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Предисловие

Владение иностранным языком стало в современном мире обязательным условием успешности профессиональной деятельности специалиста в любой области знаний. Не является исключением и сфера права. Знание специальной терминологии играет значительную роль в процессе профессионально-ориентированного использования языка.

В этой связи подготовка юристов требует введения в рамках курса английского языка специальной дисциплины, целью которой является обучение языку специальности и формирование умений и навыков, необходимых для выполнения профессиональной деятельности на английском языке: умение свободно ориентироваться в текстах юридического содержания, делать сообщения и вести беседу по профессиональной тематике, составлять юридические документы.

Данное пособие, предназначенное для студентов-юристов третьего курса, может быть использовано на факультативных занятиях по английскому языку.

В пособии представлены наиболее употребительные двуязычные словосочетания, фразы, а также текстовый диалогический материал для двустороннего перевода, иллюстрирующий ключевые понятия и категории основных отраслей права.

International law

International law is the law which governs relations between States.	
Valid international law	действующее международное право
Recognition of the rules of international law	признание норм международного права
Violation / breach of the norm of international law	нарушение норм международного права
International and legal recognition	международное правовое признание
Violate / break the international legal order	нарушать международный правовой порядок
Declaration of Human Rights	Декларация прав человека
It is consistent with generally recognized international law.	Это соответствует всеми признанному международному праву
Prosecution of citizens contradictory to international law	Преследование граждан, противоречащее международному праву
Human rights protection	защита прав человека
Commission on Human Rights	комиссия по правам человека
Infringement upon human rights	ущемление прав человека
Receive refugees	принимать беженцев
Indisputable jurisdiction	бесспорная юрисдикция
Declare armistice / truce	объявить перемирие
Take hostages	брать заложников
Introduce / declare martial law	вводить военное положение
Introduce / declare state of emergency	вводить ЧП
Unilaterally	в одностороннем порядке
Exchange of prisoners of war	обмен военнопленными
Start (cease) hostilities	начать (прекратить) военные действия
War criminal	военный преступник
In violation of international treaties agreements and obligations	в нарушении международных договоров, соглашений
expression of the will of the people	волеизъявление народа
armed conflict	вооруженный конфликт
restore rights	восстановить права
by virtue of a treaty	в силу договора
extradiction	выдача преступников
observe the terms of a treaty	выполнять положения договора
withdrawal from / disaffiliation with an organization	выход из организации
transgressing state	государство-нарушитель

act in circumvention of the UN Charter	действовать в обход положений Устава ООН
interned persons / internees	интернированные лица
code of international law	кодекс международного права
collective security system	система коллективной безопасности
jurisdiction of the International Court of Justice	компетенция международного суда
International capacity to act	международная дееспособность
legal confirmation	правовое закрепление
legal status	правовой статус
legal implications	правовые последствия
point at issue	предмет спора
crime against peace and humanity	преступление против мира и чел-ва
procedure of conciliation	согласительная процедура
cease fire agreement	соглашение о прекращении огня
contestants	спорящие стороны
peaceful settlement of territorial disputes	мирное решение территориальных споров
territorial claims	территориальные претензии
act of terrorism	террористический акт
International arbitration	международный арбитраж
Incompatible with the rules of International law	несовместимый с международными нормами

Dialogue

A: You are encroaching upon human dignity. This is a breach of the Declaration of Human Rights. Besides, this is a violation of the rules of international law.

B: In my opinion, it does not contradict the rules of international law.

A: I am going to file a complaint on the infringement upon human rights to the Commission on Human Rights.

B: You are welcome. It is your legitimate right. This very commission deals with human rights protection and they have a good knowledge of the valid international law.

Unit 2 Labour law

Job according to one's qualification	работа по специальности
One shift work	односменная работа
Job detrimental to one's health	вредная для здоровья работа
Manual / hand labour	физическая работа

Skilled labour	квалифицированный труд
Collective contract / bargain	коллективный договор
Labour union	рабочий профсоюз
employees' insurance	страхование рабочих
Every employer has the right to cancel an employment contract.	Каждый предприниматель имеет Право расторгнуть договор
Dismissal without prior notice	немедленное увольнение
Employee	наемный работник
If an employee breaks labour discipline, he can be discharged under the employment contract.	Если наемный работник нарушает трудовую дисциплину, то он может быть уволен согласно трудовому договору
labour exchange	биржа труда
employment	трудоустройство
supervision over the observance of labour safety protection	надзор за соблюдением норм охраны труда
working conditions / terms of employment	условия труда
labour relations	трудовые отношения
working day's duration	продолжительность рабочего дня
What is your record of service?	Какой у Вас стаж работы?
Observe labour discipline	соблюдать трудовую дисциплину
Income	доход (зарботок)
Remuneration	вознаграждение за труд
Court on labour disputes	суд по трудовым спорам
Employment contract	трудоовой договор
Labour Code / Labour acts (legislation)	Кодекс законов о труде
wages / salary / pay	заработная плата
labour force / manpower	рабочая сила
wage-freeze	замораживание заработной платы
Those are deductions from your salary.	Это вычеты из заработной платы
Be on the dole / get a relief	получать пособие по безработице
How long has he been on the dole?	Сколько времени он получает пособие?
Breach of professional obligations	нарушение трудовых обязанностей
International Labour Law	Международное трудовое право
labour disputes / conflict	трудоовой спор (конфликт)
breach of Labour Law	нарушение трудового права
labour safety protection	охрана труда
labour safety protection legislation	законодательство об охране труда

I demand a wage rise.	Я требую повышения заработной платы
This is unexcused absence from work.	Это прогул.
Work part time	работать неполный рабочий день
industrial accident	несчастный случай на производстве
strike / conclude an employment contract	заключить трудовой договор
have a 14-day leave / holiday	иметь 14 дней отпуска
8-hour working day	восьмичасовой рабочий день
dismiss / discharge	увольнять с работы
cause of dismissal / discharge	причина увольнения
hourly pay	почасовая оплата
under the employment contract	согласно трудовому соглашению
severance payment / redundancy	выходное пособие
sick pay	пособие по болезни
collective bargaining	переговоры между нанимателями и профсоюзами о заключении трудового договора
This is an unwarranted dismissal.	Это незаконное увольнение
overtime job	сверхурочная работа
piecework job	сдельная работа
old-age pension	пенсия по старости
procedure for dispute settlement	процедура урегулирования производственных конфликтов
occupational safety and health regulations	правила техники безопасности
on two week notice	по получении предупреждения за 2 нед.
Previous notice	предварительное предупреждение
go on strike	объявить забастовку
be on strike	бастовать
job reduction	сокращение рабочих мест

Dialogue 1

A: Excuse me, could you tell me how to get to the nearest Labour Exchange?

B: The nearest Labour Exchange is in the street N. It's not far from here.

A: I'm a driver. Half a year ago I was permanently employed in company X in Birmingham. Then I had to move to Manchester. Could you offer me anything?

B: You're lucky. A cargo agency wants drivers right now. How long is your record of service?

A: Over 10 years.

B: have you got an application for contract termination on you?

A: Yes, I have. I'm on the dole now.

B: Here is the address of the cargo agency you should apply to. And here is a job placement assignment. Good luck to you.

Dialogue 1

A: I have been dismissed unlawfully. My employer has broken the employment contract.

B: Perhaps, you broke the working routine? Or, may be, you didn't observe labour discipline?

A: No, my employer was always satisfied with my performance.

B: If things are as you put them, there was no reason for your discharge. Have you got a redundancy?

A: Not yet. However I've already received a written notice.

B: In this case it is a breach of the law prohibiting an unlawful discharge. You can file a suit (подать иск в суд) against your employer.

Unit 3

Regulations for entering a country and leaving for abroad

entry to the US (Great Britain)

valid international passport

invalid passport

diplomatic passport

official / service passport

issue a passport

valid identity papers

multiple visa

entry visa / permit

exit visa / permit

visas are not required for an under

three-month stay

issue / grant a visa

issuance of visas

prolong a visa

request for a visa

refuse smb a visa / deny smb a visa

without visa

I am a citizen of Russia.

mission of the US (Great Britain)

prolong / extend the validity of a visa

visa expires

the visa has been prolonged

receive a visa

naturalized citizen

въезд в США (Великобританию)

действующий загранпаспорт

недействительный паспорт

дипломатический паспорт

служебный паспорт

выдать паспорт

действительное удостоверение

виза многократного пользования

виза на въезд

виза на выезд

для пребывания до трех месяцев

виза не нужна

выдать визу

выдача виз

продлить срок визы

просьба о выдаче визы

отказать кому-либо в визе

без визы

Я гражданин России

представительство США

в России

продлевать срок действия визы

срок действия визы истекает

срок действия визы продлен

получить визу

натурализованный гражданин

stateless citizen (person), the stateless	лицо без гражданства, апатрид
have dual citizenship / nationality	иметь двойное гражданство
alteration / change of the children's citizenship	изменение гражданства детей
be a citizen of Russia / have Russian citizenship	иметь российское гражданство
mission of Russia	представительство России
consular fees	консульские сборы
Embassy of the USA	Посольство США
Consulate	Консульство
Consular department (division)	Консульский отдел
Embassy of the UK	Посольство Великобритании
denaturalization (deprivation),	лишение гражданства
termination of citizenship	(прав гражданства)
lose citizenship	утратить гражданство
loss of citizenship / nationality	утрата гражданства
acquisition of citizenship	приобретение прав гражданства
deprive of citizenship / terminate	лишать гражданства
citizenship / denaturalize	прав гражданства
renounce citizenship	отказаться от гражданства
change citizenship	переменить гражданство
be granted citizenship / be	получить права гражданства
admitted to citizenship	
be naturalized as a Russian citizen /	принять российское
be granted Russian citizenship /	гражданство
acquire Russian nationality	
denization / naturalization	предоставление прав
	гражданства (натурализация)
deportation	депортация (высылка)
immigrate / emigrate	иммигрировать
political refugee	политический беженец
residence permit	вид на жительство
immigration quota	иммиграционная квота
Immigration and Naturalization service	Управление по вопросам
	иммиграции и натурализации
apply for citizenship	отдавать заявление на принятие
	в гражданство
special regime / treatment of aliens	специальный режим для
	иностранцев
right of political asylum	право политического убежища
person granted asylum	лицо, которому предоставлено
	убежище
extraditable persons	лицо, подлежащее выдаче
Read the regulations on entry and exit	Ознакомьтесь, пожалуйста, с
of the country, please.	положением о въезде и выезде

What is your citizenship?	из страны
Show your passport, please.	Какое гражданство Вы имеете?
Your passport is not valid.	Предъявите паспорт, пожалуйста.
Check up passports	Ваш паспорт недействителен.
Can I prolong the duration of my passport?	проверить паспорта
Where was your passport issued?	Можно продлить срок действия паспорта?
You have been denied a visa.	Где Вам выдан паспорт?
I'd like to prolong my visa.	Вам отказано в выдаче визы.
When was your visa issued?	Я хотел бы продлить визу.
Your visa is no longer valid.	Когда выдана виза?
When receiving a visa it is necessary to check its duration.	Ваша виза больше недействительна
	По получении визы необходимо обратить внимание на срок ее действия.

Dialogue 1

A: I'd like to visit the US. What papers are needed to enter your country?

B: You should first read the regulations on entry and exit of the country.

A: And where can I get them?

B: At the Consulate, Embassy or mission of the US in the Commonwealth of Independent States. You can find there any information about how to enter or leave the US.

Dialogue 2

A: I am a citizen of Russia and I'd like to visit your country. Do I need a visa?

B: Yes, citizens of the Commonwealth of Independent States must first receive a visa. Besides, they must have an international passport.

A: Are British visas become valid since the date of issue?

B: No, they become valid since the date fixed in the visa.

A: And where can I get more detailed information about it?

B: Such information is available in any mission of the UK abroad.

Unit 4

Environmental protection legislation

Vocabulary

Marine pollution – загрязнение морской среды

deterioration of the environment environmental deterioration - 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
Ban - запрещать
chlorofluorocarbons (CFCs) – хлорфторуглероды
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
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 mount 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 centigrade by 2100. This projected change is larger than any climate change experienced over last 10,000 years – with potentially significant impact on the global environment.

A: 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 km 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 administrates 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.

Translate into English and reproduce the dialogue:

- Кто отвечает за охрану окружающей среды?
- Управление по охране окружающей среды.
- Какие меры принимаются, если предприятия вследствие своей устаревшей технологии загрязняют окружающую среду?
- Если предприятия наносят вред окружающей среде, то такие предприятия наказываются, а руководство возмещает ущерб. Кроме того, конструкторы и инженеры работают постоянно над тем, чтобы промышленность и автомобили по возможности были безвредными для окружающей среды.

**Unit 5
Insurance**

Adjuster	оценщик
insurance adjuster	оценщик размера страхового убытка
adjustment	установление суммы
adjust	устанавливать сумму, выплачиваемую по страховому полису
average adjuster	диспашер (официальный эксперт)
to assess damage	определить сумму денежного возмещения
assessor	эксперт по оценке истинной суммы заявляемых исков
claim	рекламация, иск
to make a claim	предъявлять иск
to put a claim	предъявлять притязание на что-либо
insurance compensation	страховое возмещение
compensate	возмещать, компенсировать
to effect insurance	застраховать
a cover note	ковернота, временное свидетельство о страховании
insurer	страховщик
insured	страхователь, застрахованный
insure	страховать
I'd like to be insured	Я бы хотел застраховаться.

My house has been insured.	Мой дом застрахован.
Social insurance	социальное страхование
state / public insurance	государственное страхование
I have got an insurance certificate / policy.	У меня есть страховое свидетельство
Apply to the insurance company agent.	Обратитесь к представителю страх. Общества
Each city has an insurance company.	В каждом городе есть страховое Общество
Those matters will be dealt with by the insurance supervision agency.	Этими вопросами занимается страховый надзор.
Have you got an insurance certificate on you?	У вас есть с собой страховое свидетельство?
I'd like first to see the insurance terms And conditions.	Сначала я хотел бы познакомиться с Условиями страхования.
Regulations on insurance	положение о страховании
How large is the premium?	Каков размер страхового взноса?
I demand an insurance indemnity.	Я требую страхового возмещения.
This is a fraudulent attempt to obtain a greater lump sum compensation.	Это обман в целях получения повышенной страховки.
Insurance terms and conditions	общие условия страхования
Those issues come within the jurisdiction of an insurance company.	этими вопросами занимается страховое общество.
Payment from the social insurance fund	платеж из фонда социального страхования
An insurance agent will inform you of the insurance terms and conditions.	Страховой агент ознакомит Вас с условиями страхования.
Who will assume the responsibility For the damages?	Кто берет на себя страховые издержки?
Local insurance company	местный страховой орган
indemnification	выплата страхового возмещения
It will lead to insurance abuses.	Это приводит к злоупотреблениям страхованием
The policy-holder complies with it.	Страхователь с этим согласен.
Have you insured your property already?	Вы уже застраховали свое имущество?
You are violating the insurance commitment	Вы нарушаете страховые обязательства
Will you pay the insurance tax, please?	Уплатите страховой налог.
The insurance company bears no responsibility for it.	Страховая компания не несет за это ответственности.
Where are insurance papers available?	Где находится страховая документация ?
Our insurance company will cover	Наша страховая компания возместит

all your losses.	Вам все Ваши убытки.
Effect insurance	заключить договор страхования
violate / break insurance	нарушить договор страхования
cancel insurance	расторгнуть договор страхования
amount at risk	страховая сумма
lump sum compensation	выплата страховой суммы
We are against the indemnification.	Мы возражаем против выплаты страховой суммы.
I am insured against accidents.	Я застраховался от несчастного случая.
What is the amount of risk?	Каков размер суммы страхования?
Assess the damage	оценить размер ущерба
The insurance attaches from the moment the goods leave the warehouse.	Страхование товаров действительно с момента вывоза их со склада
be insured against fire, burglary and other risks	быть застрахованным от пожара, ограбления и др. ущерба.
Life insurance	страхование жизни

Dialogue

A: I'd like to be insured at your company.

B: Apply to our insurance agent. Our company is located in Street...

A: Does your company insure only people?

B: No, it doesn't. We insure both people and property.

A: How large is the premium?

B: The amount of premium is established in each particular case. Our insurance agent will inform you of the regulations on insurance.

A: Can I effect the insurance today?

B: Sure you can. When you and your property are insured, you will get an insurance certificate.

Real property

real property – 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

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
mortgage – ипотека
conveyance of land – передача земли
security for a debt – обеспечение долга
note – простой вексель
bond – закладная
mortgagor – должник по закладной
mortgagee – кредитор по закладной
interest – проценты
principle 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 работнику в обеспечение оплаты труда или материалов, затраченных на благоустройство, ремонт и содержание собственности
judgment lien – право удержания в силу судебного решения
attachment lien – права кредитора на имущество заемщика
tax lien – право ареста имущества налогового должника
lease – аренда
binding contract – договор, имеющий обязательную силу
lessor – арендодатель
lessee – арендатор
tenant – съемщик
periodic tenancy – срочная аренда
notice - уведомление
terminable – могущий быть прекращенным
expiration – истечение срока
holding over – владение арендованной собственностью после истечения срока действия аренды
oust – выселять
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 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 the purpose.

A: Что такое ипотека?

B: A mortgage is a conveyance of land as security for debt, and in most states it is accompanied by a note or bond as 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 takes the mortgage as security.

A: Какие обязанности существуют у должника по закладной?

B: Mortgagor must pay interest and principle 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 judgment is entered against the mortgagor for the balance of the debt.

A: *Сколько закладных мест 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 the first mortgage.

A: *На каких условиях можно приобрести заложенную недвижимость?*

B: Sometimes a property is sold subject to or by assuming an 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, кроме ипотеки?*

B: Several other types of liens besides mortgage may be made against real property. Among them are mechanic's, judgment, attachment and tax liens.

A: *Что такое аренда?*

B: A lease is a contract transferring the right to the possession and enjoyment of real estate for a definite period of time. A lease is a binding contract whether it is for 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 instate, 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.

Trusts

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

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 b 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 expires (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 trust, 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 desired 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 is 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 requirements that these can be the same people.

A: Какие 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 principle (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 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 имущества на началах доверительной собственности и зависимым держанием имущества?

B: The bailor, being the owner of 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 (eg. Safe custody, cleaning, repair, hire): thus the bailee, unlike a trustee, cannot transfer title to the chattels as the property remains in the bailor.

Unit 6

Contract law

Vocabulary

to conclude / sign / negotiate – заключать, подписывать, обсуждать условия договора

ratify a contract – ратифицировать договор

to carry out / execute a contract – исполнять, оформлять, совершать договор

to abrogate / cancel / repudiate a contract – аннулировать, расторгнуть, отменить договор

to breach / break / violate a contract – нарушать договор

a void contract – договор, не имеющий юридической силы

a valid / legal contract – договор, имеющий юридическую силу

break / violate / denounce an agreement – нарушить, расторгать, денонсировать соглашение

to come to / conclude / enter into / negotiate

/ reach / work out an agreement – приходить к заключению, заключать, обсуждать условия соглашению, достигать соглашения, выработать соглашение

to carry out an agreement – исполнять соглашение

by virtue an agreement – в силу договора

under / in accordance with a contract – согласно договору

elaborate the wording of an agreement – выработать текст договора

contest contract specifications – оспаривать положения договора

adhere to the terms of a contract – придерживаться условий договора

You are misinterpreting the agreement. – Вы неправильно толкуете договор.

adhere to / observe an agreement – соблюдать договор

We haven't broken the agreement. – Мы не нарушили договор.

Why don't you want to renew the contract? – Почему Вы не хотите возобновить контракт?

We approve this contract. – Мы одобряем этот контракт.

I'd like to make a contract with you. – Я хотел бы заключить с Вами контракт.

sign an agreement – подписать договор

contractual sanction – договорная санкция

pay a penalty – платить неустойку

strict observance of a contract – точное соблюдение контракта

breach of a contract – нарушение контракта

contractual commitment – договорное обязательство

contrary to agreement – противоречащий договору

contractual interest – договорные проценты

bilateral agreement – двустороннее соглашение

long-term contract – долгосрочный контракт

short-term contract – краткосрочный контракт

interim agreement – временное соглашение
agreement liable to unilateral annulment – соглашение, которое может быть расторгнуто в одностороннем порядке
multilateral agreement – многостороннее соглашение
invalid agreement – недействительный договор
expiration of a contract – истечение срока контракта
clause – статья договора
This is an unequal agreement. – Это неравноправный договор.
agreement of use gratis – договор безвозмездного пользования
effective agreement – действующее соглашение
draft agreement – проект договора
Are you entitled to conclude a contract? – Вы обладаете полномочиями заключить контракт?
contractual price – договорная цена
agreement to bargain – соглашение о ведении переговоров
agreement to sell – соглашение о продаже
discharge of contract – прекращение обязательств по договору
articles of agreement – письменное соглашение
The contract comes into effect... - Договор вступает в силу...
contracting parties – договаривающиеся стороны
penalty for nonperformance of contract – штраф за невыполнение договора
We are performing all the obligations under the contract. - Мы выполняем все обязательства по договору.
term of validity – срок действия (договора)
privaty of contract – договорные отношения
We insist on the negotiated terms. – Мы настаиваем на условиях, достигнутых в ходе переговоров.
recession from a contract – отступление от контракта
abide by the terms of an agreement – соблюдать условия договора
repudiation of an contract – отказ от контракта
contract termination – прекращение действия контракта
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
statute of frauds – статут о мошенничествах
legal capacity – право и дееспособность
majority - совершеннолетие
minor - несовершеннолетний
binding обязательный для исполнения
be bound by the agreement – быть связанным обязательствами по договору

back out of contract – отступить от договора
under duress - под принуждением

Dialogue

A: Do you already know the Contract Law?

B: Yes, I do. And now I'd like to make a contract with you.

A: Are you entitled to make a contract?

B: Certainly. I'm entitled to it by our company.

A: Then read the contract, please. Do you agree with everything?

B: Yes, I do. I'd like to sign the contract today. But first I'd like to find out whether it is possible to cancel the contract unilaterally.

A: Oh, yes. Besides, it is a long-term contract. But in case of breach of the contract, the violator has to pay a penalty.

B: As to our company, we're going to closely adhere to the terms of the contract.

A: So we are.

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 the 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 действия сторон?

B: Sometimes a contract is formed by actions. When one drives into a gas station, sees a sign that states a price, and then pumps gas into his car, he has entered into a

contract. By pumping gas into a 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 may be in writing to be enforceable. Most states have laws known as statutes of fraud, 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 вступать 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 18) and who is considered to be mentally competent can enter into a contract. In general, minors can enter into binding, or enforceable, contracts only 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 to 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 отступить от договора до подписания документа?

B: Maybe. If a contract is required to be in writing by the state's statute 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 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 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.

Read the texts, think them over and solve the problems:

Contracts

Have you ever wondered how it is possible that you can eat a variety of foods produced in different parts of the world? That your TV - a very complex machine - brings you news and entertainment at the flick of a finger? That the streets are paved and crowded with vehicles? That you and others are comfortably dressed? That there is fresh running water in the kitchen tap? The list could go on and on. These and all other marvels of modern civilization are the output of work by millions of persons. The key or link among the people who produce and consume these many goods and services is: *the contract*.

A contract is an agreement, which is enforced by law. This agreement normally results from an *exchange of promises*.

For example, a husband and wife want their house painted. A painter examines the building and *offers* (promises) to do the job for \$1,500 during the next month. The owners could accept the offer by promising to pay the price. For a contract to arise, the painter as **offerer** (one who makes the offer) must make a definite offer, and generally the **offeree** (one to whom the offer is made) must accept the offer exactly as presented. Of course, the parties may negotiate additional details. The homeowners could reject the offer by demanding a lower price or earlier completion. The painter, in turn, could accept or reject such a **counteroffer**. Without both offer and acceptance, there is no agreement. No particular language need be used. The intent of the parties is the important thing.

Solve the problem

PROBLEM: Moreland phoned Eagan, saying, «I'll let you have my video-cassette recorder for \$150. Is it a deal?» Eagan answered, «Sounds fair; sure. Bring it tomorrow.» Was a contract made?

Answer to the problem: There was a contract even though payment and delivery were to be made later.

ILLEGAL AGREEMENTS

Vocabulary

to obstruct – препятствовать, мешать, затруднять

legal procedures – процессуальные нормы

unconscionable contract – незаконная сделка

compounding a crime – соглашение о замене судебного преследования материальным вознаграждением
restitution – возмещение убытков
contract clause – пункт договора
contract of adhesion – 1) договор на основе типовых условий;
2) договор присоединения
concession - уступка
principal – основная сумма
pawnbroker – ростовщик, ссужающий деньги под залог
loan shark – разг. ростовщик
usury - ростовщичество
small loan rate of interest – повышенная процентная ставка на небольшие займы
overhead costs – накладные расходы
livelihood – средства к жизни
fair competition – честная конкуренция
carrying charge – сумма, которую клиент платит при покупке в кредит
wager – пари, ставка

What makes an agreement illegal?

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

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

What types of agreements are illegal?

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

1. Agreements That Obstruct Legal Procedures

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

- a. promises by witnesses to give false testimony or not to testify at all,
- b. promises to give jurors something of value to influence their votes, or
- c. payment of more than the regular fee to ordinary witnesses. (Note that expert witnesses may legally charge their customary professional fees, which are much higher.)

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

criminal, then the criminal makes **restitution** by restoring the stolen property or its value to the owner.

2. Agreements That Affect Marriage Negatively

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

3. Agreements to Commit Crimes or Torts

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

4. Agreements to Waive Certain Legal Rights

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

5. Agreements Made Without a Required Competency License

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

6. Agreements That Are Unconscionable

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

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

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

- a. refuse to enforce the contract,
- b. enforce the contract without the unconscionable clause, or
- c. limit the clause's application so that the contract is no longer unfair.

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

7. Agreements to Pay Usurious Interest

Lenders of money may not charge more than a specified maximum rate of interest. This rate varies among the states from 8 percent to 16 percent a year that are common maximums. Some of these rates have been increased in recent years because of inflation.

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

Sometimes a person borrows money for which interest is charged but no exact rate is stated. The rate to be paid is the legal rate of interest, which is specified by state statute. This rate in most of states is 7 percent or less per year. In other states, the legal rate ranges between 8 and 12 percent.

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

Many states permit licensed loan companies and pawnbrokers to charge a small loan rate of interest. This rate is typically 36 percent a year, usually on loans of up to \$300 or \$500. The *overhead cost* per dollar loaned is high, and presumably the risk of loss from defaults is also high on such loans. This concession is made to protect people against criminal *loan sharks*, who illegally charge extremely high rates (often 100 percent annually, and sometimes more).

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

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

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

10. Agreements That Restrain Trade Unreasonably

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

Answer the questions:

- 1) Are illegal agreements generally enforceable?
- 2) What is necessary for a contract to be valid?

- 3) Name the types of agreements that are illegal.
- 4) What is restitution?
- 5) What is an unconscionable contract?
- 6) Why contracts of adhesion are mainly unconscionable?
- 7) What can a court decide in case of an unconscionable contract?
- 8) What is usury?
- 9) What is a wager?

MUST CONTRACTS BE IN ANY SPECIAL FORM?

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

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

Even when a written contract is not required by law, it is often wise to put the agreement in writing and have a signed copy for each party. This is particularly true if the agreement is complex and contains many details, which could lead to later misunderstandings. It also is important when large sums of money or long periods of time are involved. In such cases, it is advantageous for both parties to express their intentions with reasonable precision in written form. In this way, the agreement can be easily referred to or readily proved if necessary. The chance of later confusion or disagreement is greatly reduced. Neither party can effectively deny having agreed to particular terms. Also, the process of putting ideas into writing encourages the Parties to anticipate and provide for problems that could arise later. It is usually easier to settle such matters before either party signs and while both parties are inclined to compromise in order to conclude the agreement. Later, each party tends to demand strict performance of the terms. Of course, whenever appropriate, prudent persons seek the aid of a lawyer in the preparation or review of important contracts.

Solve the problem

PROBLEM: Collins orally agreed to buy a mini-warehouse from Stein. Over the telephone, Collins then persuaded Keith to promise to lend \$100,000, which Collins needed for the down payment on the purchase price. A mortgage (claim on the property) was to be given to Keith as security for the loan. Collins and Stein

then signed the sales contract. Early the next day, Collins was stunned when Keith said that the loan could not be made as promised. Can Collins force Keith to make the loan? Is the sales contract with Stein enforceable?

Answer to the problem: The written agreement between Stein and Collins is enforceable. However, the oral agreement between Stein and Collins is not enforceable. Also, the oral agreement between Keith and Collins would not be enforceable. The two oral agreements pertained to an interest in real property—one an agreement to buy a building, the other an agreement giving a mortgage on the building. Thus, they were insufficient because they were not in writing and properly signed.

HOW ARE CONTRACTS CLASSIFIED?

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

1. Method of Creation

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

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

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

Quasi contracts. In a quasi contract (частичный контракт), the parties are bound as though there were a valid contract even though technically there is none. For example, a doctor may voluntarily give first aid to a person injured in an accident. There is no agreement. Yet the doctor may submit a bill and collect a charge reasonable for such a professional service. Thus, the law creates an obligation in the absence of an actual agreement between the parties. This is done to prevent unjust enrichment of one party. Strictly speaking, no contract exists because some essential element is missing. Someone who is not a doctor could give similar first aid yet not be entitled to payment since the service is not done with the expectation of payment nor by a licensed specialist.

2. Formality

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

Formal contracts. A formal contract is a written contract that must be in some special form to be enforceable. Examples are commercial paper and contracts

under seal. Commercial paper, such as an ordinary check, must meet certain requirements to be valid. A *contract under seal* is one with a seal attached or with a similar impression made on the paper. Seals served to validate agreements years ago, when few people could read or write. Today, in most states, the legal effect of the seal on contracts has been limited or ended.

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

An example of simple, written contract:

This agreement is made on May 10, 20___, between New Way Pavers, 17 Beacon Street, Boston, Massachusetts, and J. Clayton Jones, 734 Regent Circle, Brookline, Massachusetts.

New Way Pavers agrees to finish all materials and to perform in a workmanlike manner necessary labor required to remove present concrete walk in front of the residence at 734 Regent Circle from the building door to the public sidewalk; to replace the walk with red brick (of quality and grade as in sample) laid in a herringbone pattern, on a new concrete base 2,5” thick, in consideration for which Jones agrees to pay New Way Pavers or its assignee three thousands two hundred dollars (\$3,200) upon completion of the work on or before April 10, 20__ .

New Way Pavers
By *James G Mason*

J. Clayton Jones

3.Extent performance

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

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

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

PROBLEM: Rissan walked into a telephone booth, dropped some coins into the telephone, and dialed a number. No words were spoken until the party answered. A conversation followed between Rissan and the party. A few minutes later Rissan hung up the receiver and left. What kind of contract had Rissan made with the telephone company?

Answer to the problem.

Rissan's contract with the telephone company was bilateral and valid. It was executory when the coins were deposited. It became executed when Rissan finished the conversation and hung the receiver. As to formality, it was simple; as to method of creation, it was implied.

Read and translate into Russian:

When you enter a Contract.

- 1) if a contract is complex or involves much time or money, put it in writing even when not required by the statute of frauds. Be sure the words are understandable, cover all important contingencies, and clearly reflect your intentions. When appropriate, consult a qualified lawyer;
- 2) if a prepared contract is presented to you for signature, read it carefully, especially if it is a contract of adhesion;
- 3) insist on definition and explanation of any terms of the contract which you do not understand. Make necessary changes, or reject the entire contract;
- 4) make sure that all changes are written into the contract on all copies as well as on the original, and that all changes are entitled by both parties;
- 5) be sure your entire agreement is included in the writing. The parole evidence rule may bar evidence of all prior and contemporaneous oral or written agreements; and
- 6) when any payments have been made in cash, be sure to get a receipt if payment is not acknowledged in the contract. (If payments are made by check, indicate the purpose on the face of the check. The canceled check will serve as your receipt.)

Match the following:

- A. executed contract
- B. executory contract
- C. express contract
- D. formal contract
- E. implied contract
- F. parole evidence rule
- G. quasi contract
- H. simple contract
- I. statute of frauds

1. Rule under which a written contract cannot be changed by prior oral or written agreements.
2. Contract in which the agreement of the parties is spoken or written.
3. Written contract that must be in a special form to be enforceable.

4. Contract that has been fully performed.
5. Any contract that is not a formal contract.
6. Contract in which intent of the parties is shown by conduct or circumstances.
7. Obligation that is enforced as if it were a contract in order to prevent unjust enrichment of the party.
8. Law stating that certain agreements are not enforceable unless they are in writing and signed by the party against whom the contract is to be enforced.
9. Contract that has not been fully performed.

Read and translate into Russian:

Reviewing the important points

1. Unless required by law, contracts need not be in writing.
2. An spoken contract is stated in words, written or spoken. An implied contract is shown by conduct of the parties and by surrounding circumstances.
3. A formal contract must in some special, written form. All contracts which are not formal contracts are simple contracts.
4. An executory contract has not been fully performed. An executed contract has been completed by both parties.
5. A quasi contract exists when some elements of a valid contract is missing, yet the arrangement is enforced as if it were a contract. This is done to prevent unjust enrichment of the party.
6. To be enforceable, the following contracts must be **in writing** (or evidenced by some other written proof) and signed by the party against whom enforcement is sought:
 - a) contracts to buy and sell goods for a price of \$500 or more,
 - b) contracts to buy and sell real property or any interest in real property,
 - c) contracts that can not be performed within one year after being made,
 - d) contracts to pay a debt or answer for a legal obligation of another person,
 - e) contracts having marriage as consideration, and
 - f) contracts of an executor or administrator to be personally liable for the debts of an estate.
7. A memorandum of an agreement need not be in any special form. However, it must contain all the material facts and must be signed by the party against whom the contract is to be enforced.
8. The terms of a written contract may not be changed ambiguous. Parol evidence may also be used to show that a written agreement is not binding because of mistake, fraud, or illegality.

Solve the problems:

1. Under a written contract, Vancura bought Trickett's car for \$800. Vancura gave Trickett a check for \$300 as a down payment and took delivery of the car. On

the way home, Vancura bought some gas at a self-service station. She then got a soft drink from a vending machine. What kinds of contracts were used?

2. Bruno bought Hummel's furniture for the lump sum of \$2,800. When she took possession of the condo, Bruno told Hummel she had changed her mind about buying the furniture. Can Hummel enforce the furniture deal?
3. Central-Cal Lands Corporation orally agreed to sell a 640-acre producing ranch to Ceres, Inc., for \$1,280,000. Ceres paid \$25,000 and immediately took possession,
 - a) Can Central-Cal legally withdraw from the agreement?
 - b) Suppose Ceres proceeds to spend \$75,000 to level part of the land for improved irrigation purposes. Can Ceres now enforce the oral contract?

WHAT IS COMMERCIAL PAPER?

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

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

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

commercial paper – вексель, оборотные кредитные документы

unconditional – безусловный, не ограниченный условиями

order – приказ, распоряжение

Answer the questions:

1. Who is a depositor?
2. What is the most common form of commercial paper?

WHAT ARE THE TYPES OF COMMERCIAL PAPERS?

Today commercial papers can be grouped into two broad categories.

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

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

The word *unconditional* means that the legal effectiveness of the order or promise is not dependent upon any other event. IOU is not a commercial paper.

1. Drafts

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

The usual purpose of a draft is to collect money owed. A draft initially involves three parties — the drawer, the drawee, and the payee. The **drawer** is the person who executes or draws the draft and orders that payment be made. The **drawee** is the person directed to pay the draft. The **payee** is the party to whom this commercial paper is made payable.

Drafts are sometimes described in terms of the time of payment. If the draft is payable at sight or on demand — that is, when it is presented to the drawee by the one holding the draft — it is a **sight draft**. The drawee is expected to pay when the draft is presented.

If a draft is payable at a specified time, or if it is payable at the end of a specified period after sight or after the date of the draft, it is a **time draft**, as is illustrated in the example.

When a time draft is payable a number of days or months after sight, it must be presented to the drawee for acceptance in order to start the running of the specified time. Acceptance is the drawee's promise to pay the draft when due. When the draft states it is payable a number of days or months “after date”, the time starts running immediately from the date of the draft.

Answer the questions:

1. What is a draft? What is another name of a draft?
2. What does the word *unconditional* mean?
3. What is the aim of a draft?
4. Who is a drawer?
5. Who is a drawee?
6. What is a time draft?
7. What is the acceptance?

2. CHEQUES

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

The bank, according to the contracts with its depositors, agrees to **honor** (pay when due) each cheque as long as sufficient funds remain in the depositor's account. As a debtor of the depositor, the bank must honor the cheques in return for the right to use the depositor's funds until the depositor demands their return. Of course, the bank must retain a sizable percentage of all funds deposited so that it can pay cheques when they are presented. The remainder of the deposited funds is loaned at interest to pay for the bank's operations and to earn for the bank's owners.

A person, who deliberately issues a cheque with the knowledge that the funds in the account will be insufficient to pay the cheque when it is presented at the drawee bank, is guilty of a crime. The bank will **dishonor** (refuse to pay when due) the instrument and the payee or current owner of the cheque will not get any money for it from that source. In addition, if a cheque is issued to pay a debt, the payoff is not effective until the cheque is presented to the drawee bank and honored.

When a cheque has been lost or stolen, the drawer should direct the bank not to pay it. Such an instruction is called a **stop payment order**. Banks usually charge a small fee to stop payment on a cheque. If, by mistake, the drawee bank disregards the stop payment order and pays the cheque, the bank must recredit the account. The bank — not the depositor — must bear any loss. Oral stop payment orders are good only for two weeks unless they are confirmed in writing. Written stop payment orders are good for six months and lapse at the end of that time unless renewed. Care must be taken when writing or accepting cheques. When you write a cheque, be sure not to leave room for someone to insert figures and words to change the amount of the instrument. Never sign a blank cheque.

Answer the questions:

1. What are cheques usually written on?
2. What does it mean *to honour the cheque*?
3. What does it mean *to dishonour the cheque*?
4. What is a stop payment order?
5. Who bears the loss when a cheque was stolen and no stop payment order was made?

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Английский язык

**ПРАКТИКУМ
ПО ФОРМИРОВАНИЮ НАВЫКОВ
УСТНОЙ РЕЧИ НА ОСНОВЕ
ПРОФЕССИОНАЛЬНО ОРИЕНТИРОВАННЫХ
ТЕКСТОВ ДЛЯ СТУДЕНТОВ
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