use of artificial islands, installations and structures создание и использование искусственных островов, установок и сооружений	be prejudicial to the peace, good order or security of the coastal state представлять угрозу миру, правопорядку или безопасности прибрежного государства
high sea(s) открытое море	fishing vessel рыболовецкое судно
operate ships and aircraft эксплуатировать суда и летательные аппараты	observe laws and regulations соблюдать законы и правила
lay submarine cables and pipelines прокладывать подводные кабели и трубопроводы	International Seabed Authority Международный орган по морскому дну
high seas freedoms свободы открытого моря	International Tribunal for the Law of the Sea Международный трибунал по морскому праву
innocent passage мирный проход	Commission on the Limits of the Continental Shelf Комиссия по границам континентального шельфа
transit passage транзитный проход	be within the scope of находиться в ведении
strait пролив	international seabed area международный район морского дна
unilateral right право, предоставленное в одностороннем порядке	forum суд
verify проверять, контролировать	settle disputes урегулировать споры
suspend the right to innocent passage приостановить право мирного прохода	claim претендовать
take effect вступать в силу	
due publication соответствующая публикация	

A.: *Конвенция ООН по морскому праву считается уникальным документом, который сравнивается с конституцией для морей и океанов. Почему?*

B.: The United Nations Convention on the Law of the Sea is considered one of the most comprehensive instruments of international law. It pro-

vides the framework for all aspects of ocean sovereignty, jurisdiction, use, as well as rights and obligations of states.

A.: *Сколько государств подписали Конвенцию?*

B.: The legitimacy of the Convention is based on the near universal acceptance of the Convention – more than 130 states are parties to the Convention, numerous others are in the process of ratification or accession, and nearly all, but a handful of states, recognize and adhere to the Convention and its provisions.

A.: *Какова сфера действия Конвенции?*

B.: The Convention covers all aspects of ocean space and its uses – navigation and overflight, resource exploration and exploitation, conservation and pollution, fishing and shipping.

A.: *Можно ли говорить о положительных итогах подписания Конвенции?*

B.: Absolutely. Thus far, its major impact has been on the near universal acceptance of 12 nautical miles as the limit of the territorial sea, as well as coastal states jurisdiction over the resources of an “exclusive economic zone” up to the 200 nautical miles, and over the resources of the continental shelf extending beyond the limits of the zone.

A.: *Какими правами обладают прибрежные государства в исключительной экономической зоне?*

B.: The LOS Convention established exclusive rights for coastal states to explore, exploit, conserve, and manage all living and nonliving resources within the zone. The Convention also allows coastal states to exercise limited jurisdiction in establishing and using artificial islands, installations and structures.

A.: *Каковы права других государств?*

B.: Aside from the coastal state’s exclusive right to exploit the zone’s resources, the waters are otherwise treated like the high seas. All states are free to operate ships and aircraft and to lay submarine cables and pipelines within an EEZ. They may also engage in other internationally lawful uses of the sea which are part of high seas freedoms.

A.: *Какое влияние оказала Конвенция на безопасность морского судоходства?*

B.: The Convention has brought stability in the area of navigation, either through the acceptance of the notion of innocent passage through the territorial sea, or transit passage through the narrow straits used for international navigation.

A.: *Кто вправе определять, носит ли проход судов мирный характер?*

B.: The coastal state has the unilateral right to verify the innocent character of passage, and it may take the necessary steps in its territorial sea to prevent passage which it determines to be not innocent. The coastal state may temporarily suspend the right to innocent passage if essential for protection of the state’s security. Suspension may take effect only after due publication.

A.: *В каком случае проход судов перестает считаться мирным?*

B.: Passage ceases to be innocent where it is “prejudicial to the peace, good order or security of the coastal state”, and in the case of foreign fishing vessels when they do not observe such laws and regulations as the coastal state may make and publish to prevent these ships from fishing in the territorial sea.

A.: *Конвенция была подписана в 1982 году. Это уникальный документ, но не все вопросы пока урегулированы. Кто занимается их решением?*

B.: The Convention established three specific organs to deal with various aspects of the law of the sea. They are the International Seabed Authority; the International Tribunal for the Law of the Sea; and the Commission on the Limits of the Continental Shelf.

A.: *Какие вопросы находятся в ведении Международного органа по морскому дну?*

B.: It’s the organization through which states-parties organize and control activities relating to the deep seabed area, beyond the limits of national jurisdiction.

Established in 1994, it is located in Kingston, Jamaica.

A.: *Каковы функции Международного трибунала по морскому праву?*

B.: The Tribunal, operational since 1996, is a forum for settling disputes arising out of the interpretation or application of the Convention. Made up of 21 judges elected by the states-parties, it is located in the German seaport of Hamburg.

A.: *Чем занимается Комиссия по границам континентального шельфа?*

B.: The Commission on the Limits of the Continental Shelf makes recommendations to states that claim a shelf extending beyond 200 miles from their coast. Based at United Nations Headquarters, it started its sessions in 1997. Its 21 members, elected by the states-parties, serve in their personal capacity.

Воздушное и космическое право

Vocabulary

air navigation

воздушная навигация

Convention on International Civil Aviation (Chicago Convention)

Конвенция о международной гражданской авиации (Чикагская конвенция)

airspace

воздушное пространство

scheduled international air services

регулярные воздушные сообщения

operate air services

осуществлять воздушные сообщения

contracting state

договаривающееся государство

special permission or other authorization

специальное разрешение или иная санкция

aircraft (ед. и мн. число)

воздушное судно, воздушные суда

military, customs and police aircraft

воздушные суда, используемые на военной, таможенной и полицейской службах

non-scheduled flights

нерегулярные полеты

make flights in transit non-stop across a state's territory

осуществлять транзитные беспосадочные полеты через территорию государства

make stops for non-traffic purposes

совершать посадки с некоммерческими целями

subject to the right of the state flown over to require landing

при условии, что государство, над территорией которого осуществляется полет, имеет право требовать совершения посадки

nationality of aircraft

национальность воздушного судна

domestic law

национальное право

International Civil Aviation Organization (ICAO)

Международная организация гражданской авиации (ИКАО)

specialized agency

специализированное учреждение

adoption of agreed safety standards

принятие согласованных стандартов безопасности

expansion of navigational facilities

усовершенствование навигационного оборудования

air law

воздушное право

outer space

космическое пространство

res communis

лат. общая вещь

be appropriated to the sovereignty of individual states

подлежать национальному присвоению путем провозглашения суверенитета

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies

Договор о принципах деятельности государств по исследованию и использованию космического пространства, включая Луну и другие небесные тела

be subject to national appropriation

подлежать национальному присвоению

for the benefit of all countries

на благо всех стран

military activities

военная деятельность

nuclear weapons

ядерное оружие

weapons of mass destruction

оружие массового уничтожения

prohibit / ban

запрещать

celestial body

небесное тело

early warning

раннее оповещение

intelligence gathering

сбор информации в разведывательных целях

damage caused by space objects

ущерб, причиненный космическими объектами

launch a space vehicle

производить запуск космического корабля

space law

космическое право

Convention on International Liability for Damage Caused by Space Objects

Конвенция о международной ответственности за ущерб, причиненный космическими объектами

payment of compensation

выплата компенсации

A.: Когда и на какой основе был установлен ныне действующий правовой режим воздушной навигации?

B.: The present regime concerning air navigation developed from the 1944 Chicago Conference and the conventions adopted there.

A.: Какое соглашение представляет наибольший интерес?

B.: It's the Chicago Convention on International Civil Aviation which emphasizes the complete and exclusive sovereignty of states over their air-

space and provides that no scheduled international air service may be operated over or into the territory of a contracting state without that state's special authorization.

- A.:** *Конвенция применима ко всем видам воздушных судов?*
- B.:** The Convention does not apply to state aircraft (for example, military, customs and police aircraft).
- A.:** *Какие правила действуют в отношении регулярных полетов?*
- B.:** Article 5 of the Convention provides that aircraft of other contracting states not engaged in scheduled international air service, shall have the right to make flights into or in transit non-stop across their territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission and subject to the right of the state flown over to require landing.
- A.:** *Как определяется национальность воздушного судна?*
- B.:** Aircraft have the nationality of the state in which they are registered, although the conditions for registration are a matter for domestic law.
- A.:** *Существует ли организация, занимающаяся проблемами гражданской авиации?*
- B.:** The Chicago Conference led to the creation of the International Civil Aviation Organization (ICAO), a UN specialized agency based in Canada, which concentrates upon technical and administrative cooperation between states in the field of civil aviation, ranging from the adoption of agreed safety standards to the encouragement of the expansion of navigational facilities.
- A.:** *Распространяется ли суверенитет государства и на космическое пространство?*
- B.:** Beyond the point separating air from space states have agreed to apply the international law principles of *res communis*, so that no portion of outer space may be appropriated to the sovereignty of individual states.
- A.:** *Какой документ регулирует правовой режим космического пространства?*
- B.:** The legal regime of outer space is governed by the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The document states that outer space is not subject to national appropriation by any means and emphasizes that the exploration and use of outer space must be carried out for the benefit of all countries.

- A.:** *Разрешена ли военная деятельность в космическом пространстве?*
- B.:** The Treaty does not prohibit military activities. It bans nuclear weapons and weapons of mass destruction from outer space, the celestial bodies and from orbit around the earth. In fact, the Outer Space Treaty specifically allows certain military activities and the use of military personnel for scientific and other peaceful purposes.
- A.:** *Можно ли говорить о положительных итогах подобной деятельности?*
- B.:** Military activities in space have been going on for over thirty five years and there are some areas where the results are positive: it's the early warning area and the intelligence gathering area which many countries consider as stabilizing forces for world peace and security.
- A.:** *Кто несет ответственность за ущерб, причиненный космическими объектами?*
- B.:** States retain jurisdiction and control over personnel and vehicles launched by them into space and remain responsible for any damage caused to other parties to the Treaty by their space objects. This aspect of space law was developed by the Convention on International Liability for Damage Caused by Space Objects, signed in 1972.
- A.:** *Предусмотрена ли выплата компенсации?*
- B.:** Yes. The Convention provides for the payment of compensation in accordance with international law and the principles of justice and equity for any damage caused by space objects.

Vocabulary

marine pollution

загрязнение морской среды

deterioration of the environment / environmental degradation

ухудшение состояния окружающей среды

United Nations Environmental Programme (UNEP)

Программа ООН по окружающей среде (ЮНЕП)

World Commission on Environment and Development

Международная комиссия по вопросам окружающей среды и развитию

sustainable development

устойчивое развитие

deplete

истощать

Convention on Biological Diversity

Конвенция о биологическом разнообразии

Framework Convention on Climate Change

Рамочная конвенция об изменении климата

Convention to Combat Desertification in those Countries Experiencing

Serious Drought and/or Desertification, Particularly in Africa

Конвенция по борьбе с опустыниванием в тех странах, которые испытывают серьезную засуху и/или опустынивание, особенно в Африке

greenhouse gases

парниковые газы

carbon dioxide

углекислый газ

fossil fuel

органическое топливо

depletion of the ozone layer

истощение озонового слоя

Convention for the Protection of the Ozone Layer

Конвенция по защите озонового слоя

ban

запрещать

chlorofluorocarbons (CFCs)

хлорфторуглероды

deforestation

обезлесение

desertification

опустынивание

A.: *Часто ли за прошедшие десятилетия поднимались вопросы, связанные с защитой окружающей среды?*

B.: In the 1950s and 1960s environmental concerns rarely appeared on the international agenda. During the 1960s, there were some agreements made regarding marine pollution. But with increasing evidence of the deterioration of the environment on a global scale, the international community has since the 1970s shown escalating alarm over the impact of development on the ecology of the planet and human well-being.

A.: *Существует ли связь между экономическим развитием и ухудшением состояния окружающей среды?*

B.: The relationship between economic development and environmental degradation was first placed on the international agenda in 1972 at the United Nations Conference on the Human Environment, held in Stockholm. After the Conference governments set up the United Nations Environmental Programme (UNEP), which today continues to act as the leading environmental agency.

In 1987, the World Commission on Environment and Development, established by the General Assembly, put forward the concept of sustainable development as an alternative approach to one simply based on unconstrained economic growth.

A.: *В чем основной смысл концепции «устойчивого развития»?*

B.: Sustainable development is the satisfaction of current human needs without depleting the natural resource base for future generations.

A.: *Какие практические шаги должны сделать правительства и гражданское общество в плане претворения в жизнь концепции устойчивого развития?*

B.: Fortunately, many of the practical tools and actions for promoting sustainable development are available through the three so-called Rio Conventions: *the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, and the United Nations Convention to Combat Desertification.*

All three conventions address the complex interactions among human and natural systems. These systems and the physical processes of biodiversity, climate change and desertification are intimately interlinked. They represent different aspects of the same challenge — how to ensure the sustainable exploitation of the earth's resources.

A.: *Что конкретно должен сделать каждый из нас для достижения устойчивого развития мирового сообщества в целом?*

B.: Achieving sustainable development worldwide depends largely on changing patterns of production and consumption – what we produce, how it is produced and how much we consume.

Central to the issue is the fact that using fewer resources and wasting less is simply better business. It saves money and generates higher profits. It also protects the environment by conserving natural resources and creating less pollution. In doing so, we sustain the planet for the enjoyment and well-being of future generations.

A.: Верны ли предположения о том, что деятельность человека способствует изменению климата на планете?

B.: Yes. There is substantial evidence that human activities contribute to the build-up of “greenhouse gases” in the atmosphere, leading to a gradual rise in global temperatures. In particular, carbon dioxide is produced when fossil fuels are burned to generate energy, or when forests are cut down and burned. According to the Intergovernmental Panel on Climate Change, climate models predict that global temperatures will rise by about 1 to 3.5 degrees centigrades by 2100. This projected change is larger than any climate change experienced over the last 10,000 years – with potentially significant impact on the global environment.

A.: А к каким последствиям может привести истощение озонового слоя?

B.: The ozone layer is a thin layer of gas in the upper atmosphere (about 12 to 45 kilometres above the ground) which shields the Earth’s surface from the Sun’s damaging ultraviolet rays. Exposure to increased ultraviolet radiation is known to result in skin cancer, and to cause unpredictable damage to plants, the food chain and the global ecosystem.

A.: Можно ли избежать подобных последствий?

B.: UNEP helped to negotiate and now administers the historic *Vienna Convention for the Protection of the Ozone Layer* (1985), and the *Montreal Protocol* (1987) and its *Amendments*. Under these agreements, developed countries have banned the production and sale of chlorofluorocarbons, a chemical that depletes the ozone layer. Developing countries must stop production by 2010. If measures had not been taken in accordance with the *Protocol*, the ozone depletion would have been much more serious and would have continued for many more decades.

A.: Какие еще глобальные катастрофы угрожают человечеству?

B.: Among the most hazardous are deforestation, desertification and marine pollution.

CONTRACTS

Договорное право

Vocabulary

form a contract

заключить договор

offer

оферта, предложение

acceptance

акцепт

enforceable

имеющий исковую силу

identify goods

индивидуализировать товары

quantum meruit

лат. оплата по справедливой оценке

enter into a contract

вступить в договорные отношения

accept

акцептовать, принять (*предложение*)

Statute of Frauds

статут о мошенничествах

valid

юридически действительный

legal capacity

право- и дееспособность

majority

совершеннолетие

minor

несовершеннолетний

binding

обязательный для исполнения

be bound by the agreement

быть связанным обязательствами по договору

get out / back out of a contract

выйти из договора

under duress

под принуждением

A.: Что такое договор?

B.: A contract is an agreement that can be formal, informal, written, oral, or just plain understood. It can be between individuals, between two or more companies, or between different combinations of individuals and organizations.

A.: Что нужно для того, чтобы договор считался заключенным?

B.: Basically, a contract is formed when there is an offer and an acceptance of terms in which each party benefits.

A.: *Насколько конкретно стороны по договору должны формулировать свои намерения?*

B.: The parties must be specific enough in their agreement for the contract to be enforceable. For example, in the sale of merchandise, the terms have to identify the goods and the price.

A.: *Бывают ли случаи, когда сторонам нет необходимости подробно оговаривать условия договора?*

B.: Yes. Sometimes the parties do not have to spell out the essential terms in order to form a contract.

Say, for instance, a man with a snowplow drives by your house after a big blizzard.

“Want me to plow?” he shouts.

“Sure, go ahead!” you holler back, and he cuts a neat path up your driveway.

He has provided goods or services, and you have accepted them knowing they are not a gift, so he is entitled to receive quantum meruit — the reasonable value. In other words, you have to pay him. If, however, he had just plowed without first asking you, no contract would be formed and you would owe him nothing.

A.: *Что на практике означает договор, вытекающий из действий сторон?*

B.: Sometimes a contract is formed by actions. When one drives into a gas station, sees a sign that states the price, and then pumps gas into his car, he has entered into a contract. By pumping gas into his car, one has accepted the gas station’s offer to sell gas at the posted price.

A.: *Обязательно ли договор должен быть в письменной форме?*

B.: It depends. Some, but not all, contracts must be in writing to be enforceable. Most states have laws known as statutes of frauds, which were designed to protect against false claims for payment from contracts that were not, in fact, agreed upon. The specific laws vary from state to state, but most require that the following contracts be in writing:

- the sale of land;
- the sale of goods valued over \$500;
- contracts that require more than one year to perform;
- promises to guarantee someone else’s debt.

A.: *Кто может вступить в договорные отношения?*

B.: For a contract to be valid, the parties must have the legal capacity to enter into it. In most states that means that anyone who has reached the age of majority (usually eighteen) and who is considered to be men-

tally competent can enter into a contract. In general, minors can enter into binding, or enforceable, contracts only for necessities.

Mentally handicapped persons can also enter into contracts, as long as they have not been declared incompetent and they understand the nature and consequences of their actions.

A.: *Можно ли сначала заключить договор, а потом изменить свое решение?*

B.: Yes, but only in very limited circumstances. The whole purpose of a contract is to create a binding obligation for both parties. If one simply has changed his or her mind about the terms of the contract, he or she is still bound by the agreement.

There are some reasons that do justify release from a contract, however. If the contract was obtained by the fraud of the other party, one can be released from a contract.

If the other party fails to perform a significant part of the contract, one would no longer be bound by the agreement.

A.: *А можно ли выйти из договора до подписания документа?*

B.: Maybe. If a contract is required to be in writing by the state’s statutes of frauds, and if the agreement has not yet been signed, either party probably can still back out. However, if a party admits that a verbal contract for the sale of goods was made, it will still be enforceable in almost all states.

A.: *Будет ли действительным договор, заключенный под принуждением?*

B.: Duress can be grounds for getting out of a contract. But duress is considered to be “extreme improper influence” that prevents one from asserting his or her own free will. Financial concerns or strong persuasion do not legally constitute duress.

A.: *Что произойдет, если непредвиденные обстоятельства воспрепятствуют исполнению договора?*

B.: In some cases unexpected circumstances can excuse one from the contract. However, this is generally limited to two types of situations:

- the subject of the contract is destroyed;
- circumstances arise that make it impossible or extremely difficult to perform the contract.

AGENCY

Агентский договор

Vocabulary

fiduciary relationship

лично-доверительные, фидуциарные отношения

authorize smb. / clothe smb. with authority

наделять кого-либо полномочиями

independent contractor

подрядчик

agency by estoppel

представительство в силу неопровержимой правовой презумпции

agency by ratification

представительство с последующим подтверждением полномочий агента

by operation of law

в силу закона

general agent

агент, имеющий полномочия на проведение всех деловых операций, связанных с деятельностью принципала, без ограничений

special agent

агент, полномочия которого ограничены совершением конкретной сделки

apparent agent

агент, полномочия которого разумно предполагаются из обстоятельств

disclosed principal

названный (поименованный) принципал

undisclosed principal

неназванный принципал

Statute of Frauds

статут о мошенничествах

exceed authority

превышать полномочия

acquiescence

молчаливое согласие

trustee

доверительный собственник

executor

душеприказчик

administrator

администратор наследства

guardian

опекун

discretion

усмотрение, свобода действий

keep accounts

вести отчетность

render accounts

представить отчетность

impress a trust on the property acquired by an agent

учредить траст на собственность, приобретенную агентом

tort action

деликтный иск

gross negligence

грубая неосторожность

termination of agency

прекращение агентского договора

revoke authority

отзывать полномочия

renounce authority

отказываться от полномочий

rescind a contract

расторгнуть договор

injunction

судебный запрет

void

ничтожный, недействительный

A.: *Что понимается под агентскими отношениями?*

B.: Agency is a fiduciary legal relationship where one person represents another in dealing with third persons. It is based on an express or implied agreement that one person (the agent) is authorized to act under the control of and for another person (the principal) in making agreements with third persons.

A.: *А работник является агентом работодателя?*

B.: No. An ordinary employee is one who is not hired to represent an employer in dealing with third persons. Nor is an independent contractor, who contracts to do something according to his own methods and is not subject to the control of the employer except as to results.

A.: *Всегда ли агентские отношения основываются на договоре?*

B.: There are several ways to form an agency. It can be created by agreement, by conduct of the parties, by estoppel, by ratification, or by operation of law.

A.: *Какие существуют классы агентов?*

B.: The law distinguishes between kinds of agents and kinds of principals. A general agent is a person authorized to conduct a series of transactions with continuity of service; a special agent is one authorized to conduct a single transaction; an apparent agent is a person who, although not really authorized to act as an agent for another, seems to third persons to have that authority.

A.: *А классы принципалов?*

B.: A principal may be disclosed, partially disclosed and undisclosed. A disclosed principal exists in a transaction when the third party is notified of the identity of the principal for whom the agent is acting; a partially disclosed principal exists when the third party is notified that an agent may be acting for a principal but without identifying the principal; an undisclosed principal exists when the third party is not informed that the agent is acting for principal.

- A.:** *Обязательна ли письменная форма договора?*
- B.:** No. Although no writing is necessary to establish an agency, and verbal authorizations to an agent are generally good, the Statute of Frauds requires written authorizations to sell real estate and to enter into certain other types of contract.
- A.:** *Если агент действует без полномочий, несет ли принципал ответственность за его действия?*
- B.:** Despite the fact that he did not give his agent authority, or the fact that the agent exceeds his authority, the principal may later be bound by his agent's actions if he ratifies or approves them. Once a principal acquiesces in the acts and conduct of an agent, such acquiescence indicates authorization to perform similar acts in the future.
- A.:** *Может ли агент передать свои обязанности другому лицу?*
- B.:** Ordinarily, an agent is not clothed with authority to delegate his responsibilities to someone else. It is a general rule that a person who holds a fiduciary position cannot do it. Therefore, a trustee, executor, administrator or guardian cannot delegate those of his responsibilities which involve elements of discretion.
- A.:** *Как регулируются права и обязанности агента?*
- B.:** In most circumstances, the duties and liabilities of an agent are governed by the terms of the agreement between the principal and the agent, but there are certain rules which apply to most agencies.
- A.:** *Каковы основные обязанности агента?*
- B.:** In general, an agent has the following duties: (1) to use care and skill; (2) to give his principal all pertinent information; (3) to keep and render accounts if the nature of the work requires it; (4) to stay within the limits of his authority; (5) to obey his principal and to carry out all reasonable instructions; (6) to act with utmost faith and loyalty in advancing the interests of his principal.
- A.:** *Может ли у агента быть два принципала?*
- B.:** Yes. That's the case of dual agency. Agent for two principals (e.g. buyer and seller) must have informed consent of both principals or transaction is void by either principal.
But an agent must not represent anyone whose interest conflicts with that of the principal.
- A.:** *А если агент ведет себя недобро по отношению к принципалу?*
- B.:** The principal who is the victim of a disloyal agent has various remedies at his disposal. He may bring an action for: (1) damages for breach of contract; (2) damages for wrongful breach of duty (tort action); (3)

impressing a trust on the property acquired by an agent; (4) an accounting; (5) an injunction. The injured principal may also discharge the agent, refuse to pay his compensation and/or rescind the contract of employment.

- A.:** *Несет ли агент ответственность перед третьими лицами?*
- B.:** The liability of the agent to third parties involves the important question of whether the principal is disclosed, partially disclosed or undisclosed.
- An agent who makes a contract for a disclosed (identified) principal is not personally bound by the contract.
- A.:** *А если агент говорит, что действует в интересах принципала, но не называет его имени?*
- B.:** An agent acting for a partially disclosed principal (he discloses his agency but not the principal's name) becomes a party to the contract.
- A.:** *Что происходит, если третья сторона вообще не знает о существовании принципала?*
- B.:** An agent who does not disclose to a third person the fact that he is acting for another is a party to the contract. If the third party later finds out the identity of the principal, he has the option of holding either the agent or the principal responsible.
- A.:** *Какие обязанности существуют у принципала?*
- B.:** The principal owes his agent just compensation. The basic right of an agent to recover compensation rests on contract, express or implied, and on custom or usage in the particular field. But when an agent has been guilty of such gross negligence as to render his services of no value, the agent can recover no compensation.
A principal is liable to his agent for damages if he breaches his contract by prematurely terminating the agency.
- A.:** *Несет ли принципал ответственность за действия агента перед третьими лицами?*
- B.:** A principal is liable to third parties for contracts made by the agent within his authority, whether actual or apparent. When the agent violates his secret instructions, the principal may nevertheless be liable on the contract.
- A.:** *Как прекращается агентский договор?*
- B.:** An agency is usually terminated by mutual consent. It may also be terminated if the principal revokes the agent's authority or if the agent renounces his agency. Such revocation or renunciation may constitute a breach of contract between the principal and agent and may be basis

for a lawsuit for damages. Nevertheless, as far as third persons are concerned, the agency itself is terminated.

A.: *Существуют ли другие основания для прекращения агентских отношений?*

B.: Agency may also be terminated by the death of either the principal or the agent or when it becomes impossible to carry out the agent's authority, as in the destruction of the subject matter or in the bankruptcy of the principal.

SALE OF GOODS

Купля-продажа товаров

Vocabulary

bill of sale

купчая

"as is" sale

продажа товара на условии «как есть» (без гарантии качества)

warranty

гарантия качества товара

be binding on smb

иметь обязательную силу для кого-либо

disclaim a warranty

отказаться от дачи гарантии

conspicuously

видимо, ясно; заметно

service contract

зд. договор обслуживания

Uniform Commercial Code (UCC)

Единообразный торговый кодекс (ЕТК)

implied warranty

подразумеваемая гарантия

imposed by law

установленный в законе

merchantability

пригодность товара для купли-продажи

fitness for a particular purpose

пригодность товара для определенной цели

express purpose

прямовыраженная гарантия

caveat emptor

лат. «пусть покупатель будет бдителен»: покупатель действует на свой риск

A.: *В каких случаях покупателю и продавцу необходимо оформлять купчую?*

B.: Casual sales of small items between individuals do not call for a bill of sale or a written contract. But for more substantial items a short written record of the terms of sale is useful to prevent misunderstandings. Many states require written contracts for any sale of goods over \$500.

A.: *Какую информацию должен содержать этот документ?*

B.: The names of the buyer and seller, the price of the goods, any special term, such as delayed payment or responsibility for delivery of the goods.

If the seller does not want to guarantee the goods, he or she should include the notation "as is" in the bill of sale. On the other hand, the buyer should demand that any guarantee that the seller is offering be put in writing.

A.: *А что вообще представляет собой гарантия качества товара?*

B.: A warranty is a promise about a product that can be made by either a manufacturer or a seller. "Satisfaction guaranteed" is a broad warranty that is often offered.

A.: *Так чья же гарантия важнее для покупателя — производителя или продавца?*

B.: A confusing aspect of warranties is that both the manufacturer and the seller can make a warranty. Usually the warranty of one is not binding on the other.

As a result, the consumer has to determine which guarantees are given by the manufacturer and which by the seller.

A.: *Предоставляется ли гарантия автоматически при покупке того или иного товара?*

B.: No, the consumer does not automatically get a warranty when he or she buys something. In most states, manufacturers have no obligation to offer warranties to consumers — although most of them do.

Sellers, on the other hand, usually must guarantee that the products the consumer buys from them will work as directed. However, sellers often can disclaim the warranty by posting a sign conspicuously or otherwise informing the consumer that there is no guarantee being offered.

A.: *В каких случаях производитель принимает на себя обязательства перед потребителем?*

B.: Generally, a manufacturer has a legal obligation to the consumer only under the following circumstances:

- the manufacturer has specifically offered a warranty;
- the manufacturer has sold a service contract;
- the product physically harmed the consumer.

A.: *Как в законодательном порядке регулируется купля-продажа товаров?*

B.: The sale of goods is generally governed by federal law and by a standard set of statutes that is in effect in almost all states — the Uniform Commercial Code. All states have adopted and adapted the entire UCC, with the exception of Louisiana, which adopted only parts of it.

A.: *В чем состоит особенность подразумеваемой гарантии?*

B.: An implied warranty is a guarantee imposed by law in a sale. Even though the seller may not make any explicit promises, the buyer still gets some protection. Two important implied warranties apply to sales:

- the implied warranty of merchantability;
- the implied warranty of fitness for a particular purpose.

A.: *Чем отличаются друг от друга эти две подразумеваемые гарантии?*

B.: The implied warranty of merchantability guarantees that goods are reasonably fit for their *ordinary* purpose. As the name suggests, this warranty applies only when the consumer buys something from a person in business. It does not apply to sales between private individuals.

The implied warranty of fitness for a particular purpose applies when a sale is made by both private individuals and merchants. This warranty exists when a seller should know that a buyer is relying on the seller's expertise.

A.: *А что представляет собой прямовыраженная гарантия?*

B.: An express warranty is an assertion or promise concerning goods. Statements such as: "This air conditioner will cool a five-room house" or "We will repair any problems in the first year" are express warranties.

A.: *Действует ли до сих пор в отношениях между покупателем и продавцом принцип caveat emptor?*

B.: Caveat emptor is Latin for "buyer beware". Before the modern law of warranties was developed, the rule of caveat emptor prevailed. This rule gave the buyer full responsibility for determining the quality of the goods in question. The seller had no duty to offer warranties or to disclose defects in the goods. In sales between individuals, caveat emptor generally still applies.

Недвижимая собственность

Vocabulary

real estate

недвижимое имущество

abstract company

титульная компания: фирма, специализирующаяся на проверке прав собственности на землю и недвижимость

title search

проверка правового титула

title insurance policy

полис страхования правового титула

faulty title

титул, обладающий пороком

abstract of title

справка (сертификат) о правовом титуле

lien

право удержания имущества за долги

encumbrance

обременение (*имущества*)

good title

безупречный правовой титул

environmental search

экологическая проверка

chain of title

последовательный ряд передач правового титула

Environmental Protection Agency

управление по охране окружающей среды

waste

отходы

zoning ordinance

постановление муниципальных властей о зонировании

mortgage

ипотека

conveyance of land

передача земли

security for a debt

обеспечение долга

note (promissory note)

простой вексель

bond

закладная, закладной лист

mortgagor

должник по закладной

mortgagee

кредитор по закладной

interest

проценты

principal payment

основная сумма

come due

наступать (*о сроке платежа*)

cancellation

аннулирование; погашение

redemption

выкуп заложенного имущества

foreclosure

потеря права выкупа заложенного имущества

surplus

излишек

deficiency

нехватка

balance of the debt

остаток долга

preferred lien

преимущественное право удержания

subject to mortgage

с учетом ипотеки

assuming mortgage

принятие на себя ипотеки

mechanic's lien

право удержания, предоставленное законом работнику в обеспечение оплаты труда или материалов, затраченных на благоустройство, ремонт и содержание собственности

judgement lien

право удержания в силу судебного решения

attachment lien

право кредитора на имущество заемщика

tax lien

право ареста имущества налогового должника

lease

аренда

binding contract

договор, имеющий обязательную силу

lessor

арендодатель

lessee

арендатор

tenant

сьемщик

periodic tenancy

срочная аренда

notice

уведомление

terminable

могуший быть прекращенным

expiration

истечение срока

holding over

владение арендованной собственностью после истечения срока действия аренды

oust

выселить

fixture

принадлежность недвижимости

die intestate

умереть, не оставив завещания

laws of descent

законодательство о наследовании

accession

присоединение (*территории*)

accretion

аккреция; приращение (*территории*)

adverse possession

владение, основанное на утверждении правового титула вопреки притязанию другого лица

A.: Как определяется недвижимость?

B.: Real property has been defined by the courts as "land, and whatever is erected or growing on it, and all things connected with it which are permanently fixed and immovable".

- A.:** *Следует ли обращаться к юристу при покупке недвижимости?*
- B.:** No contract for the purchase or sale of real estate should be entered into by anyone without the benefit of legal counsel. In some communities lawyers or abstract companies make title searches which indicate the validity or invalidity of titles to real property. In other communities the purchaser of real estate buys a title insurance policy to protect himself against loss in case of faulty title.
- A.:** *Значит, покупатель недвижимости может обратиться в титульную компанию за справкой о правовом титуле?*
- B.:** Yes. An abstract of title is a summary of deeds and other instruments, which have been recorded and arranged in chronological order, and containing a statement of all liens and encumbrances against the real property. The attorney for the buyer examines the abstract to determine whether it shows that the seller has good title to property.
- A.:** *Должна ли проводиться экологическая проверка собственности?*
- B.:** Diligent research should be had regarding the existence of environment hazards, to make sure that in the chain of title to the property there isn't an owner that might have been a factory, a gas station, etc. Both a physical examination of the premises as well as a search of the Environmental Protection Agency records should be made to determine the existence of any toxic waste.
- A.:** *Почему так важно ознакомиться с постановлениями муниципальных властей о зонировании перед покупкой недвижимости?*
- B.:** It is important that zoning ordinances be thoroughly investigated before one contracts to purchase real property because many a purchaser has contracted validly to buy property that he later discovers is not "zoned" to his purpose.
- A.:** *Что такое ипотека?*
- B.:** A mortgage is a conveyance of land as security for a debt, and in most states it is accompanied by a note or bond as the evidence of the indebtedness. The mortgagor is the owner of the land and the giver of the mortgage. The mortgagee is the person who loans the money and who takes the mortgage as security.
- A.:** *Какие обязанности существуют у должника по закладной?*
- B.:** Mortgagor must pay interest and principal payments as they come due, depending on the wording of the mortgage. Mortgagor must pay taxes on the mortgaged property. Mortgagor cannot do an act that would harm the security of the mortgagee, such as tear down the building, or cut the trees.

- A.:** *Какие права сохраняются за должником по закладной?*
- B.:** There are certain important rights that the mortgagor retains:
- possession of the property;
 - right to the rents and profits from the property;
 - cancellation of the lien;
 - redemption.
- A.:** *Каким образом заложенная собственность может перейти в руки залогодержателя?*
- B.:** By a process known as foreclosure which is a legal procedure where an officer of the court sells the mortgaged property. Any surplus from the sale must be returned to the mortgagor. If the sale results in a deficiency, a court judgement is entered against the mortgagor for the balance of the debt.
- A.:** *Сколько закладных может быть на одно и то же имущество?*
- B.:** A mortgage may be a first mortgage, second mortgage, third mortgage and so on. Obviously, the first mortgage is the one which has a preferred lien against the property. Subsequent mortgages are subordinate and secondary in lien to a first mortgage.
- A.:** *На каких условиях можно приобрести заложенную недвижимость?*
- B.:** Sometimes a property is sold subject to or by assuming an existing mortgage. In assuming the existing mortgage, the purchaser becomes personally liable to pay it. By buying the property subject to mortgage the purchaser is not personally liable on it.
- A.:** *Какие еще виды обременений существуют помимо ипотеки?*
- B.:** Several other types of liens besides mortgage may be made against real property. Among them are mechanic's, judgement, attachment and tax liens.
- A.:** *Что такое аренда?*
- B.:** A lease is a contract transferring the right to possession and enjoyment of real estate for a definite period of time. A lease is a binding contract whether it is for a short term or a long term. The lessor is the owner of the property, the lessee is the tenant.
- A.:** *В какой форме, устной или письменной, заключается договор аренды?*
- B.:** Tenancies from month-to-month and week-to-week are verbal in most cases, and some year-to-year tenancies are verbal. Such leases are called periodic tenancies. They are terminable at the end of one of the periods by means of a previous notice from the landlord to the tenant or from the tenant to the landlord.

In forty states, including New York, a lease for more than one year must be in writing.

A.: *А если после истечения срока аренды съемщик не съезжает?*

B.: A tenant who continues in possession of leased premises after the expiration of the term of his lease is said to "hold over". Holding over is usually regarded as wrong, and the landlord may take steps to oust the tenant. In general practice, a tenant for a year or more who wrongfully holds over may be compelled by the landlord to leave or be treated as a holdover tenant for another period of one year.

A.: *Вправе ли арендодатель удерживать личное имущество съемщика до получения арендной платы?*

B.: In the absence of a state statute covering the subject, the landlord has no lien on the personal property of his tenant for unpaid rent and for that reason has no right to hold the tenant's property.

A.: *Что такое принадлежность недвижимости?*

B.: Fixtures are personal property that have become real property. Personal property attached to land or building becomes real property if it is attached so securely that it cannot be removed without damaging the real property to which it is attached.

A.: *Каким образом можно приобрести право собственности на имущество?*

B.: There are many methods of acquiring property ownership. It can be done by purchase, will, gift, descent (when a person dies intestate, that is without leaving a will, in which case that person's property is disposed of according to the laws of descent in that state). Besides title can be acquired by accession, accretion, or adverse possession.

COMMERCIAL PAPER (NEGOTIABLE INSTRUMENTS)

Коммерческие бумаги (Оборотные документы)

Vocabulary

commercial paper

коммерческие бумаги

draft / bill of exchange

тратта / переводный вексель

promissory note

простой вексель

negotiable instrument

оборотный документ

indorsement

индоссамент, передаточная надпись

delivery (of a document)

вручение (документа)

negotiability

обращаемость, способность к обращению

validity (of a document)

юридическая действительность (документа)

bona fide holder

добросовестный держатель

subject to all original agreements, understandings and defenses

с учетом всех первоначальных соглашений, договоренностей и возражений

bond

облигация

trade acceptance

торговый акцепт: переводный вексель, выставленный на экспортера или импортера

Uniform Commercial Code (UCC)

Единообразный торговый кодекс (ЕТК)

stock certificate

сертификат акции

bill of lading

коносамент

warehouse receipt

складская расписка

payable on demand

подлежащий оплате по требованию

payable to order of the payee or bearer

подлежащий оплате приказу ремитента или предъявителя

certificate of deposit

депозитный сертификат

depositor

вкладчик, владелец банковского вклада

order paper

ордерная бумага

face of the paper

лицевая сторона документа

bearer paper

документ на предъявителя

indorser

индоссант: лицо, совершающее передаточную надпись на векселе или чеке

holder in due course (HDC)

держатель в порядке законного правопреемства

instrument is due and payable

финансовый документ, срок оплаты по которому наступил

defect in title

порок титула

drawer

трассант: лицо, выставившее тратту

drawee

трассат: лицо, на которое выставлена тратта

payee

ремигент: получатель денег по векселю

A.: *Что такое коммерческие бумаги?***B.:** Commercial paper is a broad term that includes drafts (bills of exchange), promissory notes, checks and other negotiable instruments for payment of money. To be negotiable, commercial paper must be transferable by indorsement or delivery without the consent of the debtor and must make the person to whom the instrument is indorsed or transferred the complete owner of the commercial paper.**A.:** *Существует ли связь между обращаемостью документа и его юридической действительностью?***B.:** Negotiability is not essential to the validity of the instrument. Nonnegotiable commercial paper may be considered a valid contract as well.**maker**

векселедатель простого векселя

certified check

чек клиента, гарантированный банком

issue a check

выдать чек

stale check

просроченный чек

stop payment

остановить платеж

lost check

потерянный чек

mislaidd check

забытый чек

default on a contract

не выполнить обязательства по договору

bouncing

возврат чека в связи с нехваткой средств на счете

bad check

необеспеченный чек

A.: *Почему так важно определить, является ли документ оборотным?***B.:** It is very important to determine whether a particular paper is negotiable because the law gives negotiable paper special treatment, and in doing so protects "bona fide holders".**A.:** *На каких условиях передается необоротный документ в отличие от оборотного?***B.:** The person to whom a nonnegotiable instrument is transferred takes it subject to all the original agreements, understandings and defenses available between the original parties to the instrument; but a transferee of a negotiable paper takes it free from all previous agreements, understandings, and defenses.**A.:** *Какие разновидности коммерческих бумаг встречаются в обороте?***B.:** Commercial papers are either orders or promises to pay money. There are many types of negotiable instruments; common among them are promissory notes, bills of exchange, bank drafts, checks, paper money, bonds and trade acceptances.

There are, in addition, certain quasi negotiable documents which do not call for the payment of money and, thus, are technically not negotiable instruments, but which have other qualities of negotiability under the Uniform Commercial Code. These quasi negotiable documents are stock certificates, bills of lading, and warehouse receipts.

A.: *Каким критериям должен отвечать оборотный документ?***B.:** All the following tests for negotiability must be met:

- the instrument must be in writing and signed by the person negotiating it;
- the instrument must contain an unconditional order or promise to pay a sum certain in money;
- the instrument must be payable on demand or at a fixed or definite time;
- the instrument must be payable to the order of the payee or bearer.

A.: *Относится ли депозитный сертификат к оборотным документам?***B.:** A certificate of deposit is not negotiable in the course of business from one person to another. A certificate of deposit is a bank acknowledgment that it has received money from a depositor, and that at the end of a certain period of time it will repay the depositor the amount invested plus a certain percent interest.**A.:** *Каким образом коммерческая бумага переходит из рук в руки?***B.:** It depends on the type of the paper. If it is an order paper, it is negotiated only by indorsement, by signing one's name on the back. On the

face (front) of the paper it may say *Pay to the Order of*. If it is a bearer paper it doesn't require indorsement. The mere handing of the paper from one person to another is enough. On the front of the paper it may say *Pay to the Bearer*.

- A.:** *Какие обязанности несет лицо, совершившее на финансовом инструменте передаточную надпись?*
- B.:** The liabilities and responsibilities of indorsers are considerable and are based on technical rules which have been codified in the Uniform Commercial Code. These rules are so strictly interpreted that if those seeking to impose liability on indorsers do not follow them explicitly, the indorsers are sometimes excluded from legal liability. On the other hand, indorsers also have rights and privileges which are protected if the other parties to commercial papers do not live up to their obligations.
- A.:** *Кто такие "holders in due course"?*
- B.:** Holders in due course (HDC) are innocent purchasers. To be a holder in due course, a person must receive the instrument (1) in good faith, (2) for valuable consideration, (3) without notice that the instrument is due and payable, and (4) without notice of any defect in the title of the person who transfers the instrument itself.
- A.:** *Какими правами они обладают?*
- B.:** A holder in due course holds an instrument free from any defenses which would exist between the original parties to the instrument.
- A.:** *Чем переводный вексель отличается от простого векселя?*
- B.:** A draft is written by the first party (drawer) who orders the second party (drawee) to pay a third party (payee) and is a three-party instrument. A promissory note is written by the maker who promises to pay the second party (payee) and is a two-party note.
- A.:** *Какие обязательства несет банк по чеку, в отношении которого он предоставил гарантию?*
- B.:** A certified check is issued by a bank, which guarantees that the drawer's signature is genuine and the amount for which the check is drawn has been set aside for payment from the drawer's account. When a bank's authorized representative puts the bank's stamp, "certified", on a check and signs it, the bank becomes liable for its payment.
- A.:** *Какое определение дается просроченному чеку, и как действует банк в случае предъявления такого чека к оплате?*
- B.:** Over the years, there have been various court decisions that a check presented to a bank five to twelve months after the date written on the

check need not be paid by the bank without further inquiry. These checks are called "stale checks".

Now the Uniform Commercial Code has established a definite rule. A bank is under no obligation to a customer to pay an uncertified check presented more than six months after its date without consulting the depositor.

- A.:** *Можно ли остановить платеж по чеку?*
- B.:** Yes. It can easily be done by phoning or writing the bank giving them the number on the check, the date of the check, the amount of the check, and the name of the payee on the check, and telling them to stop payment.
- Stopping payment is a paid service of the bank to a depositor. It is useful when a check is lost or mislaid, or if a payee defaults on a contract. It, in effect, makes the check "bounce".
- A.:** *Что такое необеспеченный чек?*
- B.:** A bad check is the one that bounces because the maker of the check does not have enough money in the bank to cover the amount of the check.

Юридические формы организации бизнеса

PARTNERSHIPS

Товарищества

Vocabulary

form a partnership

создать товарищество

make a profit

получать прибыль

income tax return

налоговая декларация с отчетом
о доходах

personal assets

личное имущество

general partnership

полное товарищество

limited partnership

коммандитное товарищество,
ограниченное партнерство

investment of capital

капиталовложение

share profits and losses

участвовать в прибылях и нести
убытки

general partner

член полного товарищества

limited partner

партнер-вкладчик, партнер с о-
граниченной ответственностью

**Uniform Limited Partnership Act
(ULPA)**

Единообразный закон о товари-
ществах с ограниченной ответ-
ственностью

partnership by estoppel

товарищество в силу правовой
презумпции

extend credit to smb

предоставить кредит кому-либо

articles of copartnership

учредительный договор товари-
щества

rules of law

нормы права

applicable

применимый

consideration

встречное удовлетворение

consent

согласие, совпадение воле

capacity to enter into contracts

способность вступать в договор-
ные отношения

derive a profit

извлекать прибыль

notice

уведомление

withdrawal from partnership

выход из товарищества

transferee

правопреемник

deplete assets

исчерпывать ресурсы

dissolution of partnership

ропуск товарищества

winding up of partnership

ликвидация товарищества

supervening cause

новое обстоятельство, которое
может стать непосредственной
причиной чего-либо

Uniform Partnership Act (UPA)

Единообразный закон о товари-
ществах

distribution of assets

распределение активов товари-
щества после его ликвидации

liquidate assets

перевести активы в наличные

A.: *Что такое товарищество?*

B.: A partnership is an association of two or more persons formed to carry on a business for mutual profit. The partners (1) are co-owners of the enterprise, (2) intend through the partnership to make a profit, (3) are agents for and have a fiduciary relationship with each other, and (4) consequently, each partner is responsible for the acts of the others.

A.: *Товарищества – довольно распространенный тип коллективной предпринимательской деятельности. В чем их привлекательность?*

B.: A key advantage of a partnership is that no taxes are paid by the partnership itself. Although a federal income tax return must be filed by the partnership, it is for information purposes only. Profits or losses are “passed through” directly to the partners, who report them on their individual returns.

A.: *Но если есть преимущества, то, вероятно, могут быть и недостатки?*

B.: One of the main disadvantages of a partnership involves liability – each partner is personally liable for the obligations of the business. This means that someone who sues the partnership can also sue and recover from each individual partner. If the partnership owes money, each partner can be held liable for the amount of the entire debt.

- A.:** *Значит, риску подвергается и личное имущество каждого участника товарищества?*
- B.:** That's true. When a person enters into a partnership agreement, not only is his investment in the business at stake, but all his other personal assets may be at risk as well. In addition, any one partner can enter into a contract for which that partner and all the other partners will be responsible.
- A.:** *Какие существуют виды товариществ?*
- B.:** Partnerships may be general or limited. Over 90% of partnerships in the US are general partnerships, those in which all the partners share the liabilities of the partnership debts and in which each partner is an agent for the firm. In a general partnership partners may have the same or different investments of capital and may share the profits and losses in the same or different proportions.
- A.:** *А что такое коммандитное товарищество?*
- B.:** A limited partnership is composed of one or more general partners and one or more special partners. A limited partner may limit his liability in the partnership to the amount of his investment by inserting modifying articles in the partnership agreement.
- A.:** *Оговорены ли права и обязанности полных товарищей и партнеров-вкладчиков?*
- B.:** The Uniform Limited Partnership Act sets forth the rights and liabilities of general and limited partners between themselves and in respect to other persons. Among other things, the act provides (1) that a limited partner shall not become liable as a general partner unless he takes part in the control of the business, (2) that a limited partner shall have the right to full information about all things affecting the partnership, and (3) that a limited partner shall receive his share of the profits or other compensation by way of income.
- A.:** *А возможно ли существование товарищества в силу правовой презумпции?*
- B.:** This is known as partnership by estoppel. A partnership may exist where parties do not intend partnership or where the agreement between them states otherwise. This happens when persons conduct themselves in such a manner that it may be reasonably inferred that they are partners. For example, if a third party, assuming that two businessmen are partners, extends credit to them, they may be held to be partners by the third party.
- A.:** *Обязательна ли письменная форма договора при создании товарищества?*

- B.:** No particular form of contract is necessary for the formation of a partnership. The contract may be oral or written or may be implied from the conduct of the parties. An oral contract is as binding on the individual partners as a written agreement between them. Nevertheless, it is preferable to establish a partnership by a contract in writing. A partnership agreement is sometimes called "Articles of copartnership" and usually contains in detail all things agreed to by the prospective partners.
- A.:** *Какие нормы права применимы к договору об учреждении товарищества?*
- B.:** The rules of law applicable to contracts generally, such as those relating to consideration, consent and capacity of the parties to enter into a contract, apply to partnership contracts, but the contract of partnership, as distinguished from other types, must be a contract to conduct a business for the mutual profit of the partners. The purpose to make money is the essential feature of a partnership.
- A.:** *Какова роль фактора фидуциарности в отношениях между участниками товарищества?*
- B.:** As do partners in a marriage, business partners also owe to each other the utmost good faith in all their mutual dealings. All profits made by a general partner in conducting the business of the partnership belong to the partnership. Thus, a partner may not derive a secret personal profit from any transaction of the firm or use partnership property for his individual profit or benefit. He must always disclose his personal interest in the matter.
- A.:** *Каковы правила выхода из товарищества одного из участников?*
- B.:** When a partner withdraws from the partnership, notice of his withdrawal should be given to all the persons with whom the partnership has dealings so the withdrawing individual cannot be held liable for debts contracted after he has severed his connection with the business. Unless the other partners consent, a partner cannot sell his interest in the firm in order to give the transferee the right to become a member of the firm.
- A.:** *Какие обязательства несут участники товарищества перед третьими лицами?*
- B.:** In the United States each partner may usually be held liable for the total amount of the partnership debt. If the partnership assets are depleted, the creditors may look to the individual partners for payment. This is true not only regarding contractual obligations but also con-

cerning wrongs committed in behalf of the partnership that result in injuries and damages to others. The partnership firm as well as each member thereof is answerable for the acts of its agents and employees provided their acts are performed in the course of their employment.

A.: *Что понимается под роспуском товарищества?*

B.: A dissolution of a partnership is the cancellation or breaking up of the relationship of the partners. On dissolution the partnership is not terminated but is continued until the settlement of the partnership affairs. Dissolution does, however, terminate all the remaining partners' authority, except that which is necessary to wind up partnership affairs.

A.: *Каковы возможные причины роспуска товарищества?*

B.: A partnership may be dissolved either with or without violation of the original agreement, because of some supervening cause or by court order.

A.: *Является ли смерть одного из участников товарищества основанием для роспуска товарищества?*

B.: In the forty seven states where the Uniform Partnership Act has been adopted, the death of a partner operates as dissolution of the partnership unless there is a provision in the partnership agreement for the continuance of the partnership notwithstanding the death of a partner.

A.: *Как происходит распределение активов товарищества после его ликвидации?*

B.: When the winding up process has been completed and the assets liquidated, the final step before termination is the distribution, first to the creditors and then to partners, of the remaining assets.

CORPORATIONS

Корпорации

Vocabulary

legal person

юридическое лицо

natural person

физическое лицо

separate and distinct entity

самостоятельный субъект права

perpetual existence

бессрочное существование

withdrawal from a corporation

выход из компании

disability

недееспособность

sue and be sued

предъявлять иски и отвечать по искам

assume liabilities

принимать на себя обязательства

shareholder / stockholder

акционер

go bankrupt

обанкротиться

to the extent of one's investment

в размере вклада

interest in a corporation

доля / участие в акционерном капитале

share

акция

dispose of smth

распоряжаться чем-либо

at one's discretion

по своему усмотрению

pledge as security for a loan

отдавать в залог в качестве поручительства по займу

incorporate

регистрировать

rule of thumb

практическое правило

operate business

заниматься предпринимательской деятельностью, бизнесом

impose a tax

устанавливать налог, облагать налогом

franchise tax

франшизный налог: налог штата за право заниматься бизнесом в данном штате

be subject to tax

подпадать под налогообложение

fees

комиссионные

charges

сборы

certificate of incorporation

свидетельство о регистрации

board of directors

совет директоров

incorporator

учредитель

bylaws

внутренние правила деятельности компании

charitable (not-for-profit)

благотворительный

"C" corporation

корпорация «С»: облагается налогом в соответствии с разделом «С» Налогового кодекса США

"S" corporation

корпорация «S»: малая корпорация; облагается налогом в соответствии с разделом «S» Налогового кодекса США

earnings

прибыль

tax return

налоговая декларация

publicly held company

открытая компания

New York Stock Exchange (NYSE)

Нью-Йоркская фондовая биржа

assets

активы

closely / privately held corporation

закрыва́тая компания

Securities and Exchange Commission (SEC)

Комиссия по ценным бумагам и биржам

liabilities

обязательства, пассивы

disclosure

предоставление компанией информации о своей деятельности

run a company

управлять компанией

officer

должностное лицо

keep minutes and records

вести протоколы и документацию

treasurer

казначей, финансовый директор

remove

смещать (с должности)

merger

поглощение одной компанией другой компании

voluntary dissolution

добровольная ликвидация компании

involuntary dissolution

принудительная ликвидация компании

A.: *Что такое корпорация?*

B.: A corporation is a legal "person" composed of one or more natural persons and is an entirely separate and distinct entity.

A.: *Каковы основные характеристики корпорации?*

B.: A corporation may have perpetual existence, notwithstanding the death, withdrawal or disability of its members. It can sue and be sued; it can purchase and hold lands or other property, enter into contracts, borrow money, pay taxes, assume liabilities. A corporation can do all these things under its own name, without making the individual owners and investors, known as shareholders, liable.

A.: *Какие преимущества предоставляет такая форма объединения?*

B.: One significant advantage of the corporate structure is that the shareholders are usually protected from personal liability. Of course, any shares one owns are vulnerable if the corporation has excessive debt or goes bankrupt. Still, a shareholder will be liable only to the extent of his or her investment in the corporation. Another advantage is that, unlike with a partnership, a shareholder is free to sell his or her interest (shares) in a corporation.

A.: *Значит, акционер может распоряжаться своей долей в акционерном капитале по своему усмотрению?*

B.: Yes, he can. Shares of stock represent fractional ownership interest in a corporation. They may be sold, given away, or pledged as security for

loans by the stockholder without affecting the basic corporate organization.

A.: *Как долго может существовать корпорация?*

B.: A corporation's life span is usually perpetual. The corporation may continue indefinitely no matter what happens to its original shareholders.

A.: *Где предпочтительнее регистрировать корпорацию?*

B.: The general rule of thumb is to incorporate in the state where one intends to operate business. States generally impose a tax (commonly known as a franchise tax) on corporations that are either incorporated under their laws or do business within their borders. So if business is incorporated in one state but headquartered in another, it will probably be subject to tax in both states.

A.: *Какова процедура регистрации?*

B.: The rules of incorporating vary from state to state. Generally, however, one must file articles of incorporation with the secretary of the state of incorporation.

A.: *И с этого момента корпорация считается официально зарегистрированной?*

B.: The filing will be dated on its receipt in the secretary's office. And when the secretary has approved the articles of incorporation and when all taxes, fees, and charges as required by law have been paid, he certifies the incorporation and the certificate of incorporation is issued. At this point corporate existence begins.

A.: *А на каком этапе принимаются внутренние правила деятельности компании?*

B.: Although business is officially incorporated on the date of acceptance of the filing in the secretary of state's office, several additional steps must be taken to get the corporation up and running. First, the initial board of directors or the incorporators (depending on the laws of the state) must adopt bylaws – the procedural rules and regulations that govern how the corporation is run. Unlike the articles of incorporation, the bylaws do not have to be filed with the secretary of state. On the adoption of the bylaws and a number of other resolutions, the corporation is usually in business.

A.: *Какие существуют типы корпораций?*

B.: There are several types. These include charitable (not-for-profit) corporations and professional (P.C.) corporations. Professional corporations are formed by certain professionals who are required to be li-

censed in order to render their services. This structure is typically used by attorneys and physicians, for example.

For most businesses, though, there are, basically two types of corporations: the "C" corporation and the "S" corporation.

A.: *Чем они отличаются?*

B.: A "C" corporation may have an unlimited number of shareholders. An "S" corporation, on the other hand, can have no more than thirty-five shareholders.

The key difference, though, lies in the way the two types of corporations are taxed: "C" corporation shareholders are taxed twice at the federal level. First, the corporation pays tax on its earnings, and then the shareholders pay tax on any dividends they received.

A.: *А как облагаются налогом корпорации "S"?*

B.: "S" corporation shareholders, on the other hand, are taxed only once, because the corporation pays no tax on earnings. As with a partnership, profits or losses of an "S" corporation are passed through to the shareholders, to be reported on their personal tax returns in proportion to their ownership interests in the corporation. It should be noted, however, that the "S" corporation shareholders are taxed on the corporation's earnings whether or not a dividend actually is paid.

A.: *Существует еще одно деление корпораций — на открытые и закрытые, верно?*

B.: Yes, and there is a key distinction between the two types. A "publicly held" company is one that typically either:

- has shares that trade on a recognized exchange (for example, the New York Stock Exchange); or
- has assets of more than \$5million and has a class of stock held by 500 or more people.

A.: *А закрытые компании?*

B.: A "closely held" or "privately held" corporation usually has:

- a relatively small number of shareholders;
- no shares of stock available for public purchase;
- active participation by many of the shareholders in the management of the corporation.

A.: *Как регулируется деятельность этих компаний?*

B.: Publicly held corporations are regulated by both state agencies and the federal Securities and Exchange Commission (SEC), which require that the corporations make regular "disclosures" to shareholders regarding their assets and liabilities. The purpose of these disclosures is

to enable the investing public to make informed decisions when considering the purchase of the corporation's securities.

Small businesses are closely held companies and are not required to make the same type of disclosures.

A.: *Как управляется компания?*

B.: Major business decisions for a corporation are made by its board of directors, which is elected by the shareholders. The day-to-day responsibilities for running the corporation are typically handled by its officers. The corporation's bylaws specify the number and respective duties of directors and officers. Traditionally, state statutes have required all corporations to have certain officers, including:

- a president;
- at least one vice president;
- a secretary (the officer who keeps the corporate minutes and records);
- a treasurer.

A.: *Должностные лица тоже избираются акционерами?*

B.: A corporation's officers are usually elected by the board of directors. The directors have the power to elect anyone they wish, including themselves or family members. The board also has the power to fire corporate officers.

Members of the board of directors as well as corporate officers have a fiduciary duty to the corporation. This means they have an obligation to protect the shareholders' interests rather than their own personal interests.

A.: *Какими правами обладают акционеры?*

B.: Although the shareholders are the owners of a corporation, their role in management is usually limited unless the business venture is relatively small. Shareholders of large or small companies can, however, influence the conduct of business in a number of ways. For example, shareholders have the power to:

- elect and remove directors;
- influence the allocation of power by making changes to the corporation's "articles of incorporation";
- approve or disapprove such fundamental changes as a merger, a sale of substantial assets, or the dissolution of the corporation.

A.: *В каком случае можно говорить о ликвидации компании?*

B.: A corporation is dissolved when its existence is terminated, its affairs wound up, and its assets distributed among creditors and stockholders. Dissolution may be voluntary and involuntary.

Доверительная собственность

Vocabulary

trust

собственность, находящаяся в доверительном управлении; доверительная собственность; траст

trustee

доверительный собственник

beneficiary

бенефициар, выгодоприобретатель

trust income

доход от собственности, находящейся в доверительном управлении

interest

проценты

trust assets

имущество, находящееся в доверительном управлении

terminate

прекращать/ся

remainder of the principal

остаток основной суммы

will

завещание

testamentary trust

доверительная собственность, установленная завещанием

living trust

доверительная собственность, вступающая в силу при жизни ее учредителя

set up a trust

учреждать доверительную собственность

grantor / settlor

учредитель доверительной собственности

(ir)revocable trust

доверительная собственность, условия учреждения которой (не) могут быть изменены ее учредителем

protect / shield assets from a child's creditors

оградить завещанные ребенку средства от притязаний кредиторов

spendthrift trust

статус доверительной собственности, предусматривающий гарантии против расточительности бенефициара

totten trust

банковский траст

probate

утверждение завещания

tort

деликт

gratuitous

безвозмездный

unascertained

неустановленный

minor

несовершеннолетний

bailment

зависимое держание, ответственное хранение

bailor

лицо, отдающее вещь в зависимое держание; депонент

bailee

зависимый держатель; депозитарий

safe custody

надежное хранение

transfer title to smth

передавать правовой титул на что-либо

A.: *Что такое доверительная собственность?*

B.: A trust is a property given to a trustee to manage for the benefit of a third person. Generally, the beneficiary gets a "trust income" — the interest and dividends on the trust assets — for a period of years. After a certain time specified in the trust (*say, the beneficiary turns twenty-five*) the trust "terminates". At this point the beneficiary gets the remainder of the principal (whatever hasn't been paid out during the life of the trust).

A.: *Какие существуют виды доверительной собственности?*

B.: There are two main kinds of trust: those created by provisions in wills, called testamentary trusts, and those created during the maker's lifetime, called living trusts.

A.: *Могут ли условия, на которых учреждена доверительная собственность, быть изменены ее учредителем?*

B.: Some living trusts are set up so that they can be changed during the grantor's lifetime, but others are set up so that they can't be touched. The first kind of living trust is called revocable, the second is called irrevocable.

A.: *Можно ли путем учреждения траста оградить завещанные ребенку средства от притязаний кредиторов?*

B.: Generally, yes. The grantor can set up the trust as a spendthrift trust, which is designed to keep the money out of the hands of creditors. The sum in the trust will generally be safe from the banks, although creditors can collect from any money paid directly to the child from the trust. To be fully effective, a spendthrift trust must be irrevocable, it must last for the entire lifetime of the beneficiary and it must give the trustee full discretion over the assets of the trust.

A.: *Необходима ли помощь юриста при учреждении доверительной собственности?*

B.: Most trusts should be drawn up with the help of a lawyer or financial manager. Because there are so many issues to consider, with so many weighty consequences if things go wrong, it is a situation in which expertise is really needed.

The only exception is the totten trust, which allows the grantor to go to a bank and open an account himself or herself, while naming a beneficiary. A totten trust can be paid out quickly after the grantor's death with a minimum of formalities. Because the money transfers directly, there's no need for choosing a third-party trustee, and the advantages are the same as with any other trust. The grantor can revoke a totten trust at any time during his or her life, and the beneficiary can't take out the money until the grantor dies.

A.: *Кто может выполнять функции доверительного собственника?*

B.: Many people choose relatives or close friends, although institutions – banks or trust companies – also provide this service. Often a person selected as a minor child's guardian is also named a trustee of any trusts established for the child – but there is no requirement that these be the same people.

A.: *Каковы основные обязанности доверительного собственника?*

B.: The trustee's main duties are as follows:

- to keep under control the trust property;
- to safeguard the value of the trust fund;
- to administer the trust honestly and impartially for the benefit of the beneficiaries;
- to account strictly to the beneficiaries.

A.: *Какие причины создания траста считаются самыми распространенными?*

B.: There are many reasons, but some of the more common are as follows:

- to manage assets during the lifetime of the person creating the trust, and to pass them on to chosen beneficiaries without probate (often done through revocable living trusts);
- to manage assets for a child until he or she reaches a certain age;
- to manage assets for an adult who is incapable of handling them;
- to attempt to shield assets from creditors through irrevocable and spendthrift trusts.

A.: *В чем отличие правоотношений доверительной собственности от правоотношений в рамках агентского договора?*

B.: – An agent sometimes has control of his principal's property, sometimes not: a trustee always has property vested in him.

– The principal (unlike the settlor or the beneficiaries) can direct the agent and can terminate the agency.

– The agent has power to subject the principal to liability in contract or in tort: a trustee is himself personally liable.

– In the vast majority of cases agency arises as a result of a contract: trusts normally arise from a gratuitous transfer of property.

– A person cannot be an agent for unborn or unascertained persons nor, except in very limited circumstances, for minors: a person can be a trustee for such persons.

A.: *В чем разница между распоряжением имуществом на началах доверительной собственности и зависимым держанием имущества?*

B.: The bailor, being the owner of the goods, delivers them to the bailee on condition that the goods will be redelivered to the bailor when the purpose of delivering has been carried out (*e.g. safe custody, cleaning, repair, hire*): thus the bailee, unlike a trustee, cannot transfer title to the chattels as the property remains in the bailor.

BANKRUPTCY

Банкротство

Vocabulary

bankruptcy proceedings

процедура банкротства, конкурсное производство

voluntary bankruptcy

банкротство, возбуждение дела о котором инициируется самим должником

involuntary bankruptcy

банкротство, возбуждение дела о котором инициируется кредиторами

file a petition with a bankruptcy court

подать заявление в суд по делам о банкротстве об объявлении себя банкротом

automatic stay

приказ суда об автоматической приостановке требований кредиторов

owe

быть должным; задолжать

assets

имущество

seizure

изъятие (*имущества*)

lawsuit

судебный иск

court order

судебный приказ

criminal prosecution

уголовное преследование

commit a criminal offense

совершить уголовное правонарушение

child support

материальное обеспечение ребенка

alimony

алименты

Internal Revenue Service (IRS)

служба внутренних доходов

proceeds

доход

file for bankruptcy

объявить себя банкротом

bankruptcy estate

имущество банкрота, конкурсная масса

trustee (in bankruptcy)

конкурсный управляющий

exempt property

собственность, освобожденная от судебного взыскания

appliances

бытовые приборы

social security

социальное страхование

disability

нетрудоспособность

public assistance

государственное вспомоществование

life insurance

страхование жизни

pro rata share

пропорциональная доля

discharge a debtor

освободить несостоятельного должника от налогов; восстановить в правах банкрота

A.: *Что такое банкротство?*

B.: Bankruptcy is a process governed by federal law and is intended to help when people cannot (or will not) pay their debts. The idea of bankruptcy is to help a debtor get his financial situation in order and begin with a clean slate. The bankruptcy laws also may help creditors recover some, if not all, of what is owed to them. Bankruptcy proceedings may be initiated either by a person in debt (voluntary bankruptcy) or by a creditor (involuntary bankruptcy).

A.: *Какие виды банкротства являются наиболее распространенными?*

B.: Though there are four types of bankruptcies, the two main types of personal bankruptcy are Chapter 7 and Chapter 13.

A.: *Какова процедура банкротства согласно главе 7 Кодекса о банкротстве?*

B.: One begins a bankruptcy proceeding by filing a petition with one's local bankruptcy court. When one does that, an automatic stay is imposed that protects the person who owes and his assets from seizure and lawsuits. The automatic stay is a court order that immediately stops the creditors from trying to collect what is owed to them but it does not stop the government from criminally prosecuting the debtor if he has committed a criminal offense, it does not stop the debtor's obligation to keep paying child support and alimony, it does not stop the IRS from auditing the debtor.

A.: *Какие действия предпринимаются в отношении собственности должника?*

B.: Chapter 7 bankruptcy is sometimes called "straight" or "liquidation" bankruptcy. That means that the assets of a debtor are liquidated (collected and sold) and the proceeds are distributed to his creditors. After the debtor has filed for Chapter 7 bankruptcy, his creditors will be notified and much of the property of the debtor which is collectively called the bankruptcy estate will be turned over to a court-appointed trustee, who will oversee its sale.

A.: *Все ли имущество должника подлежит распродаже?*

- B.:** No, not all the assets will be sold. Federal law allows a person in bankruptcy to keep certain possessions. This is known as exempt property. Everything else is nonexempt.
- A.:** *Что конкретно включает в себя понятие «собственность, освобожденная от судебного взыскания»?*
- B.:** Some of the exemptions the federal law allows are:
- the bankrupt's residence or personal property, up to \$7,500;
 - one car, up to the value of \$1,200;
 - household property, including books and appliances, up to \$500;
 - up to \$500 worth of jewelry;
 - professional books or tools, up to \$750;
 - any income from social security, disability, public assistance, unemployment, pension funds, life insurance, alimony or veteran's benefits.
- A.:** *Каков порядок удовлетворения требований кредиторов?*
- B.:** Once the assets are sold, the proceeds are used to pay the creditors. Depending on the assets available, creditors may not receive back every penny that the debtor owes them. They each should, however, receive a pro rata share of what the debtor owes. If the debtor has no assets available, then none of them will receive anything. These determinations will be made by the trustee and approved by the judge and are based on an analysis of the debtor's total income and assets.
- A.:** *В чем различие между процедурой банкротства согласно главе 7 и процедурой банкротства согласно главе 13 Кодекса о банкротстве?*
- B.:** The key difference between Chapter 13 and Chapter 7 is that under Chapter 13 the debtor keeps his assets but usually pays more to creditors than under Chapter 7.
- A.:** *Какова процедура банкротства согласно главе 13 Кодекса о банкротстве?*
- B.:** After the debtor files for bankruptcy under Chapter 13, all debt collection proceedings against him stop, and a trustee is appointed to oversee the case. Within a set period of time the debtor must submit to the trustee a plan in which he outlines how the debts will be repaid over the course of three to five years. The creditors are then notified and, if the plan is approved, the debtor must make regular payments to the trustee who will distribute the money to the creditors. If the debtor meets his obligations under the plan, he will be discharged from debt. If not, his bankruptcy may be converted to Chapter 7 and the assets may be liquidated.

- A.:** *Какая процедура банкротства предпочтительнее для должника – согласно главе 7 или согласно главе 13?*
- B.:** It depends on the circumstances. If the debtor is really overwhelmed with debt, he may need Chapter 7. If there's some realistic expectation that the debtor will be able to repay some or all of what he owes, then Chapter 13 is better.
- A.:** *Сколько времени занимает процедура банкротства?*
- B.:** The proceedings can take anywhere from a few months to a few years, depending on the circumstances of the case. Generally, in the final stage of the case, there will be a "discharge hearing", in which the judge will notify the debtor which of his debts have been excused and which have not. The debtor then "emerges" from bankruptcy.
- A.:** *Какие еще существуют виды банкротства?*
- B.:** The other two types of bankruptcies are:
- Chapter 12 bankruptcy is specially designed to family farmers and provides a way to keep the farm while paying off debts over time. It's similar to Chapter 13.
 - Chapter 11 bankruptcy allows debtors with substantial debts to reorganize their financial affairs and keep operating. Chapter 11 bankruptcy is generally very complex, used by corporations and partnerships and is rarely beneficial to individuals or sole proprietors.

CIVIL PROCEDURE

Гражданский процесс

Vocabulary

file a civil lawsuit

подать гражданский иск

valid claim

юридически действительное притязание

grievance

жалоба

standing

зд. право возбуждать судебное дело

statute of limitations

закон об исковой давности

plaintiff

истец

complaint

исковое заявление

initiate a case

возбуждать дело

notify

извещать

service of process

вручение судебного документа

defendant

ответчик

summons

судебная повестка ответчику

contention

утверждение (*в споре*)

charges

обвинения

dismissal of a lawsuit

1. отклонение иска 2. прекращение дела

motion to dismiss

1. ходатайство об отклонении иска 2. ходатайство о прекращении дела

allegation

заявление

legal relief

средство судебной защиты

deny a motion

отказать в удовлетворении ходатайства

answer

возражение ответчика по иску

discovery

сбор и исследование материалов по делу

fact-finding

установление фактов по делу

deposition

письменные показания под присягой

interrogatories

письменные вопросы одной стороны другой стороне, требующие письменных ответов

witness

свидетель

give testimony under oath

давать показания под присягой

court reporter

судебный секретарь

venue

территориальная подсудность

prejudice

ущемление прав

try a case before a jury

рассматривать дело с участием присяжных

bench trial

суд без участия присяжных

waive

отказываться (*от права, привилегии*)

probate disputes

споры о наследстве

jury selection

отбор присяжных

panel / pool of jurors

состав присяжных

alternate juror

присяжный запасного состава

potential / prospective juror

кандидат в присяжные

voir dire

допрос присяжных с целью выявления их возможной пристрастности

challenge a juror

отвести кандидатуру присяжного

challenge for cause

отвод при наличии оснований

peremptory challenge

отвод без указания причины

introduce evidence

представлять доказательства

admissible evidence

допустимые доказательства

hearsay evidence

свидетельские показания с чужих слов

subpoena

судебная повестка свидетелю

grand jury

большое жюри

be held in contempt of court

быть признанным виновным в неуважении к суду

default judgement

судебное решение в пользу истца вследствие неявки ответчика или непредставления последним возражений по иску

burden of proof

бремя доказывания

preponderance of the evidence

перевес доказательств

clear and convincing evidence

явные и убедительные доказательства

beyond a reasonable doubt

вне разумных оснований для сомнения

unanimous verdict

вердикт, вынесенный единогласно

hung jury

состав присяжных, не пришедших к единому мнению

mistrial

судебный процесс, в котором присяжные не вынесли единогласного решения

retrial

повторное рассмотрение дела

supervisory court

суд высшей инстанции

appellate court

апелляционный суд

overturn a decision

отменить решение

- A.:** *Какие вопросы следует уточнить прежде, чем подавать гражданский иск?*
- B.:** There are a few important legal questions one should ask. First of all, does one have a valid claim? A valid claim is one where the grievance can be resolved by legal action.
- A.:** *А следующий вопрос?*
- B.:** Next, does one have standing. To initiate a lawsuit one must have standing, which means one must be sufficiently affected by the matter at hand. And last, each state has laws, known as statutes of limitations, that require one to bring a suit within a certain period after an injury. The time limits vary from state to state and for different types of cases.
- A.:** *С чего начинается гражданское судопроизводство?*
- B.:** The suit begins when the injured party, the plaintiff, files a complaint.
- A.:** *Иск может быть подан в любой суд?*
- B.:** No, a case must be initiated in a court that has jurisdiction, which means that it is located in the right place and has the power to rule on the questions of law at issue in the dispute. Federal courts, for instance, usually hear only cases in which there is an issue of federal law or where the parties involved are from different states.
- A.:** *Как поставить другую сторону в известность о возбуждении против нее дела?*
- B.:** It's done through service of process. Typically the person sued, the defendant, is served with a summons, accompanied by a copy of complaint, which sets forth the grounds for the plaintiff's contention that the defendant is liable and states when the defendant should appear in court to answer the charges.
A failure to serve process properly can result in the dismissal of a lawsuit.
- A.:** *Каковы действия ответчика?*
- B.:** The defendant may choose to file a motion to dismiss, asserting that even if all the allegations are true, the plaintiff is not entitled to any legal relief.
If that motion is denied, or if the defendant chooses not to file it, he or she must file an answer within a specified period of time. The answer either admits or (more typically) denies the factual or legal basis for liability.
- A.:** *Можно ли выбрать судью, который будет вести дело?*
- B.:** No, it's possible to pick the court, but not the judge. And judges aren't usually allowed to pick the cases they hear either. Cases are typically assigned to judges at random, though there are exceptions.

- A.:** *На каком этапе происходит сбор и исследование доказательств по делу?*
- B.:** Discovery is the fact-finding process that the parties in a lawsuit go through before trial, and it can take months, even years to complete. Each side tries to gain information through methods such as depositions and interrogatories, and by requesting documents and other information, such as contracts, memos, photographs, and plans, relating to the case. Each jurisdiction has its own rules for discovery, and judges can force unwilling parties to come forward with information if it is relevant.
- A.:** *Где и как происходит снятие показаний под присягой?*
- B.:** A witness gives testimony under oath. Depositions usually take place in the office of one of the lawyers, and a witness is often represented by her own lawyer. No judge is present, but the testimony is recorded by a court reporter and possibly may be used during the trial. It also may be videotaped.
- A.:** *В каком случае такие показания могут быть использованы в суде?*
- B.:** If a witness is ill or otherwise unable to testify at trial, the judge may allow the transcript to be read or the videotape to be presented.
- A.:** *Возможно ли изменение территориальной подсудности?*
- B.:** Yes, it is possible. The change in the location of a trial is usually granted to avoid prejudice against one of the parties in both civil and criminal cases. A change of venue may be appropriate if a case has received so much local publicity that the judge believes potential jurors will be unable to give it fair consideration. This, however, happens only rarely.
- A.:** *Рассматриваются ли все гражданские дела с участием присяжных?*
- B.:** No. There are two types of trials: those before a jury and those before a judge, known as "bench trials". In a trial without a jury, a judge hears the case alone and rules on the facts. Usually both parties in the lawsuit must agree to waive a jury trial, though some states don't permit jury trials in certain cases, such as divorces or probate disputes. A bench trial is often faster than a jury trial.
- A.:** *Принимают ли стороны участие в выборе присяжных заседателей?*
- B.:** Jury selection is the first thing that happens in both civil and criminal trials. Both sides have a right to participate in choosing the jury.
At the start of the trial, the judge will call on a panel of potential jurors who will sit down in the courtroom. From this pool, a group of jurors (sometimes twelve, but sometimes fewer) and often one or two alternates will be chosen.

- A.:** Как проходит процедура отбора присяжных?
- B.:** The potential jurors are questioned in a process called *voir dire* (it's a French phrase that means "to speak the truth"). *Voir dire* examination of prospective jurors is interrogation about their possible biases.
- A.:** Вправе ли сторона отвести кандидатуру присяжного?
- B.:** Each side is given an opportunity to challenge each juror. There are two types of challenges. The first one is a challenge for cause. A juror can be rejected "for cause" if it is revealed during questioning that he or she is apparently unable or unwilling to set aside preconceptions and pay attention only to evidence. Each side can make an *unlimited* number of challenges for cause.
- A.:** А второй вид отвода?
- B.:** The second type is a peremptory challenge. Each side has a *limited* number of peremptory challenges. In recent years, courts have held that such challenges may not be used for the purpose of keeping members of a particular race or sex off the jury.
- A.:** Какие доказательства могут быть представлены сторонами в суде?
- B.:** The lawyers in a civil or criminal trial may introduce many different kinds of evidence – testimony, documents (photocopies are usually okay in most courts, though originals are preferred), photographs, maps (of an accident scene, for example) and videotapes. The rules about what's admissible as evidence are complicated, especially when it comes to hearsay – statements made outside of court.
- A.:** Допускаются ли показания с чужих слов в качестве доказательств?
- B.:** Hearsay is usually excluded because it's not trustworthy, and because it's believed that a witness should personally testify in court instead of having a third person repeat his or her comments. There are, however, many exceptions to the rule excluding hearsay, and often it will be allowed in for one reason or another.
- A.:** Могут ли стороны вызвать в суд свидетелей?
- B.:** To present the facts, each side may call witnesses, people who come to the stand and swear to give truthful evidence. If a witness doesn't come voluntarily, a judge may issue a subpoena that orders him or her to appear. The courts have ruled that no one is immune from a subpoena, not even the President of the United States.
- A.:** Значит, никто не может игнорировать повестку о явке в суд?
- B.:** No. A subpoena is an order commanding a person to appear and give testimony either in court, in a grand jury or in a deposition. A subpoena can also order someone to turn over relevant documents to the oth-

- erside during a lawsuit. If one ignores a subpoena, one could be held in contempt of court, fined, and possibly even sentenced to jail.
- A.:** Ответчик и свидетель вызываются в суд одинаковыми повестками?
- B.:** No. A defendant is sent a summons which usually notifies the recipient that he or she is being sued and gives the deadline for filing a written answer to the complaint. A witness is sent a subpoena which orders the recipient to appear and give testimony at a specified time and place. On receiving a summons one should respond as directed. If one fails to answer without justification, the judge may automatically enter a default judgement.
- A.:** Что значит «нести бремя доказывания»?
- B.:** The party that has the burden of proof in a case is the one that must persuade the judge or the jury that enough facts exist to prove the allegations of the case.
- A.:** Какие существуют критерии доказанности?
- B.:** It depends on the kind of case. There are three basic "levels" of proof. Most civil cases must be proved by a preponderance of the evidence. This means that, to prevail, the plaintiff must persuade the judge or the jury that the facts are more probably one way (the plaintiff's way) than another (the defendant's). Sometimes a civil case must be proved by clear and convincing evidence, a higher burden for a plaintiff to meet. (In order to have someone committed to a mental hospital, it would be necessary to show by clear and convincing evidence that the person presented a danger to himself or herself and others, for example). The highest level of proof is required in criminal cases. In those, the government must prove a person's guilt beyond a reasonable doubt.
- A.:** Вердикт выносится единогласным решением присяжных?
- B.:** Yes, in all federal cases, although in a federal civil case, if both parties agree, a majority verdict will suffice. Some states, such as Oregon, require only a substantial majority of the jurors to agree on a verdict in both civil and criminal cases. Some states, like New York, require a unanimous verdict in criminal cases, but accept a majority verdict in civil cases. More typically, however, jurors must unanimously reach a verdict.
- A.:** А если между присяжными нет единодушия?
- B.:** If the jurors cannot all agree, and the jury is "hung" – incapable of reaching a decision – the judge will eventually declare a mistrial. When

this happens, the prosecutor or the plaintiff must then decide whether or not to pursue a retrial.

A.: *Что такое апелляция?*

B.: An appeal is a request to a supervisory court, usually composed of a panel of judges, to overturn the legal rulings of a lower court. The purpose of an appeal is to have a higher-level court review the procedures at the trial and rule whether the verdict was arrived at properly. If the appellate court believes an error affected the outcome of the trial, the verdict may be overturned.

INTELLECTUAL PROPERTY

Интеллектуальная собственность

PATENTS

Патенты

Vocabulary

consideration

встречное удовлетворение

useful device

полезная модель

disclosure

раскрытие (*информации*)

exclusive right

исключительное право

application

заявка (*на выдачу патента*)

Patent Office

патентное бюро

patentable

патентоспособный

**standards of nonobviousness, novelty
and usefulness**

критерии наличия изобретательского уровня, новизны и применимости

to collect money damages

взыскать убытки

assignment of patent rights

передача прав из патента

property right

вещное право

to grant a license

предоставить лицензию

valid

юридически действительный

royalty

зд. плата за право пользования патентом

patent infringement

нарушение прав патентообладателя

unauthorised use

использование без разрешения автора; несанкционированное использование

patentee

патентообладатель

patented article

запатентованное изделие

remedy

средство судебной защиты

injunction

судебный запрет

bring an action for damages

подать иск о возмещении убытков

challenge / attack the patent validity

оспорить действительность патента

letters patent

патент (*документ*), патентная грамота

trade secret

коммерческая тайна

A.: *Что такое патент?*

B.: A patent is a contract between the federal government and an inventor whereby, in consideration of the disclosure of a new and useful device to the public, the inventor is granted the exclusive right to manufacture, use, and sell the device for a fixed period (usually seventeen years).

A.: *Какова процедура оформления патентных прав?*

B.: The first step is to prepare an application, which is then filed with the Patent Office. The application will be examined by government patent examiners, and if an examiner decides that the application describes and claims something that is patentable, a patent will be issued.

A.: *В каком случае изобретение будет признано патентоспособным?*

B.: Patents are only available for those inventions that meet the standards of nonobviousness, novelty and usefulness.

A.: *А что, если кто-то предлагает изобретение, почти не отличающееся от уже существующего?*

B.: A rival invention that improves on the already existing idea does not diminish the inventor's patent right, and the inventor may be able to stop his competitor and collect money damages.

A.: *Возможна ли передача прав из патента?*

B.: A patent is a property right and may be assigned; that is licenses to manufacture and sell patented articles with or without royalties may be granted to others by the inventor. To be valid the assignment must be recorded in the patent office.

A.: *Что понимается под нарушением прав патентообладателя?*

B.: If a person wrongfully manufactures or sells a patented article or makes any unauthorised use or sale of the invention he is guilty of infringement.

A.: *Каким образом патентообладатель может защитить свои права?*

A.: The owner of the infringed patent has two remedies: 1) he may apply to the court for an injunction to retain the unlawful infringement of the patent; 2) he may bring an action for damages.

A.: *Можно ли оспорить действительность патента?*

B.: Yes. The issuance of a *letters patent* simply raises the presumption of validity, it does not mean that the patent is valid for all purposes. Anyone may attack the validity of a patent and have the question decided by a federal court.

A.: *Верно ли, что патент наилучшим образом защищает права изобретателя?*

B.: Not necessarily. Some inventions, like recipes, may be better off kept as trade secrets. That's what the Coca-Cola Company has done for years with its soft drink formula, which remains a cherished trade secret that has never been patented.

COPYRIGHT

Авторское право

Vocabulary

exclusive right

исключительное право

copyright holder

обладатель авторского права

embody in a tangible form of expression

воплощать в материальной форме

copyright infringement

нарушение авторского права

copyright notice

знак охраны авторского права

substantial similarity

существенное сходство

fair use

добросовестное использование

derivative work

производная работа

moral rights

личные неимущественные права

right of attribution

право авторства

right of publication

право на опубликование

right of integrity

право на целостность произведения

transferor

лицо, передающее право; cedent

by operation of law

в силу закона

injunction

судебный запрет

within the scope of employment

в рамках служебных обязанностей

shop right

право нанимателя на служебное изобретение работника

A.: *Что понимается под авторским правом?*

B.: It's an exclusive right to print, to publish and to sell literary, dramatic, artistic and similar works. The right prevents others from copying words that the author has written, designed or otherwise created on his own.

A.: *Каким работам предоставляется авторская защита?*

B.: The works that a copyright protects include:

- writings;
- software;
- photographs;
- films;
- videotapes;
- recordings;
- artworks.

The list is not absolute.

A.: *А идею?*

B.: The holder of the copyright is protected (by copyright) only in his form of expression; that is his ideas, themes, emotions must be embodied in a tangible form of expression (for example, a book, painting, composition) in order to be protected by a copyright.

A.: *Необходима ли регистрация для возникновения и осуществления авторского права?*

B.: The work is protected by copyright as soon as it is created. No application is required. Indeed, no application is permitted on the state level. The only registration available is on the federal level with the Library of Congress in Washington, D.C. One will need this registration if one wants to be able to enforce the copyright in federal court, which is the only place the author can sue for copyright infringement.

A.: *Каким образом обладатель авторского права может оповестить о нем других?*

B.: The copyright law provides that the author may secure a copyright by publication of the work containing a notice of the copyright. The notice, which is specifically prescribed by statute, shall be affixed to each copy published and offered for sale in the United States.

A.: *Из каких элементов состоит знак охраны авторского права?*

B.: As a general rule, the copyright notice should consist of three elements:

- the word “copyright”, the abbreviation “copy”, or the symbol ©;
- the name of the copyright owner;
- the year of publication.

A.: *Каков срок действия авторского права?*

B.: Whether or not it's registered, a copyright lasts for the life of the author or artist, plus seventy years.

A.: *Как можно установить нарушение авторских прав?*

B.: Because it may be impossible to prove that something has been copied, copyright infringement is often determined by evaluating whether or not there is substantial similarity between two works. There are no hard rules about what constitutes a substantial similarity. It is generally determined on a case-by-case basis.

A.: *А что такое добросовестное использование?*

B.: A copyright does not completely prevent someone from using the author's work. Portions of a copyrighted work can be used without infringing the owner's rights if the use is considered a fair use.

What is “fair use” is a continual source of interest and litigation in both literary and legal worlds. In a 1992 case, a Federal District Judge said there are four factors to be considered in deciding fair use:

- the purpose and character of the use, including whether it is commercial;
- the nature of the work;
- the size of the portion used;
- the effect of the use on the potential market.

A.: *Распространяется ли защита авторских прав на производные работы?*

B.: Derivative works are works based upon one or more preexisting works, such as translations, musical arrangements, dramatizations, art reproductions, abridgements, etc. Derivative works are within the subject matter of copyright, but copyright protection extends only to the original material contributed by the derivative author, not to the preexisting material.

A.: *Что понимается под личными немущественными правами?*

B.: Generally, moral rights include the right of attribution, the right of publication and the right of integrity.

A.: *Возможна ли передача авторских прав?*

B.: Yes, but all transfers of exclusive rights must be in writing and signed by the transferor, unless the transfer is by operation of law. Transfers of non-exclusive rights (licenses) need not be in writing.

A.: *На какую защиту может рассчитывать обладатель авторских прав?*

B.: In bringing an infringement suit, the owner of a copyright may seek an injunction against the person improperly using the copyrighted work,

and he may also seek damages by reason of the infringement. In some cases, the court may require that the infringing material be delivered up for destruction.

A.: *Кому принадлежит права на работу, созданную наемным работником на рабочем месте?*

B.: Usually to the employer. Copyright laws generally give employers ownership of the work created by employees that falls within the scope of employment. That means that if an employee created a work as part of his defined job responsibilities and used the employer's resources to create it, then it is likely that the employer will own the copyright in the work under the "shop right".

TRADEMARKS

Товарные знаки

Vocabulary

trademark

товарный знак

distinctive

обладающий различительной способностью

affixation

прикрепление, нанесение (*товарного знака*)

trade name

фирменное наименование

service mark

знак обслуживания

certification mark

удостоверительный знак (*напр., удостоверяющий происхождение товара или его качество*)

collective mark

коллективный товарный знак; коллективный знак обслуживания

register a trademark

зарегистрировать товарный знак

nationwide

на территории всей страны

renew the registration

продлить срок регистрации

registration application

заявка на регистрацию товарного знака

interstate commerce

торговля между штатами

Patent and Trademarks Office (PTO)

Бюро по патентам и товарным знакам

be eligible for registration

быть приемлемым для регистрации

hearing

слушание

applicant

заявитель

deny the registration

отказать в регистрации

insignia (*лат.*)

знаки отличия, ордена

disparage

порочить

qualify

отвечать требованиям

secondary meaning

второе значение

pending

находящийся в процессе рассмотрения

cease and desist letter

требование о прекращении противоправного действия

wrongful user

лицо, неправомерно использующее товарный знак

dispute

спор, конфликт

punitive damages

штрафные убытки

fine

штраф

attorney fee

гонорар адвоката

A.: *Что понимается под товарным знаком?*

B.: A trademark is a distinctive mark or symbol or device that a manufacturer affixes to the goods he produces so that they may be identified in the market.

A.: *Но это не то же самое, что фирменное наименование?*

B.: No, it shouldn't be confused with a trade name, which is a name used in the trade to designate as an entity the particular business of certain individuals or sometimes to designate a class of goods.

A.: *Например?*

B.: The registered name identifies both the goods and the persons selling or making them, whereas a registered trademark designates only the product.

For example, the product "Sunshine Cola Drink" could be a subject of a trademark, and the "Sunshine Soft Drink Company" could be a trade name.

A.: *А какие еще знаки могут обозначать товары и услуги?*

B.: There are also service marks, certification marks and collective marks.

A.: *Обязательна ли регистрация товарного знака?*

- B.:** Though trademark rights are acquired without registration, it is advisable to register a trademark and to register it under federal law.
- A.:** *Значит ли это, что регистрация на федеральном уровне дает преимущества?*
- B.:** Federal registration is preferable, because the benefits of state registration are available only in the state of registration. The benefits of federal registration are available nationwide.
- A.:** *На какой срок регистрируется товарный знак?*
- B.:** Federal registration lasts initially for ten years. The registration is renewable for consecutive ten-year periods. State registration and renewal period vary from state to state.
- A.:** *Какая информация должна быть включена в заявку на регистрацию товарного знака?*
- B.:** A registration application typically asks for: 1) a description of the trademark; 2) an explanation of how the applicant is using it or plans to use it in the future; 3) a statement that the applicant believes no one else has a right to use it.
- Application for federal registration also requires the showing that the applicant is involved in interstate commerce.
- A.:** *Если Бюро по патентам и товарным знакам сочтет, что знак приемлем для регистрации, что дальше?*
- B.:** Next, the PTO publishes the trademark in the Official Gazette (a publication of the US Patent and Trademark Office). The Gazette states that the mark is a candidate for registration; this provides existing trademark owners with an opportunity to object to the registration. If someone objects, the PTO will schedule a hearing to resolve the dispute.
- A.:** *Какие товарные знаки подлежат регистрации?*
- B.:** For a trademark to be registered in the patent office, it must be a distinctive design, combination of letters, words, or figures, and must be shown to be first adopted and used by the applicant.
- A.:** *А каким знакам будет отказано в регистрации?*
- B.:** The PTO won't register a trademark if it's not distinctive or already in use. Besides there are other types of marks that are ineligible for registration.
- A.:** *Например?*
- B.:** The PTO won't register marks that contain:
- names, portraits or signatures of living individuals without their consent;
 - the insignia of any US or foreign governmental body;

- the name, portrait or signature of a deceased US President without his widow's consent;
 - words or symbols that disparage living or deceased persons, institutions, beliefs;
 - marks that are judged immoral, deceptive or scandalous.
- A.:** *Возможно ли использование имени собственного в качестве товарного знака?*
- B.:** It depends on the name. A mark that is primarily a surname (last name) does not qualify for protection under federal law unless the name becomes well-known as a mark through advertising or long use. If this happens, the mark is said to have acquired "secondary meaning". Mc.Donald's and Calvin Klein are just a few of the hundreds of surnames that have become effective and protected marks over time.
- A.:** *А может заявитель провести собственное исследование уже существующих знаков, чтобы избежать повтора при регистрации?*
- B.:** Yes. One can do his own search for free on the Internet by visiting the US Patent and Trademark Office's website. Or one can visit one of the Patent and Trademark Depository Libraries, available in every state. These libraries offer a combination of hardcover directories of federally registered marks and an online data base of both registered marks and marks for which a registration application is pending.
- A.:** *При каких обстоятельствах владелец товарного знака может воспрепятствовать использованию знака другими лицами?*
- B.:** Whether the owner of a trademark can stop others from using it depends on such factors as:
- whether the trademark is being used on competing goods or services;
 - whether consumer would likely be confused by the dual use of the trademark;
 - whether the trademark is being used in the same part of the country or is being used on related goods.
- A.:** *Каким образом владелец товарного знака может защитить свои права в случае их нарушения?*
- B.:** Typically, the owner will begin by sending a letter, called a "cease and desist letter" to the wrongful user, demanding that he stop using the mark. If the wrongful user continues to infringe the mark, the owner can file a lawsuit to stop the improper use.
- A.:** *В какой суд подается иск?*
- B.:** The lawsuit is usually filed in federal court if the mark is used in more than one state or country, and in state court if the dispute is between

purely local marks. In addition to preventing further use of the mark, a trademark owner can sometimes obtain money damages from the wrongful user.

A.: *Какие убытки может взыскать владелец товарного знака?*

B.: If a trademark owner proves in federal court that the infringing use is likely to confuse consumer and that he suffered economically as a result of the infringement the competitor may have to pay the owner damages based on the loss.

A.: *И все?*

B.: Not quite. If the court finds that the competitor intentionally copied the owner's trademark, or at least should have known about the mark, the competitor may have to give up the profits he made by using the mark as well as pay other damages, such as punitive damages, fines or attorney fees.

CRIMINAL PROCEDURE

Уголовный процесс

Vocabulary

prosecutor

обвинитель

prosecution

обвинение (*как сторона в уголовном процессе*)

damages

возмещение убытков

defendant

обвиняемый; подсудимый (*в уголовном процессе*)

burden of proof

бремя доказывания

plaintiff

истец

preponderance of the evidence

перевес доказательств

beyond a reasonable doubt

вне разумных оснований для сомнения

acquit

оправдать

probable cause for arrest

достаточное основание для ареста

evidence

доказательства

arrest warrant

ордер на арест

recite the Miranda rights

зачитать задержанному его права

self-incrimination

дача показаний против самого себя в уголовном деле

interrogate

допрашивать

suspect

подозреваемый

booking

процедура регистрации задержанного в полицейском участке

magistrate

мировой судья; судья суда низшей инстанции

arraignment

предъявление обвинения

charge

обвинение

plea of (non-)guilty

заявление подсудимого о признании себя (не)виновным

plead (non-)guilty

признать себя (не)виновным

public defender

государственный защитник

attorney

адвокат

fee

гонорар (*адвоката*)

How does a person decide which way to plead?

Как обвиняемый решает вопрос, какое заявление сделать — о признании себя виновным или о признании себя невиновным?

convict

осуждать

sentence

приговаривать (*к наказанию*)

pass a sentence

выносить приговор

be bailed for trial

быть выпущенным на свободу под залог до суда

deny bail

отказать в освобождении под залог

offense

правонарушение

murder

противоправное лишение человека жизни с заранее обдуманым намерением

misdemeanor

мисдиминор: категория наименее опасных преступлений, граничащая с административными правонарушениями

felony

фелония: категория тяжких преступлений

sworn statement

заявление под присягой

grand jury

большое (следственное) жюри: коллегия из шестнадцати-двадцати трех присяжных, решающих вопрос о предании обвиняемого суду

indictment

обвинительный акт

preliminary hearing

предварительное судебное слушание дела

pretrial motion

ходатайство, заявленное до начала судебного разбирательства

motion to suppress evidence

ходатайство о непринятии судом представленных доказательств

try a case before a jury

рассматривать дело с участием присяжных

bench trial = court trial

суд без участия присяжных

waive a jury trial

отказаться от права на судебное разбирательство с участием присяжных

find the defendant guilty

вынести вердикт о виновности подсудимого

defendant's record

досье подсудимого (*перечень приводов, арестов, совершенных преступлений и судимостей*)

probation

условное осуждение, пробация

probation officer

должностное лицо, осуществляющее надзор за условно осужденными

probationer

условно осужденный

(un)supervised probation

(не)надзираемая пробация

parole

условно-досрочное освобождение заключенных

parole board

совет по условно-досрочному освобождению

parolee

условно-досрочно освобожденный

parole officer

должностное лицо, надзирающее за условно-досрочно освобожденными

A.: В чем отличие уголовных дел от гражданских?

B.: There are a few major differences.

A criminal case is always brought by the local, state or federal government, represented by the prosecutor seeking punishment — a fine or imprisonment or both. Civil cases, on the other hand, are usually brought by private parties or corporations seeking to collect money damages.

Second, in a criminal trial, the defendant has a right to testify in his or her own defense, but also, under the Fifth Amendment, a right *not* to testify. However, in a civil case, the defendant can be compelled to testify against his or her will.

The third major difference involves the burden of proof. In a civil case, the plaintiff only has to show by a “preponderance of the evidence” that the facts alleged are true. In a criminal case, the prosecution has the much heavier burden of proving that the defendant is guilty “beyond a reasonable doubt”.

Fourth, and perhaps most important: in a criminal trial, once a person is acquitted, he or she can never be tried again for the same crime.

A.: На каком основании лицо может быть подвергнуто аресту?

B.: While the law favors arrests made on the basis of a warrant issued by a judge, there are circumstances when it excuses the lack of a warrant. This happens most often when the situation does not give the police time to get a warrant. If the police officer sees the crime committed, or if the officer can later prove that his observations gave him probable cause to act as he did, then a warrantless arrest can be justified.

However, if time and circumstances allow it, the police should obtain a warrant before an arrest. A prosecutor or an officer can go to a judge with evidence that there is probable cause to believe a defendant committed a crime and ask for an arrest warrant.

A.: Каковы права задержанного и в чем, в частности, заключается так называемое «правило Миранды»?

B.: We all hear it lots of times on TV crime shows: “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense”.

That is the Miranda warning, named after a famous case involving a suspect named Miranda.

A.: *Является ли арест незаконным, если задержанному не были «зачитаны его права»?*

B.: No. These rights protect against self-incrimination only, not against being arrested. The only thing the police need before making an arrest is “probable cause” – a sufficient reason, based on facts and observations, to believe one has committed a crime. Police must recite the Miranda rights only when they are about to interrogate a suspect.

A.: *В чем состоит процедура регистрации задержанного в полицейском участке?*

B.: It’s the process in which the details of who the arrested is and why he was arrested are entered into the police records. The arrested will be asked a lot of questions about his identity and may be fingerprinted. After booking, he’ll probably be put into a cell, awaiting an appearance before a judge or magistrate, and will probably be given the opportunity to make a phone call.

A.: *Как происходит предъявление обвинения?*

B.: The arrested appears in court before a judge, the charges against him are read, if he cannot afford a lawyer one is appointed, and his plea is entered. The US Supreme Court now requires that if a person was arrested without a previously issued warrant, he or she must be brought before a judge within forty-eight hours so that a judge may determine whether there was probable cause for arrest.

A.: *Вправе ли обвиняемый рассчитывать на помощь адвоката?*

B.: Yes. If the accused can’t afford an attorney, the judge may appoint one to represent him – either a public defender, who works for a state or local agency, or a private attorney paid a minimal fee by the state.

A.: *Если обвиняемый способен оплатить услуги адвоката, существуют ли для него какие-либо ограничения в выборе адвоката?*

B.: No. He has the right to hire any licensed attorney that he chooses for any crime with which he may be charged.

A.: *Как обвиняемый решает вопрос, какое заявление сделать – о признании себя виновным или о признании себя невиновным?*

B.: That’s a crucial decision the accused and his attorney make. If the accused pleads not guilty, then the judge will set the next court date. If the accused refuses to enter a plea or asks for more time to consult a lawyer, the judge will enter a not guilty plea on behalf of the accused. If the accused pleads guilty, he is admitting that he committed the crime. He is convicted without a trial and may be sentenced and sent to jail on the spot. If the accused pleads guilty, the judge will question him carefully to be certain that the person understands the consequences of his or her decision and that he or she is doing it voluntarily.

A.: *Может ли обвиняемый быть выпущенным на свободу под залог до суда?*

B.: Sometimes. Bail is money a defendant pays as a guarantee that he or she will show up in court at a later date. Many defendants are allowed to pay bail before they ever see a judge, obtaining release much sooner, sometimes within hours of being arrested.

A.: *В каких случаях судья может отказать обвиняемому в освобождении под залог?*

B.: Certain offenses, like murder, are so serious that the court may deny bail.

A.: *Каков следующий этап уголовного процесса после предъявления обвинения?*

B.: The procedure varies from state to state and also depends on whether a person is charged with a misdemeanor or a felony. If a person is accused of a misdemeanor, the prosecution files a sworn statement with the court charging this person with the crime. If a person is accused of a felony, the prosecution has to convince either a judge or a grand jury that there is probable cause that a crime was committed and that the defendant committed it.

A.: *Что представляет собой «большое жюри»?*

B.: It’s a group of from sixteen to twenty-three citizens. The main purpose of a grand jury in a criminal case is to determine whether probable cause exists to prosecute a suspect. If the grand jury finds there is probable cause that a felony was committed by the defendant, it will issue an indictment, i.e. a formal accusation.

A.: *С какой целью проводится предварительное судебное слушание дела?*

B.: Some states don’t bother with grand juries, substituting a preliminary hearing, in which the prosecutor presents evidence to the judge in an attempt to show that there is probable cause that the defendant committed a crime. If the judge is convinced there is probable cause to

charge the defendant with a crime, the prosecution proceeds to the next phase. If the judge is not convinced that probable cause exists, the charges will be dropped.

A.: *Какова функция ходатайств, заявленных до начала судебного разбирательства?*

B.: Whenever a lawyer wants a judge to issue a ruling or order on a legal matter, that request is made through a motion. Motions may be brought by either side. One of the most important motions a defense lawyer makes is a motion to suppress evidence.

A.: *Все ли уголовные дела рассматриваются с участием присяжных?*

B.: No. There are two forms of trials: those before a jury and those before a judge, known as "bench trials" or "court trials". In a trial without a jury, a judge hears the case alone and rules from his or her desk, known as the bench. The process is usually faster and cheaper than a jury trial. In general, defendants are better off with a trial by a jury than a judge. Some defendants waive a jury trial because the main issue in their case may be technical and best understood by a judge. Or a defendant may fear that jurors would be too prejudiced because of the type of crime or adverse publicity surrounding it. The right to a jury trial is an important constitutional right and should not be waived without a very good reason.

A trial with a jury is still held before a judge, but it's up to the jury to make a ruling about the facts of the case.

A.: *Кто определяет, будет ли дело рассматриваться с участием присяжных или без?*

B.: Generally, the choice is up to the criminal defendant, though some jurisdictions require the prosecutor's consent as well. While the defendant always has the right to a jury trial for all felonies and for misdemeanors carrying a sentence of six months or more he or she may choose the quicker route of a bench trial, especially with minor crimes.

A.: *Каковы дальнейшие действия суда в том случае, если присяжные выносят вердикт о виновности подсудимого?*

B.: The next phase is sentencing. Usually it is the judge who passes sentence, though in a few states, such as Texas, juries determine the sentence. Generally, the most important factors in sentencing are the seriousness of the offense and the defendant's prior criminal record.

A.: *Что такое условное осуждение и какие требования предъявляются к условно осужденным?*

B.: Probation is the release of a defendant into the community, often under certain conditions.

Defendants on probation are often required to report periodically to a probation officer. If those conditions are violated, a hearing is held, and the defendant may be sent to jail or have stricter conditions imposed.

Probation conditions are a flexible tool of social control. They may be as restrictive as house arrest or frequent meetings with a probation officer. In some places, probationers must wear electronic ankle bracelets so that their movements can be tracked. For minor crimes, probation may be unsupervised.

A.: *На каких принципах основывается система условно-досрочного освобождения заключенных?*

B.: Parole is a system for the supervised release of prisoners before their terms are over. Although Congress has abolished parole for people convicted of federal crimes, most states still have parole boards. Most prisoners may petition the board for release after serving a part of their sentences; in many places prisoners have the right to an annual hearing after a certain percentage of a sentence has been served. At the hearing the prisoner will try to convince the board that he or she is capable of living lawfully in the outside world.

Parolees who win their restricted freedom must visit their parole officers frequently. If they break the law again or otherwise violate the conditions of their parole, the parole can be revoked. Plus, they may face time for the additional crime.

SECURITIES REGULATION

Правовое регулирование ценных бумаг

Vocabulary

securities market

рынок ценных бумаг

market for the original distribution

первичный рынок ценных бумаг

market for the continuous trading of outstanding securities

вторичный рынок ценных бумаг

Securities and Exchange Commission (SEC)

Комиссия по ценным бумагам и биржам

rulemaking

нормотворчество

Securities Act of 1933

Закон о ценных бумагах 1933 года

issuer

эмитент

Securities Exchange Act of 1934

Закон о ценных бумагах и биржах 1934 года

registration statement

регистрационный документ

net earnings

чистый доход

balance sheet

балансовый отчет

profit and loss statement

отчет о прибыли и убытках

stocks

акции

bonds

облигации

statutory prospectus

официальный проспект эмиссии

updating

обновление

mandatory

обязательный

refusal order

распоряжение Комиссии по ценным бумагам и биржам об отказе в рассмотрении регистрационного документа

stop order

распоряжение Комиссии по ценным бумагам и биржам об отсрочке вступления в силу регистрационного документа

acceleration order

распоряжение Комиссии по ценным бумагам и биржам об ускоренном вступлении в силу регистрационного документа

at a marked-up price

с наценкой

authorization

наделение полномочиями

understanding

договоренность

discretionary account

тип счета, дающий брокеру право покупать и продавать ценные бумаги без предварительного согласия клиента

fines and penalties

штрафные санкции

brokerage firm

брокерская фирма

suspension of license

временная приостановка действия лицензии

revocation of license

отзыв лицензии

financial adviser

финансовый советник

litigation

тяжба, судебный процесс

Williams Act

закон Вильямса: федеральный закон о поглощениях

hostile takeover

враждебное поглощение: попытка получить контроль над компанией путем скупки ее акций

insider trading

незаконные операции с ценными бумагами на основе «внутренней» информации о деятельности компании-эмитента

short-swing profits

доходы, полученные от «короткой» (*в течение 6 месяцев*) торговли ценными бумагами

insider

«инсайдер»: лицо, имеющее доступ к «внутренней» информации, которая недоступна широкой публике

officer

должностное лицо

A.: *Какие существуют рынки ценных бумаг?*

B.: Securities markets are the systems through which securities are bought and sold. The two basic types of securities markets are the markets for the original distribution of securities and those for the continuous trading of outstanding securities.

A.: *Что входит в функции Комиссии по ценным бумагам и биржам?*

B.: The Securities and Exchange Commission is the agency responsible for administering and enforcing the federal securities laws. The basic functions of the SEC are: (1) rulemaking, (2) interpreting (the Commission interprets the securities laws and SEC rules issued thereunder), (3) investigating (the Commission investigates possible violations of the laws and rules), (4) initiating formal proceedings.

A.: *Какие федеральные законы регулируют выпуск и торговлю ценными бумагами?*

B.: There are two primary federal statutes to that effect. The Securities Act of 1933 deals primarily with initial distribution of securities by the issuer. The Securities Exchange Act of 1934 is designed to regulate post-distribution trading in securities and provides for the registration and regulation of securities exchanges.

A.: *С какой целью подается регистрационное заявление?*

B.: The primary objective of the 1933 Act is to provide investors with all material investment information relating to the original issuance of securities. To accomplish this goal, the Act requires the issuer to file a "registration statement" with the SEC prior to issuing its securities. The statement must contain all material investment information about the issuer and the issuer's securities.

A.: *Относится ли финансовая информация к разряду существенной?*

B.: Definitely. To make a wise investment decision, a potential investor will want to project the issuer's future sales and net earnings. Thus, financial data are obviously an important part of information that must be disclosed in the registration statement.

The issuer is required to release a balance sheet and profit and loss statement.

A.: *Что такое проспект эмиссии?*

B.: A prospectus is a detailed information sheet, published by the corporation, giving information about the corporation and the new issue which they are trying to sell, such as stocks or bonds.

A.: *В каком случае проспект эмиссии должен быть обновлен?*

B.: If the period of use of the statutory prospectus extends beyond nine months, the updating is mandatory.

A.: *Сколько времени требуется Комиссии для рассмотрения заявки о регистрации?*

B.: The registration statement becomes effective on the twentieth day after its filing with the SEC, unless it is subject to refusal or stop order issued by the SEC or becomes effective sooner by an SEC acceleration order.

A.: *Чем отличаются брокеры от дилеров?*

B.: Brokers are generally defined as agents who buy and sell securities for their customers on a commission basis.

Dealers, on the other hand, act as principals – buying the securities for their own account and subsequently reselling them at a marked-up price.

A.: *Значит ли это, что брокер действует только по указанию клиента?*

B.: Yes. Generally, a broker can buy and sell only with the client's authorization. Usually, that authorization is given verbally, for both convenience and timing. Because of the verbal nature of the broker-client relationship, any after-the-fact disagreements about transactions are governed by general contract law. If the client can prove that the broker misled him or violated an understanding they had, the broker may be liable for the client's losses.

A.: *Возможны ли случаи, когда брокер проводит сделки для клиента, не имея разрешения?*

B.: There are some instances in which the broker does not need the client's authorization for a transaction. In what's called a "discretionary account", brokers are essentially given free rein to manage the account. However, the creation of a discretionary account must be authorized in writing. If there are certain precautions the client wants the broker to follow, the client should specify it in writing.

A.: *На каких условиях клиент доверяет брокеру ведение своих дел?*

B.: Customers are typically asked to sign a statement that indicates the degree of risk they are willing to assume. A broker's failure to act in an ethical fashion can result in restitution paid to the client, fines and penalties against the broker and the brokerage firm, suspension of the broker's license, and in rare instances, revocation of the license. If the financial adviser acted with fraudulent or criminal intent, then criminal liability can also result.

A.: *Брокер отвечает за финансовые убытки клиента?*

B.: Not usually, so long as the trading and management were handled professionally. However, financial advisers have an ethical responsibility to their clients, and they are obligated to disclose the risks of the client's investments and to make investments that are in line with the personal financial goals that the client has communicated to them.

A.: *Может ли клиент подать иск против брокера?*

B.: Brokerage firms are not interested in litigation. In an effort to avoid it, many brokerage houses require their clients to sign agreements stating that they will consent to arbitration of disputes by a neutral third party, rather than sue in a court of law. If no such arbitration clause exists, the client might consider suing the broker and the firm, although it may be difficult to find an attorney to take the case if the disputed amount is small.

A.: *Каким образом Комиссия по ценным бумагам и биржам контролирует враждебные поглощения?*

B.: Through the Williams Act which was set up to regulate hostile corporate takeovers and insider trading. Under the act any person or group buying or acquiring more than 5% of a class of securities is required to file a statement with the Securities and Exchange Commission giving details as to their plans and purpose in acquiring the stock.

A.: *Обладает ли Комиссия по ценным бумагам и биржам рычагами контроля над незаконными операциями, проводимыми с ценными бумагами на основе «внутренней» информации о деятельности компании-эмитента?*

The Commission can do it through the same Williams Act. To prevent short-swing profits by insiders, the law requires that directors, officers, and owners of 10% of the securities of an issuing corporation cannot realize profits on stocks by buying and selling within a six-month period. Any such realized profit must be returned to the corporation.

TAXATION

Налогообложение

Vocabulary

tax return

налоговая декларация

file a return

подавать налоговую декларацию

minor

несовершеннолетний

marital status

семейное положение

dependent

иждивенец

failure to pay taxes

неуплата налогов

penalty

наказание, санкция

fine

штраф

imprisonment

тюремное заключение

married couples

лица, состоящие в браке

joint tax return

совместная налоговая декларация

federal revenues

федеральные доходы

income tax

подходный налог

excise tax

акцизный налог

customs duties

таможенные пошлины

corporation tax

налог на прибыль корпораций

social security taxes

взносы в фонд социального страхования

inheritance and gift taxes

налоги на наследство и дарения

prepayment

авансовый налоговый платеж

withholding

взимание налога путем вычета из заработной платы

estimated tax payments

«предполагаемые» налоговые платежи

self-employed people

лица, работающие не по найму

paycheck

чек на получение заработной платы

freelance income

доход лиц, работающих не по найму

compute, calculate

вычислять, рассчитывать

IRS (Internal Revenue Service)

Служба внутренних доходов

keep financial records

хранить финансовую документацию

tax collection

сбор налогов

central record centre

центральный архив

audit

аудиторская проверка

audit a tax return

проводить проверку налоговой декларации

tax deductionналоговый вычет: разрешенный законом вычет из облагаемой налогом суммы (*напр., местные налоги*)**tax credit**налоговый кредит: разрешенный законом прямой вычет определенных расходов из общей суммы налогов (*напр., социально мотивированных и общественных расходов*)**return item**

статья в налоговой декларации

IRS officer

налоговый инспектор

burden of proving

бремя доказывания

refund

налоговый возврат

challenge

оспорить

auditor's findings

выводы, сделанные в результате аудиторской проверки

IRS appeals officer

налоговый инспектор по вопросам апелляций

reach a settlement

прийти к соглашению

disputed amount

спорная сумма

reject a claim

отклонить претензию

federal district court

федеральный окружной суд

US Court of Federal Claims

Федеральный претензионный суд

file a petition

подать ходатайство

US Tax Court

Налоговый суд США

notice of deficiency

уведомление о недоимке

tax disputes

налоговые споры

litigate a dispute

рассматривать спор в судебном порядке

contest one's tax liability

оспорить наличие задолженности по уплате налога

overpayпереплатить (*налог*)**sue**

подать иск

property tax

поимущественный налог

charge a tax

взимать налог

assess / impose / levy a tax

облагать налогом

federal estate tax

федеральный налог на наследство

federal gift tax

федеральный налог на дарения

estate tax

налог на наследство: налог на право передачи имущества по завещанию

inheritance tax

налог на наследство: налог на право получения имущества по завещанию

net value

чистая стоимость

heir

наследник по закону

donor

даритель

donee

дарополучатель

sweepstake

тотализатор

A.: Кто обязан платить налоги?**B.:** Everyone who earns over a certain minimum amount has to file an income tax return minors included. That minimum amount is listed in the instruction booklet accompanying the tax return form, and it varies according to age, marital status, and whether or not the taxpayer has dependents.**A.:** Предусмотрены ли санкции за неуплату налогов?**B.:** Failure to pay taxes, or paying less than is owed, can lead to substantial penalties. If the failure to pay or the payment of an incorrectly low amount is deemed intentional, not merely a mistake, it is a crime subject to more severe penalties, including large fines and imprisonment.**A.:** Всегда ли лица, состоящие в браке, подают совместную налоговую декларацию?**B.:** No, but generally taxes are saved if the taxpayer does so. The exception is if one spouse has a much lower income than the other. Filing separately in the case may result in lower taxes.**A.:** На чем основывается налоговая система США?**B.:** Any tax system in based on the ability of citizens to pay. Modern tax system in the US is based upon the same ability, i.e. the basis for taxation is income. About 50% of the federal revenues come from income taxes. The rest come from excise taxes, customs duties, corporation taxes, social security taxes, inheritance and gift taxes.**A.:** В какие сроки следует уплачивать налоги?**B.:** Under the federal tax system taxes have to be paid throughout the year, not just when the tax return is filed. These "prepayments" are made either through withholding by an employer or by estimated tax payments.**A.:** В каких случаях производятся так называемые «предполагаемые налоговые платежи», т.е. "estimated tax payments"?**B.:** Generally, self-employed people do not have taxes withheld from their paychecks, so they have to pay estimated taxes. In addition, some em-

ployed people may also have freelance income that is not subject to withholding.

A.: *Как рассчитываются такие выплаты?*

B.: Estimated tax payments are quarterly payments toward the tax the taxpayer will report when he files his return. They are "estimated" because one may not know exactly what the income for the year will be. The IRS imposes a penalty for failure to make adequate prepayments. To avoid the penalty, one must generally prepay either 90 percent of the tax owed in the current year, or 100 percent of the amount paid in the previous year.

A.: *Как долго хранится финансовая документация?*

B.: To be safe, six years. The IRS, the agency that oversees federal tax collection, has three years from the filing date to review the return and assess any additional tax. However, in some cases the IRS may be able to review up to six years of the records.

A.: *А что делать, если документы не сохранились?*

B.: If necessary, one may obtain a copy of old tax returns going back three years by paying a small fee to the IRS. Returns that are older than three years are sent to a central record centre and may be more difficult to obtain.

A.: *Что требуется от налогоплательщика, если Служба внутренних доходов производит проверку его декларации?*

B.: In an audit, the IRS examines whether the taxpayer correctly reported his income, deductions and credits on the return. Being audited doesn't always mean the taxpayer'll have to turn over every piece of documentation and financial record for the period in question. Since some audits focus only on specific return items, the taxpayer may be asked to provide documentation only for a particular item. Sometimes the matter may be handled through mail, but sometimes a visit to an IRS officer will be necessary.

A.: *Каковы возможные результаты аудиторской проверки?*

B.: During the audit, the taxpayer has the burden of proving that his return is correct. So, if the taxpayer doesn't have documentation, some deductions may not be allowed. However, many audits result in no change to the tax return, and some audits actually result in a refund.

A.: *Можно ли оспорить результаты аудиторской проверки?*

B.: If the taxpayer doesn't agree with the auditor's findings, he has a right to a conference with an IRS appeals officer, whose job is to help re-

solve cases. If the settlement can't be reached with the appeals officer, there are two options.

The taxpayer can pay the disputed amount and file a claim for a refund with the IRS. The IRS will likely reject the claim. If it does, the taxpayer may file a suit in federal district court or the U.S. Court of Federal Claims, which hears cases against the federal government.

A.: *А каков второй вариант?*

B.: The taxpayer can decline to pay the disputed amount and file a petition with the U.S. Tax Court in Washington, D.C., within ninety days of the date the IRS issues a notice of deficiency.

More than 90 % of all tax disputes are litigated in this court, the only one in which a taxpayer can contest a tax liability without first paying it.

A.: *Что делать, если налогоплательщик переплатил налог?*

B.: If the taxpayer simply made a calculation error, the IRS computers may catch the mistake and issue a refund. If they don't the taxpayer may still be able to get a refund depending on how much time has elapsed. He can file an amended tax return within three years of when his return was due, or he can file a claim for a refund within two years from the date the taxes were paid.

A.: *А если ошибка произошла по вине бухгалтера?*

B.: That won't make any difference to the IRS. If the accountant is responsible for overpayment, the taxpayer could sue him or her for failing to prepare the return in professional manner. However, if the taxpayer has been able to collect a refund on his overpayment, there may not be much point in suing, since the damages will be minimal.

A.: *На каком уровне, федеральном или штатов, взимается подоходный налог?*

B.: Property tax is imposed by municipalities upon owners of property within their jurisdiction based upon the value of such property. The rate of such tax is usually the same regardless of the value of the property.

A.: *Какие налоги платятся с наследства?*

B.: There are several kinds: federal estate tax, federal gift tax, state estate tax and state inheritance tax. The federal tax is imposed upon the net value of an estate and on gifts of certain amounts. For example, the federal estate tax applies only to estates larger than \$ 600.000.

A.: *В чем различие между "estate tax" и "inheritance tax"?*

B.: An estate tax is assessed against a dead person's property before it is passed on to the heirs, while an inheritance tax is levied against the

heirs based upon the value of what they have received as an inheritance. On the state level, estate and inheritance taxes vary widely, but all rates are far below federal rates.

A.: *Дарения облагаются налогом?*

B.: A true gift is not subject to income tax and the taxpayer does not have to report it on his income tax return. However, there is a federal gift tax which is imposed on gifts of certain amounts at the same rate as the federal estate tax. Generally, each person may give up to \$10,000 per year to each donee without imposition of federal gift tax. In some states the same tax is levied on the donor of a gift.

A.: *А вдруг вам повезет, и вы выиграете в лотерею?*

B.: Uncle Sam gets a piece of it. Prizes won in lotteries, on game shows, or in sweepstakes are taxable at the same rate as other income.

Часть 2

ТРУДНОСТИ ПИСЬМЕННОГО ПЕРЕВОДА

СЛУЖЕБНЫЕ СЛОВА

FOR

Слово “for” в английском языке может быть как союзом, используемым для соединения частей сложного предложения, так и предлогом — служебным словом, показывающим определенные отношения между словами-членами простого предложения.

В качестве **союза** оно вводит **придаточные предложения причины** и переводится на русский язык союзами «поскольку», «так как», «потому что», «ибо»:

The rule of contributory negligence has been criticized for its harshness, **for** it may absolutely bar recovery for damage against the person most to blame.

Правило встречной небрежности (вины потерпевшего) подвергается критике за его строгость, **поскольку** оно может полностью исключить взыскание убытков с лица, несущего наибольшую ответственность за случившееся.

The mere existence of a will may mean nothing, **for** it may not be a valid will, or it may not be the last will.

Сам факт существования завещания может мало что означать, **так как** завещание может оказаться либо недействительным, либо не последним.

В качестве **предлога** слово “for” наиболее часто имеет следующие значения:

а) **временное значение:**

For years such organizations as the Audubon Society and the Sierra Club have been in the forefront of environmental movement.

В течение многих лет такие организации, как Audubon Society и Sierra Club, занимали ведущее положение среди участников движения в защиту окружающей среды.

б) **пространственное значение — протяженность или направление:**

The cable connecting the territories of the two belligerents may be seized or destroyed on the territory of and in the waters belonging to the territory of the enemy **for** a distance of three marine miles from low tide.

Кабель, соединяющий территории двух воюющих стран, может быть захвачен и уничтожен на территории вражеского государства и в прилегающих водах **на протяжении** трех морских миль от линии отлива.

Thus if the intestate was domiciled in Scotland at the time of his marriage, left **for** France and died domiciled in France, then if the widow's claim is a matter of intestate succession, French law will govern, while Scots law will govern if it is a matter of matrimonial property.

Таким образом, если мужчина при вступлении в брак имел domicilio в Шотландии, а затем переехал на постоянное место жительства **во** Францию и там умер, то если его вдова претендует на наследование его незавещанного имущества, дело будет рассматриваться в соответствии с законами Франции, в то время как вопросы, касающиеся общего имущества супругов, будут регулироваться правом Шотландии.

в) **значение цели, намерения, назначения:**

The document adopted defined the legal standing of NGOs, one of the most powerful of them calling itself “Friends of the Earth — an international movement to fight **for** a better future **for** mankind and **for** the environment”.

Принятый документ определял правовой статус неправительственных организаций, одна из наиболее влиятельных из ко-

торых именуется «Друзья Земли – международное движение за лучшее будущее для человечества и в защиту окружающей среды».

d) значение причины, повода:

Although it is advisable to have such a document prepared at the time that a person has made a will, it may not be possible to do so **for** a number of reasons.

Хотя такой документ рекомендуется подготовить к моменту составления завещания, по целому ряду причин сделать это может быть невозможно.

Особое внимание следует обратить на случаи введения предложением “for” конструкций с инфинитивом, так называемых **инфинитивных комплексов**:

For trusts to receive favored treatment as charitable they must be for the relief of poverty or for the advancement of purposes beneficial for community.

Для того чтобы трасты получили режим благоприятствования в качестве благотворительных, они должны быть созданы для оказания помощи бедным или содействия целям, полезным для общества.

In order **for the suit to be brought** for negligence a person suing another must prove that a duty for which the law imposes liability actually devolved on the second person.

Для того чтобы возбудить дело о небрежности, допущенной другой стороной, сторона, вчиняющая иск, должна доказать, что некая обязанность, в отношении которой суд предусматривает ответственность, лежала именно на другой стороне.

Примечание

В некоторых случаях при переводе инфинитивных комплексов для достижения оптимально корректного перенесения информации с одного языка на другой и соответствия нормам языка оформления необходимы существенные синтаксические трансформации:

It is important **for a beneficiary to have locus standi** to enforce a trust if there is to be a valid trust.

Чтобы обеспечить исполнение правомерного договора траста в судебном порядке, **бенефициару** необходимо **обладать** правом *locus standi*, т.е. иметь возможность обращения в суд, имеющий надлежащую юрисдикцию.

УПРАЖНЕНИЕ 1. Переведите следующие предложения с союзом “for”.

1. These laws of descent and distribution are diverse and difficult to reconcile, **for** they represent the varying views of the lawmakers in the fifty states.
2. Young lawyers are constantly warned against too much cross-examination, **for** it can bring out harmful testimony or give the witness an opportunity to reinforce his direct testimony.
3. Many experienced lawyers apply the principles of preventive law to many problems and, when feasible, encourage the settlement of controversies out of court, **for** litigation is costly and time-consuming.
4. This rule rests on public necessity, **for** the welfare of society and the safety of individuals depend on the enforcement of criminal laws.
5. Generally, a printed lease is a “landlord’s lease”, **for** it contains clauses which favor the landlord.
6. The legal representative must investigate assets carefully to determine their value, **for** claims which seem to be uncollectible may prove to be collectible.

УПРАЖНЕНИЕ 2. Перед тем, как перевести следующие предложения, определите, какой частью речи является в них слово “for”.

1. Although the speed limit may be thirty miles per hour in a certain area, one cannot always drive at that speed in that locality without fear of negligence, **for** the street at a particular moment may be so crowded or so icy that twenty miles per hour might be a reckless and excessive rate of speed.
2. It was **for** many years thought that the courts could not review the exercise of prerogative powers in the same way that they could review the exercise of statutory powers.
3. Questions of fact are naturally **for** the jury (when there is one) to decide.
4. It is possible **for** there to be a custodian trustee and managing trustees.
5. **For** a time there was much confusion and doubt as to what trial judges should do with defendants who threatened and abused judges and tried to break up court proceedings.

6. In cases where the defendant may only be in England **for** a short time, it will be wise to effect personal service.
7. It would be quite impractical **for** the procedural aspects of that litigation to be governed by any law other than English law.
8. In America, **for** a long time, and in Canada, only recently, the principle of unjust enrichment has been recognized as a general basis of liability, which is usually a personal liability.
9. Terms of court may be regular or special; the latter are held **for** a special purpose, usually **for** the hearing of nonjury cases.
10. Courts of appeal, one **for** each of eleven circuits in the United States, are courts of appellate jurisdiction.
11. It is clearly *ultra vires* **for** an official to claim powers which the law says he does not have.
12. **For** the rules of natural justice to apply, a person must have either rights or legitimate expectations.
13. Unfortunately, matters are not quite as simple as we would like them to be **for** there are a number of matters in which the Convention departs from the principle that it is the court of the "domicile" which has jurisdiction.
14. As charity goes much beyond direct handouts to the needy it is necessary **for** there to be some institutional structure to carry out charitable purposes.

SINCE

Английское слово "since" в предложении может быть союзом, предлогом или наречием.

В качестве **союза** оно вводит:

- а) **придаточные предложения причины** и переводится словами «**поскольку**», «**так как**»:

Since a corporation is a legal entity entirely separate from its stockholders, the latter are neither liable for the debts of the corporation nor for the acts or misdeeds of the officers or agents of the corporation.

Поскольку корпорация является юридическим лицом, существующим независимо от ее акционеров, последние не отвечают по долгам корпорации, а также за действия и проступки должностных лиц и представителей корпорации.

Such obligations are more correctly described as "quasi" contracts, which is the better name, **since** it indicates that the obligation is not a true contract.

Такие обязательства правильнее называть квазидоговорами, что является более удачным названием, **так как** оно указывает на то, что данное обязательство не является настоящим договором.

- б) **временные придаточные предложения** и переводится словами «**после того как**», «**с тех пор как**»:

Since the UN broke new ground when it supervised in 1989 the entire election process that led to the independence of Namibia, it has monitored, at governments' requests, elections in such countries as Nicaragua, Angola, Cambodia and others.

После того как в 1989 году ООН впервые координировала весь выборный процесс, приведший к установлению независимости в Намибии, осуществление контроля за выборами в таких странах, как Никарагуа, Ангола, Камбоджа и других, было также возложено по просьбе правительств этих стран на Организацию Объединенных Наций.

The bargain-and-sale deed contains no guarantee of title but simply the owner's covenant that **since** he has owned it he has done nothing to encumber the property.

Договор купли-продажи не содержит гарантий в отношении правового титула, а лишь гарантию собственника недвижимости, состоящую в том, что **с тех пор как** он вступил во владение этой собственностью, он не подвергал ее никаким обременениям.

- в) В качестве **предлога** "since" указывает на начало какого-либо периода времени и переводится русским предлогом «**с**»:

Most of the White Paper's proposals were incorporated in the Criminal Justice Act 1967, and the parole scheme has operated **since** 1968.

Большинство предложений, содержащихся в Белой книге, было включено в Акт об уголовном судопроизводстве 1967 г., а система условно-досрочного освобождения действует **с** 1968 г.

The safeguards for the protection of criminals have come down to us through the English common law and are known **since** King John.

Меры по защите преступников пришли к нам из английско-общего права и известны **со** времен короля Джона.

В качестве **наречия** слово "since" обычно стоит в конце предложения и, как правило, переводится на русский язык словами «с тех пор». Перед "since" часто стоит "ever":

Over the next 50 years or so, prison conditions were made less deliberately punitive, and facilities for aftercare of prisoners were implemented. Other types of sentence, such as, for example, probation, have been used **ever since**.

В течение последующих 50 лет условия содержания заключенных стали менее жесткими, были внедрены меры воспитательно-исправительного воздействия на лиц, освободившихся из заключения. **С тех пор** практикуются и другие виды приговоров, такие, как, например, условный.

It has been accepted **ever since** that the courts have the power to decide on the extent of prerogative powers.

С тех пор общепринятой практикой стала практика определения объема исключительных полномочий судами.

УПРАЖНЕНИЕ 1. Переведите следующие предложения с союзом "since", вводящим придаточные предложения причины.

1. **Since** in our country (*USA*) the business guest receives greater protection than the social guest, there seems to be a fundamental obligation that the possessor of land owes to one from whom he expects to derive a profit or economic benefit.
2. **Since** some audits focus only on specific return items, the taxpayer may be asked to provide documentation only for a particular item.
3. **Since** the buyer has already paid the seller at closing, he may have to take legal action to recover anything.
4. Wills are especially crucial for parents with children who are minors, **since** you can name a guardian in a will and make arrangements for financial support of children even past the age of eighteen.

5. Charitable purpose trusts are exempt from the rule **since** they are for the public benefit and are to be encouraged to continue forever.
6. Even though you don't put your agreement in writing, in many jurisdictions they are equally binding, though it may be harder to prove, **since** you'll just have one person's word against the other's.
7. A biological explanation could be well suited to this **since** the identification of actual or potential criminals could be very easy.
8. Everyone has to have a birth certificate **since** many things in life, such as obtaining a passport, getting a driver's license, or registering for school may require a person to have one.

УПРАЖНЕНИЕ 2. Перед тем, как перевести следующие предложения, определите, какой частью речи является в них слово "since". В том случае, если "since" является союзом, определите, какой тип придаточного предложения он вводит.

1. If your neighbours are noisy, you can try to resolve the problem neighbour to neighbour, but **since** emotions usually run hot, the amicable approach is rarely successful.
2. The concept of "habitual residence" has been much used **since** the Second World War in the Hague international conventions designed to unify the rules of the conflict of laws in different countries.
3. **Since** landlords generally aren't responsible for problems that are caused by a tenant's carelessness, tenants can be billed for repairs.
4. What seems to have happened **since** is that the Home Office has set the Prison Service objectives which are more realistic in relation to existing prison conditions and the resources available.
5. **Since** *Government of India v. Taylor (1955)* it has been quite clear that English courts will not enforce foreign revenue laws.
6. **Since** it's impossible to cover all contingencies, some wills also name an ultimate beneficiary, who receives the residuary estate in the event all other beneficiaries are dead.
7. **Since** becoming Secretary-General, Mr. Annan has made use of his good offices in a range of situations, including Cyprus, East Timor, the Middle East, Nigeria and Western Sahara.
8. **Since** the US Supreme Court permitted the resumption of the death penalty in 1976, there have been over 650 persons executed.
9. **Since** Britain's accession to the EEC this country is subject to the EEC law.

UNLESS

Союз “**unless**” обычно переводится на русский язык словами «**если (только) ... не**», «**если не ...**»:

The decision of the court of appeals is final, **unless** it is appealed to the US Supreme Court.

Решение апелляционного суда считается окончательным, **если оно не** обжаловано в Верховном суде США.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer.

Если не оговорено иное, риск случайной гибели товара продолжает лежать на продавце, пока право собственности на товар не передано покупателю.

В некоторых случаях, если в главном предложении содержится слово с отрицательным значением, союз “**unless**”, вводящий придаточное предложение, лучше переводить на русский язык словами «**за исключением тех случаев, когда**»:

A lease for more than seven years may be invalid **unless** recorded in the Registry of Deeds.

Арендный договор на срок более семи лет может быть признан недействительным **за исключением тех случаев, когда** он занесен в официальный реестр.

This type of memorandum is not legally binding **unless** it complies with the state statute.

Такой меморандум не имеет юридической силы **за исключением тех случаев, когда** он соответствует закону штата.

There is no legal liability simply for causing a person mental or emotional distress **unless** it is accompanied by physical injury.

Доведение человека до состояния стресса не влечет за собой юридической ответственности **за исключением тех случаев, когда** оно сопровождается нанесением телесных повреждений.

Примечание

Говоря о союзе “**unless**”, нельзя не коснуться некоторых проблем, возникающих при переводе предложений, содержащих слово “**until**”, которое может выступать и в качестве союза, и в качестве предлога.

В качестве **союза** “**until**” обычно переводится на русский язык словами «(до тех пор) пока ... не»; «(только) после того, как»:

The Court then applied the well-established “discovery rule,” which delays the accrual of the statute of limitations **until** a plaintiff knows, or should know, about the wrongful injury.

Суд применил хорошо известное «правило обнаружения», согласно которому срок исковой давности не начинается **до тех пор, пока** истец не узнает или не должен был бы узнать о причиненном ему ущербе.

The plaintiff must show that the context turns the apparently innocent statement into a defamatory one. Note that, **until** he does so successfully, the statement remains non-defamatory.

Истец должен доказать, что в данном контексте внешне невинное заявление становится диффамирующим. Заметьте, что **до тех пор, пока** ему не удастся этого сделать, заявление таковым считаться не будет.

The decision of the Court of appeal will not be final **until** the time expires to file the rehearing motion.

Решение апелляционного суда становится окончательным **только после того, как** истечет срок подачи ходатайства о проведении повторного слушания.

В качестве **предлога** “**until**” переводится на русский язык словами «**только**», «**до**», «**вплоть до**»:

Not **until** 1949 would the practice of appealing decisions of Canada's Supreme Court to the Judicial Committee of the Privy Council in London be abolished.

Практика обжалования решений Верховного Суда Канады в судебном комитете Тайного совета Великобритании была отменена **только** в 1949 году.

From 1620 **until** the latter part of the 1700's the law of this land punished a person for religious beliefs. Countless people died on the gallows for this “terrible crime.”

Начиная с 1620 года и почти **до** конца 18 века, законы Англии предусматривали наказание за религиозные убеждения. Множество людей погибло на эшафоте за совершение этого «ужасного преступления».

The Revised Uniform Partnership Act's application did not go into effect **until** January 1998, well after the date the plaintiff filed his first claim in 1992 and after he filed his second amended complaint in 1996.

Единообразный закон о товариществах в новой редакции не вступал в силу **вплоть до** января 1998 года, что намного позже той даты, когда истец подал первое заявление в 1992 году, и позже того, как он подал второе заявление с внесенными в него изменениями в 1996 году.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая особое внимание на способы передачи "unless" и "until".

1. **Unless** he is a lawyer, no one should draw his own will.
2. **Unless** I revoke it, this proxy shall remain in effect indefinitely.
3. In general, judges are hesitant to authorize the eviction of bothersome neighbours **unless** the situation has become extremely unpleasant.
4. A debtor in a liquidation case may be discharged or released from all debts **unless** guilty of misconduct.
5. No deed or mortgage should ever be accepted **unless** the title to the property has been properly examined.
6. **Unless** the other partners consent, a partner cannot sell his interest in the firm in order to give the transferee the right to become a member of the firm.
7. Some states provide by statute that a will is revoked by marriage, **unless** the will expressly states that it was made in contemplation of the marriage.
8. Even in short-term leases printed forms should be avoided, **unless** inspected and found acceptable to the situation by an attorney.
9. Errors concerning the admission of evidence should not be reviewed in the appellate court **unless** proper objections were made in the trial court.
10. Today there is no liability for nuisance **unless** an individual's rights have been intentionally invaded.
11. Under Florida law such a bequest may be voided if the will is executed less than six months before death **unless** the same or similar bequest was made in an earlier will.
12. In many states a will cannot be revoked by a subsequent written instrument **unless** it is executed with the same formalities as a will.
13. As a result of this rule no trust was good **unless** it ended twenty-one years after the life of a person who was alive at the time of the creation of the trust.
14. Some states insist that the bequest to the subscribing witness be void **unless** there are two (or in some states three) competent additional witnesses by which the will can be proved.

15. Employees engaged in the same enterprise and by the same employer are not fellow servants **unless** their work is so related that they are likely to come in close contact with one another or **unless** there is a special risk of harm to one by the negligence of the other.
16. In the decision of *The New York Times v. Sullivan (1964)*, the Court held that a public official may not recover damages for libel against a newspaper **unless** the public official can prove that the defamatory statement was published with malice.
17. In 1967 the English Parliament passed a law providing that no suit or action could be brought on certain contracts **unless** a note or memorandum thereof in writing was signed by the party to be charged with an obligation.
18. In nine states passengers' claims come under "guest statutes", which prevent a guest passenger from recovering for injuries **unless** his host is guilty of willful and wanton misconduct, gross negligence, or intoxication.
19. The Uniform Limited Partnership Act provides that a limited partner shall not become liable as a general partner **unless** he takes part in the control of the business.
20. It is no easier to win a case in small claims court than in regular court, **unless** your argument is prepared very carefully.
21. Ordinarily the obligation to support children continues **until** they reach the age of majority.
22. The hire is not due **until** the carrier has accepted the goods.
23. When appropriate, the Clerk or a Deputy Clerk may announce that the Court will not meet **until** there is a quorum.
24. The trial court also determined that, although entitled to judgment, plaintiff is not entitled to payment **until** the senior creditors are paid in full.
25. An acceptance sent in the same manner in which offer was received is not binding **until** actually received by the offeror.
26. Occasionally, courts have issued a sentence of civil contempt against the custodial parent, **until** the visitation order is complied with.
27. The drawee incurs no liability on the bill **until** he accepts it.

ONCE

Слово “**once**” может быть союзом или наречием.

В качестве **союза** “**once**” часто переводится на русский язык словами «**коль скоро**», «**как только**», «**раз**»:

Once a principal acquiesces in the acts and conduct of an agent, such acquiescence indicates authorization to perform similar acts in the future.

Коль скоро принципал своим молчанием соглашается с действиями и поведением агента, такое молчаливое согласие означает санкционирование подобных действий в будущем.

Once you have selected a lawyer, you should decide about consulting or retaining the person.

Как только вы сделали свой выбор в пользу того или иного юриста, вам следует решить, будет ли это разовая консультация или об оказании юридической помощи стоит заключить договор.

Once the provisions of the Act can be varied by agreement or by trade custom, in some cases the parties may agree that the risk passes before property.

Раз положения закона могут быть изменены соглашением или торговым обычаем, то в некоторых случаях стороны могут договориться о том, что риск случайной гибели переходит раньше права собственности.

В качестве **наречия** “**once**” переводится на русский язык словами «**однажды**», «**когда-то**», «**некогда**»:

The term “heirs” **once** referred to those who inherited real property, and “next of kin” referred to those who inherited personal property; in many states the terms are now used interchangeably.

Термин «наследники» **некогда** означал лиц, наследующих недвижимое имущество, а термин «ближайшие родственники» относился к тем, кто наследовал движимое имущество; во многих штатах сегодня эти термины взаимозаменяемы.

Although not as popular as they **once** were, there still are actions brought for alienation of affections.

Иски о действиях, направленных на разрушение супружеских отношений, все еще подаются, хотя они не столь широко практикуются, как **когда-то** в прошлом.

УПРАЖНЕНИЕ 1. Переведите следующие предложения с союзом “**once**”.

1. **Once** the check is certified, the maker can no longer stop payment.
2. **Once** documents are received in evidence, they are exhibits and may be read or shown to the jury.
3. **Once** the administrator has been appointed, the management of the estate proceeds under the direction of the court in a manner similar to an estate disposed of by will.
4. **Once** a building is open to the public, anyone who has a legitimate reason for entering the premises is regarded as a business visitor.
5. **Once** it is determined that a particular person is qualified as an expert he then gives evidence in the usual way.
6. **Once** a stockholder has paid for his stock in the corporation, he usually is not liable to creditors of the corporation.
7. **Once** a question of law has been deliberately examined and decided in the United States, it is binding on the courts within the jurisdiction.
8. **Once** an accomplice has testified for the prosecution, the court is honor-bound to pardon him or to reduce the charges against him.

УПРАЖНЕНИЕ 2. Перед тем, как перевести следующие предложения, определите, какой частью речи является в них слово “**once**”.

1. The rule is that **once** a person is acquitted or has paid the penalty for his crime, he may not thereafter be arrested for the same crime.
2. The appellate court may decide the case **once** and for all by its own decision.
3. **Once** the offer has been rejected, the person to whom the offer is made cannot change his mind and later accept the offer.
4. Business Regulation (although **once** viewed with suspicion) is now invariably sustained as a reasonably state action.
5. Unfortunately, in reality, **once** a parent places a child in the foster-care system voluntarily, it is often difficult to get the child back.
6. **Once** it has been determined that the court has jurisdiction, and the matter has been characterized, then we simply need to apply the relevant choice of law rule.

NOR

Союз “**nor**” может употребляться в следующих случаях:

- a) **для того, чтобы вводить вторую часть сложносочиненного предложения при наличии отрицания в первой его части:**

In summing up, lawyers are not permitted to go outside of the evidence and discuss facts which have not been proved, **nor** may they resort to appeals to passion or to prejudice.

При подведении итогов следствия адвокаты не имеют права выходить за рамки показаний и обсуждать факты, которые не были доказаны, **а также** они **не** могут ссылаться на состояние аффекта или допущенную необъективность.

An agent who is employed to sell property cannot sell to himself, **nor** can one appointed to buy property sell that which belongs to himself.

Агент, нанятый для продажи собственности, не может продать ее самому себе, **а также и** лицо, назначенное для покупки собственности, **не** может продать то, что принадлежит ему самому.

- b) **в начале самостоятельного предложения, следующего за отрицательным:**

A party may not assign his duties under a contract. **Nor** may a person assign rights involving a relationship of personal confidence.

Сторона не вправе передавать взятые на себя обязательства по договору. **Не** могут быть переуступлены **и** права, связанные с отношениями личного доверия.

A mere enquiry by the offeree does not terminate an offer. **Nor** does the addition of terms in an acceptance, requested as a favor, terminate the offer.

Какие-либо уточняющие вопросы со стороны адресата оферты не прекращают действия оферты. **Не** прекращает действия оферты **и** просьба расширить условия акцепта.

- e) **для того, чтобы вводить вторую часть сложносочиненного предложения при отсутствии отрицания в первой его части:**

Different from private trusts, charitable trusts can last indefinitely, **nor** do they need to have objects which are certain, as long as the settlor revealed his general charitable intent.

В отличие от трастов, учрежденных в пользу частных лиц, благотворительные трасты могут существовать бессрочно; **да и** цели их создания **не** нуждаются в конкретизации, если намерения учредителя в целом связаны с благотворительностью.

(Как видно из примеров, приведенных выше, в предложениях с союзом “**nor**” возможен только не прямой порядок слов (*инверсия*), т.е. сказуемое или часть сказуемого предшествуют подлежащему предложения.)

- f) **при перечислении однородных членов предложения после отрицания “neither”:**

The state courts have jurisdiction **neither** in admiralty cases or in matters arising under the patent or copyright laws of the United States, **nor** in bankruptcy matters, interstate commerce, **nor** matters affecting the property or territory of the United States.

Юрисдикция судов штатов не распространяется **ни** на дела, возникающие на основе морского права США или федеральных законов об авторских и патентных правах, **ни** на дела о банкротствах, споры, затрагивающие торговлю между штатами, а также имущественные или территориальные споры, стороной в которых выступают Соединенные Штаты.

When property is exempt from execution, **neither** sheriff **nor** marshal **nor** constable can seize the property and sell it to satisfy a judgment.

Если имущество освобождено от действия исполнительного производства, **ни** шериф, **ни** судебный исполнитель, **ни** констебль не могут конфисковать имущество и продать его во исполнение судебного решения.

УПРАЖНЕНИЕ. Переведите следующие предложения с союзом "nor". Обратите внимание на особенности передачи этого союза в разных типах предложений.

1. In this chapter we will be concerned with jurisdiction in personam and not with the jurisdiction in rem. **Nor** will we be concerned with jurisdiction in matters such as probate, administration of estates, matrimonial cases and the like.
2. A nuncupative will is not required to be in writing **nor** to be formally attested.
3. To prevent the dead ruling the living for too long, trusts cannot last for longer than a particular perpetuity period, **nor** can income be accumulated and rolled over into capital for longer than a particular accumulation period.
4. In *Schmidt v. Home Secretary (1969)*, a foreigner whose leave to enter the UK for a limited time had expired had no rights, **nor** any basis for an expectation that the entry permit would be renewed.
5. **Neither** consolidation **nor** merger does away with the rights of creditors without their consent.
6. Beneficiaries' equitable interests were not recognized by the common law courts, so no common law remedies in tort were available to them **nor** would any contractual remedies be available to them since they would not be in a contractual relationship with third parties or the trustees.
7. An appellate court does not have the power to review questions which were not raised **nor** properly preserved for review in the trial court.
8. The Federal Wage Garnishment Law (passed in 1970) restricts the amount payable under a state garnishee execution. **Nor** can employers fire employees when their wages are garnished.
9. A person cannot be an agent for unborn or unascertained persons **nor**, except in very limited circumstances, for minors.
10. In law **neither** hostile intent **nor** harmful design is necessary to constitute an intentional act.
11. No investment should be made **nor** funds deposited with any bank or corporation in the individual name of the legal representative.
12. The settlor cannot insist on income being accumulated beyond an accumulation period, **nor** can he insist on persons becoming entitled to interests outside the perpetuity period.
13. Usually **neither** the law **nor** the government interferes with religious beliefs, but they may interfere if religious practices constitute crimes.

14. The claim to make the Duke (or, rather, his executor) personally liable to account as constructive trustee for the lost chattels failed. **Nor** had he actual knowledge of the true position of things.
15. The one to consult in drawing a will is **neither** the person in the stationery store who sells printed forms for wills **nor** an accountant, **nor** a banker, **nor** a so-called estate planner, but a lawyer.

WHETHER

Союз "whether" может употребляться в текстах юридического характера в следующих основных случаях:

а) для ввода косвенного вопроса:

The judge first asked the defendant **whether** he understood that he had an absolute right to a jury trial and that only he could waive that right. The judge went on to inquire **whether** the defendant had discussed that right with counsel.

Вначале судья спросил у обвиняемого, понимает ли тот, что имеет полное право на суд присяжных и что только он может отказаться от этого права. Судья далее заинтересовался, обсуждал ли обвиняемый это право со своим адвокатом.

б) для ввода определительных придаточных предложений, выражающих сомнение, неуверенность, выбор:

Many times the principal raises the question of **whether** the agent has gone beyond his bare authority to buy and sell.

Принципал неоднократно поднимает вопрос о том, не вышел ли агент за пределы своего единственного полномочия совершать сделки купли-продажи.

в) для ввода условных или уступительных придаточных предложений, предполагающих выбор; в данном случае в английском предложении после "whether" стоит отрицание "or not":

Job hunting expenses are the expenses of looking for a new job in the same line of work, **whether or not** a new job is found.

Расходы на поиск работы — это расходы на поиск рабочего места в той же области деятельности **вне зависимости от того**, найдено **ли** новое место работы **или нет**.

A decedent's estate must be managed by someone, **whether or not** the decedent leaves a will.

Кто-то все равно должен управлять имуществом умершего **вне зависимости от того**, оставлено **ли** завешание **или нет**.

d) для ввода именных придаточных предложений:

— подлежащих:

Whether this formula is wholly satisfactory from the viewpoint of the record manufacturer is difficult to say with any confidence.

Трудно с уверенностью говорить о том, является **ли** эта формула полностью удовлетворительной с точки зрения изготовителя звукозаписей.

Whether adequate storage space will continue to be available is another matter.

Другое дело, будет **ли** по-прежнему свободен подходящий склад.

Whether or not a store is responsible for the products it sells depends on a number of things, including what state the store is in.

Несет **ли** магазин ответственность за товары, которые он продает, зависит от ряда факторов, включая то, в каком штате находится магазин.

(В этом типе предложений, если после “**whether**” стоит отрицание “**or not**”, на русский язык “**or not**” не переводится.)

— составляющих именную часть составного сказуемого:

A highly important matter to determine is **whether** the accused is being tried for several crimes or being tried for one several times.

Крайне важно определить, находится **ли** обвиняемый под судом за совершение нескольких преступлений или его судят несколько раз за совершение одного и того же преступления.

In bringing suit the first thing to determine is **whether** an action is local or transitory.

Обращаясь с иском, следует прежде всего определить, можно **ли** его подавать только в местный суд, учитывая характер причиненного вреда, или же иск может быть подан в суд другого штата по месту жительства ответчика.

— дополнительных:

The Supreme Court has laid down some tests to determine **whether** a transaction is a securities transaction **or not**.

Верховный Суд установил некоторые критерии для определения того, является **ли** сделка операцией с ценными бумагами **или нет**.

Sometimes it is difficult to determine **whether** the principal has actually given an agent this authority **or not**.

Иногда трудно определить, действительно **ли** принципал предоставил агенту такое полномочие **или нет**.

(В данном типе предложений опускать при переводе «или нет» не рекомендуется.)

e) с уступительным значением при любых второстепенных членах предложения; в данном случае выбор подчеркивается союзом “**or**”, стоящим после “**whether**”:

A principal is liable to third parties for contracts made by the agent within his authority, **whether** actual **or** apparent.

Принципал несет ответственность перед третьими лицами за договоры, заключенные агентом в пределах его полномочий, **будь то** фактических **или** презюмируемых.

Depending upon the class of crime, **whether** a felony **or** a misdemeanor, the accused is entitled to certain preliminary hearings.

Имеет ли обвиняемый право на предварительное слушание, зависит от категории преступления, которое он совершил, — относится **ли** оно к разряду тяжких уголовных преступлений **или** мелких правонарушений.

УПРАЖНЕНИЕ. Переведите следующие предложения с союзом "whether". Обратите внимание на особенности передачи этого союза в разных типах предложений.

1. State laws differ greatly on the question of **whether** a marriage revokes a will.
2. **Whether** the owner of a trademark can stop others from using it depends on a number of factors.
3. **Whether** someone was given a hearing is easily established by the evidence of witnesses, but the question of **whether** the judge was biased is ultimately unanswerable.
4. It should be noted, however, that the "S" corporation shareholders are taxed on the corporation's earnings **whether or not** a dividend actually is paid.
5. Wilkins suggests that when members of the public decide **whether or not** to report a crime, they are deciding **whether or not** the incident is one the police should do something about.
6. Imposing responsibility, or legal liability, on the owner, **whether** imposed by the state legislature **or** through case law, is a growing trend.
7. **Whether or not** it is registered, a copyright lasts for the life of the author or artist, plus seventy years.
8. The test of **whether or not** a particular instrument disposing of property is a will is **whether** the person making the instrument intended it to take effect upon his death and to be revocable until that time.
9. **Whether** a particular requirement is mandatory or directory will have to be decided by the court.
10. The question of **whether** excessive force may be used in self-defense frequently arises.
11. In false imprisonment it makes no difference **whether or not** the illegal act is inspired by malice or by personal hostility.
12. The question **whether** a transaction involves a security or **whether** it is a mere commercial transaction often arises.
13. The other significant feature of Wade's definition is "**whether** action is lawful".
14. If the will and the probate proceedings are contested, the court conducts a hearing and decides **whether or not** there are valid legal objections to the will.
15. It is not clear, then, **whether** the authors were offering a method of explaining crime, or one for predicting it.

16. Almost any published libel is actionable per se, regardless of **whether** special harm has been caused.
17. Physical barriers, **whether** natural (e.g. rivers) **or** man-made (railway lines), would affect the growth pattern of a particular city.
18. In *Bain v. Whitehaven and Furness Railway* it was held that "**whether** a witness was competent **or not**, **whether** a certain matter requires to prove by writing **or not**, **whether** certain evidence proves a certain fact **or not** ... is to be determined by the law of the country where the question arises".
19. Trustees, **whether** express, resulting **or** constructive, have very little opportunity to plead the Limitation Act 1980 against beneficiaries.
20. A lease is a binding contract **whether** it is for a short term or a long term.
21. Parents, however, have the right to decide which schools their children go to, **whether** public **or** private, parochial **or** secular.
22. The insured should read his policy to see **whether** it provides a grace period, and if so, how long it runs.
23. If the king wished to establish **whether** some official's actions were lawful, he could ask the Court for a writ of certiorari.
24. The liability of the agent himself to third parties involves the important question of **whether** the principal is disclosed, partially disclosed, or undisclosed.
25. **Whether** a particular work has been made "in the course of his employment" is a question which has often led to controversy.
26. Legal authorities differ in their opinions about **whether** the legislature or the courts should determine the detailed rules governing the conduct of legal actions and proceedings.
27. Social Security taxes, however, must be paid on household workers **whether or not** the employer withholds the amount from the employee's compensation.

Раздел 2

СИНТАКСИЧЕСКИЕ КОНСТРУКЦИИ

СЛОЖНОЕ ПОДЛЕЖАЩЕЕ

Как уже говорилось выше, в английском языке есть особые конструкции, сходные по значению с придаточными предложениями, — синтаксические комплексы, состоящие из именной и глагольной части. Наибольшие сложности при переводе может вызвать так называемое **сложное подлежащее**.

Сложное подлежащее — это конструкция, выполняющая функцию подлежащего английского предложения при сказуемом, наиболее часто выраженном глаголами “say”, “presume”, “report”, “announce”, глаголами физического и умственного восприятия “see”, “hear”, “know”, “think”, “consider”, “deem”, а также сочетаниями с глаголом “be”, выражающими возможность или вероятность наступления действия, выраженного инфинитивом (“be likely”, “be sure”, “be certain”). При переводе глагол-сказуемое английского предложения преобразуется в главное неопределенно-личное или безличное предложение, а синтаксический комплекс — в придаточное дополнительное предложение, вводимое союзом «что»:

Complaints against lawyers are said to stem from complaints against the administration of justice.

Считается, что **претензии** к юристам **возникают** на почве недовольства тем, как отправляется правосудие.

The Aarhus Convention is considered to allow the public to actively contribute to better preservation and protection of the environment.

Считается, что **Орхусская конвенция открывает** более широкие возможности для активного участия общественности в деле сохранения и защиты окружающей среды.

The court is sure to consider all relevant factors.

Несомненно, что **суд рассмотрит** все относящиеся к делу обстоятельства.

Часто возможен и другой вариант перевода, при котором именная часть конструкции становится подлежащим предложения, а инфинитив-глагольная часть преобразуется в причастие (несовершенного вида, если инфинитив неперфектный, и совершенного вида, если инфинитив перфектный):

Written contracts are presumed to have valid consideration.

Письменные договоры считаются имеющими законное встречное удовлетворение в силу презумпции.

The prosecution is said to have begun when information, charging the commission of the crime, is laid before a magistrate.

Судебное преследование считается начавшимся после того, как информация о предполагаемом совершении преступления представлена судье полицейского суда.

Гораздо реже встречается сложное подлежащее, в котором глагольной частью является не инфинитив, а причастие. Принцип перевода такой конструкции аналогичен переводу сложного подлежащего с инфинитивом. Однако следует обратить внимание на то, что причастие 1 здесь подчеркивает незавершенность действия и поэтому переводится на русский язык глаголом в форме настоящего времени, а причастие 2 — завершенность и поэтому переводится глаголом в форме прошедшего времени:

A police officer is considered acting lawfully when, having reason to believe the suspect is armed and dangerous, he conducts a limited weapons search, its purpose being not to discover evidence of

crime, but to allow the officer to pursue his investigation without fear of violence.

Считается, что **полицейский действует** в рамках закона, если, имея основания полагать, что подозреваемый вооружен и опасен, он обыскивает его на предмет наличия оружия; цель такого обыска заключается не в поиске доказательств совершения преступления, а в том, чтобы продолжать расследование, не опасаясь нападения.

A **promise is considered given** for "moral" or "past" consideration when the promisor's motivation for making the promise is a past benefit to the promisor or detriment to the promisee.

Считается, что **обещание было дано** в обмен на «моральное» или «прошлое» встречное удовлетворение, если поводом для его дачи послужила ранее полученная должником по договору выгода или ущерб, причиненный кредитору.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая внимание на особенности передачи инфинитива в составе сложного подлежащего.

1. **The rule** is said **to be necessary** because not all family members may be financially responsible.
2. **A voidable marriage** is presumed **to have been induced** by misrepresentation or fraud.
3. **A void marriage** is said **to have never existed** legally because it was invalid from the beginning.
4. **A tenant** who continues in possession of leased premises after the expiration of the term of his lease is said **to "hold over"**.
5. If an accord is a substituted contract, **the accord** itself is said **to be a satisfaction** and therefore immediately discharges the original contract.
6. When husband and wife both acquire a piece of real estate, **they** are said **to own** it as "tenants by the entirety".
7. **Certain public officials and others** charged with the performance of public functions are said **to be privileged**.
8. An offer terminates at the time specified, but if no time is specified, it is said **to terminate** at the end of a "reasonable time".
9. **The rules** of equity are not supposed **to have been established** from time immemorial.

10. In the United Kingdom, some bold claims have been made about the effectiveness of watch schemes. For example, **one scheme** in Bradford is said **to have reduced** crime by 80 per cent.
11. In West Germany in 1963 steering locks were made compulsory on all cars, including those already registered. **Car thefts** are said **to have dropped** by 60 per cent.
12. Most members of the Parole Board, which is a statutory body established by the Criminal Justice Act 1967, are appointed for three years, but **judges** are only expected **to serve** for two years.
13. If the parolee breaches the conditions of his license, or behaves in a manner which causes the supervising officer concern, **the latter** is expected **to inform** the Parole Unit via his Chief Probation Officer.

НОМИНАТИВНО-ПРИЧАСТНАЯ АБСОЛЮТНАЯ КОНСТРУКЦИЯ

Абсолютная причастная конструкция обычно состоит из именной части — существительного в общем падеже и глагольной части — причастия. От остальной части предложения эта конструкция всегда отделяется запятой.

Абсолютная причастная конструкция, стоящая в начале предложения, чаще всего переводится на русский язык придаточным предложением, вводимым словами «так как», «поскольку»:

An offer consisting of various terms, care should be taken that the whole of the terms are brought to the notice of the other party.

Поскольку оферта может состоять из нескольких условий, необходимо предусмотреть, чтобы до сведения адресата оферты было доведено каждое из них.

There being no comparable statutory provision in the Bahamas to the relevant English Charities Act, the court was to exercise its *cy pres* jurisdiction so as to give effect to the underlying charitable purpose of the trust.

Поскольку законодательство Багамских островов не содержало положения, сопоставимого с соответствующим законом о благотворительной деятельности, действующим в Англии, суд должен был применить юрисдикцию *su pres*, чтобы реализовать основополагающую благотворительную цель траста.

(Как видно из вышеприведенного примера, конструкция может начинаться с вводного слова “**there**”, лишённого лексического значения.)

Абсолютная причастная конструкция, стоящая в конце предложения, обычно переводится на русский язык в виде второй части сложносочиненного предложения, присоединяемой к первой части без союза или вводимой союзами «а», «и», «при этом»:

It is said that there is no difference in the meaning of the terms “factors” and “commission merchants”, the latter being perhaps more commonly used in America.

Считается, что между терминами «факторы» и «комиссионеры» различия не существует, при этом последний, возможно, более часто используется в США.

Under some community property systems, and despite the provisions of a will, on the death of a husband or wife one-half of all the community property passes to the surviving spouse; the other half being subject to disposition by will.

В соответствии с принятыми в некоторых штатах правилами раздела или наследования общего имущества супругов, действующими в рамках так называемой “community property system”, несмотря на условия завещания, в случае смерти мужа или жены половина всего общего имущества переходит другому супругу, а распоряжение второй половиной осуществляется в соответствии с условиями завещания.

Причастие, образующее часть конструкции, может быть перфектным. В этом случае конструкция переводится придаточным предложением, вводимым словами «после того как»:

A method of executing traitors in England having been introduced in 1241, the traitor was carried on a hurdle to the gallows, hanged

till half dead and then cut down; the executioner usually cutting out the heart and holding it up to view.

После того как в 1241 году в Англии был введен новый способ казни изменников, преступника везли на повозке к месту казни, вздергивали на виселицу, затем снимали полуживого и разрубали на части; при этом палач обычно вырезал сердце и выставлял его на всеобщее обозрение.

At this point it is helpful to correlate the facts with the motive of the crime, the circumstances and details of the case having been established and recorded.

После того как обстоятельства происшествия полностью установлены и запротоколированы, полезно соотнести факты с мотивом преступления.

Примечание

В то же время, учитывая, что существующая в грамматической системе английского языка абсолютная конструкция не имеет прямого соответствия в русском языке, необходимо иметь в виду и другие возможные варианты перевода данного явления, при которых для достижения эквивалентности перевода требуется изменить всю структуру предложения:

In *Re Coca-Cola Co.*, the Coca-Cola organization attempted to register as a trade mark the well-known and distinctive shape of the bottle in which the beverage is contained. protection under the registered design legislation having run out.

В деле «Кока-кола» компания «Кока-кола» в связи с истечением срока действия защищенных прав по законодательству о товарных знаках попыталась зарегистрировать в качестве товарного знака хорошо известную и легко узнаваемую форму бутылки, в которой продается напиток.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая внимание на особенности передачи перфектной и неперфектной форм причастия в составе номинативно-причастной абсолютной конструкции.

1. A performing right was by this statute accorded to musical as well as to dramatic works, the term of both being the new period.
2. The decision demonstrated how strained the concept of artistic copyright had become when applied to subjects of manufacturing industry; by selling shirts bearing this design in the United Kingdom, the plaintiff's copyright in the design would have been infringed, such sale being regarded as publication within the meaning of the Copyright Act of 1956.

3. **Its work having been completed**, the Trusteeship Council has amended its rules of procedure to meet as and where occasion may require.
4. For example, if A agrees with B, **there being a consideration for the promise, that C shall receive a certain sum of money**, C cannot enforce the payment of the sum agreed upon, or any other sum, because he is no party to the agreement.
5. All the terms of an agreement to be binding must be assented to by both parties, and in the same sense or with the same intent, and must be obligatory on both parties, though there are exceptions to this, as in the case of a minor contracting with an adult, **the latter being bound and the minor being entitled to plead his minority and thereby defeat the action**.
6. By will T may leave, say, £ 150,000 to B absolutely, **B's agreement having been obtained secretly to hold £ 100,000 on trust for Mandy Mountjoy for life, then for her son, Sebastian, absolutely**.
7. The word "resulting" is used in the sense of "springing back"; **the idea being of the property springing back to benefit the grantor**.
8. It is thus a simple matter to create a trust, **no formalities being required except that trusts of land must be evidenced in writing at some stage**.
9. Corporations pay tax on the income they receive; **that income having been distributed to shareholders in the form of dividends**, it is again taxed in the hands of the individual shareholders.
10. An auction sale occurs when goods are put up in separate lots, **each lot being the subject of a separate sale**.
11. A conditional sale contract is a contract in which the seller reserves the title until the buyer pays for the goods or land, at which time, **the conditions having been fulfilled**, the title passes to the buyer.

КОНСТРУКЦИИ С ВВОДНЫМ "IT"

Структура английского предложения предусматривает обязательное наличие в нем обоих главных членов — подлежащего и сказуемого, а также строго фиксированный порядок слов. Однако подлежащее не всегда выражено значимыми словами, требующими перевода на русский язык, а бывает *формальным*, включаемым в предложение только для создания грамматически правильной конструкции. Обыч-

но в роли формального подлежащего выступает местоимение "it". При этом местоимение "it" занимает в предложении место подлежащего — перед сказуемым, но не несет никакого смыслового значения, поскольку после сказуемого стоит **смысловое подлежащее**, выраженное:

а) **инфинитивом (обычно с зависимыми словами)**:

It is difficult **to count the number of "lawyers" in the world** because a "lawyer" is defined differently in each country.

Трудно *подсчитать количество юристов в мире*, потому что в каждой стране понятие «юрист» определяется по-своему.

б) **придаточным предложением, вводимым союзом «that»**:

It is a fundamental principle of American criminal law **that a person charged with the commission of crime is presumed to be innocent until proven guilty**.

Фундаментальный принцип американского уголовного права гласит, *что лицо, обвиняемое в совершении преступления, считается невиновным, пока его вина не будет доказана*.

Подлежащее, выраженное местоимением "it", в предложениях со сказуемым, передаваемым формами глаголов "say", "report", "announce", "hold", глаголов физического и умственного восприятия "see", "hear", "know", "think", "consider", "deem", "remember", глаголов "seem", "appear" и некоторых других, также является формальным, не переводимым на русский язык:

It is said that a term of only 25 years will put British film producers at a serious disadvantage as against producers in those countries affording protection to films for the term of 50 years.

Считается, что срок защиты прав в течение всего лишь 25 лет поставит британских кинопродюсеров в гораздо более невыгодное положение по сравнению с продюсерами тех стран, законодательство которых предусматривает срок защиты в течение 50 лет.

As **it was found** as a fact that the person had acted without negligence **it was held** that he was not liable on the bill, though **it is** often **said** that negligence in such matters is hard to trace.

Поскольку *было установлено*, что лицо не допустило небрежности, *суд признал*, что оно не несет ответственности по векселю, хотя *считается*, что небрежность в таких делах выявить трудно.

Even if **it appears** at first sight that the rules of natural justice do apply, **it must be remembered** that the rules can be excluded.

Даже если на первый взгляд *представляется*, что к конкретному случаю применимы нормы естественного права, *нужно помнить* о том, что эти нормы могут и не применяться.

Еще одним случаем формального подлежащего, выраженного местоимением "it", являются так называемые **эмфатические конструкции**, употребляемые для выделения (*эмфазы*) одного из членов предложения. При переводе русское предложение обычно начинается со слов «**именно**», «**только**»; часто используются также усиительные слова «**же**», «**но**», «**ведь**»:

It is the judge who decides the law applicable to the case; **it is the jury** who decide the facts after the judge has instructed them concerning the law.

Только судья решает, какой закон применить к данному делу; **присяжные же** принимают решение в отношении фактов, после того как судья разъяснит им нормы права.

It is under the rule in *Saunders vs Vautier* that it was finally established that the beneficiaries, if unanimous, can terminate the trust and require the trust property to be vested in themselves or their nominees.

Именно в решении по делу *Saunders vs Vautier* было установлено правило, в соответствии с которым бенефициары в случае их общего согласия могут прекратить действие договора траста и потребовать передачи имущества траста себе или названным ими лицам.

Due to the obvious difficulties and dangers, only about 3% of company pension funds are self-invested, but **it is here** that there are usually close links between the funds' trustees and the company.

Вследствие очевидных трудностей и рисков только около 3% пенсионных фондов компании формируется за счет ее собственных средств, но **именно в этом случае** между доверительными управляющими фондов и компанией обычно складываются тесные связи.

It was not **until the Tudor monarchy in the 16th century** that anything like an efficient administrative system was established and **it was the monarch** who exercised firm control over it.

Сколько-нибудь эффективная административная система стала складываться **лишь в 16-м веке с приходом к власти династии Тюдоров**. И не кто иной, как **монарх** осуществлял жесткий контроль за ее функционированием.

УПРАЖНЕНИЕ. Переведите следующие предложения, содержащие конструкции с вводным "it".

1. **It is very important** in this context to be precise about one's terminology, and, in particular, to distinguish carefully between "review" and "appeal".
2. **It is a basic principle** of the law of copyright in Britain that there is no copyright in a title.
3. **It appears from the reading** of the X decision that at least five members of the Supreme Court would have voted to recognize surrogate decision.
4. **It has been said** that the work of the lawyer is to be a wise counselor, to be an advocate, to work toward the improvement of the profession.
5. **It is the right** of the parent who does not have custody of the minor children to visit those children while the children are in the custody of the other spouse.
6. **It is sensible** for the client to ask the lawyer in advance what the consultation fee will be.
7. **If it appears** to the court that there is merit in the wife's case, it will award her an amount for lawyer's fees.
8. **It is a general rule** that a person who holds a fiduciary position cannot delegate his responsibility to someone else.
9. **It has been said** that voluntary dissolution results from the expiration of a corporate charter, from merger, from consolidation, or from other proceedings which result in the corporation going out of existence.

10. In a construction proceeding **it** is the court's duty first to examine the will and then, if possible, to determine its meaning.
11. **It** was against this use of the trust in the development of monopolistic empires that the Antitrust Act was directed.
12. **It** became apparent, however, that **it** was impossible to evaluate the qualifications of law schools without personal inspection.
13. **It** was held that this defect in the letter, though it might appear trivial, was actually of such importance that it invalidated the whole decision.
14. **It** was the estate or quantum of a man's rights that became significant.
15. Today, **it** is the seller's well-established duty to make sure that the merchandise cannot harm the buyer.
16. **It** is an exception to the broad rule that an act that simply causes emotional distress results in no legal liability.
17. **It** is possible to find many persons who believe that lawyers do not tell the truth.
18. **It** seems natural to ask why criminology has suffered from this bias for so long.
19. **It** is the basic principle to be observed that the director should not use his corporate position to make a personal profit or to gain other personal advantage.
20. **It** was the Copyright Act 1709, familiarly known as the Statute of Anne, which granted authors the sole right of printing their books for 21 years if already printed, and 14 years if not then printed.
21. In *Ridge v. Baldwin* and the cases immediately following it, **it** was held that only those with rights could claim the protection of natural justice.
22. As in the case of assault, **it** is not necessary that the battery be inspired by personal hostility or the desire to injure the other person.
23. Usually **it** is the judge who passes sentence, though in a few states, such as Texas, juries determine the sentence.
24. **It** is often said that lawyers are apt to say, "Everyone should have a will".
25. In cases of negligence to trespassers, **it** is a general rule that the owner or tenant of real estate is not liable for harm to trespassers even if his property is in an unsafe condition.
26. **It** would seem sensible to encourage prisoners to maintain contact with their families and friends, not least because it might ease their return to normal life.

27. **It** is advisable to see a lawyer and have a will drawn in the proper way.
28. **It** is an erroneous belief that facts may be established by written evidence only.
29. **It** is hard to keep track of the legal profession.
30. **It** is often claimed that prison acts as a school for crime.
31. **It** is unethical for a lawyer to solicit automobile accident cases.
32. Once a valid trust is created **it** is only the beneficiaries — and not the settlor — who can enforce it, so the trustees' duty is to keep the beneficiaries — and not the settlor — happy.
33. New drawings were produced in an attempt to get another term of protection but **it** was held that they were not original.
34. **It** seems obvious that taking an offender out of circulation will prevent him from committing crimes against members of the public.
35. **It** is important that zoning ordinances be thoroughly investigated before one contracts to purchase real estate.
36. **It** is a general rule that copyright in artistic works subsists for the life of the author, and a post-mortem period of 50 years.
37. **It** is the trustees who manage the trust property, and rights and duties thereby arising involve only them and not the beneficiaries.
38. **It** appears, then, that a more widespread understanding of the Model Rules of Professional Conduct should be attempted by education and by publicity.
39. **It** is perfectly reasonable to take the view that prisoners cannot expect to lead a luxurious lifestyle.
40. **It** is a general rule that the author of a work is the first owner of any copyright in it.
41. **It** is usually not necessary that any particular words be used in making a will.
42. **It** is a general rule that the crime of homicide is prosecuted in the county where the crime was committed.
43. **It** may afterwards appear that through mistake or error in judgement there was an overvaluation of property received by the corporation in exchange for stock.
44. **It** is the courts themselves which have, over the last four centuries, decided the extent of their power.

ИНВЕРСИЯ

Как уже отмечалось, для английского предложения характерен фиксированный порядок слов, в котором каждый член предложения имеет определенное место по отношению к другим. Если подлежащее стоит перед сказуемым, порядок слов называется прямым. Если сказуемое или его часть стоят перед подлежащим, порядок слов называется обратным, или **инверсией**.

Инверсия используется в утвердительных предложениях для того, чтобы сделать предложение более выразительным, эмоциональным в двух основных случаях:

- а) в придаточных условных предложениях с глаголом в сослагательном наклонении. В этом случае условие, выражаемое в таком предложении, является, как правило, неосуществимым. При переводе русское предложение следует начинать со слов «**если бы**»:

Had this bill **succeeded** in the form in which it was drafted, it would have had the following effects.

Если бы этот законопроект **был принят** в той форме, в которой он был первоначально составлен, это имело бы следующие последствия.

The object of damages is to place the injured party in as good a position as he would have been in **had** the contract **been carried out**.

Цель возмещения убытков заключается в том, чтобы обеспечить потерпевшей стороне такое положение, какое она бы имела, **если бы** договор **был исполнен**.

A beneficiary has an equitable interest in the trust property itself, so that **were** such property in Manitoba he would be treated as having a Manitoban interest even if the trustees were English trustees administering the trust in England.

В соответствии с правом справедливости бенефициар имеет права на предмет траста как таковой, поэтому **если бы** такое имущество **было** в Манитобе, он бы считался имеющим права в соответствии с законами Манитобы, даже если бы дове-

рительными собственниками были подданные Англии, осуществляющие управление имуществом траста из Англии.

Then, **were** the matter **litigated** in Belgium, Belgian law would apply; while **were** it **litigated** in England then English law would apply.

Далее, **если бы** дело **было принято** к судебному производству в Бельгии, оно бы рассматривалось на основе бельгийских законов; тогда как **если бы** дело **было принято** к судебному производству в Англии, то оно бы рассматривалось на основе английских законов.

Should the author **be still living** at the end of that period, the protection was to continue for the remainder of his life.

Если бы на конец этого периода автор **все еще был жив**, защита его прав должна была бы продолжаться в течение всей его оставшейся жизни.

The law of contract exists to provide one party with a remedy **should** the other **fail** to do what he has undertaken.

Договорное право существует для обеспечения средств судебной защиты одной стороне в случае, **если** другая сторона **не сделает** того, что обязалась сделать.

- б) в предложениях, начинающихся с обстоятельств, а также с отрицательного союза “**not**”:

No longer is the criminologist a middle class observer studying lower class behaviour.

Криминолог **более не** является наблюдателем, выходцем из среднего класса, изучающим поведение представителей низших слоев общества.

Nowhere is this more true than in the realm of copyright, where the major Western European countries favour a philosophical approach.

Нигде более это не является столь очевидным, чем в области авторского права, в которой главные страны Западной Европы отдают предпочтение философскому подходу.

Not only was the insurance contract lawful by English law but the premiums were to be paid in England and any claims on the policy were to be made in England.

Не только сам страховой договор был признан законным в соответствии с английским правом, но и страховые взносы должны были уплачиваться в Англии, и любые требования по полису должны были предъявляться в Англии.

A landowner owes his guest no absolute duty to prepare a safe place for his coming, **nor does he have** to inspect his land to uncover possible dangers.

Владелец земли не несет никаких обязательств перед своим гостем за обеспечение безопасности места посещения; он **также не** обязан осматривать территорию с целью обнаружения возможных опасностей.

Сходный вариант инверсии наблюдается в предложениях, начинающихся с сочетания слов **only when, only if, only where**. Однако здесь инверсия будет употребляться не в придаточном предложении, вводимом указанными словосочетаниями, а в главном, к которому относится такое придаточное:

Only when you have proved that there is a right to a fair hearing **is it** safe to go on to consider the content of the rule in detail.

Только когда вы доказали наличие права на беспристрастное судебное разбирательство, можно перейти к детальному изучению содержания нормы права.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая внимание на особенности передачи инверсии.

1. **Had** this measure **been passed**, it would undoubtedly have destroyed both the Performing Right Society and the occupation of song-writer as a means of gainful employment.
2. **Were** the trustee's £ 2,000 and the beneficiaries' £ 3,000 **used** to purchase a £ 5,000 asset, the beneficiaries would be entitled to 3/5 of it.
3. **Should** the company **fail** to provide the name of a person authorized to accept service on the company's behalf, or **should** this person **be dead** or **have ceased** to reside at that address, then the writ can be

served by leaving it at or sending it by post to any place of business established by the company in Great Britain.

4. To those representing the interests of authors, it has been apparent for some time that **not only is action required** to protect the literary world from direct assault in the nature of unauthorized and wide-scale infringements of copyright involved in multiple reproduction, but at the same time new sources of income are required to replace the potential sales which have been lost.
5. **Only when** you have proved that the rules of natural justice do apply **can** you safely **go on** to look for breaches of them.
6. The trustees may or may not pay out under dispositive powers: **only if** they choose to pay out **is** there a further choice as to who should be the payees.
7. However, **were** the shares worth £ 6,000 **divided** between Trusts A, B and C in the original £ 1,000, £ 2,000, £ 3,000 proportions, each Trust would recover its original moneys.
8. **Not only does it act** as a deterrent to would-be copiers, but it also goes some way towards establishing the date of creation of the work, **should** this ever **be disputed**.
9. So, **should** such a case **arise** before an English court, that court would not apply the lex fori but would apply French law as the law of the cause or lex causae.
10. **Were** the trustee in breach of trust **to appropriate** trust funds to buy a Picasso for himself, then the beneficiaries could claim the Picasso as their own.
11. **Not only are** such obvious candidates as income tax, capital gains tax and death duties **included**, but also municipal rates and customs duties.
12. On the other hand, **were** the lex fori (English law) **applied** to the incidental question, a different result to that reached by the Brazilian courts would be reached: the second marriage would be upheld.
13. If both the French court and the English court had rejected renvoi, then French law would have been applied **had** the case **been litigated** in England, while English law would have been applied **had** the case **been litigated** in France.
14. **Should** that party **fail** to adduce any evidence of the foreign law, or **adduce** insufficient evidence of that law to enable the judge to form an opinion of the relevant question, then the court will apply English law.

5. **Were** trustees' discretions **to be delegated**, the donor of the power would be automatically vicariously liable for the acts or defaults of the donee, which is a very significant sanction.
6. When a person enters into a partnership agreement, **not only is** his investment in the business **at stake**, but all his other personal assets may be at risk as well.

Раздел 3

ОСОБЕННОСТИ ПЕРЕВОДА НЕКОТОРЫХ ТИПОВ СЛОВ И СЛОВСОЧЕТАНИЙ

PROVIDED (THAT)		
СОЮЗ provided (that) при условии, что; в том случае, если	ГЛАГОЛ provide (provide that... provide for smth., provide smth.) 1) предусматривать, 2) предоставлять, обеспечивать	ПРИЧАСТИЕ provided (for) предусмотренный, обусловленный
<p>The partnership firm as well as each member thereof is answerable for the acts of its agents and employees provided their acts are registered in the course of their employment.</p> <p>Товарищество в целом и каждый член товарищества в отдельности несут ответственность за действия своих агентов и служащих при условии, что такие действия совершаются последними в рамках договора найма.</p> <p>Provided they satisfy these rules, illustrators may register as well as authors.</p> <p>В том случае, если иллюстраторы соответствуют предъявляемым требованиям, они могут быть зарегистрированы так же, как и авторы.</p>	<p>The US Constitution provides that no state may pass a law impairing the obligation of contracts.</p> <p>Конституция США предусматривает, что ни один штат не может принять закон, ослабляющий обязательную силу договоров.</p> <p>Under the Uniform Commercial Code, all agreements which create or provide for a security interest in personal property are called "security agreements".</p> <p>В соответствии с Единым торговым кодексом "security agreements" — это все соглашения, которые создают или предусматривают право на обеспечение в виде движимого имущества.</p> <p>The courts have provided the following guidelines for determining the existence of an inferred common intention.</p> <p>Суды предусматривают следующие критерии, в соответствии с которыми устанавливается наличие подразумеваемого общего намерения.</p> <p>If you provided services and the other party refuses to pay, you can bring a claim in court to recover your money.</p> <p>Если вы предоставили свои услуги, а другая сторона отказалась их оплатить, вы можете высказать претензию в суд в судебном порядке.</p>	<p>The General Assembly may discuss any questions of any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter.</p> <p>Генеральная Ассамблея уполномочивается обсуждать любые вопросы или дела в пределах настоящего Устава или относящиеся к полномочиям и функциям любого из органов, предусмотренных настоящим Уставом.</p> <p>A state which is not a member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.</p> <p>Государство, которое не является членом Организации, может довести до сведения Совета Безопасности или Генеральной Ассамблеи о любом споре, в котором оно является стороной, если оно примет на себя заранее в отношении этого спора обязательства мирного разрешения споров, предусмотренные в настоящем Уставе.</p>

УПРАЖНЕНИЕ. Переведите следующие предложения, предварительно определив, какой частью речи в этих предложениях являются выделенные слова.

- It would not matter what conclusion you reached, **provided that** it was supported by the arguments you had used.
- Settlers sometimes **provide that** a person will only qualify as a beneficiary if he satisfies some condition or answers to some particular description: the question then arises as to how certain and administratively workable must the condition or description be.
- There may be a voluntary dissolution of the corporation, **provided that** the majority of the incorporators desire that the corporation be dissolved.
- Although authority is often confusing, questions about damages should not cause great difficulty **provided** the distinction between remoteness of damage and quantum (or amount) of damages is kept clearly in mind.
- The Act further **provides that** UK courts may award damages to those whose rights have been infringed.
- Distinctions are often made on arbitrary grounds, but that is acceptable **provided** the limitations of such an approach are recognized.
- Under the mother's will the daughter was entitled to the mother's movables **provided** she survived her mother.
- The Model Act **provides that** the board of directors of a corporation shall elect a president, a secretary, a treasurer, and one or more vice-presidents.
- Some states have changed the rules of the common law in order to **provide that** the majority of written contracts are presumed to have valid consideration.
- When an agent has exceeded his authority in such a manner that his principal could not be bound by the contract which has been made, the principal may afterwards adopt the transaction **provided** the agent has contracted as agent and not as principal.
- To make matters even worse, decisions were only regarded as judicial if a hearing **had been provided for** by statute.
- Walker (1971) suggested that criminologists can draw on official figures to make useful inferences about crime and the penal system, **provided** they use common sense and follow certain guidelines.
- An appeal may be on law, fact or merits or any combination of those three, depending on what Parliament **has provided**.
- Formerly, people using dynamite or other explosives for blasting were immune from damage claims of neighboring property owners **provided that** rocks or other material were not cast upon the damaged premises.
- When the agreement **provides for** termination upon a certain date or the happening of a particular event, such occurrence dissolves the partnership.

SUBJECT TO			
СОСТАВНОЙ ПРЕДЛОГ subject to при условии; с соблюдением; с учетом; допущая; в том случае, если	ПРИЛАГАТЕЛЬНОЕ subject (to) подлежащий, подпадающий	СУЩЕСТВИТЕЛЬНОЕ (a/the) subject (of) 1) предмет (разговора, обсуждения), тема, вопрос 2) предмет (изучения), дисциплина, область; 3) подданный, субъект	ГЛАГОЛ subject (to) [səb'dʒekt] подвергать, подчинять
<p>A contract of sale is sometimes entered into subject to certain conditions.</p> <p>Договор продажи иногда заключается с учетом определенных условий.</p> <p>Bankruptcy judges are appointed by the president subject to approval by the Senate.</p> <p>Судьи судов по делам о банкротстве назначаются президентом с одобрения Сената.</p>	<p>The assets of a living trust are ordinarily subject to estate taxes.</p> <p>Активы прижизненно-го траста обычно подлежат налогообложению с наследства.</p> <p>Certain property is exempt from execution; generally, only personal property can be subject to an execution.</p> <p>Определенная собственность освобождена от взыскания по исполнительному листу; вообще только движимое имущество может подпадать под судебное взыскание в обеспеченные иском кредиторов.</p>	<p>This continues to be a subject of debate between the courts and the media.</p> <p>Это остается предметом спора между судами и средствами массовой информации.</p> <p>The subject was controversial and was debated for many years.</p> <p>Вопрос был спорным и обсуждался много лет.</p> <p>A well-known authority upon the subject of Sale of Goods has thus expressed himself...</p> <p>Известный специалист в области правового регулирования купли-продажи товаров выразил свою мысль следующим образом...</p> <p>A subject is someone who lives in a country that is controlled by a king or queen.</p> <p>Подданным называют лицо, живущее в стране, являющейся монархией.</p>	<p>To subject anyone to torture or to cruel, inhuman or degrading treatment or punishment means to act in contravention of the provisions of the International Covenant on Civil and Political Rights.</p> <p>Подвергать кого-либо пыткам или жестокому, бесчеловечному или унижающему человеческое достоинство обращению или наказанию означает действовать в нарушение положений Международного пакта о гражданских и политических правах.</p> <p>The amendments approved by the Senate Appropriations Committee subject those who deliberately defraud the United States to jail terms of up to 20 years and costly fines.</p> <p>Согласно поправкам, одобренным сенатским комитетом по ассигнованиям, лица, умышленно совершающие мошеннические действия в отношении государства, подлежат тюремному заключению сроком до 20 лет и большим денежным штрафам.</p>

УПРАЖНЕНИЕ. Переведите следующие предложения, предварительно определив, какой частью речи в этих предложениях являются выделенные слова.

- Although there is no central register for the deposit of copyright material in Britain, as is the case in the United States of America, nevertheless the publisher of a book is **subject to** certain requirements of a similar nature.
- The person to whom a nonnegotiable instrument or contract is transferred takes it **subject to** all the original agreements, understandings, and defenses available between the original parties to the instrument.
- Now all partnerships, individuals, and corporations are **subject to** one reorganization chapter.
- Most corporations are only **subject to** the jurisdiction of the law of the state of incorporation or the laws of the states where they do business.
- The proceedings may be conducted out of court (voluntary dissolution) or **subject to** the supervision of a court (involuntary dissolution).
- These three **subjects** – jurisdiction, choice of law and the recognition and enforcement of foreign judgments – comprise the Conflict of Laws.
- All corporations listed on any stock exchange are **subject to** the Securities Laws.
- All assets of the decedent that pass to his or her surviving spouse will not be **subject to** tax at the time the surviving spouse dies.
- Now, **subject to** some presently irrelevant limitations, the proprietary consequences of marriage are governed by the husband's domicile at the time of the marriage.
- A manufacturer who fails to exercise reasonable care in the manufacture of merchandise may be **subject to** liability for bodily harm resulting from his negligence.
- A landlord who conceals from his tenant a condition involving risks of bodily harm to persons coming onto the land is **subject to** the liability for whatever harm results.
- On **the subject of** expense, the Government's own figures make frightening reading.
- In looking at this case, it is worth noting that, as was usual at that time, the House of Lords classified the minister's decision as administrative, suggesting that it was not **subject to** natural justice at all.
- A landlord who leases real property for use by a large number of persons may be **subject to** liability for bodily injuries caused by a dangerous condition existing when the tenant took possession.

15. If the principal instructs the agent to purchase Blackacre for the principal but the agent purchases it for himself, equity treats the agent as holding Blackacre on trust to transfer it to the principal, **subject to** the agent being reimbursed the purchase price.
16. The application of the rules of natural justice was complicated for many years by the drawing of a distinction between judicial decisions, which were **subject to** natural justice, and administrative decisions which were not.
17. Religious practices are **subject to** the rules of government.
18. The product of a mere industrial process is, according to this view, not worthy of consideration as a **subject of** copyright, but must turn for its protection to the laws designed to shield manufacturing processes.
19. An interest is vested when it is fixed, certain, absolute and not **subject to** defeat by a future uncertain event.
20. Sometimes a property is sold **subject to** or by assuming an existing mortgage.
21. A majority of the Whitford Committee on the other hand recommended that, **subject to** any agreement to the contrary, copyright in all commissioned works should belong to the author.
22. Any property going to a minor child in such a situation would be **subject to** an expensive court appointed guardianship, which could eat up any inheritance.
23. Technically, the only property **subject to** probate is that for which there is no other legal mechanism for shifting title to a new owner.
24. The officers and agents have authority to perform duties in the management and affairs of the corporation **subject to** such control of the board of directors as may be prescribed in the bylaws or as determined by the board.
25. Even a family member who doesn't take fees would have to file frequent accountings with the court and be **subject to** strict supervision over how funds are spent – which may require the assistance of a lawyer and an accountant.
26. There are many rules governing **the subject of** offers and acceptances.
27. Visits are also **subject to** restrictions, some administrative, others of a geographical origin.
28. If a settlor wishes to create a trust by declaring himself trustee of some of his own property he must be specific as to which of his property is **subject to** the trust.

29. Later, these statistics are **subject to** official processing.
30. The Fifth Amendment to the Constitution of the United States states that no person "shall be **subject** for the same offence **to** be twice put in jeopardy of life or limb."
31. Thus in *Infabrics Ltd. v Laytex Ltd.*, a design on printed fabric showing three racehorses with their jockeys passing a winning post in a dead-heat finish was **the subject of** copyright as an artistic work.
32. When a person lives in a cooperative he usually signs a written agreement to abide by the rules and regulations of the co-op board. He is free to do any basic interior decorating, but most boards require that plans for any renovation affecting the structure or mechanics of the building be **subject to** their approval.
33. Fabric designs, if of sufficient originality, are entitled to protection under copyright law as artistic works, although in their industrial application they become **the subject of** wide multiplication.
34. The defendant swore that the information was true and signed a statement of understanding that if his application contained any false information or materially misleading statements, or concealed any material fact, he would be **subject to** criminal prosecution and deportation.
35. Liberty of **the subject** is right of a citizen to be free unless convicted of a crime which is punishable by imprisonment.
36. British **subjects** do not need visas to visit Common Market countries.

OTHERWISE

1. The requirement of the Uniform Commercial Code that a note be "payable to order" means that the draft or note or other commercial paper must be payable to the order of a designated person, not just to the person. **Otherwise**, the instrument must be payable to bearer.

Требование Единообразного торгового кодекса, заключающееся в том, что вексель должен подлежать «оплате приказу», означает, что переводный вексель, простой вексель или любой другой оборотный документ подлежат оплате не только в пользу определенного лица, но и в соответствии с распоряжением обозначенного лица. **В противном случае** документ подлежит оплате на предъявителя.

2. Mental incapacity caused by medicinal use of drugs may excuse the commission of what **otherwise** would constitute a criminal act.

Психическое расстройство, вызванное приемом лекарственных препаратов, освобождает от ответственности за совершение того, что **иначе** могло бы квалифицироваться как преступное деяние.

3. Absent a statute **otherwise**, oral contracts are enforceable.

Если в законе не предусмотрено иное, исковой силой наделяются и устные договоры.

4. In the case of a draft, the drawee must be named or **otherwise** indicated with certainty.

Если речь идет о тратте, трассат должен быть назван или точно указан **каким-либо иным способом**.

5. When the legal maxim "wherever there is a right, there is a remedy" could not **otherwise** be satisfied, an appeal was made to the king's chancellor.

В тех случаях, когда юридический принцип «если есть право, есть и средство его защиты» не мог быть реализован **иначе**, подавалась апелляция лорду-канцлеру.

6. The contract provided that "all conditions, warranties and liabilities, implied by statute, common law or **otherwise**" were to be excluded.

Договор предусматривал, что «все существенные условия, гарантии и обязательства, вытекающие из закона, общего права или **других источников**», должны быть исключены.

7. The assumption underlying this is that the administration needs to be controlled because **otherwise** it will endanger the rights and liberties of the citizens.

Исходная посылка состоит в том, что за деятельностью администрации необходим контроль, поскольку **в противном случае** ее действия могут создавать угрозу правам и свободам граждан.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая внимание на особенности перевода otherwise в разных позициях.

1. Partial performance of a contract that would **otherwise** be unenforceable under the Statute of Frauds makes it enforceable.
2. The New York Business Corporation Law, enacted in 1961, states that every corporation has the power: to purchase, receive, take by grant, gift, devise, bequest or **otherwise**, lease or **otherwise** deal in and with real or personal property, or any interest therein, wherever situated.
3. It is normally advisable to look at such a secondary source, where possible, before reading the law report, as **otherwise** you may waste time looking at aspects of the case which are not essential for your purposes.
4. Some states will also require a parent to continue supporting a child over eighteen if the child would **otherwise** have to go on welfare and become a "public charge".
5. The essential reason for this occasional non-application of the **otherwise** applicable lex causae is that in the particular circumstances the application of the lex causae may lead to a result inconsistent with some fundamental principle of the public policy of the lex fori.
6. If a partner insists, partnership assets may be sold and converted into cash. **Otherwise** they may be distributed in kind.
7. At the end of eleven months, A sues X or **otherwise** asserts her claim.
8. As a last resort, you can sue the garage in small claims court to get the improper part of your bill refunded. If you take this approach, you'll likely need to recruit another mechanic to testify on your behalf to help prove your case. **Otherwise** you may have difficulties with the technical specifics of the dispute.
9. Even if only one spouse is named on a deed, the other spouse may have a right to share in the property if it was obtained with marital funds or if it would **otherwise** be unfair to exclude him or her from sharing in the value of the property or in the appreciation of the value.
10. To the extent that the trustees do not actually use the trust property to **effect the anomalous purposes then** the beneficiaries **otherwise** entitled to **such property may claim it and also** prevent it being used in any other way.
11. **To the extent that powers are not** exercised within the specified time (or, **otherwise**, a reasonable time), then the trustees must distribute the income or capital as **the case may be** to appropriate trust beneficiaries.
12. State and local real **estate boards** require this disclosure as a way of protecting buyers. **Buyers otherwise** might assume that the broker who introduced them to the property is acting as their agent.

OTHER THAN	OTHER THAN, RATHER THAN, RATHER	RATHER
<p>"Goods" include all chattels personal other than things in action and money.</p> <p>Понятие «товар» включает все виды движимого имущества, кроме имущества в требованиях и денеж.</p> <p>But if the goods are actually delivered to the buyer, the seller has no remedy other than an action for the price of them.</p> <p>Если же товар покупателю доставлен, то у продавца нет иного средства защиты, чем иск о взыскании стоимости этого товара.</p> <p>It is obvious that if the carriage is a mere casual employment, the person engaged is bound by a contract other than that which applies to common carriers in general and is only responsible for negligence.</p> <p>Очевидно, что, если перевозка осуществляется лицом в качестве случайного занятия, то это лицо связано договорными обязательствами, отличными от тех, которыми обычно связан ответственный перевозчик, и несет ответственность только за небрежность.</p> <p>Other than these exceptions, though, buyers are bound by the price in a contract.</p> <p>Впрочем, помимо этих ограничений покупателя связаны ценой, указанной в договоре.</p> <p>The rules contained in the Act apply to the carriage of goods other than (a) live animals, or (b) deck cargo.</p> <p>Правила, установленные в данном законе, применяются к перевозке товаров за исключением а) живых животных или б) палубного груза.</p>	<p>In some states a case may be completely retried in a higher court, but this is the exception rather than the rule.</p> <p>В некоторых штатах дело может быть заново рассмотрено в суде высшей инстанции, но это скорее исключение, чем правило.</p> <p>When the seller is to manufacture goods especially for the buyer and the goods are not suitable for sale to others in the ordinary course of the seller's business, the Statute of Frauds does not apply. Such a contract is a contract for labour and materials rather than a contract of sale.</p> <p>Если продавец должен произвести специально но для конкретного покупателя товар, не пригодный для продажи другим покупателям в ходе обычной торговли, то к данному случаю закон о мошенничестве неприменим. Такой договор является договором подряда, а не договором продажи.</p> <p>Rather than wallow in semantic technicalities, we should move on to consider the various aims or functions of punishment.</p> <p>Вместо того, чтобы впадать в семантические тонкости слова «наказание», мы должны проанализировать этот институт с точки зрения его различных целей и функций.</p>	<p>It is clear that neither A nor B views the dollar as the price of the house. Rather, the transaction has only the form of a bargain.</p> <p>Ясно, что ни А, ни В не считают, что дом стоит один доллар. Скорее, такая операция только внешне выглядит как сделка.</p>

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая внимание на особенности перевода **other than, rather than, rather** в каждом конкретном случае.

- Other than** in the special cases to be discussed below this general rule is not subject to any common law exceptions.
- In some instances taxes are imposed by states, **other than** the state of domicile in which the decedent owned property.
- The question of who owns what usually arises only if the couple is splitting up and trying to divide their property, or if one person is writing a will and wants to leave property to a person **other than** the spouse.
- Child labor laws do not apply to children under 16 if they are employed by their parents in occupations **other than** manufacturing, mining or other fields that have been declared hazardous by the Secretary of Labor.
- The members of that Committee did not see why the promoters of sporting events should require any powers **other than** those already available in civil and criminal law to prohibit the appearance of television cameras in the venue where a particular sporting event was held.
- Persons **other than** the owner of the asset can either have proprietary rights over that owner's asset or personal rights merely against the owner himself.
- It is unlikely, however, that anything **other than** strong grounds of national security or public safety would justify the making of a decision without compliance with the rules of natural justice.
- A testator may revoke his will by an instrument **other than** a will containing an express declaration of absolute revocation.
- When people band together for **other than** business purposes, for example, for political, religious, or charitable reasons, no partnership exists.
- Enforcement is very often in the hands of agencies **other than** the police, and violations may attract civil or administrative action **rather than** criminal prosecution.
- As just seen Article 11 requires civil law States to recognize the trust as such **rather than** to try to transpose it into some analogous civil law concept.
- It is often advantageous to incorporate in one state **rather than** in another state.
- A negligent act is a careless or reckless one **rather than** an intentional harm.
- Students will be expected to be aware that appeals exist and that litigants will use them where applicable **rather than** using judicial review.

15. Insurance companies very often make large settlements **rather than** risk large jury verdicts.
16. Indeed, using a good casebook, which gives substantial extracts from judgments **rather than** mere second-hand summaries, will be an adequate way of studying the average case.
17. Juries of twelve members, **rather than** six, should be used to assure greater predictability and discourage obstructionism by individual jurors.
18. It should be noted however that a lot of the earlier material was intended to promote discussion **rather than** to represent fully developed theories.
19. A rider is an amendment, sometimes called an endorsement, added by the insurance company that changes a policy in some way. Most riders limit coverage, **rather than** expand it.
20. Thus a deteriorating area may attract, **rather than** breed, individuals with social problems.
21. The White Paper Crime, Justice and Protecting the Public, 1990, proposes a variety of measures to ensure that sentencing decisions are focused on the seriousness of the offense, **rather than** the character of the offender.
22. A second type regarded themselves as members of a gang, but were casual **rather than** consistent participants in its activity.
23. Park viewed the human population in American cities as being migratory, **rather than** fixed.
24. In many other accounts, the public role in influencing criminal statistics is seen as passive, **rather than** active.
25. It seems quite inappropriate and unjust that English law **rather than** French law should determine which of H's relatives will inherit the money.
26. Where there are two possible constructions due to an ambiguity of wording then a construction should be chosen that makes a trust valid **rather than** void.
27. Securities should have investment **rather than** commercial attributes.
28. When there are no disputes between the parties, an estate may be settled by written agreement **rather than** by an accounting proceeding.
29. The improper influence must so overpower and subjugate the mind of the testator that it destroys his free will and makes him express the will of another **rather than** his own.
30. **Rather than** adhere to a city-wide analysis, some researchers have taken a more microscopic view of particular areas.

31. An illusory promise does not limit one's future options. **Rather**, an illusory promise is an apparent commitment that actually leaves a "free way out".
32. Options and guarantees usually are not donative promises, but **rather** are promises designed to facilitate or further a proposed bargain.
33. The Court did not establish a federal standard as to how that right may be exercised; **rather**, it permits each state to establish procedures limiting the methods of exercising the rights of a patient who is incompetent.
34. Comity is not a matter of right, but **rather** a matter of courtesy and good will.

HOLD

1. The court **held** that the editorial was fair comment and hence free from liability.

Суд признал, что факты в передовой статье были изложены верно, что исключало какие-либо претензии к редакции.

2. Three per cent of the shares are now **held** by US investors.

В настоящее время американские инвесторы владеют тремя процентами акций.

3. You may personally **hold** the libertarian view that the powers of the government are a threat to the liberties of the individual.

Вы лично можете придерживаться философской точки зрения, что любая власть представляет угрозу свободе личности.

6. A series of conferences **have been held**, which led to the four 1958 Conventions on the Law of the Sea and then to the 1982 Convention on the Law of the Sea.

Принятию четырех конвенций по морскому праву 1957 года и конвенции по морскому праву 1982 года предшествовало проведение ряда конференций.

7. For topics such as ombudsmen or tribunals, find out what your library **holds** in the way of official publications.

По таким вопросам, как омбудсмены и суды, узнайте, какими официальными публикациями располагает ваша библиотека.

8. The right to a speedy trial is intended to relieve the accused of the hardship of **being held** in jail indefinitely.

Право на безотлагательное судебное разбирательство призвано защитить обвиняемого от содержания под стражей в течение неопределенного периода времени.

9. Any two or more offices **may be held** by the same person, except the offices of president and secretary.

Одно и то же лицо может занимать любые две или более должностей за исключением должностей президента и секретаря.

10. As there was no negligence committed it **was held** that the defendant was not liable.

Поскольку факт небрежности установлен не был, суд признал ответчика невиновным.

11. Lawyers **holding** public office assume legal responsibilities going beyond those of other citizens.

Юристы, состоящие на государственной службе, несут большую ответственность, чем государственные служащие. Не являющиеся юристами.

4. If the marriage is valid by the law of the place where it occurred, it **will be held** valid wherever the question arises.

Если брак является действительным по законам того места, где он заключен, он будет признан таковым и по законам любого другого места, где бы ни возник вопрос о его законности.

УПРАЖНЕНИЕ. Переведите следующие предложения, обращая особое внимание на значения слова hold.

- Most courts **hold** that nominal consideration makes an option binding.
- All depository institutions – commercial banks, savings banks, savings and loan associations, and credit unions – must retain a percentage of certain types of deposits **to be held** in reserves.
- In 1900 the then copyright legislation, based on the Act of 1842, **was held** to furnish no protection for composers of musical works.
- Although each state legislature has the power to set the schedule, very often the designation of time for **holding** court sessions is left to the court itself.
- Some psychologists **hold** that a person's capacity to learn types of behavior is affected by biological factors.
- When the articles of incorporation are filed, the incorporators **hold** a meeting, adopt bylaws, and approve the initial steps to be taken by the corporation.
- It is also clear that the expert need not have either academic or professional qualifications if he has had appropriate practical experience of the law in question. Thus an ex-Governor of Hong Kong **has been held** competent to give evidence of the marriage laws of the Colony.
- Such marriages **were held** valid in England even though they were contracted in Scotland purely to evade the provisions of English law.
- In closely **held** corporations, the distinction between shareholders and managers may be insignificant because the shareholders, directors and officers may be the same people.
- Other corporations have a large number of shareholders and have shares which trade in various stock markets. These are called publicly **held** corporations.
- Formal meetings of the Federal Open Market Committee **are held** eight times each year in Washington, D.C. Telephone conversations and other meetings **are held** when needed.
- They were arrested and **held** under the Prevention of Terrorism Act.
- In the past, New York courts **have held** that mental or emotional injuries were so vague that it would be against public policy to permit money recoveries.
- A stock corporation is one in which the capital stock is divided into shares **held** by the owners of the corporation.
- The appeals courts in Idaho and Iowa **have held** that their guest statutes were unconstitutional.

16. A number of specialized conventions came into existence as a result of conventions **held** in various parts of the American continent.
17. In the United States each partner **may** usually **be held** liable for the total amount of the partnership debt.
18. At the end of June 1994, the United States **held** foreign currency reserves valued at \$42.8 billion.
19. In certain cases a trial **held** within six months **has been held** to be a speedy one, while in other cases the same period of time **has been held** to be excessive.
20. Recently, courts in some jurisdictions **have held** that an expert witness may be asked his opinion directly, instead of having to give it as an answer to a hypothetical question.
21. The courts **have held** that well-meaning but unauthorized surgical operations may give rise to a cause of action of battery.
22. *In camera* hearings **are** sometimes **held** in cases involving trade secrets.
23. If the decision is a severable one, the courts **could** simply **hold** that it bound those who were given notice but not those who were not.
24. The US Supreme Court **has held** that the public and the press have access to courtrooms while trials are in progress.
25. **It was** widely **held** at one time that the seas were capable of subjection to national sovereignties.
26. In some states, when the punishment is by fine only, the trial **may be held** in the defendant's absence.
27. Shareholders who purchase shares in corporations take the risk that if the corporation **is** ultimately **held** liable, they will lose all or part of their investment.
28. In such a situation, most courts **hold** that A's promise should not be interpreted as a promise to forbear forever.
29. The Board of Governors is the central governmental agency of the Federal Reserve System, located in Washington, D.C., and composed of seven members, who, **holding** a position of trust and responsibility, are appointed by the President and confirmed by the Senate.
30. The court **held** that the defendant's obligation to obtain a formal written license was a mandatory requirement.
31. Too often, married persons believe they can avoid the necessity for making a will by having all property jointly **held**.
32. The exception **holds** that even where the United Kingdom does not recognize the state in question, it may recognize another state as entitled to exercise sovereign authority there.

МАТЕРИАЛЫ ДЛҀЯ ПОВТОРЕНИЯ

УПРАЖНЕНИЕ 1. Переведите следующие предложения, обращая особое внимание на выделенные трудности.

1. **It is significant**, however, that **it is the court which** decides whether a body is public enough to **be subject to** judicial review.
2. In *Howard v. Secretary of State for the Environment (1973)*, the time limit of 42 days for appealing against an enforcement notice **was held** to be mandatory, because **it was essential for** the authorities to **know whether** they could take immediate enforcement action or would have to wait for the outcome of appeal.
3. The House of Lords **held** that the reviewing court must ask itself **whether** there was a real danger of bias, **rather than** invoking the imaginary reasonable person.
4. **It is a fundamental principle** of law **that** for every wrong, there is a remedy. **The subject of** rights and wrongs embraces **the entire subject of** human relations.
5. The rule is clear in the case of the destruction of property, but sometimes disputes arise when the form of the property is altered, **rather than** destroyed, **for** its identity may be lost when altered.
6. The courts also rejected that argument, **holding** that it cannot be known **whether** a victim will recover anything at all from a lawsuit.
7. The landlord **is subject to** liability for bodily injuries caused to his tenant or others if a condition of disrepair existed before the tenant took possession or if the landlord agreed by covenant in the lease or **otherwise** to keep the premises in repair.
8. Although children usually may also be disinherited, most states **provide** that children who are born after the making of a will but before the death of the testator inherit as though there were no will, **unless it appears** that the testator intended **otherwise**.
9. Almost all other states have a law requiring that persons may not transact business as partners under a partnership name **other than** their own names **unless** they file in the county clerk's office in the county in which the firm operates a certificate showing the name under which the business is transacted and the name and address of each partner.
10. Property owned by husband and wife as tenants by the entirety is not good security **for** a creditor who has a claim against the husband alone.

- or against the wife alone, **for** when the creditor's claim is reduced to judgment, it attaches only against the survivorship interest of the husband or wife.
11. Eleven states list pregnancy existing at the time of marriage as a ground for divorce, **provided** the pregnancy is **proved to have been caused** by a man **other than** the husband.
 12. This doctrine led to evils, **for unless** it was restricted, the creditor might never know **whether or not** the land was rightfully his.
 13. Until recent years the law governing landlords and tenants was that, **unless otherwise** expressly **provided** in the lease, a tenant took the leased premises "as is", and assumed all risk as to their condition.
 14. **Whether** an accord is a substituted contract **is said to be** a question of the parties' intent.
 15. The contract is **said to be** within the Statute of Frauds **unless** some exception to the Statute applies. If an exception does apply, **it is said that** the contract is "taken out of the Statute".
 16. **Unless otherwise** expressly agreed upon, tender of delivery and payment of the purchase price are concurrent conditions so that each party is required to perform or tender performance at the same time.
 17. Law so grounded makes justice possible, **for** only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become **subject to** unrestrained power, respect for law is destroyed, and rational self-government is impossible.
 18. **It is the general rule that** a lawyer may not testify in litigation in which he is an advocate **unless** circumstances arise which could not be anticipated and **it is necessary** to prevent a miscarriage of justice.
 19. **It is in the interests** of both the State and the individual **for proper arrangements to be made for** an individual's needs **once** he retires from paid employment.
 20. **Unless** such rules prescribe **otherwise**, the trustees will have a right of indemnity out of the club's property, but not against the club members personally.
 21. This was obviously a sensible result **for** the rigid English choice of law rule would **otherwise** lead to injustice.
 22. The crux of the matter is that if one beneficiary, B, who clearly is a relative, objects that the trustees should not have paid money to X because X is not a relative, the burden of proof lies on the trustees to prove X is a relative **for otherwise** they will be liable for breach of trust.

23. This situation was clearly anomalous, **for** aesthetic creation should surely be regarded with a longer term of protection **rather than** a shorter one, and designs which are merely mechanical ought to be excluded from such protection.
24. **It should be noted** that the property of foreign central banks will, **unless** the bank agrees **otherwise**, remain immune from execution.
25. A State is also not immune in regard to contracts (**whether** commercial transactions **or not**) to be performed wholly or partly in the United Kingdom (**unless** the parties have agreed **otherwise**), **nor** is it immune regarding employment contracts where the contract was made in the UK or the work is to be done here **unless** the parties agree **otherwise**, or the employee is a national of the State or not a national of the UK.

УПРАЖНЕНИЕ 2. Переведите следующий текст, стараясь сохранить целостность повествования, обращая при этом особое внимание на выделенные трудности.

...You will certainly wish to achieve the best class of degree you can, so you should be aiming to maximize your performance, **rather than** doing the barest minimum to scrape through.

...**It is** perfectly **realistic** to set yourself the aim of obtaining an upper second in administrative law. I am not saying that it is **an easy subject**; at final degree level there are no easy **subjects**, but it is **a subject** in which effort is rewarded.

...**Once** a topic, or a substantial section of a topic, has been dealt with in lectures and seminars, you should aim to refine, consolidate and organize your knowledge.

...**It is at this point that** you need to make sure that you really understand the topic.

...**It is** always **a bad sign** if a student comes to see the lecturer just before the exam saying, "I have just read it in my lecture notes and I don't understand it."

...There is little point in photocopying sheets, **unless** you intend to work away from the library.

...The existence of photocopiers **provides** a trap into which many students fall, **for** many of them hope that by some mysterious process photocopied information will enter the brain as well as the folder.

...**It is worth** asking yourself, before making voluminous copies, **whether it is really worthwhile**.

...You are not expected to be startlingly original in an undergraduate essay. **Provided** you have a good understanding of the basic points, you will be able to produce a satisfactory piece of work.

...**The material having been gathered**, your next task is to turn it into a coherent essay with a beginning, a middle and an end, preferably in that order.

...Many of the lecturers who stand in front of you were **once** shy.

...When the lecturers first taught **the subject**, they prepared a set of notes and handouts based on the law that existed then. Every year **since** then, they have added the new cases as they happen, so their handouts just get longer and longer, and less and less coherent.

...**Once** you have completed your initial study of a substantial part of the syllabus, there is a lot to be said for starting your revision of the earliest topics while you are still working on new areas. This will **provide** a variety of work for you **rather than** an unvaried diet of revision which can get extremely tedious.

...This breaks what might **otherwise** seem a daunting volume of material into manageable chunks.

...Take advantage of any revision sessions offered. **Otherwise** you will need to go back to your books and revisit the library.

...**Once** you have read over the topic a couple of times, you should have a reasonably clear idea of its broad outline.

...**It is** usually **possible** to identify some topics which are likely to come up. ... **But it is a waste** of time trying to predict every element of the examination paper.

...No professional examiner will reveal the contents of an unseen examination in advance, **unless** a formal decision has been made which needs to be communicated to all students.

...In most courses, **provided** you have covered the main areas of judicial review, there are likely to be two or three questions you can answer fully and only one or two that touch on the peripheral areas.

...Nothing can make the basic grind of revision **other than** hard work, but there are means of managing it.

...If you can, find a congenial place to work, **whether** at home, in hall or in the library.

...**Once** you have gone through and learned the details of a particular topic, you may find it helpful to do other things.

...**Once** in the examination room, check that you have everything you need.

...**Unless** you have been very unlucky, at least one and possibly two or three of your predicted questions will have come up.

...You will feel so much calmer **once** you have got something on paper.

...**It is well worth** taking time to marshal your thoughts and make rough notes, **rather than** just plunging in to writing down the first thing that comes into your head.

...The advantage of answering problem questions is that the structure of the answer is **provided** for you.

...**Once** sure that the paper is a clear pass or seems to fall within a particular class, the examiner will spend no more time on it.

...**It is best style** to write out the name in full **once**, put the abbreviated version in brackets next to it, and then use the short version freely.

...**The instructions having been given**, good luck to you!

УНИКАЛЬНЫЙ УЧЕБНЫЙ КОМПЛЕКС

Федотова И.Г., Толстопятенко Г.П.

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В АНГЛИЙСКОМ ЯЗЫКЕ**
Учебное пособие

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Толковый словарь

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**ТЕОРИЯ И ПРАКТИКА УСТНОГО И ПИСЬМЕННОГО
ЮРИДИЧЕСКОГО ПЕРЕВОДА**

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Для заметок