САНКТ-ПЕТЕРБУРГСКИЙ ЮРИДИЧЕСКИЙ ИНСТИТУТ (ФИЛИАЛ)
УНИВЕРСИТЕТА ПРОКУРАТУРЫ РОССИЙСКОЙ ФЕДЕРАЦИИ

С.П. СИНЯВСКАЯ, П.Б. КОНДРАТЬЕВ, Е.С. АНИСТРАТОВА

# ИНОСТРАННЫЙ ЯЗЫК В СФЕРЕ ЮРИСПРУДЕНЦИИ

## (АНГЛИЙСКИЙ)

*Учебно-методическое пособие*

Санкт-Петербург
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***Р е ц е н з е н т ы***

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Учебно-методическое пособие состоит из нескольких тематических блоков юридической направленности на английском языке, а также из блока академического английского языка. Тематические блоки, способствующие формированию и развитию профессиональной коммуникативной компетенции, содержат англоязычные юридические тексты и комплексы упражнений по переводу, устной практике и усвоению профессиональной терминологии. Академическая компонента данного пособия включает в себя задания по обучению различным стратегиям чтения англоязычной научной литературы (просмотровое и поисковое чтение на материале юридических текстов), упражнения, помогающие развитию навыков анализа, синтеза, обобщения и критического осмысления научной профессиональной информации на английском языке (умения писать резюме и тезисы), задания, направленные на формирование публичной речи в формате академической презентации.

В пособие включены также краткое грамматическое приложение, охватывающее материал, предусмотренный программой обучения юридическому английскому языку, а также краткий словарь профессиональной лексики.

Учебно-методическое пособие предназначено для обучающихся по программам высшего образования по укрупненной группе специальностей и направлений подготовки 40.00.00 Юриспруденция.

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**СОДЕРЖАНИЕ**

Учебно-методическое пособие разработано с целью восполнения пробелов в материале других учебников для юристов, в которых не освещается подробно прокурорская деятельность в Российской Федерации и странах англосаксонской правовой семьи.

В задачи пособия входит развитие грамматически и лексически правильной речи на основе дальнейшего углубления языковых знаний: расширение словарного запаса по изучаемым темам, закрепление и изучение нового грамматического материала, развитие навыков и умений двустороннего перевода профессиональной литературы, а также совершенствование письменной речи.

Пособие состоит из 7 тематических разделов (Units), в которых представлены тексты из оригинальной юридической литературы, а также аутентичные тексты из англоязычных нормативных правовых документов, и приложений (Appendices) — материалы для самостоятельной работы студентов, грамматический справочник и список латинских слов и выражений, используемых в правовом английском языке. Все разделы имеют единую структуру построения, включающую необходимые материалы, предназначенные для формирования у обучаемых способности к коммуникации в устной и письменной формах на английском языке для решения задач профессиональной деятельности.

# Unit 1

## PUBLIC PROSECUTOR IN THE COUNTRIES OF ANGLO-SAXON LEGAL SYSTEM. FUNCTIONS AND ROLE IN CRIMINAL COURT PROCEEDINGS

### PRACTICE YOUR READING AND SPEAKING SKILLS

### The role of public prosecutor[1]

A public prosecutor is an integral part of the machinery for the administration of criminal justice. No legal system that uses public prosecutors in the dispensation of criminal justice, therefore, can afford inexcusable weaknesses on the part of its public prosecutors.

Like many occupations, the job of a public prosecutor demands intelligence, training, courage, common sense, tact, patience, capacity for hard work, and an interest in the job. A public prosecutor with these qualities is certain to derive pleasure and satisfaction from the work, and is an asset to the administration of criminal justice.

For those with requisite qualities, the job of a public prosecutor is a most fascinating one. It is never dull, for no two cases are the same; and each case has its own "dramatis personae". The scenes keep on changing, the characters come and go, the climax is breathtaking, and the end of one case is but the end of a scene or an act in an endless drama. It involves endless battles of wits. Each day that passes enriches your experience, and as years go you can draw on that experience.

For the man with the requisite qualities of a public prosecutor, therefore, there will be sympathy and encouragement from the magistrates, applause from the watchful public, and adequate remuneration for his labours from his superiors. But a public prosecutor who lacks even a modest amount of these qualities or any of them is a menace to the administration of justice. The sooner he quits for desk work or some other prosaic assignments the better for him and justice.

[1] Chipeta B. D. A handbook for Public Prosecutor / B. D. Chipeta. Mkuki Na Nyota Publishers, 2009. 300 p.

A public prosecutor, as an officer of the court, is charged with the very important duty of assisting the court in discovering the truth or otherwise of allegations against accused persons. The duty of a public prosecutor is to present the case against an accused person by bringing all the evidence that is necessary and available, and presenting it in the best possible manner, in order to enable the court to reach a just decision.

It is therefore incumbent upon the public prosecutor to ensure that the evidence presented explains all the questions in issue in the case he is prosecuting. Although he should not be unduly anxious for a conviction, it is certainly his duty to see that as far as possible all the evidence necessary and available to prove the charge(s) is brought out so as to leave little room for ambiguity and so that it should never be said that an acquittal was owing to failure on his part to discharge his duties properly. Quite a number of unjust acquittals have resulted from bad presentation of the cases by public prosecutors. It is all too easy for a public prosecutor.

The Public Prosecutor and the Law of Criminal Procedure to confuse an otherwise clear case. He can, through genuine ignorance, lack of zeal or preparation, or other less excusable reasons, confuse himself, his witnesses and the court.

Now, in a majority of cases, prosecution is conducted by police officers. By the nature of their training and experience, not all of them are versed in this important and delicate task. In addition to logic, common sense and preparation, the job of conducting prosecutions requires a sound knowledge of the basic principles of criminal law, criminal procedure, the law of evidence and the principles of practice which are used and applied in courts. An exhaustive knowledge of the Law is, of course, impossible for a police officer unless he possesses a law degree; but he should certainly be conversant with the basic principles of substantive and procedural law and practice, as well as the basic principles of the art of prosecuting cases. These are as much his essential tools as are his case files and exhibits. A public prosecutor who goes to court with no idea of the elements of the offence he is going to deal with, the possible defences available to the accused, and how to deal with his boisterous, revengeful, hostile, timid, or stupid witnesses is sure to land in trouble. He is certain to confuse his witnesses, himself and the court. The consequences of such confusion are likely to be an unjust decision. No judicial system worth its name can afford that.

**dispensation —** 1) изъятие, освобождение; смягчение требований закона, разрешение на отступление от норм, правил; 2) отправление (правосудия)
**asset —** 1) ценное качество (a useful or valuable thing); 2) имущество, фонды, активы
**administration of criminal justice** — отправление правосудия по уголовным делам
**requisite** — необходимый, требуемый, нужный
**dramatis personae** (лат.) — 1) действующие лица (пьесы); 2) список действующих лиц
**climax —** кульминация, кульминационный пункт, высшая точка
**wits —** разум, ум
**watchful** — 1) внимательный, наблюдательный; 2) осторожный, настороженный, бдительный
**remuneration** — вознаграждение, оплата, компенсация
**menace —** угроза, опасность, опасный человек
**to quit** — оставлять, покидать, уходить
**incumbent** — лежащий, возложенный на (об обязанности)
**anxious** — беспокоящийся, тревожный, озабоченный, беспокойный
**ambiguity** — неоднозначность, двусмысленность, неопределенность, неясность, недоразумение, двузначность
**acquittal** — оправдание, судебное решение об оправдании, оправдательный вердикт, приговор
**all too —** слишком, чересчур
**zeal** — рвение, старание, усердие
**versed** — опытный, сведущий (в чем-л.)
**conversant** — 1) хорошо знакомый; 2) знающий, опытный, квалифицированный
**case files** — материалы дела
**exhibits** (= physical evidence) — вещественные доказательства
**elements of offence** — признаки состава преступления
**defence** — 1) защита (на суде); 2) аргументация ответчика, подсудимого; 3) обстоятельство, освобождающее от ответственности
**boisterous** — 1) возбужденный; 2) бурный, неистовый, яростный
**timid** — робкий, застенчивый
**to land in trouble** — попасть в неприятную историю, в трудную ситуацию

## Ex. 1. Translate the following words and phrases; reproduce the context in which they are used in the text:

| | |
|---|---|
| machinery | allegation |
| (in) excusable | unduly |
| to derive satisfaction from | to confuse |
| to draw on (experience) | sound (adj) |
| sympathy | exhaustive (adj) |

## Ex. 2. Match the following words with their definitions:

| | |
|---|---|
| 1) sound (adj) | a) an established system of (justice) |

| | |
|---|---|
| 2) exhaustive | b) the process of providing a supply of smth. |
| 3) menace | c) a major benefit |
| 4) machinery | d) payment or other rewards for your work |
| 5) remuneration | e) necessary |
| 6) dispensation | f) use smth that you have already gained or served |
| 7) allegation | g) a threatening quality |
| 8) asset | h) a statement that smb has done smth |
| 9) requisite (adj) | i) reliable |
| 10) draw on | j) to a greater degree than is reasonable or necessary |

**Ex. 3. Match the following adjectives with noun as they appear in the text:**

| | |
|---|---|
| 1) requisite | a) battles of wits |
| 2) accused | b) climax |
| 3) excused | c) remuneration |
| 4) breath-taking | d) acquittal |
| 5) adequate | e) reasons |
| 6) unjust | f) qualities |
| 7) endless | g) knowledge |
| 8) substantive and procedural | h) witness |
| 9) boisterous and timid | i) law |
| 10) sound | j) person |

**Ex. 4. Make up a short story on professional duties of a public prosecutor.**

**Составьте небольшой рассказ о профессиональных обязанностях государственного обвинителя.**

**Ex. 5. Pay attention to the pronunciation of the following words.**

Climax, courage, requisite, incumbent, anxious, ambiguity, acquittal, genuine, delicate, procedure, exhaustive, exhibit, consequences.

**Ex. 6. Make the written translation into Russian.**

**Recommendation No. (2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system.**

### Functions of the public prosecutor

1. "Public prosecutors" are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system.

2. In all criminal justice systems, public prosecutors:

— decide whether to initiate or continue prosecutions;

— conduct prosecutions before the courts;

— may appeal or conduct appeals concerning all or some court decisions.

3. In certain criminal justice systems, public prosecutors also:

— implement national crime policy while adapting it, where appropriate, to regional and local circumstances;

— conduct, direct or supervise investigations;

— ensure that victims are effectively assisted;

— decide on alternatives to prosecution;

— supervise the execution of court decisions;

— etc.

*(URL: http://www.legislationline.org/documents/id/8106)*

**Ex. 7. Here you can see two texts for rendering (см. Appendix 3). You may choose one of them.**

## Text 1

### A Comparative Analysis with Special Focus on Switzerland, France and Germany[1]

Prosecutors, whose traditional legal duty lies in determining whether or not a criminal case should enter the criminal justice process, turn out to be the centerpiece of the process. This key position of the prosecutor in the criminal justice system is strengthened by the fact that in some instances, he acts as the sole adjudicator of the criminal case. The practice of plea bargaining in the United States and the penal order procedure in Europe best illustrate the power of the de facto adjudication of prosecutors. Plea proposals are only rarely rejected by the judge. The same is true for penal orders in those criminal justice systems where the approval of the court is required. The Swiss penal order, for its part, is an excellent example of a de jure power of the prosecutor to adjudicate cases. In the last years, some criminal justice systems in Europe have undergone a clear change by introducing the possibility of informal negotiations between the prosecution and the defense; this is in response to the pressure for greater efficiency in criminal justice systems. Thus, several continental European jurisdictions have adopted adversarial elements. It follows that the European prosecutor has become more like his American counterpart than inversely. Given the broad power of American and European prosecutors, it is essential that they exercise this power in the most responsible fashion. However, since there is an unavoidable risk that prosecutorsabuse this power, every criminal justice system should have a system that holds prosecutors accountable.

In recent years, significant changes in criminal procedure and in public prosecution have occurred in many parts of the world, including Switzerland, as a result of rationalization of criminal justice systems. On January 1, 2011, the first Swiss Criminal Procedure Code came into force and replaced the 26 cantonal criminal procedure codes and the Federal Act on the Administra-

[1] Gilliéron G. Public Prosecutors in the United States and Europe / G. Gilliéron. Springer, 2014. 362 p.

tion of Federal Criminal Justice. Prior to 2011, the inquiry models could basically be differentiated between those cantons following the system of an investigating judge, inspired by the French legal system and those that have adopted the German system of the prosecutor with one or more district prosecutors. The unified Swiss Code of Criminal Procedure has opted for the German system and thus the examining magistrate, previously known in some cantons, has been abolished. Because the Swiss legal system was influenced by the French and German criminal justice systems, this research could not have been done without taking a look at the evolution and current situation of the prosecutorial role in those countries. The increasing workload of criminal justice systems will make prosecutorial discretion more and more of a necessity. However, before modifying a current system, it is important to know all the advantages and disadvantages related to a prosecutor having broad discretionary power. Absolute prosecutorial discretionary power having a long history in the U.S. system, it was an obvious choice to include American prosecutors in this research. Comparison of different legal and prosecutorial systems aims to improve the systems currently in place.

***Vocabulary***

**(public) prosecutor** — государственный обвинитель, прокурор (только в смысле лица, осуществляющего уголовное преследование или обвинение в суде от имени государства или штата)

**to further** — продвигать, поддерживать, содействовать, способствовать

**centerpiece** — нечто центральное, основное, главное, находящееся в центре внимания

**adjudication** — 1) признание, установление, объявление (в судебном порядке); 2) рассмотрение спора, разрешение дела, вынесение судебного решения; судебное решение или приговор; 3) осуждение

**adjudicator —** судья, арбитр

**plea bargaining** — переговоры о заключении сделки о признании вины (в наименее тяжком из вменяемых обвинением преступлений)

**to opt *(opt for)*** — выбирать, предпочитать

**adversarial** — состязательный; *юр.*: (of a trial or legal proceedings) in which the parties in a dispute have the responsibility for finding and presenting evidence

**inquisitorial** — *юр.*: (of a trial or legal procedure) characterized by the judge performing an examining role

## Text 2

### Overview[1]

Basically, there are three different methods for coping with the caseload problem in criminal justice systems: (1) decriminalization of material law, (2) discretionary powers on the police and prosecution service level, and (3) summary or alternative proceedings. A fourth option — in accordance with the principle of legality — would consist of continuing to bring all cases to court. This, however, would mean a considerable increase in personnel at the prosecution and the court levels, which in turn would create additional costs. For this reason, such an option is not really envisaged by any criminal justice system.

### Decriminalization of Material Law[2]

There are two types of decriminalization: (1) material decriminalization, where administrative offenses are dealt with by administrative procedures, and procedural decriminalization, where administrative fines are imposed for criminal offenses by administrative agencies.

Decriminalization often happens in relation to minor traffic offenses. Such minor illegal acts, which provide for the imposition of an administrative fine, are known as offenses against the order (Ordnungswidrigkeiten) in Germany. In Switzerland, the Road Traffic Act and the regulatory statutes belonging to it provide for a direct imposition and collection of fines by the cantonal police that may not exceed CHF 300.00 (Ordnungsbusse). If the payment is not made within the prescribed timeline of 30 days, the police assume that the concerned person does not agree with the sanction and initiate the ordinary proceedings respectively penal order proceedings. Cantons may also provide for the imposition of on-the-spot fines for petty violations of cantonal law. In other European countries similar approaches to those just described exist.

Minor traffic violations have also been decriminalized in the U.S. criminal justice system. The Traffic Violations Bureau — an administrative agency that is implemented in every state throughout the nation — is responsible for processing the citations issued by vari-

[1] Ibid.
[2] Ibid.

ous law enforcement agencies for the violation of local ordinances and state motor vehicle codes. Collecting all fines and fees are among several of the various duties and functions of the office. Payment of the traffic ticket (citation) prior to the court date is deemed a waiver of the court hearing and an entry of a guilty plea. Ordinance violations in the United States are usually prosecuted by a municipal attorney, whereas the more severe offenses are reserved for the district attorney. For many years, ordinance violations were considered as "quasi-criminal". Today, depending on the jurisdiction, some ordinance violations are procedurally treated in the same way as misdemeanors. However, some states view an ordinance violation punishable only by a fine as non-criminal. In the state of Minnesota for instance, petty misdemeanors are not viewed as criminal.

Police involved in this kind of administrative procedures do not act as part of the criminal justice system and are therefore generally not controlled by the prosecutor when acting in this capacity.

### Discretionary Powers[1]

Use of discretionary powers on police and prosecution levels is a simple and very effective method for dealing with large caseloads.

Criminal justice systems adhering to the principle of opportunity may use discretion at different stages of the criminal proceeding. In the United States for instance, the police are not required by law to pass every case to the prosecutor but instead are allowed to make a discretionary decision as to whether to hand over a case to the prosecutor or not. To a certain extent, because police officers are almost always at the front line of the criminal process, the discretion exercised by them may be more important than the one exercised by the prosecutor. In contrast, the latter rarely has the occasion to consider a case unless it's brought to his attention by the police. Police discretion has only rarely come under judicial review. Once the police report the incident to the prosecutor, the prosecutor for his part decides whether he wants to go forward with a case or not. His decision is led by various public interest considerations such as the gravity of the offense and the availability of resources.

Police operating in a criminal justice system that follows the principle of legality are required to hand over every case to the prosecutor with the exception of those minor offenses that fall within the

[1] Ibid.

responsibility of the police. The only grounds for not passing a case on to the prosecutor is lack of evidence that a punishable action has been committed, or if the preliminary proceeding proves the innocence of the accused. The prosecutor, bound by the principle of legality, cannot exercise any discretion in deciding whether to prosecute or not. As soon as there is enough evidence to believe that a crime has been committed, the case has to be prosecuted and brought to the court. However, today, criminal justice systems that strictly adhere to the principle of legality are virtually nonexistent. Exceptions to this principle have been developed and implemented. The German and Swiss criminal justice systems are illustrative examples for such an evolution.

### Alternative Proceedings[1]

Alternative proceedings are another simple method for relieving courts' heavy caseload. In this context, the prosecutor plays a crucial role. Although the court may be involved in the final stage to impose a sanction, it is the prosecutor who plays the central role. The German penal order (Strafbefehl) and the French penal order (ordonnance pe´nale) are examples of such proceedings. In both proceedings, it is the prosecutor who does the preparatory work and formulates a written recommendation to the judge. The court only rarely refuses to follow the prosecutor's advice. Hence, in reality, the penal order is a decision issued by the prosecution, which is checked and usually approved by the court. There are even proceedings in which the court is no longer involved, but where the prosecutor is responsible for imposing a sanction and therefore makes a case-ending decision. An excellent example of such a procedure is the Swiss penal order (Strafbefehl). Another observable trend is the implementation of criminal procedures that are similar to American plea bargaining. The Swiss criminal procedure with its abridged proceedings and the French criminal procedure with its "guilty plea" proceedings took a step in this direction. The advantage of these types of proceedings is that, through negotiations between the prosecutor and the defendant prior to trial, the procedure before the court is accelerated. In the vast majority of cases, the judges accept the agreement between the prosecutor and the defendant so that in reality the prosecutor makes a decision that is to a large extent adjudicatory.

[1] Ibid.

It is certainly true that these alternative proceedings increase the efficiency of criminal justice systems. However, it must not be forgotten that simplifications of proceedings usually go along with restrictions on criminal defendant's rights, such as the right to be heard. This in turn may reinforce the risk of wrongful convictions.

***Vocabulary***

**caseload** — нагрузка (количество рассматриваемых дел)
**to provide for** (**smth.**) **—** предусматривать что-либо
**CHF** = Swiss Franc
**on-the-spot fines —** штраф, оплачиваемый на месте
**citation** — вызов ответчика в суд
**to process** — 1) возбуждать процесс, начинать процесс, возбуждать обвинение, преследовать в судебном порядке; 2) оформлять (документы), вызывать (кого-л.) в суд
**ordinance —** 1) указ, декрет, закон; 2) постановление, предписание, распоряжение
**traffic ticket** — (*амер.*) квитанция с уведомлением о необходимости выплатить штраф за нарушение правил уличного движения
**waiver —** отказ (от права, требования, привилегии)
**misdemeanor** — мисдиминор; проступок

*Категория мелких уголовных преступлений, граничащих с административными правонарушениями. Наказанием за большую часть таких преступлений обычно является штраф или лишение свободы на срок до 1 года. Единого для всех штатов определения таких преступлений нет. К ним могут относиться: нарушение правил уличного движения, мелкая кража, хулиганство [disorderly conduct], участие в азартной игре. Поскольку граница между мисдиминором и фелонией [felony] часто весьма подвижна, делались попытки определить мисдиминор в нормах статутного права [misdemeanor by statute]. Дела такого рода обычно рассматриваются мировым судьей [Justice of the Peace] или муниципальным судом [municipal court] в порядке упрощенного производства [summary process], без предъявления обвинительного акта [indictment] и суда присяжных.*

**discretion —** 1) усмотрение, свобода действий; 2) дискреционное право
**discretionary** — 1) дискреционный; 2) действующий по своему усмотрению
**discretionary powers** — дискреционные полномочия

## MASTER YOUR GRAMMAR

### Ex. 8. Translate the sentences paying attention to the word "it":

1. Although the need for characterization of law's nature is obvious, ***it*** is a need that is not so easily satisfied.

2. Therefore, ***it*** is important that legal rules can clearly be identified as such and distinguished from rules that are "merely" moral.

3. We believe that ***it*** is of crucial importance for lawyers to be aware of the different ways in which societal problems can be solved

4. When looking at the relationship between law and morality, ***it*** is useful to keep in mind that the very notion of "morality" is ambiguous.

5. Although customary law is often retrospectively ascribed to a legislator, ***it*** is typically not the result of legislation.

6. If the rule already existed, ***it*** is clear that the same rule should be applied in future cases and also by other judges.

7. ***It*** is often assumed that the process of state formation on the continent reached a provisional end point in 1648 when a number of wars were ended by the peace treaties of Westphalia.

8. Scottish law was influenced by both the common law and the civil law tradition. ***It*** is a "mixed legal system".

9. ***It*** is possible to detect a further subdivision within this civil law tradition. On one hand, there are countries that have been strongly influenced by the French codification movement.

10. In such a society, the need to contract with other people is absent. ***It*** is not only Communism that provides – at least in theory – an example of such a society.

11. This does not mean that case law is not important: the older the civil code, the more important ***it*** is to take cognizance of the decisions of the highest national court in order to understand contract law properly.

12. Ownership is therefore a matter of all or nothing, not a matter of degree as ***it*** is in common law where different persons can have different titles to a good.

**Ex. 9. Translate the sentences paying attention to the words "whether" and "since":**

1. Once the police report the incident to the prosecutor, the prosecutor for his part decides ***whether*** he wants to go forward with a case or not.

2. With the adoption of the 14th Amendment, the question of ***whether*** and to what extent the guarantees found in the Bill of Rights apply to state criminal proceedings arose.

3. The public prosecutor was neither entitled to investigate nor did he have the right to decide ***whether*** or not a criminal case should be prosecuted.

4. However, ***since*** there is an unavoidable risk that prosecutors abuse this power, every criminal justice system should have a system that holds prosecutors accountable.

5. Although, ***since*** January 1, 2011, Switzerland has a unified Criminal Code of Procedure (CCrP), each canton remains responsible for its organization.

6. ***Since*** the prosecutor's broad charging discretion has a long history in the U.S. criminal justice system, the Swiss criminal justice system can learn from the positive as well as from the negative aspects of the U.S. system.

7. Finally, according to Article 8 para. 3 CCrP (Swiss Criminal Procedure Code), the prosecution and the courts may waive prosecution if the criminal offense is already being prosecuted by a foreign authority or if the prosecution was relinquished in favor of such an authority and ***provided that*** this does not conflict with the private claimant's overriding interests.

8. Reparation is compensation provided for pain and suffering.

## Unit 2

## CROWN PROSECUTION SERVICE IN ENGLAND

### PRACTICE YOUR READING AND SPEAKING SKILLS

The Crown Prosecution Service is a public service for England and Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through the Attorney General.

The Crown Prosecution Service is a national organisation consisting of 42 Areas. Each Area is headed by a Chief Crown Prosecutor, and corresponds to a single police force area, with one for London. It was set up in 1986 to prosecute cases instituted by the police. The police are responsible for the investigation of crime. Although the Crown Prosecution Service works closely with the police, it is independent of them.

The Director of Public Prosecutions is responsible for issuing a Code for Crown Prosecutors under section 10 of the Prosecution of Offences Act 1985, giving guidance on the general principles to be

applied when making decisions about prosecutions. This is the fourth edition of the Code and replaces all earlier versions. For the purposes of this Code, «Crown Prosecutor» includes members of staff in the Crown Prosecution Service who are designated by the Director of Public Prosecutions under section 7A of the Act and are exercising powers under that section.

## General Principles

Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.

Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.

It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.

The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

## Review

Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.

Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Wherever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

### Code Tests

There are two stages in the decision to prosecute. The first stage is the evidential test. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.

This second stage is the public interest test. The Crown Prosecution Service will only start or continue with a prosecution when the case has passed both tests.

*(URL: https://www.cps.gov.uk/publication/code-crown-prosecutors)*

**Ex. 1. Suggest opposites for the following words from the text:**

| | |
|---|---|
| fair | undue |
| independent | unique |
| objective | answerable |
| improper | |

**Ex. 2. Match the words from the previous exercise with synonyms.**

Just, liable, sole, single, impartial, unsuitable, sovereign, excessive, accountable, extreme, equitable, indecent, unbiased, self-governing, self-reliant, dispassionate, unjustified, responsible, unrivalled.

### The Evidential Test

Crown Prosecutors must be satisfied that there is enough evidence to provide a «realistic prospect of conviction» against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or magistrates' court should only convict if satisfied so that it is sure of a defendant's guilt.

When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

*Can the evidence be used in court?*

a) Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

*Is the evidence reliable?*

b) Is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?

c) What explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?

d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?

e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?

f) Are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

### The Public Interest Test

In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since: "It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution". (House of Commons Debates, volume 483, column 681, 29 January 1951.)

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.

*Some common public interest factors in favour of prosecution*

The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:

a) a conviction is likely to result in a significant sentence;

b ) a weapon was used or violence was threatened during the commission of the offence;

c) the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);

d) the defendant was in a position of authority or trust;

e ) the evidence shows that the defendant was a ringleader or an organiser of the offence;

f ) there is evidence that the offence was premeditated;

g) there is evidence that the offence was carried out by a group;

h) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;

i) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect demonstrated hostility towards the victim based on any of those characteristics;

j) there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;

k) the defendant's previous convictions or cautions are relevant to the present offence;

l) the defendant is alleged to have committed the offence whilst under an order of the court;

m) there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or

n) the offence, although not serious in itself, is widespread in the area where it was committed.

*Some common public interest factors against prosecution*

A prosecution is less likely to be needed if:

a) the court is likely to impose a nominal penalty;

b) the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;

c) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);

d) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;

e) there has been a long delay between the offence taking place and the date of the trial, unless:

— the offence is serious;

— the delay has been caused in part by the defendant;

— the offence has only recently come to light; orthe complexity of the offence has meant that there has been a long investigation;

f) a prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;

h) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or

i) details may be made public that could harm sources of information, international relations or national security;

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

*The relationship between the victim and the public interest*

The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim's family.

It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

*(URL: https://www.cps.gov.uk/publication/code-crown-prosecutors)*

## SUMMARY OF THE ROLE OF THE CPS

1. In our legal system, the police have the responsibility for investigating allegations of criminal conduct and for starting criminal prosecutions. It is the role of the CPS to take those cases over and to prosecute them. The CPS is responsible for pursuing prosecutions in the vast majority of the criminal cases that come before the courts in England and Wales each year: some 1.4 million cases.

2. The CPS reviews every case presented to it and has the power to stop (or discontinue) a case if a prosecution is not justified; it also has the power to decide the appropriate charge(s) when cases proceed. It is therefore ultimately a prosecuting lawyer independent of the investigation who takes the decision to prosecute.

3. In a number of cases each year, the CPS either decides not to proceed with a prosecution that has already been started by the police; or advises the police not to bring proceedings in the first place. The more serious and difficult the case, the more likely it is that the police will seek advice, if they can, before bringing charges.

4. The CPS is responsible for the selection of the correct charges and for the conduct of court proceedings by advocates, whether CPS lawyers or members of the independent professions (a barrister or a solicitor advocate).

5. The general principles underpinning the key decisions taken by CPS prosecutors are set out in the Code for Crown Prosecutors, which is referred to in more detail below. A copy of the Code is included with this consultation paper.

*(URL: https://www.cps.gov.uk/publication/code-crown-prosecutors)*

**Ex. 3. Match the following adjectives with noun as they appear in the text:**

| | |
|---|---|
| long | sentence |
| vulnerable | orientation |
| credible | views |
| relevant | penalty |
| significant | victim |
| overall | delay |
| political | evidence |
| nominal | explanation |
| sexual | assessment |

**Ex. 4. Find in the text the English equivalents for the following Russian phrases:**

точность и достоверность показаний свидетелей
провести общую оценку
взвесить факты за и против
получить огласку
реальная перспектива судимости
перевесить
предумышленный

**Ex. 5. Translate into Russian the next sentences paying attention to the words from the text:**

***hearsay***

1. The court cannot accept evidence based on ***hearsay*** and rumour**.**
2. The ***hearsay*** rule operates to exclude extrajudicial assertions as untrustworthy because they can not be tested by cross-examination**.**
3. The fact that it is his own statement does not change the ***hearsay*** nature of the statement.
4. Many of them only heard about the war from the radio or from ***hearsay***.
5. If the statement is being offered to prove the truth of what it asserts, then it becomes ***hearsay***.

***background***

1. The artist himself did not paint ***the backgrounds to*** his pictures — they were done by his pupils.
2. The book's cover has white lettering on a blue ***background***.
3. We couldn't hear what they were saying on the tape — there was too much ***background noise***.
4. These decisions have had to be made ***against a background of*** high unemployment.
5. They come from a privileged ***background***.
6. The book provides ***background information*** on the history of the region.

***ringleader***

1. He felt that one of the other defendants, a 17-year-old, was more likely the ***ringleader*** of the group.

2. Though devastated by the assassination, on the day before the ***ringleader*** was hanged she sent him the small gold crucifix she had long worn, as a token of her forgiveness.

3. An alleged ***ringleader*** has been accused of 14 cases of bank fraud, and each of these accusations is potentially punishable with up to 30 years imprisonment and a $1 million fine.

4. At his trial authorities described him as a counter-revolutionary ***ringleader***.

### MASTER YOUR GRAMMAR

**Ex. 6. Translate into Russian paying attention to the Passive Voice:**

1. In the United States for instance, the police are not required by law to pass every case to the prosecutor but instead are allowed to make a discretionary decision as to whether to hand over a case to the prosecutor or not.

2. As soon as there is enough evidence to believe that a crime has been committed, the case has to be prosecuted and brought to the court.

3. However, it must not be forgotten that simplifications of proceedings usually go along with restrictions on criminal defendant's rights, such as the right to be heard. This in turn may reinforce the risk of wrongful convictions.

4. Originally, equity may have been intended to be a correction to common law, where common law remained the starting point when the decision of cases is at stake.

5. Law that was established by means of reason was usually discussed under the heading of natural law.

6. These systems were not so influenced by the reception of Roman law.

7. Moreover, the development of common law is driven by the judiciary because the judges make new law through their decisions.

8. The law of most countries in the European continent has been greatly influenced by the combination of Roman and Canon laws.

9. Because human rights were proclaimed and protected by international treaties, they no longer belonged exclusively to the domain of national law.

10. In the treaties that created the European Union (EU), the institutions of the European Union have been given powers to make new European legal rules.

11. For this reason, customary law is usually seen as a source of law, and this means simply that part of the law exists (or existed) in the form of customary law.

12. These rules, which are valid because they were created by recognized rule makers, are called institutional rules.

13. Part of the law has been created or codified in the form of legislation, and therefore legislation is a source of origin of the law.

14. This chapter will analyse how migrants are being criminalised before reaching the borders of Europe.

## Unit 3

## THE UNITED STATES CRIMINAL JUSTICE SYSTEM

### PRACTICE YOUR READING AND SPEAKING SKILLS

### Overview

The United States is a federalist system. It consists of 50 sovereign states. The Federal Government and each state government are divided into executive, legislate, and judicial branches. The Federal Government has specific powers that are enumerated in the U.S. Constitution. Hence, the 50 states retain substantial autonomy, since any powers not delegated to the Federal Government and not prohibited to the states by the Constitution are reserved to the states. Title 18 of the United States Code (USC) is the criminal code for federal crimes. All 50 states have their own criminal codes. In addition, the Congress has created a separate criminal code for the District of Columbia. By far the vast majority of criminal cases are prosecuted at the state level. Criminal actions are classified as "felony" and "misdemeanor". The Federal Rules of Criminal Procedure (FRCrP) are the procedural rules that govern how federal criminal prosecutions are conducted in U.S. district courts. They were first promulgated by the Supreme Court in 1944 and became effective on March 21, 1946. Like substantive criminal law, each state and the District of Columbia has its own criminal procedure.

In the United States, prosecutions are carried out through U.S. attorneys at the federal level and by district attorneys at county level. There is no examining magistrate.

## Main Features of the United States Criminal Procedure

### *The Ex Officio Principle*

The state has a monopoly on criminal prosecution. Whether or not to initiate criminal proceedings is a matter for the discretion of the public prosecutor.

### *Principle of Opportunity*

The principle of opportunity — as opposed to the principle of legality —leaves the prosecutor broad discretion to decide whether to prosecute or not. Prosecution systems adhering to the opportunity principle allow prosecutors to take into account various factors not limited to evidence in making their decisions. Hence, prosecutors are not obliged to prosecute every case where there is sufficient evidence to believe that a crime has been committed. Reasons for not prosecuting are commonly known as public interest factors. Such factors include for example the gravity of the offense, the availability of resources, and the victim.

### *The Adversarial and Accusatorial Nature of Criminal Proceedings*

The U.S. criminal process is designed to be accusatorial as well as adversarial. The adversary model gives the parties the responsibility of investigating the case and presenting their evidence before a passive and neutral judge or jury who will determine guilt. The duty of the judge is to ensure fair play of due process, whereas the responsibility to seek the truth of the case relies on the defense and prosecution.

The accusatorial character of the criminal justice process is reflected in various elements of the process. The most important of these elements is that the burden of establishing the guilt of the accused is upon the prosecution. The prosecutor has to prove guilt "beyond a reasonable doubt". Other elements of the accusatorial process include the presumption of innocence and the defendant's privilege against self-incrimination.

*The Emergence of Crime Victim Rights and Remedies*

By the end of the eighteenth century, the concept of public prosecution was well established in the United States. The perception was that, in a system of public prosecution, — as opposed to a system of private prosecution — all criminal acts were against the state and hence, the victim was society as a whole. Victims of crimes had no right to participate in the criminal process at all. The responsibility for conducting criminal justice processes rested entirely in the hands of the prosecutor, and the victim just had the role of witness in the prosecution. As a result, during many years, U.S. criminal justice system has paid little attention to victim concerns. It is with the rise of the victims' rights movement at the end of the twentieth century that interest in crime victims increased. This movement emerged from the belief that crime victims in a criminal process were not fairly treated. Since then, victims have progressively won the right to participate in the criminal process.

The first federal victims' rights legislation was the Victim and Witness Protection Act of 1982. Since then, U.S. Congress has subsequently amended and expanded the provisions of the 1982 Act with the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, and finally with the Justice for All Act of 2004 that contains four major sections related to crime victims and the criminal justice process.

The Crime Victim's Rights Act that is part of the Justice for All Act of 2004 has strengthened the rights of victims of federal crimes and has implemented additional enforcement mechanisms and remedies for violations of victims' rights.32 In 2008, key applicable provisions of the Crime Victim's Rights Act were incorporated into the Federal Rules of Criminal Procedure.

*Crime Victim Rights and Remedies*

Section 3771 of Title 18 of the USC provides the following rights: (1) the right to be reasonably protected from the accused, (2) the right to notification of public court and parole proceedings and of any release of the accused, (3) the right not to be excluded from public court proceedings under most circumstances, (4) the right to be heard in public court proceedings relating to bail, the acceptance of a plea bargain, sentencing, or parole, (5) the right to confer with

the prosecutor, (6) the right to restitution under the law, (7) the right to proceedings free from unwarranted delays, and (8) the right to be treated fairly and with respect to one's dignity and privacy.

Today, over 30 states have added a crime victim "bills of rights" or other victim-related provisions to their state constitution. Each of the states has a general statutory declaration of victims' rights. The state of Minnesota, for example, requires victim notification of important events and actions in the criminal justice process. Furthermore, it allows crime victim presence and hearing at various stages of the criminal justice process.

The Federal Government and all of the states recognize compensation programs and restitution provisions.

### The Definition of a "Victim"

The definition of the term "victim" is important for determining the field of application of the victims' rights provisions.

The Federal Crime Victims' Rights Act defines a "crime victim" as follows: "For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative". From this it follows that the prescribed rights are not limited only to direct crime victims, but extend to representatives of incompetent, incapacitated, minor, or deceased victims. Defendants are excluded. In *United States v. Ekanem*, the Court concluded that "person" also included the government so that restitution in favor of the government is possible.

On the state level, crime victim rights provisions may cover only the direct victim, or similar to the federal Crime Victims' Rights Act, extend to representatives of incapacitated, incompetent, deceased, or minor victims as well. Some jurisdictions confer those rights, even to governmental entities and corporations. Some states explicitly exclude the person charged with or alleged to have committed the crime.

### The Definition of a "Crime"

The Crime Victims' Rights Act does not limit or restrict the federal crimes to which it applies. In contrast to this, most jurisdictions restrict the application of victims' rights to only certain crimes. In some states, victims' rights constitutional provisions extend to victims suffering financial, psychological, or physical harm due to crime. In others, those rights cover only victims of felony offenses. Statutory provisions may limit victims' rights to victims of crimes involving physical or sexual violence or injury. Other states limit their rights provisions to victims of specifically enumerated offenses. The state of Minnesota limits the victim rights provisions to individuals who have suffered bodily harm.

**Ex. 1. Answer the following questions using the text:**

1. Do all 50 states have their own criminal codes?
2. What does the ***ex officio*** principle mean?
3. What does the principle of opportunity mean?
4. Give definition of Crime, Victim, the Advesarial and Accusatorial Nature of Criminal Proceedings.
5. When was the concept of public prosecution well established in the USA
6. What rights and remedies are provided to Crime Victims?

### PRACTICE YOUR WRITING SKILL

**Ex. 2. Render the text in English paying attention to words and phrases learnt.**

#### Состязательная природа уголовного процесса США[1]

Понятие состязательности является ключевым для понимания того, что из себя представляет американский уголовный процесс. Его цель, как и любой другой правовой системы, состоит в принятии справедливого решения по уголовному делу в условиях беспристрастности, уважения прав и свобод человека и гражданина, корректности по отношению к сторонам и возможно полной информированности о предмете правового спора.

[1] Уголовный процесс в США : учебное пособие / Н. Г. Стойко, О. Б. Семухина. Красноярск : Краснояр. гос. ун-т, 2000. 315 с.

Согласно теории состязательности это предполагает:

1) самостоятельность сторон в собирании, исследовании и представлении доказательств в своих собственных интересах;

2) возможность сторон активно контролировать ход судопроизводства;

3) пассивность и нейтральность суда (судьи и присяжных заседателей), лишь выслушивающего доводы и аргументы сторон;

4) обязанность судьи обеспечить процедурное равноправие сторон, строгое следование ими правил изложения доказательств и доводов;

5) исключительное право суда на разрешение рассматриваемого дела.

Отсюда особая ценность процедур в американском судопроизводстве, построенном на жестком разделении функций собирания, исследования и представления доказательств и функции принятия решений. Система этих процедур, по сути, представляет собой особый механизм, дающий сторонам возможность и средства для жизни своих интересов и контроля над правильностью движения дела. Более того, правосудие здесь в каждом конкретном случае есть создание такого механизма, в котором главной целью является воспрепятствование принятию предопределенного законом или прецедентом “должного” решения одним органом власти посредством установления постоянного поддержания баланса интересов и взаимоконтроля. Иначе говоря, акцент делается на способе, которым стороны продвигают свои интересы в процессе, а суд применяет закон или прецедент. Причем принципиальным признается второстепенность содержания судебного решения, основанного на норме общего или законодательного права.

Предполагается, что четко, корректно и беспристрастно проведенная процедура, построенная на противопоставлении позиций сторон, соревновании или игре интересов, приводит к более справедливому результату в сравнении с заранее предписанным законодателем всеобщим правилом. Так происходит потому, что тем самым уменьшается риск совершения ошибок, связанный с “естественной человеческой тенденцией слишком скоропалительно выносить суждение о том, что еще не полностью известно, на основании сравнения со знакомыми образцами”. Кроме того, обладая свойством легитимности, процедура

является значительно более гибкой в сравнении с эталоном, заданным законом или прецедентом, которые стареют значительно быстрее. Будучи общепризнанной, с одной стороны, и корректной в конкретном деле, с другой стороны, процедура облегчает одобрение принятого решения обеими сторонами, несущими ответственность за результат использования переданных им в распоряжение процессуальных средств.

Итак, именно процедура есть определяющая характеристика американского уголовного процесса, ключевым элементом которой является процессуальная справедливость. Ее ценность, проистекающая из уважения к правам человека, ставится выше ценности эффективности судебного решения и даже может противоречить последней. Разумеется, совокупность вышеприведенных теоретических положений, могущих быть названными состязательной моделью судопроизводства в американской юридической литературе (и в целом в литературе стран общего права), представляет собой наиболее общее описание сущности американского варианта уголовного процесса, основанного на англосаксонских традициях. Поэтому есть смысл кратко остановиться на рассмотрении лежащих в рамках предложенной основной модели интерпретациях ученых, отражающих свои представления не столько о том, каким является, сколько — каким должен быть состязательный уголовный процесс. Можно выделить три группы таких интерпретаций, или теоретических моделей, основанных на различных критериях:

1) модели судебного разрешения споров;

2) модели социального контроля;

3) альтернативные модели.

## MASTER YOUR GRAMMAR

**Ex. 3. Translate the sentences paying attention to the functions of the Infinitive:**

1. However, before modifying a current system, it is important to know all the advantages and disadvantages related to a prosecutor having broad discretionary power.

2. The custom to decide cases by analogy to previous cases and the doctrine of stare decisis together mean that common law has developed on the basis of precedents and case law.

3. It is possible to detect a further subdivision within this civil law tradition.

4. Legislation is a way to create new rules and to modify or derogate existing ones.

5. In order to be able to create law (we will, for the remainder, ignore modification and derogation), an institution (or, less common, a person) must have the competence to do so.

6. In order to avoid an overly high concentration of power in the hands of a few individuals, it is desirable to divide the powers of the state among different organs.

7. A common way to accomplish this is to assign different functions of the state to different organs.

8. To deal with such conflicts, several principles have been developed over the course of time.

9. The purpose of the Communication was to highlight how, beyond their present purposes, databases 'can more effectively support the policies linked to the free movement of persons and serve the objective of combating terrorism and serious crime'.

10. The Directive does attempt to address this issue by providing Member States the option not to impose sanctions for human smuggling by applying their national law and practice for cases where the aim of the behavior is to provide humanitarian assistance to the person concerned.

11. The Court justified this approach on the grounds of the necessity to prevent the erosion of Community law freedoms by national measures.

12. In the light of the above discussion, the Court of Justice confirmed that the return procedure established by the Directive corresponds to a gradation of the measures to be taken in order to enforce the return decision.

13. The Court went on to highlight the differences between national criminalisation and the system put forward by the returns Directive.

14. In private law, important consequences of being a legal subject are that one can have rights, such as property or a claim to be paid money, and that one can perform juridical acts.

15. To begin with, juridical acts that belong to the sphere of public law, such as legislation, cannot be performed by ordinary citizens.

16. It is important to realize that the question whether there is an intention to be legally bound is a legal question: the law decides when such an intention exists.

# Unit 4

## GUIDE TO CRIMINAL PROSECUTIONS IN THE UNITED STATES

### PRACTICE YOUR READING AND SPEAKING SKILLS

### An Introduction to Practice and Procedure

In the United States, both the federal government and the states have authority to prosecute criminal offenses. The federal government and each state has its own criminal statutes, court system, prosecutors, and police agencies. Whether a particular crime will be prosecuted by a state or by the federal government will depend on factors too numerous and complex to be addressed in this brief paper.

As a consequence of both law and practice, the crimes most frequently prosecuted by the federal government include drug trafficking offenses, organized crime, and financial crimes, large scale frauds and crimes in which there is a special federal interest such as crimes against federal officials, and frauds against the United States. In addition, there are certain crimes that only the federal government may prosecute. These include customs offenses, offenses involving federal tax matters, and crimes of espionage and treason.

The states prosecute most crimes against the person, such as murders and assaults, and many crimes against property, such as robberies and thefts. Indeed, states prosecute a far greater number of crimes than does the federal government.

While the states have broad authority to prosecute many types of crimes, they may investigate and prosecute only criminal acts committed within their boundaries. The power of the federal government, however, extends throughout the United States. Therefore, the federal government is often better able to investigate and prosecute sophisticated and large-scale criminal activity.

The Office of International Affairs (OIA), Criminal Division, U.S. Department of Justice, is responsible for all international extradition, as well as international legal assistance, for both state and federal prosecutors. In that capacity, OIA supervises the representation of foreign governments' extradition and evidence requests in U.S. courts.

Although there are differences in criminal procedure among the states and between the states and the federal government, certain core principles of United States criminal law and practice apply equally to all state and federal investigations and prosecutions. First, it is true throughout the United States that the investigation and prosecution of crime is the responsibility of the executive branch of government. Prosecutors, investigating agents, and police officers are members of the executive branch, not the judicial branch. In the United States, there is no concept of an investigating judge, as is found in a civil system.

Therefore, the role of judges in the investigation of criminal offenses is limited. However, certain actions during an investigation can be taken only upon the authorization of a judge. Only a judge may issue a warrant to search for and seize evidence of crimes; only a judge may order the recording of telephone conversations; only a judge may take action to enforce a subpoena (an order that a witness give testimony or produce documents or other evidence in his or her possession under penalty of incarceration for refusal); and, except in limited circumstances, only a judge may issue a warrant for the arrest of an accused person.

Whenever a prosecutor (or, in some instances, a police officer) determines that such a judicial act is needed in an investigation, he or she must make a formal request to the court and present facts or evidence that are legally sufficient to support the action requested. A judge will issue the warrant or order requested only if he or she determines that there is a sufficient factual basis for it. For example, in the case of a request for a search warrant, the court must determine that the evidence presented is sufficient to establish probable cause to believe that an offense has been committed and that evidence of that offense may be found at a specific place to be searched.

Second, certain aspects of procedure in criminal cases are required under the Constitution of the United States. These apply equally to state and federal prosecutions. For example, a person accused of a serious offense has a right to be tried by a jury and to be represented by an attorney. At trial, the defendant has a right to question persons giving testimony against him or her. Also, no person may be compelled to give testimony against himself or herself. Similarly, the Constitution requires that no warrant shall be issued except upon a determination that there is sufficient evidence to support a finding of "probable cause."

Thus, a warrant for the arrest of a person may not be issued unless there is sufficient evidence to support a finding that it is more probable than not that a crime has been committed and that the person to be arrested committed that crime.

*(URL: http://www.oas.org/juridoco/mla/en/usa_int-desc-guide.html)*

**Ex. 1. General Comprehension Questions:**

1. What crimes are most frequently prosecuted by the federal government?
2. May the states investigate and prosecute criminal acts committed beyound state boundaries?
3. How far does the power of the federal government extend in the sphere of investigation and prosecution?
4. What are the functions of the Office of Internaional Affairs (OIA)?
5. Is the investigation and prosecution of crime the responsibility of the judicial branch of government?
6. May any person be compelled to give testimony against himself or herself?
7. What is the role of judges in the investigation of criminal offences?
8. When may the warrant for the arrest of a person be issued ?
9. What rights does a person accused of a serious offense have ?

**Ex. 2. Explain in English the following words and word combinations. Give their Russian equivalents:**

| | |
|---|---|
| panel | to investigate |
| tenure | to empower |
| incarceration | to rule on |
| subpoena | to give testimony against |
| to prosecute | to extend through |

**Ex. 3. Fill in the verbs and their derivatives and the nouns given above the sentences:**

***panel, to investigate, subpoena, to prosecute, incarceration, to empower, to rule on, to provide for, marshal, to give a testimony against.***

1. No one has yet been …… in connection with this murder.

2. She was thoroughly …… by the FBI before being offered the job.

3. This court is …… to review the decisions of a lower court.

4. The budget of the firm …… ….. a salary increase after one year.

5. The court still has not ……. ….. the Swift case.

6. I was asked …….. …….. ……. my friend that made me feel really uncomfortable.

7. ……. is an official legal document that says you must come to a court of law to give information.

8. ……. is a government officer whose job is to make certain that the laws of a place or orders of a court are obeyed.

9. Sometimes it is necessary to discuss and take some very important decision in ……if a person does not want to carry a burden of responsibility himself or herself.

10. He was sentenced to …… .

**Ex. 4. Speak on the structure of authorities involved in the Investigation, Prosecution and Trial of Federal Crimes. Characterize every participant of this system, duties and functions of those involved.**

**What are the duties and functions of BFI, DEA, the US Marshals and BATFE? Find out the necessary information in the Internet.**

### Authorities Involved in the Investigation, Prosecution and Trial of Federal Crimes

*The Department of Justice*

As noted above, the responsibility to investigate and prosecute crimes in the United States rests in the executive branch of government. All federal prosecutors are part of the United States Department of Justice. In addition, the investigating officers of Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA), the U.S. Marshals, and the criminal investigators of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) are all employed by the Department of Justice, and as Justice Department employees are overseen by the Attorney General.

The prosecution of federal criminal cases in each of the U.S. District Courts is the responsibility of the U.S. Attorney for that District. Each U.S. Attorney is appointed by the President and reports to the Attorney General.

There are 94 U.S. District Courts and 93 U.S. Attorneys. The number of federal judges and prosecutors in each District varies widely, depending on the number of federal legal matters (both criminal and civil) in each District. For example, U.S. Attorney's Office for the Southern District of New York (Manhattan) has more Assistant U.S. Attorneys than the U.S. Attorney's Office for the District of Connecticut.

Attorneys from the Criminal Division of the Department of Justice in Washington, D.C., may also handle prosecutions throughout the United States, but the chief federal prosecutors are the 93 U.S. Attorneys, and the attorneys whom they supervise, the Assistant U.S. Attorneys.

### *The Federal Judiciary*

There are three levels of federal courts and federal judges empowered to hear civilian criminal cases. Once appointed, all federal judges, except U.S. Magistrate Judges, may continue to serve as judges throughout their lives. The U.S. Constitution provides for the lifetime tenure of U.S. judges.

#### *The United States District Courts*

At the first level of the federal judiciary are the 94 U.S. District Courts. The judges in the district courts are either U.S. Magistrate Judges (the lowest level of federal judges) or U.S. District Court Judges. All trials of federal criminal cases take place in the U.S. District Courts.

Certain minor offenses may be tried before a U.S. Magistrate Judge. Otherwise, all federal criminal trials are conducted by a single U.S. District Judge. At trial, the judges rule on all questions of law and evidence. If there is no jury, they also determine whether the evidence is sufficient to convict. The sentencing of convicted persons is also the responsibility of the judges at the District Court level.

The power of the District Judges is greater than that of the Magistrate Judges, and, in many instances, District Court judges determine what actions the Magistrates may perform. For example, all extradition hearings occur in the District Courts, but the rules estab-

lished by the District Court Judges will determine whether the extradition hearing may be held before a Magistrate rather than a District Judge.

In addition to conducting trials, the judges of the District Court have authority to issue warrants of arrest and warrants for search and seizure, to grant provisional liberty of a person accused of crime, and to rule on all legal matters prior to trial.

*The United States Courts of Appeals*

At the next level are the U.S. Courts of Appeals, also called the Circuit Courts of Appeals. There are thirteen Circuit Courts of Appeals. Each of the twelve Circuit courts that hears appeals from criminal cases has jurisdiction over a particular geographic area called a "Circuit." Each Circuit Court hears appeals from the District Courts within its area. For example, the Second Circuit Court of Appeals hears appeals from decisions of the various District Courts in the States of Connecticut, New York, and Vermont.

Persons convicted of federal crimes have a right to appeal to the Circuit Court having jurisdiction. The Circuit Courts, however, will generally give great deference to the evidentiary (factual) findings at trial and will not conduct a broad review of the evidence. They will conduct a more extensive review of decisions of law, rather than findings of fact. The prosecutor's ability to appeal is very limited. For example, the prosecutor may not appeal a judgment of acquittal.

Appeals in the Circuit Courts are heard by a panel of three Appellate Court judges. In very rare circumstances, the decision of the three-judge panel may be reviewed by all the judges for the Circuit. At the appellate level, the attorneys for the prosecution and defense submit documents to the court outlining the law applicable to the facts of the case and the reasons why the court should find in their favor. The court then generally hears the "argument" or oral presentation of each attorney, and will ask him or her questions regarding the case. The court then considers the case and renders a decision. Generally, this decision is written, and will explain the court's reasons for the decision.

*The United States Supreme Court*

The Supreme Court is composed of nine judges. Except in unusual circumstances, the Supreme Court acts as an appellate court, reviewing the decisions of the U.S. Courts of Appeals and the Supreme Courts of the various states. Decisions of the Supreme Court

are not subject to further appeal. In criminal cases, there is generally no right to appeal to the Supreme Court. Instead, the person seeking review by the Supreme Court must file an application for review with the Court, explaining why the legal issue in his or her case is important enough for the court to consider. Only in a few cases does the Court accept a petition for review. The Supreme Court has not reviewed an extradition case in more than fifty years.

*(URL: http://www.oas.org/juridoco/mla/en/usa_int-desc-guide.html)*

## PRACTICE YOUR WRITING SKILLS

**Ex. 5. Translate the following text into English.**

### Служба государственного обвинения в США

В США обвинение по уголовным делам — важная, но не единственная функция прокуратуры[1] как совокупности правоприменяющих органов (федеральных, штатных и местных) исполнительной власти, выполняющих юридическое консультирование правительства соответствующего уровня, представляющих его интересы в судах и обеспечивающих исполнение закона.

Реализуя третью функцию, прокуратура действует как служба обвинения, управомоченная именем государства возбуждать уголовные дела, расследовать нарушения законов, привлекать правонарушителей к уголовной ответственности, поддерживать обвинение в судах.

***Генерального прокурора США (US Attorney General)*** — главу федеральных органов обвинения — в российской литературе часто именуют «министром юстиции». Это объясняется тем, что генеральный прокурор возглавляет ***министерство юстиции США (US Department of Justice)***, но последнее никакого отношения к судебному управлению не имеет, а именно эта функция составляет основу компетенции министерств юстиции в других странах. Генеральный прокурор США, возглав-

[1] Термины «прокуратура» и «прокурор» здесь не являются полным соответствием понятию прокуратуры в Российской Федерации, где прокуратура выполняет не только функции, связанные с уголовным преследованием и поддержанием государственного обвинения в суде, но и ряд других, таких как функция надзора за законностью во всех областях и пр.

ляющий министерство юстиции как приданный ему аппарат, выполняет такие функции, которые в других странах возложены на прокуратуру, министерство внутренних дел, органы контрразведки и уголовного розыска, тюремные ведомства. Сфера деятельности прокуратуры США поэтому намного шире обычной для прокуратуры сферы уголовного преследования и государственного обвинения и не совпадает с традиционной для министерства юстиции сферой судебного управления.

Прокуратура на федеральном уровне — строго централизованная иерархия правоприменяющих органов исполнительной власти, представленная генеральным прокурором США и ***прокурорами США (US Attorneys)***.

Генеральный прокурор США надзирает за прокурорами США и руководит ими. Общее политическое руководство самим генеральным прокурором осуществляет президент США, на котором в силу статьи II Конституции США лежит обязанность «обеспечивать точное исполнение законов». Президент же назначает генерального прокурора «по совету и с согласия» Сената.

Должность генерального прокурора США была учреждена на основании Закона о судоустройстве 1789 года. Первоначально он выполнял свои функции почти единолично, не имея в подчинении министерства. Лишь в 1870 году было учреждено министерство юстиции, подчиненное генеральному прокурору.

Основные обязанности генерального прокурора США — представительство интересов правительства США в судах, консультирование правительства по юридическим вопросам, обеспечение исполнения федерального законодательства — реализуются через соответствующим образом организованные подразделения министерства юстиции и через прокуроров США.

Важной обязанностью генерального прокурора является дача рекомендаций президенту относительно кандидатов на должности федеральных судей, включая членов Верховного суда США.

Функция генерального прокурора по представительству интересов США в судах делегирована ***генеральному солиситору США (US Solicitor General)***, одному из высших должностных лиц министерства юстиции. Генеральный солиситор представляет США в Верховном суде по всем категориям дел, затрагивающим интересы американского государства в целом.

В управлении по уголовным делам имеется отдел по международным делам, занимающийся вопросами взаимной правовой помощи, выдачи или депортации преступников, которые скрывались в США от правосудия в своих странах.

***Служба иммиграции и натурализации (Immigration and Naturalization Service)*** как административный орган рассматривает и решает вопрос о допуске иммигрантов в Соединенные Штаты. В ее функции входит проверка документов лиц, въезжающих в страну, регистрация иностранцев, а также проверка лиц, обращающихся в суд с ходатайством о приеме в американское гражданство. Как следственный орган служба иммиграции и натурализации расследует нарушения законов об иммиграции и натурализации, осуществляет розыск и депортацию иностранцев, находящихся на территории страны в нарушение иммиграционных законов.

***Федеральное бюро расследований (Federal Bureau of Investigation)*** выполняет основной объем оперативно-розыскной и следственной работы Министерства юстиции. ФБР разветвленное, но строго централизованное ведомство во главе с директором и его помощниками, имеет 56 отделений в крупных городах США (каждое из которых имеет филиалы) и 23 поста в ряде зарубежных стран (в 1994 году пост связи ФБР был открыт в Москве). Штаб-квартира в Вашингтоне. Юрисдикция ФБР распространяется на большинство преступлений, преследуемых по федеральным законам. Проводя расследование и оперативные мероприятия в связи с возможными нарушениями законов об охране национальной безопасности, ФБР действует как орган контрразведки. Исполнительным приказом президента, изданным в 1981 году, на ФБР была возложена координация контрразведовательных мероприятий всех правительственных ведомств США, включая ЦРУ и министерство обороны. Инструкциями генерального прокурора ФБР было уполномочено проводить так называемое разведывательное расследование деятельности групп граждан, подозреваемых в терроризме или угрожающей внутренней безопасности США.

***Служба маршалов США (US Marshals Service)***, имеющая в министерстве юстиции статус бюро, занимается координацией деятельности маршалов США в федеральных судебных окру-

гах. Своеобразие института маршалов США заключается в том, что этот орган исполнительной власти фактически подчинен судебной власти, поскольку главная функция маршала и его помощников — исполнение всех приказов, предписаний и распоряжений, отданных федеральным судом, и обеспечение исполнения вступивших в силу судебных решений. Маршалы США по делам федеральной юрисдикции производят аресты, обыски и изъятия согласно ордерам, выданным судом, обеспечивают охрану участников процесса, содержание под стражей и перевозку арестованных и осужденных до помещения их в исправительные учреждения.

*(URL: http://www.infousa.ru/laws/prosecution.htm)*

## Procedure in federal criminal cases

*The Investigation and Bringing of Formal Charges*

When one of the federal investigative agencies believes that it has evidence of a violation of United States law, the investigative agents will present their findings to the Office of the U.S. Attorney in their district. One of the Assistant U.S. Attorneys will review the case and question the agent about it in detail to determine whether the evidence shows that there is probable cause to believe a crime has been committed.

If the evidence is not sufficient to establish probable cause, the Assistant U.S. Attorney (AUSA) may ask the agents to continue their investigation, in the alternative, he or she may decide that the evidence should be presented to a grand jury and that the grand jury should continue the investigation of the case.

If the AUSA determines that there is probable cause, he or she will present the evidence to the grand jury and ask that they vote on a proposed criminal charge. This charge is called an indictment. However, in some instances, there is insufficient time to present the case to the grand jury because of an urgent need to arrest the person believed to have committed the offense.

In these instances, the AUSA will ask a judge to issue an arrest warrant based on a sworn statement called a complaint, which sets out the essential facts of the offense charged. The complaint, or sworn statements filed with the complaint, must also set out evi-

dence sufficient to establish probable cause to believe that the specific crime charged was committed by the person charged with that crime. If, after a careful review, the judge determines that there is sufficient evidence to meet the probable cause standard, the judge will issue a warrant for the arrest of that person. If a person is arrested pursuant to this procedure, the AUSA must thereafter present the case to the grand jury and obtain an indictment.

A grand jury consists of between 16 to 23 citizens who have the duty, after reviewing the evidence, to vote on a proposed criminal charge. Generally, the grand jury hears evidence only from the government. A target of an investigation (i.e., a person on whom the investigation is focused) may not be subpoenaed before a grand jury but may volunteer testimony before the grand jury. This seldom occurs.

In order for a person to be indicted, at least 12 members of the grand jury must find that there is probable cause to believe that the person or persons to be charged committed the crime or crimes to be charged. While the grand jury is deliberating on whether to return an indictment, i.e., to issue an indictment, the prosecutor and the agent, court reporter, and everyone else must remain outside the grand jury room.

Persons accused of crimes punishable by more than one year's imprisonment have a Constitutional right to be indicted by a grand jury. The grand jury does not determine the guilt or innocence of the defendant. That can be done only at trial.

A federal prosecutor does not have the authority to issue a subpoena ordering a person to give testimony or to produce evidence in his or her possession. The grand jury has the authority to issue such subpoenas, and it therefore has substantial investigative powers. In practice, the AUSA or other federal prosecutor usually issues subpoenas in the name of the grand jury. However, the grand jury can subpoena additional witnesses of its own volition.

When a witness is subpoenaed before the grand jury, the AUSA generally asks the questions although in many instances the grand jurors also question witnesses. A witness before a grand jury, like a witness at a trial, may not be compelled to give evidence that would tend to show that he or she has committed a criminal offense. As discussed above, this right is referred to as the Fifth Amendment privilege or the privilege against self-incrimination.

Grand jury proceedings are recorded verbatim by a stenographer and are secret. It is a crime for a prosecutor or a member of the grand jury to discuss grand jury proceedings in public. Also, a prosecutor may not disclose grand jury information to another prosecutor or investigating officer, unless that prosecutor or officer is also involved in the same criminal investigation. Information gathered by a grand jury may be disclosed only upon the order of a federal court. Such permission is rarely given. Of course, evidence obtained by the grand jury may be used later at trial, if the grand jury formally indicts one or more persons for a criminal offense.

In complex crimes such as most bank frauds, the involvement of a grand jury from the beginning is essential to an effective investigation. In such cases, the prosecutor and investigator will work very closely together from the start of the investigation.

### *The Arrest of the Defendant*

In the federal system, accused persons are usually arrested after a grand jury formally charges them with a crime. (As noted above, a judge may issue an arrest warrant before indictment upon the filing of a complaint setting forth sufficient evidence to establish probable cause.) Generally, the AUSA will apply to the court for the issuance of a warrant of arrest for the person named in the indictment. Depending on a number of factors, the defendant may, after arrest, be released on bail (provisional liberty or conditional release) pending trial or may remain in prison. These factors include the seriousness of the crime, the criminal history of the accused, and the likelihood that he or she will become a fugitive. A judge determines whether a defendant is to remain in prison or is to be released, and, if released, on what conditions. These conditions may include a requirement that the defendant, or someone acting on the defendants behalf, pledge money or other property that will be forfeited if the defendant fails to appear for trial.

Soon after the defendant is arrested, he or she will be brought before a judge. The judge will inform the defendant of the charges against him or her and ask whether the defendant pleads guilty or not guilty to the charges. This proceeding is called the arraignment.

### *The Trial of the Defendant*

Under the U.S. Constitution, a person accused of all but very minor offenses has a right to be tried by a jury. This is a trial jury, which is sometimes called a “petit jury”. Trial juries in criminal cas-

es are composed of 12 citizens, who must all agree on the defendant's guilt in order to convict. At trial, the prosecution must prove "beyond a reasonable doubt" that the defendant committed the crime or crimes charged. The defendant has no obligation, to testify or to call any witnesses on his or her behalf. However, a defendant who chooses to testify is placed under oath like any other witness and may be prosecuted like any other witness for perjury.

At a jury trial, the jury determines whether the evidence against the defendant is sufficient for conviction. The jurors must base their determination only on the evidence presented at trial. If they reach the personal conviction that a defendant committed a crime as charged, but determine that the prosecution's evidence does not prove guilt beyond a reasonable doubt, the jury must acquit.

The judge presides over the trial and rules on all issues of law, including whether evidence is admissible (i.e., whether it can be presented to the jury for use in determining whether or not the defendant is guilty as charged). The judge also instructs the jury on the legal principles it is to apply in deciding whether the defendant is guilty or not.

A defendant may waive his or her right to a jury trial. The judge will then function as the "trier of fact" and determine whether the evidence presented is sufficient to find the defendant guilty beyond a reasonable doubt.

A trial the judge may, on occasion, question a witness. However, the questioning of witnesses is primarily the responsibility of the prosecutor and the defense attorney. They do most if not all of the questioning.

A court reporter makes a verbatim record of everything said at trial by the witnesses, prosecutor, defense counsel, and judge. This includes everything said at so-called bench or sidebar conferences in which the prosecutor and defense lawyer argue points of law, e.g., whether a given piece of evidence is admissible, before the judge but out of the hearing of the jury.

If a defendant is found guilty, it is the responsibility of the judge to impose the sentence. A defendant found guilty following a trial may appeal his or her conviction to the U.S. Court of Appeal for the circuit that includes the U.S. District Court in which the defendant was convicted. If the defendant is acquitted, the prosecution may not appeal. In certain circumstances, the defendant may also appeal the sentence imposed. The prosecution and defense must designate the

portions of the verbatim trial record and items of evidence that they wish the appellate court to consider in deciding the appeal. No new evidence may be presented on appeal.

*Declining Prosecution*

One of the most significant aspects of the American legal system is the wide discretion that American prosecutors have in criminal matters. For example, a federal prosecutor may decline to prosecute an offense because he or she finds it not significant enough to merit prosecution in federal court. For instance, the quantity of drugs involved or the loss to a victim may be relatively small. The investigating agents may then present their evidence to a state prosecutor (assuming the offense is one that may be prosecuted in state court), where, again, the state prosecutor has discretion to prosecute the offense or to decline prosecution. Similarly, the federal prosecutor may decline prosecution of a minor offense if he or she considers that there is an acceptable alternative to prosecution, such as an agreement by the defendant to compensate the victim of the offense.

Defendants charged with minor, non-violent crimes may be eligible for pre-trial diversion into a program that usually includes making restitution to the victim. If the defendant completes the program successfully, he or she will not be prosecuted and may avoid a criminal record.

Another instance in which a prosecutor may decline to bring charges or ask the grand jury to return an indictment is where, although there is enough evidence to obtain a persons arrest, (that is, probable cause), the prosecutor knows that enough additional evidence to convict the person at trial will be unavailable. In such circumstances, the prosecutor is not obligated to seek an arrest warrant. In fact, if a prosecutor did bring charges or obtain a grand jury indictment and have a defendant arrested under those circumstances, this could be viewed as an abuse of the prosecutor's discretion.

*Plea Agreements*

Most criminal cases in the United States are concluded prior to any trial or even during trial by the defendant's entering a plea of guilty. Often, these guilty pleas are the result of negotiations between the prosecutor and the defense attorney. This process is called plea bargaining. The agreement is called a plea agreement or plea bargain. In a plea agreement, the defendant, generally through his or

her attorney, agrees to plead guilty to some or all of the charges against him or her in return for certain actions by the prosecutor. The prosecutor may agree to dismiss one or more of the charges, or may agree either to make a recommendation to the judge about the sentence to be imposed or not to oppose a sentence suggested by the defense counsel. The prosecutor's agreement binds the United States. As part of a plea agreement, the defendant may also agree to give truthful testimony about crimes of which he or she has knowledge. Therefore, a prosecutor may use the plea agreement to obtain testimony of a minor criminal that is necessary to convict a more significant criminal.

A guilty plea must be made before a judge. A court reporter makes a verbatim record of everything said in the proceeding. Before the judge will accept the guilty plea, he or she will question the defendant in open court to make sure that the defendant understands his or her right to plead "not guilty" and to demand a trial; that the defendant is pleading guilty voluntarily; that the defendant understands the terms of any plea agreement and the consequences of the guilty plea; that the defendant has not been subject to coercion or improper promises on the part of the prosecutor; and that there is a factual basis for the plea. If the judge is not satisfied by the defendant's responses to the questions, the judge will reject the defendant's guilty plea.

*Grants of Immunity*

Obtaining evidence necessary to convict persons involved in organized criminal groups is particularly difficult. The secretive nature of these groups and their powers of intimidation make it very difficult for the prosecutor to obtain necessary testimony against the groups leaders. Witnesses outside the group are often afraid to testify. Persons within the group are generally not only unwilling to testify, but also may assert their Fifth Amendment privilege against self-incrimination and refuse to testify about any crimes in which they were involved. The special powers of U.S. prosecutors to "immunize" witnesses often allows them to obtain testimony that is critical to these cases.

First, the prosecutor may determine that the cooperation or expected testimony of a minor figure will be especially significant, and that the importance of that person's testimony or cooperation outweighs the need to prosecute the person for minor criminal involvement. In these cases, the prosecutor may agree not to prosecute

the person for the crimes about which he or she is to testify or to cooperate, e.g., by providing information and investigative leads. Thus, the prosecutor can grant immunity from prosecution for particular crimes.

Second, the prosecutor may determine that a narrower grant of immunity is appropriate. This narrower immunity, called "use" immunity, is designed to overcome a witness's assertion of the privilege against self-incrimination. In these cases, the prosecutor asks the court to compel the witness to testify, and the witness is assured that this testimony (and any information derived from that testimony) may not be used in a prosecution against him or her. This type of immunity is controlled by a statute passed by the Congress specifically to address the problems of obtaining evidence in organized crime cases. A prosecutor may still prosecute a person granted this second type of immunity, as long as the evidence against the person does not use or derive from the testimony that the person has been ordered to give.

*(URL: http://www.oas.org/juridoco/mla/en/usa_int-desc-guide.html)*

**Ex. 6. General comprehension question:**

1. What is probable cause to believe a crime has been committed?
2. When does AUSA ask a judge to issue an arrest warrant?
3. How many people does a grand jury consist of?
4. Who has the authority to issue a subpoena ordering a person to give testimony?
5. Who presides over the trial and rules on all issues of law?
6. When may a federal prosecutor decline to prosecute an offence?
7. What are plea agreements?

**Ex. 7. Comment on the criminal proceedings in the USA. Use and complete the given below *Outline of procedure in criminal cases*.**

***Outline of procedure in criminal cases in the USA***

***Pre-trial procedure***

1. Arrest of suspect by police (Miranda v. Arizona, 1966, rights must be read to suspect).

2. Custody (suspect may be held for up to 48 hours without formal charges).

3. Initial appearance of suspect before a judge. Judge determines whether there is sufficient evidence of a crime — probable cause — to charge the defendant, who is then informed of the charge details and his/her legal rights.

4. Arraignment. Defendant appears in court for the reading of the indictment/information/charge. Their rights are explained and they enter a plea.

5._____

6. Discovery. If a case is set for trial, prosecution and defence disclose their witnesses and prosecution must generally produce all evidence against the defendant to the defence.

### MASTER YOUR WRITING

**Ex. 8. Compare American and Canadian Prosecution Authority.**

#### American Prosecution Authority

*Power of Policing*

Policing is largely a local activity in the United States. Primary responsibility for policing criminal activity is placed in units of local government (such as city police forces). However, local law enforcement is complemented by state police (e.g. Michigan State Police). Federal law enforcement officers (e.g. Federal Bureau of Investigation) rarely act as general peacekeepers; rather they have more specific training and duties as compared to the local law enforcement officers that enforce criminal laws generally. Federal officers generally are responsible for enforcing specific Federal legislation i.e. income tax act, customs, immigration, securities etc.

*Federal Power to Prosecute*

United States Attorneys, under the direction of the Attorney General, are responsible for investigating and prosecuting violations of federal law. Dispersed amongst the United States in 93 headquarter offices and 128 staffed branch offices, United States Attorneys are responsible for the prosecution of criminal cases brought by the federal government for violations of federal criminal law including criminal activities, domestic and international terrorism, organized drug trafficking, white-collar crime and regulatory offenses. United

States Attorneys are appointed by the President of the United States with the advice and consent of the United States Senate. They serve at the discretion of the President of the United States.

*State Power to Prosecute*

The state Attorney General is basically the lawyer for the people of the state and has multiple duties including defending the laws and the constitution of the state, and representing the state in litigation. The Attorney General has original jurisdiction to prosecute violations of the law but generally criminal prosecutions are initiated through the offices of the local prosecuting attorneys. Prosecuting Attorneys represent each county in Michigan. The Prosecuting Attorneys must appear for the state or county and prosecute violations of state criminal law. Each county in Michigan elects its Prosecuting Attorney every four years. Local prosecutors (city attorneys) are primarily responsible for the prosecution of minor offenses including traffic violations.

### Canadian Prosecution Authority

*Power of Policing*

Although the federal government has authority over criminal law and procedure, Canadian provinces retain authority over the administration of justice within the province. Each province administers most of the criminal and penal law through provincial and municipal police forces. Most municipalities of any size have established their own police forces. In addition Ontario (and many other provinces) has established its own provincial police force, the Ontario Provincial Police, which supplements the work of the local police department and acts in much the same way as the Michigan State Police. The federal police force, The Royal Canadian Mounted Police, handles the policing of much of northern Canada in addition to handling matters of national security and policing of federal statutes other than those under the Criminal Code (e.g. The Controlled Drugs and Substances Act).

*Federal Power to Prosecute*

For offenses that violate federal statutes other than the Criminal Code, prosecutions are handled by the Department of Justice of the Federal Government. Federal prosecutors may either be full time or employed for specific cases or on a contractual basis with the Department of Justice.

*Provincial Power to Prosecute*

In Canada, prosecutors are appointed by the provincial government, and are known as Crown Attorneys or Assistant Crown Attorneys. They undertake prosecutions of violations of the federal Criminal Code. The Crown Attorney is the Agent of the Provincial Attorney General, the chief law enforcement officer in the province. Municipal prosecutors are hired by the city to prosecute minor offenses such as municipal bylaws and traffic matters.

*(URL: https://www.millercanfield.com/media/article/200071_Criminalprocedure.pdf)*

## MASTER YOUR GRAMMAR

**Ex. 9. Translate the sentences paying attention to the Complex Object:**

1. No legal system allows all promises to be enforceable.
2. The public prosecutor is free to make such oral submissions as it believes to be in the interest of justice.
3. The law considers certain persons to be incapable of entering into a valid legal transaction at all.
4. This regulation, however, was intended solely to enable judges to assess whether evidence was acceptable as per the rules of acceptability of evidence adopted by this Tribunal.
5. Other reasons that are advanced as causes of prosecutorial misconduct include the desire to hide a weak case, and "prosecutor's bias", which leads the prosecutor to believe those charged are guilty.
6. If leaders of the warring parties expect to be prosecuted after the conflict ends, or after they abdicate, they are likely to hold tenaciously to the reins of power and continue fighting.
7. This rule allows us to assume that the point is not to disclose all evidence but rather to enable keeping the majority of "the bulk of disclosure" for the stage of trial.
8. In another decision, the Appeals Chamber acknowledged that Regulation 55 does not authorise judges to extend ***proprio motu*** the scope of the criminal procedure by including subsidiary facts and circumstances not charged by the Prosecutor.
9. The Rules of Procedure and Evidence require the Prosecutor to disclose to the accused — within the same time limit — prior statements obtained by the Prosecutor from the accused.

10. It is not even considered inappropriate to make this assessment based on the prospects for "winning" the case — that is, assessing whether the jury would find the accused guilty.

**Ex. 10. Translate the sentences paying attention to the Complex Subject:**

1. It can be assumed that, although theoretically the criminal justice systems of both countries ***seem*** to have an entirely opposite approach, in reality they are similar.

2. The disclosure of evidence procedure ***was found*** to be strictly related to the assumption adopted by the ICC (International Criminal Court) — that a trial was a dispute between two versions of a case prepared by the parties.

3. The subsequent "reception" of the Roman law ***turned out*** to be very influential on the development of private law on the European continent.

4. The Trial Chamber found that the Prosecutor ***appeared*** to have made a tactical decision to use a piece of evidence during cross-examination rather than during his case-in-chief in order to achieve a better "explosive effect".

5. It is a long-standing principle that federal prosecutors ***are supposed*** to charge a defendant with the most serious offense that is consistent with his criminal behavior and that is likely to lead to a conviction.

6. The model of criminal procedure that was finally adopted ***turned out*** to be unexpectedly effective, and the trials were completed within 10 months.

7. At the first stage of disclosure, the prosecution ***is required*** to serve on the defendant a committal bundle prior to the case being committed to the Crown Court.

8. The hearing is usually committed to preparation of the case for trial in order to identify issues that ***are likely*** to be material to the verdict of the jury, to assist their comprehension of any such issues, to expedite the proceedings before the jury.

9. Thus, the issue of disclosing evidence ***was considered*** not only to constitute a separate right of the accused but also to be one of the rules of proceeding.

10. Accordingly, the amendment to the Code of Criminal Proceedings shifts the burden of evidentiary proceedings onto the parties, and the court ***is expected*** to limit (significantly) its role to issuing its decisions upon producing of evidence by the parties.

**Ex. 11. Translate the sentences paying attention to the construction "for + to + Infinitive":**

1. It is very difficult for a legislator to foresee all possible situations to which a rule may apply.
2. Currently, the prosecutor needs to take over the responsibility for the presentation of evidence to support the indictment and become a fully fledged party to a dispute.
3. Therefore, it is necessary for him to prepare better to act before the court; at present, this practice is (most frequently) limited to reading out the indictment — a natural consequence of an active judge's participation.
4. This may be regarded as a way for the prosecutor to affect the judgment of the court before it has been issued.
5. This power is also extraordinary because only the Attorney General may refer the case for them to review the sentencing if he considers "that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient".

## Unit 5

## THE PUBLIC PROCURATOR'S OFFICE OF RUSSIA

### PRACTICE YOUR READING AND SPEAKING SKILLS

### Article 129 of the Constitution of the Russian Federation

1. The Prosecution Service of the Russian Federation shall be the single centralized structure in which prosecutors are subordinate to superior prosecutors and the Prosecutor General of the Russian Federation.
2. The Prosecutor General of the Russian Federation shall be appointed and dismissed by the Council of Federation upon the proposal of the President of the Russian Federation.
3. The prosecutors of the subjects of the Russian Federation shall be appointed by the Prosecutor General of the Russian Federation by agreement with these subjects.
4. Other prosecutors shall be appointed by the Prosecutor General of the Russian Federation.

5. The powers, organization and procedures of the functioning of the Prosecution Service of the Russian Federation shall be determined by Federal Law.

*(URL: http://constitution.garant.ru/english/)*

**Ex. 1. Translate the sentences paying attention to the Absolute Participle Construction:**

1. However, some branches of law were only developed in equity, the law of trusts being the most prominent example.
2. The first change is temporal, with border controls taking place before an individual has reached the actual physical border.
3. Absolute prosecutorial discretionary power having a long history in the U.S. system, it was an obvious choice to include American prosecutors in this research.
4. An extensive criminalisation approach has been adopted in the context of the aim of combating human smuggling (or, in more neutral EU terminology, the facilitation of unauthorized entry, transit and residence), with a key question in this context being whether the criminalisation of smuggling would lead to the criminalisation of smuggled migrants themselves.
5. The opposite view is to give priority to the declaration and therefore to the external expression of the intention, this being the only thing that is apparent to the other party.
6. Indeed, the trial may have been dominated by the Anglo-Saxon model of evidentiary proceedings, with the judge assuming a more passive role.

**EXTRACTS FROM FEDERAL LAW**
**ON THE PROCURATOR'S OFFICE OF THE RUSSIAN FEDERATION**

**(1992, amended 2004)**

Section I. GENERAL PROVISIONS

*Article 1. Procurator's Office of the Russian Federation*

1. The Procurator's Office of the Russian Federation shall be a single, federal, centralised system of bodies exercising on behalf of the Russian Federation supervision over compliance with the Constitution of the Russian Federation and execution of the laws in force within the territory of the Russian Federation.

2. For the purpose of ensuring supremacy of the law, unity and consolidation of the rule of law, protection of human and civil rights and freedoms and of the lawful interests of society and the state, the Procurator's Office of the Russian Federation shall carry out the following:

— supervision over the execution of laws by federal ministries, state committees, services and other federal executive authorities, representative (legislative) and executive bodies of subjects of the Russian Federation, local self-government bodies, military administration bodies, supervisory bodies and officials thereof, governing bodies and heads of commercial and non-commercial organisations, and also supervision to ensure that any legal instruments issued by them are in conformity with the law;

— supervision over the observance of human and civil rights and freedoms by federal ministries, state committees, services and other federal executive authorities, representative (legislative) and executive bodies of subjects of the Russian Federation, local self-government bodies, military administration bodies, supervisory bodies and officials thereof, and by governing bodies and heads of commercial and non-commercial organisations;

— supervision over the execution of laws by bodies carrying out operative-and-search activities, inquiries and preliminary investigations;

— supervision over the execution of laws by bailiffs;

— supervision over the execution of laws by the administrations of penal bodies and institutions and by the administrations of detention and remand facilities;

— criminal prosecution in accordance with the powers prescribed by the criminal procedural legislation of the Russian Federation;

— coordination of the crime-control activities of law enforcement agencies.

In accordance with the procedural legislation of the Russian Federation, Procurators shall participate in the hearing of cases by courts of law and commercial courts (hereinafter referred to as the "courts") and shall challenge any court decisions, sentences and rulings which are contrary to the law.

4. The Procurator's Office of the Russian Federation shall participate in law-making activities.

5. The Procurator General's Office of the Russian Federation shall produce special publications.

*Article 2. International cooperation*

Within the scope of its powers, the Procurator General's Office of the Russian Federation shall communicate directly with the appropriate bodies of other states and with international organisations, shall cooperate with them, shall conclude agreements on matters relating to legal assistance and crime control and shall participate in the drafting of international treaties of the Russian Federation.

*Article 3. Legal basis for the activities of the Procurator's Office of the Russian Federation*

The organisation and procedure governing the operation of the Procurator's Office of the Russian Federation and the powers of Procurators shall be determined by the Constitution of the Russian Federation, the present Federal Law and other federal laws and by international treaties of the Russian Federation.

The Procurator's Office of the Russian Federation may not be assigned any functions other than those prescribed by federal law.

*(URL: http://fin-lawyer.ru/2008/normativnye-pravovye-akty-rf-na-anglijskom-yazyke/)*

**Ex. 2. Pay attention to some peculiarities of the federal law:**

1. Name the main functions of the Procurator's Office of the Russian Federation.
2. What does "hereinafter" mean?
3. Why do we use the modal verb "shall" in the laws?
4. What are the characteristic features of Legal English?

*Article 8. Coordination of crime-control activities*

1. The Procurator General of the Russian Federation and the Procurators subordinate to him shall coordinate the crime-control activities of the internal affairs agencies, federal security service agencies, anti-drug and psychotropic substances agencies, customs service agencies and other law enforcement agencies.

2. For the purpose of ensuring coordination of the activities referred to in item 1 of the present article, the procurator shall call coordination meetings, organise working groups, request statistical and other relevant information and shall exercise any other powers in ac-

cordance with the Regulations on the Coordination of Crime-Control Activities approved by the President of the Russian Federation.

*Article 9. Participation in law-making activities*

Where it is established in the course of exercising their powers that there is a need to improve the existing regulatory legal instruments, Procurators may apply to the legislative authorities and bodies with the right to initiate legislation, of a corresponding or lower level, with proposals to amend, supplement, repeal or adopt laws or other regulatory legal instruments.

*Article 10. Examination and settlement by procuracy bodies of petitions, complaints and other applications*

1. Procuracy bodies shall examine and settle petitions, complaints and other applications containing information on violations of the law in accordance with their powers. Any decision taken by the procurator shall not prevent an individual from applying to a court for protection of his rights. Decisions on an appeal against a court sentence, decision or ruling may be appealed only by applying to a higher procurator.

2. Any petitions, complaints and other applications received by the procuracy bodies shall be examined in the manner and within the time-limits prescribed by federal legislation.

3. Any reply to a petition, complaint or other application shall state the reasons on which it is based. In the event of refusal to satisfy a petition or complaint, the procedure for appealing the decision, and the right to apply to the courts, where provided for by law, shall be explained to the applicant.

4. The procurator shall take steps in accordance with the statutory procedure to institute proceedings against persons who have committed offences.

5. It shall be prohibited to refer a complaint to the body or official whose decisions or actions are being appealed.

## Section III. PROCURATORIAL SUPERVISION

### *Chapter 1. SUPERVISION OVER THE EXECUTION OF LAWS*

*Article 21. Object of the supervision*

1. Supervision shall be exercised over the following:

— compliance with the Constitution of the Russian Federation and execution of the laws in force within the territory of the Russian Federation by federal ministries, state committees, services and other federal executive authorities, representative (legislative) and executive state authorities of subjects of the Russian Federation, local self-government bodies, military administration bodies, supervisory bodies and officials thereof, and by governing bodies and heads of commercial and non-commercial organisations;

— the legality of any legal instruments issued by the bodies and officials referred to in the present item.

2. In exercising supervision over the execution of laws, procuracy bodies shall not be a substitute for other state bodies.

Checks to ensure the execution of laws shall be conducted on the basis of information received by the procuracy bodies concerning violations of the law which require action by the procurator.

*Article 22. Procurator's powers*

1. In exercising the functions assigned to him, the procurator shall be entitled:

— on presenting his official identity card, to freely enter the territory and premises of the bodies specified in Article 21, item 1, of the present Federal Law, to have access to their documents and material and to verify execution of the laws in connection with information received by the procuracy bodies concerning violations of the law;

— to require the heads and other officials of the said bodies to provide the necessary documents, material, statistical and other information; assign specialists to clarify any questions which may have arisen; conduct checks on the basis of material and applications received by the procuracy bodies and carry out reviews of the activities of any organisations under their control or jurisdiction;

— to summon officials and private individuals for the purpose of providing explanations concerning violations of the law.

2. On the grounds prescribed by law, the procurator or his deputy shall institute criminal or administrative proceedings, shall demand that persons who have violated the law be subjected to any other statutory liability and shall issue warnings against violations of the law.

3. Where a violation of the law is found to have been committed by the bodies and officials referred to in Article 21, item 1, of the present Federal Law, the procurator or his deputy:

— shall order the release of any persons unlawfully subjected to administrative detention pursuant to the decisions of non-judicial bodies;

— shall appeal against any legal instruments which are contrary to the law, shall apply to a court of law or commercial court, requesting it to declare such instruments invalid;

— shall make recommendations for the elimination of violations of the law.

4. Officials of the bodies referred to in Article 21, item 1, of the present Federal Law shall be bound to comply immediately with any requests by the procurator or his deputy to carry out checks and inspections.

*(URL: http://constitution.garant.ru/english)*

**Ex. 3. Find the equivalents for the following phrases:**

to exercise supervision
execution of the laws in force
supremacy of the law
consolidation of the rule of law
to be in conformity with
to challenge court decision
within the scope of its powers
on the grounds prescribed by law

## MASTER YOUR GRAMMAR

**Ex. 4. Translate the sentences paying attention to the Participle I:**

1. The European Court of Human Rights has thus attempted to address the rule of law and fundamental rights issues arising from the existence of gaps in legal protection in extraterritorial state acts by expanding state jurisdiction under the Convention.

2. Having established jurisdiction, the Court found that Italy was in breach of both Article 3 ECHR (prohibition of inhuman and degrading treatment) and of Article 4 of Protocol number 4 (prohibition of collective expulsion of aliens).

3. The European Union legislator has adopted a number of measures dealing with the criminalisation of migration.

4. The parties prefer to avoid calling such a witness, fearing that his "untrustworthiness" will be revealed during cross-examination (and being associated by the court with such a "delinquent" witness).

5. Following the judgment of the Court of Appeal, which can "consider the point and give their opinion on it", confirming that the

law has been infringed, the Attorney General may only obtain the Court's opinion to which he may refer in other cases.

**Ex. 5. Translate the sentences paying attention to the Participle II:**

1. The prosecutor, bound by the principle of legality, cannot exercise any discretion in deciding whether to prosecute or not.
2. As mentioned above, the system of interstate cooperation established by the Dublin Regulation is based on a system of negative mutual recognition.
3. Contract law in the sense mentioned above (as a set of rules and principles that governs transactions among parties, thereby setting the rights and obligations of these parties) is made up of a large number of different rules.
4. Compared to many of the other fields of law discussed in this book, contract law is special in at least one important respect: the question of what the law is (in the sense of the enforceable rights and obligations of the parties) can, to a large extent, be decided by the parties themselves.
5. Unlike the European Union legislator, a number of Member States including France and Italy have chosen to criminalise conduct deemed contrary to national immigration law.

## Unit 6

## THE CONCEPT OF LEGALITY IN ANGLO-AMERICAN AND EUROPEAN-CONTINENTAL LEGAL SYSTEMS

### PRACTICE YOUR READING AND SPEAKING SKILLS

### The consept of legality in anglo-american and eropean-continental legal sistems[1]

There are two main differences between Anglo-American and European-Continental legal systems in applying the concept of legality. The European-Continental legal systems tended not to accept the praxis of binding precedent (*stare decisis*), which enables courts

[1] A Modern Treatise on the Principle of Legality in Criminal Law / G. Hallevy. Springer, 2010. 196 p.

to "legislate" through judicial decisions. Judges are not elected by the public, and therefore are not allowed to enact laws. As a result, only codification (legislation of the parliament) has the legitimate power to enact laws. In the Anglo-American legal systems, following the English tradition, the binding precedent praxis has been accepted to preserve the power of the courts. In criminal law the courts exercise this power very strictly.

The second difference has to do with the functionality of the principle of legality in criminal law. In Anglo-American legal systems the principle of legality is considered as a protecting "shield" from unjustified application of legal social control through criminal law. Thus, the individual exercises the principle of legality as a defense argument. In European-Continental legal systems, the principle of legality can also function as an offensive weapon. In these legal systems, equality is a value that cannot be easily disregarded, and whenever the criminal law is applied to an individual, the principle of legality requires the same application to other individuals in the same circumstances.

Since the eighteenth century criminal codes have emerged all over Europe, partially or fully embracing the principle of legality in its liberal interpretation. Before the French Revolution, it was manifest in the Prussian criminal code of 1721, the Bayern criminal code of 1751, and the Austrian criminal code of 1769. The first criminal code that restrained criminal legislation was the Austrian criminal code of 1787, embraced by Joseph II. Under the French Revolution, Article 8 of the Declaration of Rights of the Man and of the Citizen (La Declaration des droits de l'homme et du citoyen), of August 26, 1789, embraced the principle of legality as an integral part of the French social order. It was restated in the 1791 Constitution and in Article 4 of Code Napoléon, in 1810. Code Napoléon served as the legal basis for many other criminal codes in the nineteenth century, including the Bayern criminal code of 1813, the Prussian criminal code of 1851, and the German penal code of 1870.

In Germany, the principle of legality (Gesetzlichkeitsprinzip) was codified in Article 1 of the German penal code (Strafgesetzbuch), and it is considered to be part of the constitutional concept in Germany because it has been included in the constitutional Basic Law as well. The principle of legality in Germany bans courts from creating offenses (only parliament is authorized to enact criminal norms), prohibits aggravating retroactive criminal norms, and bans analogy as a legitimate method of interpretation of the criminal norm.

German criminal law embraced two additional applications of the principle of legality. First is the secondary principle of subsidiarity (Subsidiaritätsprinzip), whereby criminal law is exercised only as a last resort (*ultima ratio*), when all other options are not relevant in a given case. Second is the secondary principle of protection of legal rights (Rechtsgüterschutzprinzip), whereby the criminal law can be applied legitimately only when legal rights have been infringed by the offender. Moral values are not considered as legal rights and cannot justify exercising the criminal law.

English common law regards the principle of legality as part of the concept of the rule of law, whereby subjects can be controlled by criminal norms that are not arbitrary, hidden, or vague. English common law applies the principle of legality in criminal law through four secondary principles: (a) non-retroactivity, (b) maximum certainty, (c) strict construction, and (d) the presumption of innocence. The Human Rights Act of 1998 added the dimension of human rights to the principle of legality, but English legal tradition could not comply with such a principle of recent European vintage, and English courts refused to accept it. This traditional judicial policy made use of the thin ice principle, the social protection policy, the extremely wide purposive interpretation technique, and policy of easing the burden of proof.

In American law the principle of legality is considered to be one of the basic foundations of criminal law. At the heart of the principle of legality in U.S. criminal law is the linkage between the courts and the legislator through application of the criminal law. One of the basic rules of the principle of legality in American law is that a vague criminal norm is void ("void for vagueness"). Initially, this rule was inspired by constitutional standards, in which any norm that does not meet the requirements of the Sixth Amendment to the United States Constitution is void. Currently, the United States Constitution exerts its influence over the principle of legality in criminal law through the Fifth and Fourteenth amendments.

Under the influence of constitutional insights, American criminal law also embraced rules of strict construction in the interpretation of the criminal norm in favor of the defendant. The ban on retroactive criminal norms is considered to derive directly from the United States Constitution, and it applies both at the federal and the state levels. This ban concerns the relations between the

courts and the legislator, prohibiting the courts from applying a legislation retroactively. American law regards the applicability of the criminal norm in place, by contrast, to fall under the jurisdiction of the courts.

***Vocabulary***

**praxis** — 1) практика (в отличие от теории); 2) обычай, установленный порядок
**stare decisis** (*лат.) — 1)* «стоять на решенном»; 2) обязывающая сила прецедентов
**to enact** — 1) устанавливать, предписывать в законодательном порядке, постановлять; 2) принимать (закон)
**offensive weapon** — наступательное оружие
**disregard** — игнорировать, не учитывать, пренебрегать

**Ex. 1. Answer the following question taking into account information from the text:**

1. What are two main differences between Anglo-American and European-Continental legal systems in applying the concept of legality?
2. What are the secondary principles of subsidiarity and of protection of legal rights in German criminal law?
3. What are four secondary principles through which the principle of legality in criminal law is applied in English common law?

## PRACTICE YOUR READING AND SPEAKING SKILLS

### The Basic Structure of the Principle of Legality in Criminal Law[1]

The supra-principle of free choice requires that the individual have a real possibility to choose between what is “permitted” and “forbidden,” i.e., between committing a specific offense and not committing it. This possibility can exist only if exact borderlines are drawn between what is “permitted” and “forbidden”. In a context that lacks a clear borderline, there is no meaning to free choice. The borderlines are part of the definitions of specific offenses, which forbid certain behaviors. The principle of legality shapes the general rules by which the criminal norm applies to individuals.

[1] Ibid.

Because the principle of legality has to do with the applicability of the criminal norm, it relates to criminality *in abstracto*, not *in concreto*. Criminality in abstracto means analyzing the criminal norm in abstract terms, irrespective of individual events. Criminality *in concreto* is generally the domain of the courts, where the imposition of criminal liability on an individual in given circumstances is analyzed in specific terms. The principle of legality relates to the criminal norm and not to the criminal event. Figure 1.3 describes the basic structure of the principle of legality in criminal law.

According to its basic scientific structure in criminal law, the principle of legality has four main aspects, expressed by its four secondary principles. The first secondary principle relates to the sources of the criminal norm, and asks the question: What are the legitimate sources of the criminal norm. For example, can an international covenant form a criminal norm applicable to individuals? Can the constitution? Can judicial decisions?

The second secondary principle relates to the applicability of the criminal norm in time, and asks the question: How should the criminal norm be applied with relation to time? For example, can the criminal norm be applicable retroactively, or prospectively, or both?

The third secondary principle relates to the applicability of the criminal norm in place, and asks the question: How should the criminal norm be applied with relation to place? For example, can the criminal norm be applied territorially, or extraterritorially, or both?

The fourth secondary principle relates to the interpretation of the criminal norm, and asks the question: How should the criminal norm be interpreted? For example, must the criminal norm be interpreted strictly, or purposively, or leniently toward the individual? Some aspects of this question relate to the formation of the criminal norm *ex ante* (how the criminal norm should be formulated), others to the application of the existing criminal norm *ex post* (how should the criminal norm be interpreted). The four secondary principles are discussed in four subsequent chapters. Finally, the book addresses the possible conflict between the secondary principles and their specific legal provisions as it applies to individual laws.

## Development of the Principle of Legality in Criminal Law and Its Modern Justifications[1]

Despite the Latin maxim *nullum crimen sine lege* (there is no crime without a law), the origin of the principle of legality in its modern meaning is not in Roman law but in the age of Enlightenment in the eighteenth century. Although there are some rigorous formulations of this principle in ancient cultures, these do not include the modern meaning of the concept. The first known formulation of the principle of legality is contained in the second law of Ur-Nammu, from the end of the twenty-first century BC, in the Ancient East. In Roman law, there are some legal provisions that may relate to the principle of legality and that lasted for a long period. These provisions, however, were not considered to be binding in an absolute manner.

Article 39 of the English *magna carta* provides a general formulation of the principle of legality when stating that no free person can be arrested, unless it is done according to the law of the land. But this article does not relate to the exact formulation of the law of the land in the crucial questions of the modern principle of legality. Although Article 39 played a significant role in strengthening the rule of law in England, it was not adequate to establish the principle of legality in criminal law.

The modern principle of legality originates in the insights of the European Enlightenment, in the eighteenth century, where first industrial revolution, created a new socio-economic middle class within the old absolutist regime. The new middle class then pressured the regimes to create the legal frames that would protect their economic interests in the course of the social changes taking place at the time. The middle class, based economically on the industrial production in the cities, had new social needs, different from those of the nobility and farm dwellers outside the cities, which were based upon land.

For example, it was necessary to define a new and specific offense to prohibit smuggling. An offense of this type, irrelevant in earlier times, became necessary to the new socio-economic middle class, which was been based on industry. Moreover, because of the high rates of conviction and harsh punishments meted out for prop-

[1] Ibid.

erty offenses, the courts tended to avoid convicting poor offenders by using a wide legal interpretation. As many property offenders were exonerated, not to impose severe penalties on the poor, the middle classes were left defenseless against property crime and pressured the regimes to create new offenses, with moderate and proportional penalties. The new offenses were aimed at producing a credible social deterrence.

At the same time, the ideas of the Enlightenment spread throughout Europe and contributed to the formation of a new political philosophy of liberalism. Liberalism focused on the individual and contrasted the individual with society. Importing the liberal philosophy into the law created a liberal concept of law, or the liberal legal concept. According to this concept, two principal social powers confront each other in the context of criminal law. The *first* is the power of the sovereign to impose social control. This power exists in all parts of the socialization process. In the context of criminal law, it is manifest as *legal social control*, i.e., the societal control of the individual through legal means.

The direct outcome of legal social control is that society can direct the behavior of individuals. This power is a significant characteristic of every regime in all human societies, democratic or totalitarian, ancient or modern. The difference between various societies lies in the result of the balance between this power (legal social control) and the second one.

The *second* power is individualism. In the context of criminal law, it is *legal individualism*, manifest in the fundamental freedoms of the individual, for example, the freedom to own property and the freedom of speech. Legal individualism emerged out of the political struggles against the absolutist regimes in Europe of the eighteenth and nineteenth centuries, which used their powers to create criminal norms to control the individuals. The individuals, in turn, identified the criminal law with the absolutist regime. The political struggles against the absolutist regimes brought about the recognition of the legal individualism and created a new balance between legal social control and legal individualism.

Since the eighteenth century, legal individualism has become a major restraining force on the power of the state to apply legal social control. During the nineteenth and twentieth centuries, the power of legal individualism increased, and in the modern state legal individualism is considered to be the basis of modern society, with legal

social control deemed as the necessary restraint on legal individualism to enable human existence in organized society. This arrangement is consistent with the modern liberal concept, in which the people are the basis of sovereignty in the modern state, and the state reflects legal individualism in its reign. The only restraints permitted on legal individualism are those restraints that enable social life. Intervention of the state in the individual's life is an exception that requires valid and explicit justification. Thus, the concept of the night watchman state was born.

The application of legal individualism became a major part of the rule of law in the liberal state, in which the criminal norm is created only by the elected representatives of the society, not appointed (by gods or people). This concept matured after the First World War, and became crucial after the second. Deviation from this concept is considered to be a characteristic of tyrannical regimes. One of the outcomes of this concept is the supremacy of the parliament over other organs of the state, because parliament represents society and reflects it.

## The concept of legality in Anglo-American and European-Continental legal systems[1]

There are two main differences between Anglo-American and European-Continental legal systems in applying the concept of legality. The European-Continental legal systems tended not to accept the praxis of binding precedent (*stare decisis*), which enables courts to "legislate" through judicial decisions. Judges are not elected by the public, and therefore are not allowed to enact laws. As a result, only codification (legislation of the parliament) has the legitimate power to enact laws. In the Anglo-American legal systems, following the English tradition, the binding precedent praxis has been accepted to preserve the power of the courts. In criminal law the courts exercise this power very strictly.

The second difference has to do with the functionality of the principle of legality in criminal law. In Anglo-American legal systems the principle of legality is considered as a protecting "shield" from unjustified application of legal social control through criminal law. Thus, the individual exercises the principle of legality as a de-

[1] Ibid.

fense argument. In European-Continental legal systems, the principle of legality can also function as an offensive weapon. In these legal systems, equality is a value that cannot be easily disregarded, and whenever the criminal law is applied to an individual, the principle of legality requires the same application to other individuals in the same circumstances.

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Under the influence of constitutional insights, American criminal law also embraced rules of strict construction in the interpretation of the criminal norm in favor of the defendant. The ban on retroactive criminal norms is considered to derive directly from the United States Constitution, and it applies both at the federal and the state levels. This ban concerns the relations between the courts and the legislator, prohibiting the courts from applying a legislation retroactively. American law regards the applicability of the criminal norm in place, by contrast, to fall under the jurisdiction of the courts.

***Vocabulary***

**purposive interpretation —** целенаправленное толкование
**construction —** истолкование, объяснение (текстов, поведения, символов)
**retroactive** — имеющий обратную силу
**vague** — смутный, неопределенный, неясный, туманный, расплывчатый, нечеткий
**insight** — 1) ознакомление (с материалами дела); 2) понимание, способность разобраться в существе вопроса

**Ex. 2. Match the adjectives from the first column with the nouns from the second one as they are in the texts:**

| | |
|---|---|
| binding | justification |
| offensive | choice |
| retroactive | borderlines |
| purpositive | precedent |
| free | regime |
| exact | culture |
| rigorous | weapon |
| ancient | norms |
| absolutist | formulations |
| valid and explicit | interpretations |

**Ex. 3. Find the Russian equivalents for the following words:**

to restrain legislation
to infringe legal rights
void for vagueness
the burden of proof
strict construction
to prohibit the courts from
to fall under the jurisdiction
contrast the individual with society

**Ex. 4. Tranlate into English the text of the principle of legality in Russian legal system:**

***Законность*** — это принцип точного и повсеместного исполнения всеми органами государства, должностными лицами и гражданами требований закона. Такое определение этого универсального правового принципа вытекает из ч. 2 ст. 15 Конституции Российской Федерации. Правоприменитель должен руководствоваться не духом закона, а его буквой. Законность — важнейшее проявление демократии, поскольку власть народа реализуется в установленном и надлежащем исполнении законов и иных правовых актов.

Применительно к принципу законности правосудия использование нормативной правовой базы имеет свои особенности.

Во-первых, правосудие осуществляется на основе Конституции и законов, т. е. актов, принятых законодательными органами Российской Федерации и ее субъектов. Подзаконные акты

(указы Президента, постановления Правительства, акты других органов государственной власти) применяются в пределах, установленных законами, и если они им не противоречат.

Таким образом, главное назначение принципа законности в том, чтобы обеспечить верховенство (приоритет) федеральной Конституции и федеральных законов по отношению ко всем другим актам, процедуру самого судопроизводства подчинить федеральным законам.

Во-вторых, при осуществлении правосудия должны учитываться важные для оценки правонарушения правила о действии закона во времени.

1. Закон, устанавливающий или отягчающий ответственность, обратной силы не имеет.

2. Никто не может нести ответственность за деяние, которое в момент его совершения не признавалось правонарушением. Если после совершения правонарушения ответственность за него устранена или смягчена, применяется новый закон (ст. 54 Конституции Российской Федерации).

Принцип законности правосудия требует, чтобы по каждому вынесенному судом приговору и решению была ссылка на соответствующую норму материального права и было мотивировано ее применение с учетом обстоятельств дела и характеристики его участников. Принимая решение (приговор) по уголовному делу, суды руководствуются нормами Уголовного кодекса Российской Федерации, и никакие другие законы и подзаконные акты не могут быть применены. По гражданскому (арбитражному) делу кроме норм Гражданского (Арбитражного) кодекса Российской Федерации суды применяют нормы других отраслей права (трудового, семейного, жилищного) и используют подзаконные акты, если они не противоречат закону.

В содержание принципа законности правосудия входит и требование точного соблюдения судами норм процессуального права. Здесь следует иметь в виду два обстоятельства. С одной стороны, только путем строгого соблюдения правил судебной процедуры всеми участниками судебного процесса суд может успешно выполнять правоохранительную функцию укрепления законности и правопорядка, с другой — именно с помощью установленных процедур суд получает объективные материалы

для применения соответствующей нормы материального права и в итоге может вынести законное и обоснованное решение.

Принцип законности правосудия — универсальный принцип. Его широкое и разностороннее содержание помогает формулировать и определять отдельные стороны других принципов правосудия. Соблюдение же всех принципов правосудия в конечном итоге будет свидетельствовать и о торжестве законности в правосудии.

## MASTER YOUR GRAMMAR

**Ex. 5. Translate the sentences paying attention to the Gerund:**

1. Decriminalization and selective enforcement and prosecution are the main methods for coping with the caseload problem.
2. Reasons for not prosecuting are commonly known as public interest factors.
3. The law has as one of its main functions to guide behavior, by telling people what to do or not to do in the form of prohibiting and prescribing acts.
4. Being rational has always been one of the modes of existence of the law: rules were considered to be legal rules because they were rational.
5. A key element in the immigration enforcement strategy adopted by the European Union in recent years has been the focus on preventing migrants from reaching the territory of the European Union in the first place, with the aim of shielding the European Union and Member States from assuming legal obligations towards migrants.
6. The accusation model in a given system of criminal procedure is difficult to consider without taking into account the cultural and social context of a particular state.
7. By using the threat of criminal sanctions, the EU measures on human smuggling essentially aim at deterring individuals and organisations from coming into contact and assisting any third-country national wishing to enter the territory of EU Member States.
8. The consequences of being a legal subject vary from one field of law to another.
9. In criminal law, being a legal subject means that one is addressed by rules of criminal law and can become punishable in case of violation.

10. Furthermore, an agreement is not binding if the further conduct of the defendant at the trial does not match the acts which were assumed to occur by the court. In such cases, the defendant's confession may not be admitted as evidence.

11. Unlike criminal law, tort law does not aim at punishing wrongful behavior, but seeks for ways to compensate the damage that is often caused by wrongful acts.

12. By making persons other than those who actually suffered the damage liable to compensate for this damage, tort law promotes that these other people be more careful to avoid damage.

## Unit 7

## SHADOW ECONOMY AND ITS RELATION TO THE CORRUPTION AND ORGANIZED CRIME

### PRACTICE YOUR READING AND SPEAKING SKILLS

### Definitions of the Informal (Shadow) Economy[1]

The informal economy is emerging worldwide as an antipode to the formal economy. Although only partially *visible* and parallel to the formal economic system, it is manifested in social and cultural activities in European cities in the tourist trade, in the form of vendors in the streets and squares or those selling flowers in restaurants. It has links to drug trafficking and prostitution, but also provides economic opportunities for immigrants, young people, and students. It has links with the formal economy, contributes to the forces of formal and informal social control, and is an important factor in the economies of European countries (Shapeland, 2003). The importance of the informal economy can be seen in three different forms of formal policy: the financial or economic order (formal economy), the social order (state and urban policy), and the criminal justice system. However, in some areas there is no clear dividing

[1] Corruption, Fraud, Organized Crime, and the Shadow Economy / Ed. by M. Edelbacher, P. C. Kratcoski, B. Dobovšek. CRC Press, 2016. 215 p.

line between the formal and informal economies. Work in the fields of hospitality, tourism, and construction that is usually performed by students, young people, migrants, and tourists operates mostly in the context of the formal economy for low pay. In some cases, the employer pays taxes and health insurance (formal economy), in other cases, the employer's contribution is not paid per employee (informal economy). There are two different definitions of the informal economy, the economic definition, which defines the informal sector as a sector that does not contribute to the national tax revenue and the economy; and the legal definition, which defines the black or forbidden economy (penalized by the law). Politicians provide us with a third definition, a gray economy, which is a slippery slope. They usually try to hide its existence under the carpet to maintain social stability and peace. We should also point out that, in times of financial crises, financial income (even criminal) is as important as political motivation, since it contributes to generating a more positive image of the economy to the public. An analysis of the definitions shows that there are attempts to merge these concepts and blur the distinctions between the *white* (legal, formal economic activity, not protected from paying taxes), the *gray* (legal, informal economic activity, with the services completed off the record), and the *black* (illegal, informal economic activity) economies.

The fiscal and economic factors that define the differences in the economic definitions in trying to distinguish whether a particular activity falls in the formal or informal sector are not necessarily in step with the social and political factors that influence the decision whether an offense is punishable or not, as defined in criminal law. The differences between the formal and informal sectors and between the legal and illegal sectors have been created on the basis of history, culture, and time and space, and may differ between various parts of Europe and other parts of the world. In an analysis of the Belgian experience, it was concluded that the black economy and related fraud will not usually appear in a national economic assessment, so they were regrouped in terms of the national economy. The activities that defined the informal economy in a broad sense are more heterogeneous than those attributed to the underground economy. The informal economy has become an artificial construct that exists primarily due to the efforts of countries to regulate the taxation of such economies (Shapeland, 2003).

Paoli (2003) describes the informal economy as an essentiality that can only exist if there is a formal economy. If there were not a formal economy, which is a national regulatory framework for economic activities, there would be no informal economy. The ideal market economy, without regulation or any discrimination between formal and informal, would lose its meaning. The essence of the informal economy therefore is the relationship between government and economic activity. The government is the body that governs taxes and defines the boundaries that distinguish between formal and informal, between legal and illegal activities. Despite the fact that the boundaries of the informal economy are regularly crossed by many operators, we can confirm that some criminal organizations are able to be active, simultaneously and continuously, in various sectors of the informal economy as well as in the sectors of the formal economy (Paoli, 2003).

The informal economy is increasingly encouraged by many economists, because in some instances the survival of national and regional economies depends on the informal economy. Countries are looking for different sources of income, and these sources can be found in the informal economy. One of the reasons is the high tax burden on legitimate entrepreneurs who often are tempted to acquire services through the informal economy, which includes the black market and informal employment (Shapland and Ponsaers, 2009). A high level of the informal economy can be the assistance a country needs to adjust its economy, become a modern society, and achieve economic and political globalization, even though its involvement in the informal economy and tax evasion poses a serious threat to the individual and to society (Dobovšek et al., 2008).

Undeclared work includes all paid activities that are principally legal but are not subject to social security contributions and paying income tax to the tax authorities, not the activities that are not legitimate, such as smuggling, drug trafficking, or other criminal activities. Undeclared work is not limited to work performed for money. The person completing the work can receive payment in other ways, such as being given expensive gifts or property. Payments may also comprise goods, equipment, or an exchange of service or services. For example, a plumber may insert the plumbing in a house owned by an electrician, who in return installs the electric wiring in the plumber's house. In most countries, these types of transactions must

be reported if the providers of the work expect payment, or if the value of exchanged goods or services exceeds a certain threshold. Illegal work activities are those activities that should be reported, but remain unreported to the income tax authorities and institutions responsible for collecting social security taxes. In some countries, it is not necessary to report to the authorities income from work that falls below a certain threshold, while in other countries, almost every cent earned must be reported (such as *masters* in England). In general, the tax systems and the rules vary greatly among countries. In some countries, such as Sweden and Denmark, almost any labor is income taxable, while in the other countries there are some limits set on what income is liable for taxation. The second example is one of the side incomes a country can use to increase its tax base (European Commission, 2007). The more one discovers the large amount of hidden work that is completed outside the labor market, the more it becomes clear that this work is being completed by the poor and unemployed people of the society (Pahl, 1987).

***Vocabulary***

**informal economy =** shadow economy — неофициальная (теневая) экономика
**vendor —** 1) уличный торговец, продающий товар вразнос; 2) продавец недвижимости.
**hospitality** — 1) гостеприимство; 2) индустрия развлечений
**contribution —** 1) содействие 2) взнос, налог
**penalize —** 1) объявлять уголовно наказуемым (в норме права); 2) облагать наказанием (в норме права); 3) наказывать, подвергать наказанию, применять карательные санкции
**in step** — 1) в ногу, согласованно; 2) соответствующий (with)
**heterogeneous** — неоднородный, разнородный, разнотипный, различный
**construct** — 1) (мысленная) конструкция; 2) концепция, положение, конструкт
**side income** — побочный доход
**social security** — социальное страхование, социальное обеспечение

### Ex. 1. Give Russian equivalents to the following phrases:

to be an antipode to
to be parallel to
national tax revenue
to blur the distinction between
an artificial construct
exceed a certain threshold

## The Informal Economy, Financial Crime, Corruption, and Terrorism[1]

The definition of *white collar crime* has not changed significantly since Sutherland first introduced the concept in 1939. However, the scope and the types of crimes that are included under the concept have expanded significantly. Sutherland (1949) used the term to refer to crimes committed by persons of respectability and high social status in the course of their occupations. White collar crime overlaps with corporate crime as well as financial crime, which can be defined as an act or failure to act relating to the business or financial sector of society that is in violation of the country's laws against criminal activity. The recent developments in electronic communications, transportation, and technology have led to a need for numerous new laws related to financial activities, as well as more specific regulations and involvement by law enforcement agencies.

Research on white collar and financial crime has found that some past practices of leaders of large, illegal industrial corporations, investment firms, and banks were not even considered to be criminal and thus were either ignored or treated as civil law violations. The typical U.S. citizen trusted the financial institutions, and there was a belief that the banks and security institutions were sound and that regulations and mechanisms were in place to avoid the economic disasters that occurred in the 1930s.

However, when such criminal activities as price-fixing, corruption of officials, Ponzi schemes, insider trading, money laundering, and racketeering were shown to be connected to the financing of terrorist activities and posed a threat to national security, the government criminal activity (The 9/11 Commission Report, 2014). The 9/11 Commission Report revealed the fallacies of many of the assumptions the government had about the effectiveness of the laws, regulatory agencies, and security agencies meant for curtailing financial crime and providing financial security for the nation. These deficiencies were most apparent in international matters.

According to Heyman and Ackleson (2010, p. 49), the strategies and responses by government security agencies to terrorist

[1] Ibid.

threats were disjointed and often confusing. Recognition of the deficiencies in the policies and resources to respond to terrorist attacks eventually led to the consolidation, reorganization, and expansion of the existing agencies and the creation of new agencies dedicated to protecting homeland security. The National Commission on Terrorist Attacks Upon the United States was created for the specific purpose of determining what went wrong and what could be done to prevent future attacks. Specifically, "The report emphasized the connections of criminal activities of terrorist organizations and other forms of crime, including trafficking of drugs, money and weapons, illegal immigration, human trafficking, forgery of documents and currency, money laundering, and other crimes" (Kratcoski, 2011, p. 375).

The importance of the informal economy in the financing of the operations of terrorist organizations throughout the world cannot be overstated. Edelbacher and Kratcoski (2010) noted that "Many times the same trafficking routes that are used to traffic drugs and humans from Asia to Europe and North American are used for trafficking arms, other military equipment, and money from the United States to Europe and Asia. These goods and money are then used to support terrorist operations" (p. 90).

Recognizing the importance of money laundering in the financing of terrorist operations, a key recommendation of the 9/11 Commission Report was to "Target terrorist money. Identify terrorist financiers and freeze their assets" (The 9/11 Commission Report, 2002, pp. 361—398).

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorism Act of 2001, provided means for the United States to detect and prosecute those involved in money laundering and financing of terrorist groups. In addition to increasing the capacity of investigative and law enforcement agencies to enforce the provisions of the law, it also strengthened and expanded the provisions of the Money Laundering Control Act of 1986 (18 USC: 981), developed procedures for the forfeiture of assets of those suspected of money laundering/and or financing of terrorist activities, and included provisions that would prevent U.S. financial institutions from receiving personal gain through the actions of corrupt foreign officials or sale of stolen assets (Kratcoski, 2012, pp. 376—377).

***Vocabulary***

**sound** — 1) здравый, правильный; 2) обоснованный; 3) действительный, законный; 4) платежеспособный

**Ponzi schemes** — финансовые пирамиды

**insider trading** — инсайдерные торговые операции с ценными бумагами (незаконные операции с ценными бумагами на основе внутренней информации о деятельности компании-эмитента)

**fallacy** — заблуждение, ошибка, ошибочность, обманчивость, ложный аргумент

**disjointed** — расчлененный, разъединенный, разобщенный

**overstate —** преувеличивать, завышать

**money laundering —** отмывание денег

**abatement** — уменьшение, ослабление, снижение, сокращение

## Defining Organized Crime[1]

Defining organized crime is a task undertaken by many scholars, institutions, organizations, and agencies. As the number of definitions is increasing daily, one must be even more cautious in his or her academic and research undertakings when choosing and arguing his or her working definition of organized crime. Definitions gathered on the *Organized Crime Research* web page, by von Lampe (2014), show this flood of definitions. Unfortunately, this means that one can easily choose (or coin) a definition most useful for his or her scholastic or research undertaking. Of course, there are definitions that are more dominating than others. These are mostly the ones of international organizations as they have greater impact and are in most cases required to be transplanted into the national legislations. Countries are usually included in several different international bodies, however in this sense, the common organizational denominator is the United Nations. The latter defines organized crime groups as a "structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses established in accordance with [United Nations Convention against Transnational Organized Crime Convention], in order to obtain, directly or indirectly, a financial or other material benefit" (United Nations Convention against Transnational Organized Crime and the ProtocolsThereto, 2004, p. 5).

[1] Ibid.

The activities that organized crime groups undertake are vast and diverse. Clinard and Meier (2011, p. 162) list seven predominating activities. These are illegal gambling, racketeering, distributing illegal drugs, usury or loan sharking, illicit sex, reselling stolen or hijacked goods, and controlling legitimate businesses. The latter activity is only engaged by the organized crime group that has already developed its reach to this degree. There are three stages of development of an organized crime group (Dobovšek, 2008). The first stage is the development of street gangs, where groups dominate one limited territory. These groups often conduct the *classical* crimes, such as racketeering, thefts, extortions, and usury. Their acts are not very organized and they often use violence. In the second stage, the group begins to dominate a larger area, crimes are more organized, and they also try to get informally (through corruption or threats) connected with local politicians and businessmen. In the third stage, an organized crime group has so much informal influence that it can influence state bodies and amend legalistic or economic matters in the way that it will benefit them (Dobovšek, 2008). Such influence and power over the state power players (firms, business elite, organized crime) can influence the creation and implementation of national legislation, and when such legislation is usually shaped to their benefit, it is also often named *state capture* (Hellman et al., 2000). Organized crime as state capturers is appearing in Latin America and in some ex-soviet countries, where state capture type of behaviors is exercised by oligarchs as well (Iwasaki and Suzuki, 2007). In countries where the captor is a member of the political or business elite, there is the so-called captured economy, where "public officials and politicians privately sell underprovided public goods and a range of rent-generating advantages *a la carte* to individual firms" (Hellman et al., 2000). While organized crime groups can also gain such influence over the formal economy, there is also a possibility that the informal economy, by extensively thriving on the criminal activities of organized crimes, overgrows and replaces the formal one. Something of this kind happened in the post-1980s in Bolivia due to the drug trade.

Due to various factors, namely, media representation, which is fueled by the political debate of "monstrously evil" organized crime, most people imagine organized crime groups as a Mafia or cartel-like structure composed of Italians, Russians, Albanians, and other

ethnic or racial groups and with their activities including illicit trade in arms, drugs, and human trafficking and the involvement in the sex trade, while economic or corporate crimes are not viewed as part of their domain (van Duyne, 2010; Woodiwiss, 2003). However as some scholars have argued, such a perception is flawed. Sutherland was one the earliest scholar who successful warned about such misperception (Sutherland, 1940). Others following and redeveloping his ideas created the scholastic thought that some organized crime groups behave as rational economic businessmen that are similar to their legitimate counterparts who strive to the maximization of profits with minimum cost (Allum and Sands, 2004; Broude and Teichman, 2009; D'Andria, 2011; Sellin, 1963; Vaknin, 2000). Combining the Sutherland thought of white collar crime or business crimes as organized with the notions that some organized crime groups besides their classical undertaking engage in economic criminal activity, one comes to the notion of organized business crime (Pečar, 1993). Infiltrating legitimate spheres, informal arrangement, exploiting people and opportunities, having monopolistic stand ground, and mostly operating in the gray area are some of its characteristics (Pečar, 1993). In this way the informal economy is a crucial operating field, and though in some way the informal economy shares its basic traits with organized crime, organized crime and the informal economy should not be equated.

***Vocabulary***

**coin** — создать, изобрести, выдумать

**denominator** — 1) знаменатель; to reduce to a common denominator — приводить к общему знаменателю; 2) общий знаменатель, сходные характеристики

**in concert with (smb.) —** во взаимодействии с кем-л.

**thereto =** to that

**reach** — 1) размах, амплитуда; 2) досягаемость; 3) область влияния, охват

**usury** — 1) ростовщичество; 2) ростовщические проценты

**legalistic** — правовой, юридический

**shark —** шулер, мошенник, вымогатель

**loan sharking** — (гангстерское) ростовщичество

**capture** — захват, захватывание

**underprovided —** 1) малообеспеченный, малоимущий; 2) недопоставленный

***a la carte*** (*фр.*) — предлагаемый на выбор, по выбору (из списка)

**fuel** — разжигать (страсти, спор), подливать масла в огонь

**flawed** — бракованный, дефектный, некорректный

**counterpart** — коллега, должностное лицо, занимающее аналогичный пост или выполняющий сходную работу

**Ex. 2. What crimes can be referred to the next categories:**

a) white collar crime
b) corporate crime
c) financial crime
d) organized crime?

**Ex. 3 . Find English equivalents of the next words:**

отмывание денег
торговля оружием
незаконная торголя наркотиками и людьми
рейдерский захват предприятий
рэкет
вымогательство
ростовщичество
перепродажа краденого
подпольные азартные игры

## MASTER YOUR GRAMMAR

**Ex. 4. Translate the sentences paying attention to the Subjunctive Mood:**

1. This picture of the common law tradition would be one-sided if it did not pay some attention to the phenomenon of equity.

2. If the outcome of the common law for a particular case was found to be very inequitable, the King, or rather his secretariat, the Chancery, might ask the common law courts to reconsider the case.

3. If a person or organization attempts to perform a juridical act for which such person or organization lacks the relevant competence, the act in question will not normally have the intended legal effects.

4. The “explosive effect” would not have been achieved if it had been presented earlier, together with other prosecution evidence.

5. If the rule of compulsory prosecution were strictly applied, the growth of new categories of minor crime in the statutes and the increase of reported crimes of all types would submerge the prosecution of serious crime in a sea of less important cases.

6. The legal doctrine, however, suggested that judges of the Pre-Trial Chamber should also have the right to confirm the charges with a modified legal characterisation of the facts.

7. It is desirable that the powers of the states should be divided among different bodies.

8. If the speed was more than 30 km/hour above the speed limit and on secondary roads, it would have been an offence in the B category.

9. In France for this act to be qualified as a misdemeanour, the aggravating circumstance of use of a weapon would have to be taken into consideration.

10. Had this approach prevailed, it would have significantly limited the authority of the Prosecutor and affected his role.

11. Though he might have behaved badly in the past he is a good law-abiding citizen now.

12. Were it not for the subsequent trial, the wrong man would have been convicted.

13. However, even if the court would have adopted the obvious rule according to which Elmer would inherit, the court should have justified the use of this rule.

14. They ordered that the firm (should) be punished with trade sanctions.

*Appendix 1*

## МАТЕРИАЛЫ ДЛЯ САМОСТОЯТЕЛЬНОЙ РАБОТЫ

### Text 1

### The prosecution service function within the english criminal justice system[1]

*General*

The United Kingdom is made up of three jurisdictions and each has a very different public prosecution service. This chapter covers the public prosecution service in England & Wales: a brief description of the Scottish system is at Appendix: the Northern Ireland system is not covered here[2]. The England and Wales public prosecution service is called the Crown Prosecution Service (CPS) and is very different from the two other UK services and from prosecution services in Europe. The main differences are:

— The CPS was set up in 1986. It has none of the history or the power of other European prosecution systems. Its powers and relationships with other justice agencies are still evolving.

— The police remain the stronger body in investigating offences and to some extent in sanctioning offenders.

— There is no Ministry of Justice, as such. The various agencies of the criminal justice system come under three different ministries and much cooperation is informal rather than statutory.

— There is no Penal Code as such: criminal law is made up of statute law passed by parliament and common law and practices which pay authority to precedents and practices that have become accepted over the years.

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[1] Lewis Ch. The prosecution service function within the english criminal justice system / Coping with overloaded criminal justice systems / Ed. by Jörg-Martin Jehle J.-M., Marianne Wade M. Springer, 2006. 333 p.

[2] The Northern Ireland Public Prosecution Service is very new and was launched on 13 June 2005. A brief description of the system can be found at *www.cjsni.gov.uk/index.cfm/area/information/page/ppservice.*

— There are many non-CPS prosecuting authorities in England & Wales that deal mainly, although not exclusively, with less serious and regulatory offences.

— The England & Wales system contains much more discretion about processing cases than many other jurisdictions.

— There is no system of examining magistrates in England & Wales. England & Wales has an adversarial system of justice: i.e. lawyers do not so much aim to get at the truth behind an event, but to prove a case to acceptable standards.

Given its short history, the CPS has spent much of its life in pressing for the correct structure and resources to do the job it was set up for. Having achieved this, the CPS is now beginning to modify its relationships with other CJ agencies, especially the police. Up to now, it has not been very much influenced by other prosecution systems within the EU. However, over the last two or three years there are signs that the future may see important changes in the CPS role, with more CPS influence on investigation and on sanctions.

Such changes would come about as part of the UK government's desire to bring the criminal justice system as a whole up to date. This was summed up in September 2005 when the British Prime Minister talked about 21st century problems being met by 19th century structures. Such changes will be likely to come about as a result of the government's desires to see more offenders brought to justice, more cases diverted from the courts, and a more efficient Criminal Justice System.

The justification for these policies has come about through the continuing high crime rate and a falling rate of clear-ups by the police.

Although all justice agencies agree that a significant amount of diversion from the courts is essential, criminal justice agencies differ in their understanding of the correct way of doing this. With no history of a powerful PPS, politicians tend to look first to 'more traditionally British' methods of diversion, usually involving formal or informal use of police powers, such as an increase in the use of fixed penalty notices. The CPS itself would favour developing prosecutorial fines, cautions and warning letters, provided resources and legislation were available to develop these. They feel recent Scottish experience supports their view.

Developments since 1995 to bring more criminals to justice have increased court proceedings rather than diverted from them. Moreover, they have lead to a continuing increase in the prison population,

which at 28 October 2005 had reached 77,749. This was 145 per 100,000 population of England and Wales, higher than any Western European Country save Luxembourg.

### *The Role of the CPS*

The CPS is a public service for England & Wales headed by the Director of Public Prosecutions. It is answerable to Parliament through a government minister, the Attorney General. It is a national organisation of 42 geographical areas headed by a Chief Crown Prosecutor. Each area has substantial autonomy acting within a national framework, particularly a Code of Conduct for Prosecutors and various guidelines about the procedures to follow for particular types of offence. The police are responsible for the investigation of crime but the CPS can request further investigation, if they assess that current evidence is insufficient. This relationship has been and continues to evolve: e.g. the Director of Public Prosecutions announced in November 2005 that the CPS wished to start interviewing victims of crime, particularly rape cases, in order to achieve more effective prosecution of such cases.

Up to 2002 the police decided on any charge against an offender. In October 2002, *Lord Justice Auld's Review of the Criminal Courts* (Auld 2002) recommended the CPS should be given greater legal powers to determine the decision to charge in all but minor cases. Successful pilot schemes were run in 2003 and following the Criminal Justice Act 2003, the CPS is now in the process of moving to 'statutory' charging. This means that the CPS will determine the charge in all but the most routine cases. By October 2004, around 60 % of CPS cases were dealt with under statutory charging schemes and it is planned that all areas will move to statutory charging by March 2007.

Apart from this move to charging, the CPS does not have any powers to itself issue fines, cautions, warning letters, or do anything else directly and needs to work through the police or the courts in issuing sanctions. The idea of more direct intervention by the prosecutor is one that is favoured by the CPS to some extent. However, recent public discussion has concentrated on giving the police more powers for summary justice in the form of more speedy sanctions.

## Text 2

### Investigating deaths in custody. Legal aspects[1]

There are a significant number of rules and standards of international law pertaining to the investigation of deaths in custody. They are found mainly in international human rights law and international humanitarian law. Some rules are based on treaty and customary international law. These mainly impose the obligations to respect and protect life in all circumstances (see Section 2.1) and to investigate suspected violations of the right to life (see Section 2.2). Further guidance on fulfilling the obligation to investigate deaths in custody can be deduced from soft law instruments and international jurisprudence.

#### *Respecting and protecting life*

*International human rights law*

1. The right to life is a fundamental human right. It is deemed to be a norm of customary international law and is an indispensable element of human rights treaties, at the international and the regional level.

2. States have a duty to respect and ensure the right to life of persons within their jurisdiction, including when such persons are held in custody, whether in public or in private settings.

3. The duty to respect and ensure the right to life implies that no one may be arbitrarily deprived of his or her life.

4. No exceptional circumstance whatsoever, such as an armed conflict or any other public emergency, may be invoked to justify derogation from the duty to respect and ensure the right to life.

5. The duty to respect and ensure the right to life applies to all branches and organs of the State, including law enforcement agencies, security forces and the military.

6. The right to life — which imposes an obligation to abstain from arbitrarily depriving individuals of life ("negative obligation")

[1] Guidelines for Investigating Deaths in Custody. International Committee of the Red Cross, 2013. 38 p.; URL: http:// www.icrc.org/ (дата обращения: 17.05.2018).

— has also been interpreted as entailing "positive" obligations." States are required to:

— adopt legislative, judicial, administrative and other appropriate measures to ensure that no one is arbitrarily deprived of his or her life;

— ensure adequate conditions of detention for all those in custody, which includes providing access to food and water in sufficient quantities and of adequate quality, as well as to medical care, and guaranteeing their safety and security (protection against violence by co-detainees, prevention of accidents such as fires, etc.);

— conduct a prompt and independent official investigation whenever a person dies in custody (see below);

— take appropriate measures or exercise due diligence to protect the lives of persons detained by non-State actors whose acts or omissions are not attributable to the State and who operate within its jurisdiction. In particular, States should ensure that a competent body investigates the deaths of persons detained by such actors.

### *Obligation to investigate deaths in custody*

*International human rights law*

Under human rights law, the prohibition against the arbitrary deprivation of life, read in conjunction with the general obligation to respect and ensure human rights within the State's jurisdiction, has been interpreted as imposing by implication an obligation to investigate alleged violations of the right to life. This obligation is put into effect whenever a detainee — without injuries when taken into custody — is injured or has died.

Under human rights law, the obligation to investigate deaths in custody has also been interpreted as deriving from a combination of the prohibition against the arbitrary deprivation of life and the obligation to provide an effective remedy. In cases of alleged arbitrary deprivation of life, the right to an effective remedy entails an effective investigation, one that should result in the identification, prosecution and punishment of those responsible.

The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions confirm that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death" (Para. 9).

*International humanitarian law*

In situations of international armed conflict, humanitarian law explicitly provides that every death of or serious injury to a prisoner of war or civil internee that is caused or suspected to have been caused by a sentry, another prisoner of war or internee, or any other person, as well as any death the cause of which is unknown, "shall be immediately followed by an official enquiry by the Detaining Power".

In addition, as previously mentioned, violence against persons who are *hors de combat*, which expressly includes detainees, is prohibited by treaty and customary humanitarian law in international and non-international armed conflicts alike and can amount to a war crime. The obligation under humanitarian law to prosecute war crimes logically presupposes an obligation to investigate.

### *Basic standards for investigating deaths in custody*

These standards have been identified and have developed over time as a result of the adoption of soft law instruments and the evolution of international jurisprudence. They provide States with further guidance for fulfilling their obligation to investigate deaths in custody.

In order to be effective, an investigation should meet the following criteria:

— It should be *thorough*. It should establish all the facts related to the death, such as the identity of the deceased, the cause, manner, place and time of the death, the extent of involvement of all those implicated in the death, as well as any pattern or practice that may have caused the death. It should also determine whether the death was natural or accidental, or a case of suicide or homicide.

— It should be *undertaken ex officio*, i.e. of the authorities' own volition once the case has come to their attention, regardless of whether a formal complaint has been lodged, and carried out *as promptly as possible*.

— The authorities in charge of the investigation must be *independent and impartial*. They must have no relationship, institutional or hierarchical, with persons or agencies whose conduct has to be investigated. In addition, their conclusions must be based on objective criteria, and must not be tainted by bias or prejudice of any kind. Similarly, if an autopsy is undertaken, it must be carried out by an independent and impartial body.

— The investigation should include some degree of *public scrutiny*. Its conclusions should be made public. In addition, the *next of kin* of the victim should be involved in the process. They should receive legal assistance, have access to the case file, and take part in the proceedings. They should also be permitted to have a medical or other qualified representative in attendance at the autopsy. Soft law and international jurisprudence provide further practical guidance for collecting and analysing evidence. In suspected cases of arbitrary deprivation of life, the investigation should include the following:

— *All relevant physical and documentary evidence*. The death scene should be preserved in order to protect evidence; and the authorities in charge of the investigation should make their way to it promptly. Ballistic tests should be carried out whenever firearms have been used.

— *Statements from witnesses*. All key witnesses, including eyewitnesses and suspects, should be identified and interviewed. Testimonies must be carefully recorded and analysed by the investigating authorities. Failure to interview and seek evidence from key witnesses may be sufficient reason to consider the investigation seriously inadequate.

— *A proper autopsy*. The autopsy should be conducted by a medical officer. It should identify any injury suffered by the deceased, including evidence of torture.

Further details on the collection and analysis of evidence may be found in the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (the "Minnesota Protocol") included in the 1991

## Text 3

### What is criminal law?[1]

This is a question that is surprisingly difficult to answer. Most people would imagine the criminal law to be about murders, assaults and thefts, which, of course, it is; but the scope of criminal

[1] Herring J. Criminal Law / J. Herring. Palgrave Macmillan, 2002. 485 p.

law is wider than this. It also includes pollution offences, crimes against public morals and traffic offences. It is the values and culture of a particular society which determine what conduct is regarded as being criminal. It should be noted that conduct that is contrary to criminal law at one point in time may not be seen as criminal at another time or in another country. For example, before 1967 sexual acts between two men were contrary to the criminal law, but following the Sexual Offences Act 1967 the legal prohibition on private sexual acts between two men over 21 was removed (the age limit has since been reduced to 18 and in 2001 it was reduced to 16). This was in part a result of a change in the general public's attitudes towards same-sex relationships. However, there are some crimes, such as murder, which have always been crimes and always will be. But even in the case of murder there are disagreements over whether euthanasia, abortion or capital punishment should be lawful.

But how can criminal law be distinguished from other parts of the law? Probably the best answer is given by Professor Glanville Williams, one of the great criminal law scholars, who argued that criminal law is best defined by the procedures it uses (see Chapter 2). He suggested that a crime is "an act that is capable of being followed by criminal proceedingshaving one of the types of outcome (punishment etc.) known to follow these proceedings". Although this may be the best definition, it is not especially useful, as it tends to be a circular one — What is criminal law? It is that part of the law that uses criminal procedures. What are criminal procedures? Those that apply to criminal law.

### The role of criminal law[1]

The criminal law plays a distinctive role in society, including the following functions: to deter people from doing acts that harm others or society; to set out the conditions under which people who have performed such acts will be punished; and to provide some guidance on the kinds of behaviour that are seen by society as acceptable. Of course, it is not only the criminal law that has a role in these areas. For example, deterrence from crime may occur as a result of pressure from families, friends and communities. But the criminal law is different from these other influences. It is the estab-

[1] Ibid.

lished state response to crime. This is reflected in the fact that prosecutions under the criminal law are brought on behalf of the state in the name of the Crown (see Chapter 2.1). Further, the breaking of the criminal law is seen as different from the breaking of other kinds of law, in that a breach of the criminal law involves a degree of official moral censure. To be ordered by a court to pay damages following a breach of contract (which is not a criminal offence) does not carry with it the same kind of moral message or stigma that it would if you had been found guilty of a criminal act and then ordered to pay a fine. As Professor Ashworth has written, "criminal liability is the strongest formal condemnation that society can inflict".

## What conduct is criminal?[1]

There are two aspects to the definition of most serious crimes. The first, and most important, is that the defendant has done an act which has caused a prohibited kind of harm. The second is that the defendant is culpable, worthy of censure, for having caused that harm. We will now consider these aspects separately.

### *Causing harm*

The criminal law is not only concerned with the causing of direct harm to other people: it also outlaws harm to the state, public morals and the environment, for example. The criminal law goes further and punishes conduct that might not cause harm on a given occasion but endangers others (for example, dangerous driving); attempted crimes; and acts which help other people commit crimes. There are also a few criminal laws that are mainly designed to protect people from their own folly. An obvious example is the law requiring the wearing of seat belts in cars.

It is often argued that the criminal law should seek to punish only conduct that causes harm to others. Such an argument is in line with the wellknown "harm principle", articulated by J. S. Mill, who stated: "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" Some conduct may be immoral but if it does not harm others or only harms the actor it is seen as unsuitable for punishment under the criminal law. The prohibition of non-harmful conduct is seen as too great an

[1] Ibid.

infringement on individuals' liberty. Although this principle has been widely accepted, there has been much dispute over what the term "harm" means. For example, does it cover feelings of outrage some may feel at the conduct of their fellow citizens or damage to "the moral fabric of society"?

The "harm principle" has received support not just from academics, but also the judiciary. For example, Lord Hobhouse in the recent House of Lords case of Hinks stated: "An essential function of the criminal law is to define the boundary between what conduct is criminal and what merely immoral. Both are the subject of the disapprobation of ordinary right-thinking citizens and the distinction is liable to be arbitrary or at least strongly influenced by considerations subjective to the individual members of the tribunal. To treat otherwise lawful conduct as criminal merely because it is open to such disapprobation would be contrary to principleand open to the objection that it fails to achieve the objective and transparent certainty required of the criminal law by the principles basic to human rights".

It may be necessary to calculate the severity of the harm an act has caused. This can be important for two reasons. First, it is used to determine whether certain conduct is sufficiently harmful for it to be criminalized, and secondly to decide the hierarchy of offences. Generally the more harmful the conduct, the more serious the crime, and the higher the sentence is expected to be. But how to grade harm is controversial and difficult. From one perspective it is an impossible task as the victim's circumstances and perceptions vary from crime to crime. For example, some victims seem able to shrug off a burglary with little difficulty, while others

find it a deeply traumatic and invasive experience. One could try to ignore the effect on a particular victim and instead look at the effect on an average victim, but then victims may feel that they are being pigeonholed and their individual responses are not being taken seriously. The harm to society caused by any particular act is similarly difficult to gauge.

### *Culpability*

Criminal law should be distinguished from civil law, which includes breaches of contract or claims for damages for negligent conduct. Civil law is more concerned with who should pay for a loss than with determining blame. Given that the defendant has damaged the victim's property, the question in civil law is who should pay for

that damage. If the victim is wholly innocent and the defendant even only a little to blame, then the defendant should shoulder the liability. However, in criminal law, as explained above, the censuring function plays a crucial role. Defendants should only be found guilty of a crime when they truly deserve the stigma of a criminal conviction, and so normally a higher level of blame needs to be shown in criminal law than in civil law, at least for serious offences. For less serious offences it is common for there to be a requirement of only a low level of culpability, partly because there is a correspondingly low level of censure attached to such crimes (see, for example, Chapter 6).

In deciding whether a defendant is to be blamed for her conduct, the criminal law generally presumes that a defendant is responsible for both her actions and the consequences other actions. The criminal law does not accept that a person's conduct is simply a result of her environment and/or socio-economic background. Cases would become far too complex if each time it had to be carefully determined to what extent the defendant was responsible for her personality and the causing of the harm. Instead the law assumes that every person is a free autonomous agent who is responsible for her actions. Although generally the defendant's deprived background itself does not provide the defendant with a defence to a crime, the law does not ignore it entirely. For example, a defendant's social and financial circumstances may be taken into account at the sentencing stage of the criminal process.

Although the defendant is usually responsible for her actions and their consequences, there are four main ways that the law has of recognizing that a defendant may not be to blame, or not fully to blame, for the harmful results of her actions and so is not guilty of an offence:

*Exemption from liability*

The law recognizes that there are some people who are properly exempt from criminal prosecution, that is those who have not had the opportunity to develop fully moral characters and so are insufficiently responsible for their actions to justify the censure attached to a criminal conviction. Children below the age of criminal responsibility and persons classifie as insane by the law are good examples. Such people may be subject to forms of restraint under the civil law if they harm others, for example detention in a hospital under the Mental Health Act 1983.

*Lack of capacity*

The law may accept that the defendant (although not insane) was at the relevant time not responsible for her "actions". For example, if the defendant was pushed over and fell into a window breaking it, then the "act" of falling into the window is not properly seen as the defendant's act. She was not acting in a "human" way, as the result of conduct that was (or could have been) planned and thought about, but fell in the same way that a chair would have done had it been knocked over. It may well be, however, that the person who pushed the defendant would be criminally responsible for the broken window (see Chapter 17.2). Another example of this may be where the act was that of the defendant but was done under such circumstances that he was unable to exercise control over his actions, as when acting under hypnosis, for example. Here again it was not an act that he *could* have controlled. If the defendant could have controlled his actions but it was difficult for him to do so then this is not properly described as "lack of capacity", but the defendant may be able to rely on a special defence (see point (iv) below).

*Lack of required mental state*

Here the defendant was capable of exercising rational thought and considering her actions but lacked the necessary intention or foresight required for the particular offence. Often in such a case the defendant will still be guilty of a less serious crime. For example, as we will see later, in order to convict a defendant of murder it is necessary to show that she intended to kill or cause grievous bodily harm. If she lacks that intention, she may still be guilty of manslaughter.

*Special defence*

Although the defendant had the required mental state, she may claim that nevertheless she is not to be blamed because she had a particular defence. These defences arise when the circumstances of the offence lessen or remove any blame that the defendant would otherwise face. For example, she was acting in self-defence, or had been threatened with death or serious injury if she did not commit the crime.

Although we have discussed harm and culpability separately, they are in fact closely linked. A victim is likely to feel only slightly aggrieved if someone accidentally knocks into him causing him to fall over, but much more aggrieved if someone deliberately pushes

him over. In other words intentionally inflicted injury is seen by victims as a different kind of harm to accidentally caused injury. Similarly the degree of culpability is perceived by most people, however illogically, to be different according to whether the harm caused is great or not. A person who drives dangerously and kills a pedestrian is seen as more blameworthy than someone who drives in an equally dangerous manner but injures no one.

### *Theories of culpability*

As you can imagine, there are many different theories on how to assess culpability and some of them have been developed to a high degree of sophistication. They have been expressed in many different ways and can only be discussed here in very bare outline. It is not possible to say that one of them is the "right" theory or that the law clearly follows only one of these approaches. Each has been influential in the law's developments and in the writings on criminal law. Indeed many commentators take the view that trying to find a single theory of culpability that will underpin criminal law is a futile task. The three most popular theories will now be briefly discussed.

#### *The choice theory*

The argument here is that the defendant should only be responsible for the consequences of his actions that he has chosen to bring about, be that by deliberately acting in order to bring the consequence about or acting while aware that he might bring that consequence about. In *Lynch* Lord Simon stated "the general basis of criminal responsibility is the power of choice included in the freedom of the human will". The theory accepts that a defendant is not liable where he chose to act but that choice was not one for which he should be morally responsible. For example where the defendant acts under duress (for example where a person is kidnapped and told he must commit a crime or he will be killed) his choice was not one for which he should be responsible.

The choice theory has been highly influential in the development of the criminal law, but there are two particular problems with it. The first is that there are some offences which do not require proof that the defendant intended, foresaw or knew anything (for example, negligence and strict liability offences, see Chapter 6). These offences play an important part in our criminal law, but cannot be explained by the choice theory. A variant of the choice theory can deal with negligence-based offences by asking whether the defendant had

a "fair opportunity" to choose to act otherwise. Thus H. Hart has suggested, "a moral licence to punish is needed by society and unless a man has the capacity and fair opportunity or chance to adjust his behaviour to the law, its penalties ought not to be applied to him". This variant asks not whether the defendant *did* choose to bring about the consequence, but whether he *could have* avoided causing the harm. A second objection to the choice theory is that in making a moral judgement on the defendant's actions, choice is arguably only one criteria to consider; the defendant's attitudes and motives might also be thought to be relevant. These are excluded by this theory which focuses only on choice alone.

*The character theory*

This approach suggests that if the defendant's actions indicate a character trait that is unacceptable according to the standards expected by the criminal law, then the defendant deserves punishment. Whereas if the defendant's actions do not reveal bad character then there is no point in punishing him. This argument needs to be treated with care. The criminal law is not interested in discovering whether the defendant is generally "a bad person" and so will only consider inferences of bad character from conduct prohibited by the criminal law. So the criminal law can infer bad character from the fact that the defendant assaulted someone, but not from evidence that he is a gossip. Assaulting is prohibited by the criminal law, gossiping is not. The strength of the theory is its ability to explain the defences that the criminal law provides. For example, the defence of duress can be explained because if the defendant commits a theft after he has been threatened with death, the theft does not lead us to conclude that he has a bad character. One difficulty with the theory is in explaining why, when considering the defendant's bad character, consideration is limited to criminal conduct alone. Another is that the law does not generally accept a defence of "I was acting out of character". A bank clerk who has worked at a bank for twenty years and never before taken money has no defence to a charge of theft from the bank that looking at her life as a whole she is an honest person.

*The objective theory*

This theory in its pure form focuses on what the defendant did, rather than what was going on inside the defendant's head. It argues that it is necessary to have minimum standards of conduct

that have to be met by every citizen. These standards should not be varied because of the defendant's individual characteristics because this would produce an unequal standard for different groups of people. The theory is capable of explaining those offences where the defendant is guilty if his conduct falls below the required standard, regardless of his state of mind (see, for example, Chapter 6). The objective theory is proposed by some for practical reasons. This may be because they feel the courts lack the evidence and capacity to make full moral judgements on the defendant. The court can declare certain conduct as harmful, but only an omnipotent God could decide the extent to which a defendant is morally blameworthy. Others argue a court is capable of deciding the moral blameworthiness of a defendant but that it would take too long and be too cumbersome to carry out an individual moral investigation in each case. This argument is particularly strong in respect of minor offences. Opponents of the objective theory argue that it can produce unfair results, especially with those who lack the ability to meet the required standard (for example, because of a disability), although supporters argue that these difficulties can be dealt with at the sentencing stage. Opponents also point out that, as mentioned above, a criminal conviction carries with it a degree of censure and this is only appropriate if the defendant is in some sense to blame for what has happened. We can only know that, they argue, by looking at the defendant's state of mind.

# ГРАММАТИЧЕСКИЙ СПРАВОЧНИК

## СПОСОБЫ ПЕРЕВОДА НЕКОТОРЫХ СЛУЖЕБНЫХ СЛОВ

### Слово *since*

Кроме того что английское слово ***since*** является предлогом и переводится на русский язык предлогом ***с*** (с какого-то времени, с каких-то пор), оно может выполнять функцию союза или наречия. В качестве союза ***since*** переводится соответственно ***с тех пор, как***.

Однако следует иметь в виду, что союз ***since*** может также вводить придаточное предложение причины и переводиться на русский язык союзами ***так как***, ***поскольку***. Например:

***Since*** *a corporation is a legal entity 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.*

Наречие ***since***, как правило, стоит в конце предложения и переводится на русский язык ***с тех пор***. Например:

*Other types of sentence, such as, for example, probation, have been used ever* ***since.*** — ***С тех пор*** *практикуются и другие виды приговоров, такие как, например, условный приговор.*

### Слово *for*

В качестве союза ***for*** вводит обстоятельственные придаточные предложения с указанием причины действий или событий, выраженных в главном предложении, и переводится на русский язык союзами ***поскольку, так как, потому что, ибо***. Например:

*The rule of contributory negligence has been criticized for*[1] *its harshness,* ***for*** *it may absolutely bar recovery for damage against*

[1] Здесь слово ***for*** употребляется в качестве предлога и имеет значение причины.

*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.*

В качестве предлога ***for,*** как правило, имеет следующие значения:

1) временное значение **(*на, в течение*)**. Например:

***For*** *years these organizations have been in the forefront of environmental movement. —* ***В течение*** *многих лет эти организации занимали ведущее положение среди участников движения в защиту окружающей среды;*

2) пространственное значение — направление или протяженность **(*на протяжении, в, к*)**. Например:

*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;*

3) значение цели, намерения, назначения **(*для, за, на, к*)**. Например:

*The document adopted defined the legal standing of NGOs[1], one of the most powerful of them calling itself «Friends of the Earth — an international movement to fight* ***for*** *a better future* ***for*** *humankind and* ***for*** *the environment». — Принятый документ определял правовой статус неправительственных организаций, одна из которых именует себя "Друзья земли — международное движение* ***за*** *лучшее будущее* ***для*** *человечества и* ***в защиту*** *окружающей среды";*

4) значение причины, повода **(*от, за, из-за, по*)**. Например:

*Although it is advisable to have such a document prepared at the time that a person has made a will,* ***for*** *any number of reasons it may not be possible to do so. — Хотя такой документ рекомендуется подготовить к моменту составления завещания,* ***по*** *целому ряду причин сделать это может быть невозможно.*

[1] NGO = Non-Governmental Organization — неправительственная организация.

### Союз *whether*

***Whether*** употребляется в английском языке в следующих случаях:

1) для ввода косвенного вопроса — переводится частицей ***ли***, которая стоит после глагола-сказуемого. Например:

*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 only he could waive that jury. 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 право на суд присяжных и что только он может отказаться от этого права. Судья далее поинтересовался, обсуждал **ли** обвиняемый это право со своим адвокатом;*

2) для ввода определительных придаточных предложений, выражающих сомнение, неуверенность, выбор, — переводится частицей ***ли***, которая стоит после глагола-сказуемого придаточного предложения. Например:

*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 сделку купли-продажи;*

3) для ввода условных или уступительных придаточных предложений, предполагающих выбор; в таких случаях в английском предложении после ***whether*** могут стоять слова ***or not***, тогда такой оборот переводится на русский язык как ***вне зависимости от того, … ли … или нет***. Например:

*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**, будет **ли** найдено новое место работы **или нет**;*

4) для ввода именных придаточных предложений, в которых также предполагается выбор. Например:

***Whether** this formula is wholly satisfactory from the viewpoint of the record manufacturer is difficult to say with any confidence. — Трудно с уверенностью сказать, является **ли** эта формула полностью удовлетворительной с точки зрения изготовителя звукозаписей.*

Если в данном значении после ***whether*** стоит союз ***or***, то на русский язык рекомендуется переводить такой оборот как ***… ли … или***. Например:

*It is highly technical matter to determine* ***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.*

Если в именном придаточном предложении после ***whether*** употребляется ***or not***, то на русский язык такой оборот обычно переводится как ***… ли ... или нет***. Например:

*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****.*

Если же конструкция ***or not*** стоит сразу после ***whether***, то отдельно ее переводить не следует. Например:

***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,* ***whether or not*** *the seller made any promises about the product or "satisfaction guaranteed", and* ***whether or not*** *the store made any disclaimers about its responsibility for the merchandise it sells. — Вопрос о том, несет* ***ли*** *магазин ответственность за товары, которые он продает, зависит от ряда факторов, включая то, в каком штате находится магазин, давал* ***ли*** *продавец какие-либо обязательства относительно товара или его качества и заявил* ***ли*** *магазин о том, что снимает с себя ответственность за товары, которые продает;*

5) с уступительным значением при любых второстепенных членах предложения — в данном случае с помощью конструкции ***whether … or***, которая на русский язык переводится как ***будь то … или***, подчеркивается выбор. Например:

*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.*

## ОСОБЕННОСТИ ПЕРЕВОДА ПРЕДЛОЖЕНИЙ, СОДЕРЖАЩИХ СЛОВА *PROVIDE/PROVIDED/PROVIDING*

| **Союз** | **Глагол** | **Причастие** |
|---|---|---|
| ***Provided/providing*** *(that)* — при условии, что; в том случае, если | ***Provide*** *(provide that…, provide for smth., provide smth.)* — 1) предусматривать; 2) предоставлять, обеспечивать | ***Provided —*** предусмотренный, обусловленный |
| **Примеры** | | |
| 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 | 1. The US Constitution ***provides that*** no state may pass a law impairing the obligation of contracts<br>2. Under the Uniform Commercial Code, all agreements which create or ***provide for*** a security interest in personal property are called "security agreements"<br>3. If you ***provided*** services and the other party refuses to pay, you can bring a claim in court to recover your money | 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 |
| **Перевод** | | |
| 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 | 1. Конституция США ***предусматривает***, что ни один штат не может принять закон, ослабляющий обязательную силу договоров<br>2. В соответствии с Единообразным торговым кодексом "соглашениями об обеспечении" называются все соглашения, которые создают или ***предусматривают*** обеспечительный процесс | Государство, которое не является членом Организации Объединенных Наций (ООН), 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, |

| | | |
|---|---|---|
| | 3. Если вы ***предоставили*** свои услуги, а другая сторона отказывается их оплатить, вы можете взыскать причитающиеся вам деньги в судебном порядке | ***предусмотренные*** в настоящем Уставе |

## ОСОБЕННОСТИ ПЕРЕВОДА АНГЛИЙСКИХ КОНСТРУКЦИЙ С *IT*

Подлежащее в английском предложении иногда может быть формальным, включаемым в предложение только для создания грамматически правильно конструкции. В роли формального подлежащего выступает местоимение ***it***, которое стоит перед сказуемым, но не несет никакого смыслового значения, так как после сказуемого место занимает смысловое подлежащее, выраженное:

1) инфинитивом — на русский язык не переводится. Глагол-сказуемое английского предложения преобразуется в главную часть русского безличного предложения, а смысловое подлежащее, выраженное инфинитивом, — в дополнение русского предложения. Например:

***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, так как в каждой стране понятие "юрист" определяется по-своему;*

2) придаточным предложением, вводимым союзом ***that***, — формальное подлежащее ***it*** не переводится на русский язык, а смысловое подлежащее становится частью придаточного предложения, вводимого союзом ***что***. Например:

***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.***

Предложения, в которых местоимение ***it*** *в роли формального подлежащего* употребляется с глаголами ***say, report, announce, hold, see, hear, know, think, consider, deem, remember, seem, appear***, переводятся на русский язык как неопределенно-личные. Например:

*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.*

Местоимение ***it***, выполняющее в предложении функцию формального подлежащего, может быть частью эмфатической конструкции, т. е. употребляться для выделения какого-либо члена предложения. Эмфатическая конструкция обычно употребляется для выделения:

1) подлежащего. Например:

***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;*

2) обстоятельства. Например:

*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 формируются за счет ее собственных средств, но* ***именно в этом случае*** *между доверительными управляющими фондов и компанией обычно складываются тесные связи.*

## КОМПРЕССИЯ

При переводе с русского языка на английский некоторые слова оригинального текста опускаются. Такое явление называется компрессией. Это связано с особенностями языковых систем английского и русского языков — в отличие от русского языка в английском ситуация в целом описывается менее детально.

Способы компрессии:

превращение простого словосочетания в слово;

превращение развернутого словосочетания (предложения) в простое словосочетание.

Например: *встреча на высшем уровне —* ***the summit****; изменение дел к лучшему —* ***improvements****; перспектива дальнейшего*

*развития страны по пути рыночной экономики — **market-oriented development policies**; трактуется разными людьми — **popular concepts of**, занимает ведущее место по производству — **key supplier**.*

## АНТОНИМИЧЕСКИЙ ПЕРЕВОД

Это лексико-грамматическая трансформация, при которой замена утвердительной формы в оригинале на отрицательную форму в переводе или, наоборот, отрицательной на утвердительную сопровождается заменой лексической единицы иностранного языка на единицу переводимого языка с противоположным значением. Например:

***Nothing changed** in my home town. — **Все осталось прежним** в моем родном городе.*

При переводе с английского языка на русский эта трансформация применяется особенно часто, когда в оригинале отрицательная форма употреблена со словом, имеющим отрицательный префикс. Например:

*She is not **unworthy** of your attention. — Она вполне заслуживает вашего внимания.*

В рамках антонимического перевода рассматривается и употребление союзов ***until*** и ***unless***. Например:

*The United States did not enter the war **until** April 1917. — Соединенные Штаты вступили в войну только в апреле 1917 года. Additional expenditures shall not be made **unless** authorized. — Дополнительные расходы должны производиться лишь с особого разрешения. We'll discuss this matter next week **unless** he is busy. — Мы обсудим этот вопрос на следующей неделе, **если только** он **не** будет занят.*

Союз ***unless***, как правило, переводится на русский язык оборотами ***если … не, если только… не***.

Распространены случаи, когда при переводе предложения с союзом ***unless*** требуется преобразование русского предложения, а союз ***unless***, вводящий придаточное предложение, может переводиться на русский язык словами ***за исключением тех случаев, когда***. Например:

*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.*

Вместо ***unless*** возможно употребление конструкции ***if … not***. Тогда меняется грамматическое построение придаточного предложения, но не его лексическое содержание (смысл). Например:

*Don't tell Alex what I said* ***unless*** *she asks you. = ...* ***if*** *she does* ***not*** *ask you. — Не рассказывай Алекс о том, что я сказал,* ***если*** *она* ***не*** *спросит тебя.*

Следует помнить, что в придаточном предложении с ***unless***, как и во всех условных предложениях, выражающих реальные предположения, а также придаточных предложениях времени, для выражения действия в будущем глагол-сказуемое употребляется не в формах будущего времени (Future Simple), а в форме настоящего времени (Present Simple). Например:

*We'll be late* ***unless*** *we* ***hurry*** (но не ***.... unless*** *we* ***will hurry***). *— Мы опоздаем,* ***если*** *только* ***не*** *поторопимся*.

То же самое происходит и в придаточных предложениях времени, вводимых союзами ***provided/providing, until/till, while, before, after, as soon as, when***, для выражения действия в будущем времени вместо Future Simple глагол образуется в формах настоящего времени Present Simple в соответствии со всеми грамматическими правилами. Например:

*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 начинает исчисляться* ***до тех пор, пока*** *истец* ***не узнает*** *или не должен был бы узнать о причиненном ему ущербе.*

Следует учитывать, что отрицание может выражаться и другими средствами, например при помощи союза ***without***. Например:

*He never came home* ***without*** *bringing something for the kids. — Приходя домой, он всегда приносил что-нибудь детям.*

Применение антонимического перевода нередко сочетается с использованием иных трансформаций (лексических или грамматических). Например:

*The people are not slow in learning the truth. — Люди быстро узнают правду.*

В данном примере антонимический перевод сопровождается заменой части речи — прилагательного на наречие.

Нередко допускается инверсия[1]:

*1. There are good reasons why it has happened. — Это произошло* ***не случайно****.*

*2.* ***Hardly (scarcely, barely, nearly)*** *had weentered the room* ***when*** *we were immediately accused of stealing или* ***No sooner*** *had we entered the room* ***than*** *we were immediately accused of stealing. —* ***Не успели*** *мы войти в комнату,* ***как*** *нас сразу же обвинили в воровстве.*

Для выражения действия, предшествующего другому действию в прошлом, в сложных предложениях с союзами ***hardly (scarcely, barely, nearly) … when, no sooner … than***, глагол употребляется в форме прошедшего времени Past Perfect.

### THE PASSIVE VOICE

### СТРАДАТЕЛЬНЫЙ ЗАЛОГ

**The Passive Voice — to be** (в необходимой форме) **+ Participle II**

Страдательный залог показывает, что действие глагола-сказуемого не совершается лицом или предметом, выраженным подлежащим, но направлено на него, т. е. подлежащее, будучи грамматически субъектом, по смыслу является объектом действия. Например:

*How* ***is*** *this word* ***pronounced****? — Как* ***произносится*** *это слово?*

Форма Progressive в страдательном залоге отсутствует и заменяется другими формами. Однако нередко в таких случаях вместо страдательного залога (Passive Voice) употребляются соответствующие действительные обороты (Active Voice) с глаголом в формах Future Progressive, Present Perfect Progressive, Past Perfect Progressive либо предложение перефразируется:

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[1] Для английского предложения характерен строгий порядок слов, т. е. каждый член предложения имеет определенное место по отношению к другим. Прямой порядок слов — подлежащее стоит перед сказуемым. Если подлежащее стоит после сказуемого, то такой порядок слов называется обратным, или инверсией. В предложениях, которые начинаются с обстоятельств ***there, here, never, not once, not only, no longer, nowhere*** и некоторых других, используется инверсия. Например: ***There happened*** *something unexpected. — Случилось непредвиденное событие.*

| **Форма страдательного залога** | | **Пример** | **Перевод в страдательном залоге** | **Альтернатива в действительном залоге** |
|---|---|---|---|---|
| **Не используется** | **Используется** | | | |
| Future Progressive Passive | Future Simple Passive | Приходите в 3 часа. План ***будет обсуждаться*** в это время | Come at 3 o'clock. The plan ***will be discussed*** at that time | 1. They ***will be discussing*** the plan at that time<br>2. ***The discussion*** of the plan ***will be going on*** at that time<br>3. The ***plan will be under discussion*** at that time |
| Present Perfect Progressive Passive | Present Perfect Passive | План ***обсуждается*** уже два часа | The plan ***has been discussed*** for two hours | 1. They ***have been discussing*** the plan for two hours<br>*2.* ***The discussion*** of the plan ***has been going on*** for two hours<br>3. The plan ***has been under discussion*** for two hours |
| Past Perfect Progressive Passive | Past Perfect Passive | План ***обсуждался*** уже два часа, когда он пришел | The plan ***had been discussed*** for two hours when he came | 1. They ***had been discussing*** the plan for two hours when he came<br>2. ***The discussion*** of the plan ***had been going on*** for two hours when he came<br>3. The plan ***had been under discussion*** for two hours when he came |

П р и м е ч а н и е. Вместо сказуемого в Present Progressive и Past Progressive Passive часто употребляется сказуемое, выраженное словосочетаниями типа ***to be under discussion*** — *обсуждаться*, ***to be under consideration*** — *рассматриваться*, ***to be under control*** — *контролироваться* и т. п.

## Перевод на русский язык сказуемого в страдательном залоге

Страдательный залог при переводе на русский язык может быть передан:

1) краткой формой причастия прошедшего времени страдательного залога (со вспомогательным глаголом *быть* или без него): *закон принят, закон был принят, закон будет принят;*

2) глаголом, оканчивающимся на *-ся*, в соответствующем времени, лице и числе: *закон принимается, закон принимался, закон будет приниматься;*

3) глаголом действительного залога в соответствующем времени в 3-м лице множественного числа в неопределенно-личном предложении: *закон принимают, закон принимали, закон будут принимать.*

## Перевод на английский язык возвратных глаголов

Такие глаголы, в зависимости от передаваемого ими в предложении значения, могут переводиться на английский язык глаголами как в страдательном залоге, так и в действительном.

1. Глагол на *-ся* переводится на английский язык глаголом в страдательном залоге, когда он имеет страдательное значение. В этом случае присутствует дополнение в форме творительного падежа (без предлога), которое обозначает лицо, совершающее действие, либо предложение с глаголом на *-ся* можно заменить на неопределенно-личное предложение. Например:

*Финансовые документы* ***подписываются*** *директором.* — *Financial documents* ***are signed by***[1] *the manager.*

*Этот вопрос* ***обсуждался*** *на прошлом собрании* (*Этот вопрос* ***обсуждали*** *на прошлом собрании*). — *This question* ***was discussed*** *at the last meeting.*

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[1] В английском языке формой выражения лица или предмета, производящего действие, является косвенное дополнение с предлогом ***by***. На русский язык такие дополнения могут быть переведены: а) существительным в творительном падеже при сохранении формы страдательного залога сказуемого; б) существительным или местоимением в именительном падеже, но сказуемое в русском употребляется в действительном залоге. ***The flowers are watered by mother.*** — (дословно) *Цветы поливаются* ***мамой***, или: *Мама* ***поливает цветы.***

Если косвенное дополнение обозначает инструмент или орудие, то употребляется предлог ***with***, который на русский язык часто переводится словами ***путем, при помощи***, с помощью или существительным в творительном падеже.

2. Глагол, оканчивающийся на *-ся,* переводится на английский язык глаголом в действительном залоге, когда он не имеет страдательного значения, а выражает процесс, который происходит с предметом, обозначенным подлежащим. Предложение с глаголом, оканчивающимся на *-ся,* не может быть заменено неопределенно-личным предложением. Например:

*Он толкнул окно, и оно* ***открылось****. — He pushed the window and it* ***opened****.*

Глагол *открылось* не имеет страдательного значения, так как нельзя сказать: *Он толкнул окно, и его открыли.* Данное предложение невозможно заменить неопределенно-личным предложением. Глагол *открылось* выражает процесс, который произошел с окном.

3. Один и тот же глагол на *-ся* в одних случаях может не иметь страдательного значения, а в других — иметь.

Например, в п. 2 глагол *открываться* не имеет страдательного значения, поэтому переводится на английский язык глаголами в действительном залоге. Однако так происходит не всегда. Тот же глагол в следующем предложении имеет страдательное значение, поэтому переводится на английский язык глаголом в страдательном залоге. Например:

*Окна в нашей комнате* ***открываются*** *несколько раз в день. — The windows in our room* ***are opened*** *a few times a day.*

Предложение можно перевести на русский язык неопределенно-личным:

*Окна в нашей комнате* ***открывают*** *несколько раз в день.*

4. Глаголы на *-ся,* такие как *содержаться, отражаться, заниматься, интересоваться, удивляться* и некоторые другие, не имеющие страдательного значения, не соответствуют в английском языке глаголам в форме действительного залога. Переходные глаголы *содержать — to contain, отражать — to reflect, интересовать — to interest, удивлять — to surprise*, будучи употребленными в форме возвратных глаголов на *-ся — содержаться, отражаться, интересоваться, удивляться,* переводятся на английский язык сочетанием глагола-связки *to be* с *Past Participle* от переходных глаголов *to contain, to reflect, to interest, to surprise*, т. е. такое сочетание представляет собой составное именное сказуемое. Например:

*Он* ***интересовался*** *этой проблемой. — He* ***was interested*** *in this problem.*

*В этой книге **содержится** много полезной информации. —* 1. *A lot of useful information **is contained** in this book.* 2. *This book **contains** a lot of useful information.*

### Перевод на русский язык страдательного залога во всех временах

**Present Simple:**

Laws ***are passed*** every year. — Законы ***принимаются*** каждый год.

**Past Indefinite (Simple):**

The law ***was passed*** last session:
1. Закон ***был принят***
2. Закон ***приняли***
3. Закон ***принят***

} на прошлой сессии.

**Future Simple:**

The law ***will be passed*** next week:
1. Закон ***будет принят***
2. Закон ***примут***
3. Закон ***будет приниматься***
4. Закон ***будут принимать***

} на следеющей неделе.

**Future Simple- in-the-Past:**

The speaker stated that the law ***would be passed*** the next week:
1. Председатель сказал, что закон ***будет принят***
2. Председатель сказал, что закон ***примут***
3. Председатель сказал, что закон ***будет приниматься***
4. Председатель сказал, что закон ***будут принимать***

} на следующей неделе.

**Present Progressive:**

The law ***is being passed***:
1. Закон ***принимается.***
2. Закон ***принимают***.

**Past Progressive:**

The law ***was being passed***:
1. Закон ***принимался.***
2. Закон ***принимали.***

**Present Perfect:**

The law ***has*** (already) ***been passed***:
1. Закон (уже) ***принят***.
2. Закон (уже) ***приняли***.

**Past Perfect:**

The law ***had been passed*** before:
1. Закон (уже) ***был принят.***
2. Закон (уже) ***приняли*** (к какому-то моменту в прошлом).

**Future Perfect:**

The law ***will have been passed*** by May:
1. Закон ***будет принят***
2. Закон ***примут***

} к маю.

**Future Perfect in-the-Past:**

The speaker stated that the law ***would have been passed*** by *May*:
1. Председатель сказал, что закон ***будет принят*** к маю.
2. Председатель сказал, что закон ***примут*** к маю.

Безличные предложения с модальными глаголами рекомендуется переводить с помощью модальных глаголов ***можно, нужно, следует*** *и т. д.* соответственно. Например:

*The problem* ***must be solved****. — **Эту проблему нужно решить.** It could* ***have been expected****. — Это **можно было ожидать.** He* ***can't be admitted*** *to this work. — Его* ***нельзя допустить*** *к этой работе.*

Следует помнить, что в английском языке предложения без подлежащего невозможны, поэтому русские неопределенно-личные предложения со сказуемым в форме 3-го лица множественного числа могут переводиться на английский язык предложениями со сказуемым в страдательном залоге. При этом местоимения в дательном, винительном, творительном, предлож-

ном падежах в русском языке будут в английском предложении подлежащим, а значит, местоимениями в именительном падеже. Например:

***She** has been brought a letter. — **Ей** принесли письмо.*
***He** will be given a book. — **Ему** дадут книгу.*
***They** are well spoken of. — **О них** хорошо отзываются.*

### Перевод на русский язык непереходных глаголов в страдательном залоге, требующих предложного косвенного дополнения

В английском языке непереходные глаголы, требующие предложного дополнения, могут употребляться в страдательном залоге. Предложное дополнение становится подлежащим страдательного оборота, при этом предлог сохраняет свое место после глагола:

| **Действительный залог Active Voice** | | **Страдательный залог Passive Voice** | |
|---|---|---|---|
| **Пример** | **Перевод** | **Пример** | **Перевод** |
| Глагол ***to listen to*** *— слушать кого-либо, что-либо* | | | |
| The colleagues ***listened to him*** with interest | Коллеги ***слушали его*** с интересом | *He* ***was listened*** to with interest | ***Его слушали*** с интересом |
| Глагол ***to rely on/upon*** *— полагаться на кого-либо* | | | |
| They ***could rely on/upon*** him | Они могли ***на него положиться*** | He ***could be relied on/upon*** | ***На него*** можно было ***положиться*** |

Предложное косвенное дополнение может стать подлежащим страдательного оборота не при всех глаголах. К числу наиболее употребительных глаголов, с которыми возможны страдательные обороты, относятся:

**to account for —** объяснять, обосновывать, являться причиной, учитывать
**to agree upon** — договориться о
**to comment upon (on) —** комментировать что-нибудь
**to dispose of —** реализовать, ликвидировать что-нибудь
**to insist on (upon) —** настаивать на
**to interfere with** — мешать чему-нибудь, кому-нибудь

**to laugh at** — смеяться над
**to look after —** заботиться о
**to look at —** смотреть на
**to look into —** рассматривать что-нибудь (изучать)
**to object to —** возражать против
**to provide for —** предусматривать что-нибудь
**to refer to —** ссылаться на
**to listen to —** слушать кого-нибудь, что-нибудь
**to speak of (about) —** говорить о
**to rely on —** полагаться на
**to send for** — посылать за
**to wait for** — ждать кого-нибудь, что-нибудь
**to bring about —** вызывать, осуществлять
**to deal with —** рассматривать, разбирать, заниматься; касаться
**to touch on (upon) —** затрагивать; касаться
**to subject to —** подвергать (действию, влиянию и т. п.)

### Перевод английских переходных глаголов в страдательном залоге

Довольно часто возникают случаи, когда английские глаголы являются переходными, т. е. требуют прямого дополнения, тогда как соответствующие русские глаголы являются непереходными и требуют предложного дополнения. К таким глаголам относятся:

**to affect (somebody, something)** — влиять (на кого-нибудь, на что-нибудь)
**to answer (something)** — отвечать (на что-нибудь)
**to attend (something)** — присутствовать (на чем-нибудь)
**to enjoy (something)** — получать удовольствие (от чего- нибудь)
**to follow (somebody, something) —** следовать (за кем-нибудь, за чем-нибудь)
**to influence (somebody, something) —** влиять (на кого-нибудь, на что-нибудь)
**to join (somebody, something) —** присоединяться (к кому-нибудь, к чему-нибудь)
**to need (somebody, something) —** нуждаться (в ком-нибудь, в чем-нибудь)

**to watch (somebody, something)** — следить (за кем-нибудь, за чем-нибудь)

Например:

1. *За телеграммой последовало письмо:*

a) *A letter* ***followed*** *the telegram.*

b) *The telegram* ***was followed by*** *a letter.*

2. *На лекции присутствовало большое количество студентов*:

a) *A great number of students* ***attended*** *the lecture.*

b) *The lecture* ***was attended by*** *a great number of students.*

## Перевод страдательного залога с формальным подлежащим *it*

Страдательный оборот, состоящий из местоимения ***it*** и глагола, переводится на русский язык неопределенно-личным предложением:

***It is reported…*** — *Сообщают, что…*

***It was expected…*** — *Ожидали, что…*

***It is known…*** — *Известно, что…*

***It was thought…*** — *Думали, полагали, что…*

***It is said…*** — *Говорят, что… Считается, что…*

Например:

***It is reported*** *that the delegation has left for Moscow.* — ***Сообщают****, что делегация выехала в Москву.*

***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.*

В таких оборотах могут употребляться модальные глаголы с инфинитивом страдательного залога. Например:

***It can be said*** — *можно сказать*; ***it should be mentioned*** — *следует упомянуть;* ***it was to be expected*** — *надо было ожидать***.**

Если в таких сочетаниях присутствует ***as*** со значением ***как***, то ***it*** не употребляется. Например:

***As is reported*** *— как сообщают;* ***as was believed*** *— как полагали;* ***as was to be expected*** *— как надо было ожидать.*

В некоторых случаях опускается глагол-связка ***to be***. Например:

***As shown in the table*** *— как показано на таблице;* ***as stated below*** *— как указано ниже;* ***as mentioned above*** *— как упомянуто выше;* ***as reported in the last issue*** *— как сообщалось в последнем номере журнала.*

## NON-FINITE FORMS OF THE VERB

## НЕЛИЧНЫЕ ФОРМЫ ГЛАГОЛА

Неличные формы (инфинитив — *the Infinitive,* причастие — *the Participle,* герундий — *the Gerund)* выражают действие без указания лица и числа, поэтому не могут служить в предложении сказуемым. Неличные формы сочетают свои глагольные свойства со свойствами других частей речи и выполняют в предложении синтаксические функции этих частей речи. Так, инфинитив и герундий, сочетая свойства глагола со свойствами существительного, выполняют функцию существительного, т. е. служат в предложении подлежащим, именной частью сказуемого, дополнением, определением и обстоятельством. Причастие, сочетая свойства глагола со свойствами прилагательного и наречия, выполняет функцию прилагательного и наречия, т. е. служит в предложении определением и обстоятельством.

Инфинитив, герундий и причастие могут употребляться в предложении без пояснительных слов, т. е. без дополнения и обстоятельства. Хотя, как правило, они употребляются с пояснительными словами, образуя с ними обороты.

## THE INFINITIVE

## ИНФИНИТИВ

Подобно личным формам глагола инфинитив в английском языке может употребляться в различных формах, которые выражают характер действия (длительность, законченность). Он также имеет залог (действительный — *Active Voice*, страдательный — *Passive Voice*):

| | | |
|---|---|---|
| Simple Active Infinitive | to help | I am glad ***to help*** you. — Я рад помочь вам |
| Simple Passive Infinitive (выражает действие, одновременное с действием сказуемого) | to be helped | I am glad ***to be helped*** by you. — Я рад, что вы помогаете мне |
| Progressive Active Infinitive (выражает действие в процессе его развития одновременно с действием сказуемого) | to be helping | I am glad ***to be helping*** you. — Я рад, что помогаю вам |
| Perfect Active Infinitive | to have helped | I am glad ***to have helped*** you. — Я рад, что помог вам |
| Perfect Passive Infinitive (выражает действие, которое предшествует действию, выраженному сказуемым) | to have been asking | I am glad ***to have been helped*** by you. — Я рад, что вы помогли мне |
| Perfect Progressive Active Infinitive (выражает действие, продолжавшееся в течение определенного времени и предшествовавшее действию, выраженному глаголом-сказуемым) | to have been helping | I am glad ***to have been helping*** you. — Я рад, что помогал вам |

### *Функции инфинитива*

Английский инфинитив во многих случаях выполняет те же функции, что и неопределенная форма глагола (инфинитив) в русском языке. Поэтому инфинитив в функции подлежащего, дополнения, части составного именного или глагольного сказуемого не вызывает сложности при переводе на русский язык. Однако имеются и некоторые особые случаи, когда английский инфинитив употребляется в несвойственных русскому инфинитиву функциях и не может быть переведен русским инфинитивом или образует такие инфинитивные обороты, которые можно передать по-русски только описательно.

*Определение*

Инфинитив в функции определения следует за определяемым существительным и имеет оттенок модальности и обычно переводится на русский язык определительным придаточным предложением с модальным глагольным сказуемым, выражающим возможность или долженствование, с добавлением слов ***следует, надо, должен,*** или же глаголом-сказуемым в будущем времени. Например:

*The case* ***to be*** *tried. — Дело, которое* ***следует*** *рассмотреть.*

*This question* ***will be*** *discussed at the conference shortly to open in Moscow. — 1. Этот вопрос* ***будет*** *обсуждаться на конференции, которая должна вскоре открыться в Москве. 2. Этот вопрос* ***будет*** *обсуждаться на конференции, которая вскоре открывается в Москве.*

После слова ***the last*** и порядковых числительных (если в данном предложении они выполняют функцию предикативного члена) инфинитив в функции определения переводится личной формой глагола в том же времени, что и глагол-сказуемое главного предложения. Например:

*The secretary general* ***was the first to raise*** *this question. — 1. Генеральный секретарь* ***первым поставил*** *этот вопрос. 2. Генеральный секретарь* ***был первым, кто поставил*** *этот вопрос.*

Если же эти слова выполняют какую-либо другую синтаксическую функцию, то инфинитив может также переводиться и причастием. Например:

*The first person to raise* ***objections was the Minister himself. —*** *Первым, выступившим с* ***возражениями, был сам министр.***

Пассивная форма инфинитива в функции определения сохраняет за собой предлог, с которым употребляется данный глагол, и переводится обычно на русский язык неопределенно-личным предложением. Например:

*This was not a matter* ***to be easily agreed upon****. — Не такой это был вопрос,* ***чтобы по нему можно было легко договориться.***

Если инфинитив в страдательном залоге является определением к существительному, перед которым стоит конструкция ***there is (there are)***, при переводе на русский язык такое предложение рекомендуется начинать со слов ***следует (следовало), нужно, можно (надо будет, можно было)***, в зависимости от

того, в каком времени употреблено сказуемое, затем переводится инфинитив — инфинитивом в действительном залоге. Подлежащее в английском предложении оказывается дополнением в русском предложении. Например:

***There are many problems** to be solved**. — 1. Следует решить много вопросов. 2. Есть много вопросов, которые следует решить***

*Обстоятельство цели*

Например:

***To eradicate** crime it is necessary to study all causes of crimes. — **Чтобы искоренить** преступность, необходимо изучать все причины преступлений.*

*Обстоятельство результата или следствия*

Например:

*This question is **too** difficult **to be settled** without further consultations. — 1. Этот вопрос **слишком** сложен, **чтобы** его **можно было разрешить** без дальнейших консультаций. 2. Этот вопрос **слишком** сложен, **чтобы** его **разрешить** без дальнейших консультаций*

Если в предложении с инфинитивом в функции обстоятельства результата или следствия нет слов ***such... (as), enough, so, too, only***, то инфинитив переводится, в зависимости от сочетаемости слов в русском языке, обычно самостоятельным предложением, вводимым союзом ***и***. Например:

*In 1928 he resigned his post **never to return** to public life. — В 1928 году он ушел в отставку **и никогда уже не возвращался** к государственной деятельности*

*Вводный член предложения*

***To anticipate** a little, these data prove that…* — переводится:

а) деепричастным оборотом: ***Забегая** несколько вперед, **заметим (следует сказать)**, что эти данные доказывают…*;

б) неопределенной формой глагола с союзом ***если***, после которого для связи с последующим предложением иногда вводятся слова ***заметим, следует сказать, что*** и др.: ***Если забежать** несколько вперед, **следует сказать**, что эти данные доказывают…*;

в) самостоятельным предложением со сказуемым в повелительном наклонении или изъявительном 1-го л. мн. ч.: *Забежим*

*несколько вперед (отметим, что) — эти данные доказывают…; to tell the truth — по правде говоря; to be frank — если говорить откровенно; to put it mildly — мягко выражаясь.*

В сочетании с глаголом ***to fail*** или существительным ***failure*** инфинитив передает неудавшуюся попытку совершить действие или просто отрицание и часто переводится на русский язык личной формой глагола в отрицательной форме. Например:

*The negotiators **failed to come** to an agreement. — 1. Участники переговоров **не пришли** к соглашению.* 2. *Участники переговоров **не смогли договориться**.*

Сочетание ***is (was) bound*** с инфинитивом переводится словами ***обязательно, неизбежно должно было***. Например:

*It **was bound** to happen. — Это **неизбежно должно было** произойти (случиться).*

## INFINITIVE CONSTRUCTIONS

## ИНФИНИТИВНЫЕ КОНСТРУКЦИИ

### The Complex Subject / Subjective - with - the Infinitive Construction

### Конструкция “именительный падеж с инфинитивом”

Как правило, в русском языке аналога такого оборота нет. В английском языке употребляется, когда сказуемое выражено глаголами в страдательном залоге: ***to say*** *— говорить,* ***to state*** *— заявлять, сообщать,* ***to report*** *— сообщать,* ***to announce*** *— объявлять,* ***to suppose***[1] *— предполагать,* ***to think*** *— думать, считать,* ***to know*** *— знать,* ***to consider*** *— считать* и др., а также употребляется с прилагательными ***likely*** *— вероятно,* ***unlikely*** *— маловероятно,* ***certain/sure*** *— несомненно.*

Предложение с оборотом “именительный падеж с инфинитивом” обычно переводится сложноподчиненным предложением, главное предложение которого представляет собой неопределенно-личное предложение типа: ***говорят, сообщают, известно*** и т. п., придаточное дополнительное вводится союзами ***что*** и ***как***. Например:

[1] Глагол ***to suppose*** может также иметь значение ***полагаться***. Например: *Не **is supposed to have** it. — Ему **полагается иметь** это.*

*This young inmate* ***is known to have spent*** *three months in custody.* — ***Известно, что*** *молодой правонарушитель* ***провел*** *три месяца под стражей.*

*The court* ***is certain to give*** *a fair sentence.* — ***Несомненно, что*** *суд* ***вынесет*** *справедливое решение.*

Если конструкция "именительный падеж с инфинитивом" употреблена в придаточном предложении, часто *в определительном придаточном*, или в причастном обороте, то неопределенно-личное предложение при переводе на русский язык обычно выступает в роли вводного предложения. Например:

*A move which he* ***is expected to make*** *is an attempt to come to a mutually-beneficial agreement.* — *Шаги, которые,* ***как предполагают****, он собирается предпринять, являются попыткой прийти к взаимовыгодному соглашению.*

В отдельных случаях конструкция "именительный падеж с инфинитивом" может переводиться простым предложением. Например:

*Much greater legal tasks* ***were seen to lie ahead****.* — ***Предстояли*** *значительно более важные правовые задачи.*

Если в английском предложении сказуемое имеет отрицательную форму, то при переводе на русский язык отрицание часто переносится в придаточное предложение. Например:

*The preliminary talks* ***are not expected to last*** *more than three weeks.* — ***Ожидается****, что предварительные переговоры* ***продлятся не*** *больше трех недель.*

Ниже следует перевод некоторых наиболее типичных слов в конструкции "именительный падеж с инфинитивом"; обратите внимание, что глагол-сказуемое не всегда выражен в страдательном залоге:

**is reported to**... — передают, сообщают (сообщается), что...

**is believed to**... — полагают, считают, что...

**is considered to**... — считают (считается), что...

**is thought to**... — считают, думают, что...

**is understood to**... — по имеющимся сведениям... , считают (считается), что... , по существующей договоренности (согласно договоренности)...

**is expected to**... — ожидается, предполагается, что**...**

**is alleged to**... — говорят, считают, что якобы…

**is heard to**... — имеются сведения, что...

**is seen to**... — считается, рассматривается (рассматривают), что...

**is felt to**... — считают, что...

**seems to**... — кажется, что...

**appears to**... — по-видимому...

**is likely to**... — по-видимому, похоже на то, что..., по всей вероятности, вероятно...

**is unlikely to**... — маловероятно, чтобы... едва ли ...

**happens (happened) to**... — случайно..., случилось так, что...

**is sure (certain) to**... — обязательно, наверняка...

Если после глаголов ***to seem*** и ***to appear*** глагол-связка ***to be*** перед существительным или прилагательным опускается, то глаголы ***to seem*** и ***to appear*** имеют значение ***выглядеть, производить впечатление***. Например:

*He* ***seems*** *astonished. — Он* ***выглядит*** *удивленным.*

## The Complex Object/Objective - with - the Infinitive Construction

## Конструкция "объектный падеж с инфинитивом"

Предложение с этим оборотом переводится на русский язык сложноподчиненным предложением с придаточным дополнительным предложением, вводимым союзами ***что, чтобы, как***. Например:

*The juvenile court wants* ***this child to have a guardian****. — Суд по делам несовершеннолетних хочет,* ***чтобы у этого ребенка был опекун****.*

Инфинитивный оборот «объектный падеж с инфинитивом» в английском предложении выполняет функцию сложного дополнения *(Complex Object).*

"Объектный падеж с инфинитивом" обычно употребляется после глаголов, выражающих желание: ***to want*** *— хотеть,* ***to wish, desire*** *— желать,* ***to oblige*** *— обязывать,* ***to enable*** *— способствовать и др.*, глаголов чувственного восприятия: ***to see*** *— видеть,* ***to watch*** *— наблюдать,* ***to hear*** *— слышать и др.*, глаголов умственной деятельности: ***to think*** *— думать,* ***to believe, suppose*** *— полагать и др*. Например:

*The judge* ***expects the prosecutor to attend*** *a meeting tomorrow. — Судья (ожидает)* ***полагает, что прокурор будет (присутствовать)*** *завтра на собрании.*

## For - to - Infinitive Construction

## Конструкция "for - имя (существительное/местоимение) - инфинитив"

В русском языке таких конструкций нет, поэтому при переводе на русский язык происходят определенные синтаксические изменения.

Данный оборот состоит из двух частей: именной части, выраженной существительным или местоимением, и глагольной части, выраженной инфинитивом. В глагольной части называется действие, которое совершает лицо, обозначенное в именной части оборота.

Перевод инфинитивного комплекса зависит от выполняемой им в предложении функции, предлог ***for*** опускается.

Синтаксический комплекс *"for - to - Infinitive Construction"* может быть преобразован:

1) в придаточное предложение, в котором именная часть оборота превращается в подлежащее, а глагольная — в сказуемое. Например:

***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;*

2) в безличное предложение, в котором именная часть оборота становится дополнением, выраженным соответствующим существительным или местоимением в дательном падеже и инфинитивом. Например:

***It is important for a beneficiary to have*** *locus standi to enforce a trust if there is to be a valid trust. — Для того чтобы траст был признан действительным, **бенефициару важно обладать** соответствующими правами, позволяющими реализовать положения договора траста в судебном порядке.*

***Независимая номинативная конструкция*** "***существительное + инфинитив***" стоит в конце предложения и отделяется запятой. Она передает сопутствующее обстоятельство с модальным значением долженствования. На русский язык переводится самостоятельным предложением, присоединяемыми союзами ***причем***, ***при этом*** и т. д. Например:

*The sellers offered the buyers 5 000 tons of oil,* ***delivery to be made*** *in October. — Поставщики предложили покупателям 5 000 тонн нефти,* ***причем поставка должна быть произведена*** *в октябре.*

## THE PARTICIPLE

## ПРИЧАСТИЕ

Английское причастие — неличная форма глагола, которая наряду со свойствами глагола имеет свойства прилагательного (служит определением к существительному) или наречия (служит обстоятельством). В функции определения причастие употребляется только в простой форме (не в перфектной) и соответствует русскому причастию, а в функции обстоятельства английское причастие соответствует русскому деепричастию (в английском языке нет специальной формы деепричастия) и может быть употреблено как в простой, так и в перфектной форме.

Таким образом, английское причастие в перфектной форме (*having done*) всегда должно восприниматься как обстоятельство (*сделав*), а не определение (*сделавший*). В соответствии с нормами русского языка такое причастие может передаваться через деепричастие, деепричастный оборот или глаголом в личной форме в придаточном или самостоятельном предложении.

### *Функции причастия*

*Определение*

Переводится причастием настоящего или прошедшего времени или глаголом в личной форме в придаточном определительном предложении. Например:

*It will be seen that many of the fundamental rules,* ***governing*** *the Constitution are "conventional", rather than legal rules. — Мы увидим, что многие фундаментальные нормы права,* ***регулирующие*** *Конституцию, скорее являются нормами обычными, а не правовыми.*

*The data* ***obtained*** *are being carefully analyzed and studied. —* ***Полученные*** *данные тщательно анализируются и изучаются. It is necessary to review some of the arguments* ***put forward*** *by those*

***opposing*** *the idea of such talks.— Необходимо пересмотреть некоторые доводы,* ***выдвинутые*** *теми, кто* ***выступает*** *против идеи ведения таких переговоров.*

*Обстоятельство*

Переводится деепричастием, глаголом в личной форме в составе придаточного предложения или иным способом в зависимости от сочетаемости слов в русском языке. Например:

***Building*** *precedent upon precedent, the courts have framed precedents with two ends in view. — Создавая (возводя, нагромождая, строя) прецедент на прецеденте, суды выстроили (сформировали) систему прецедентов преследуя две цели.*

***Asked*** *to comment about the U. N. resolution* ***tabled*** *by the Afro-Asian countries, the Prime Minister replied... — 1.* ***Когда его попросили*** *высказаться по поводу резолюции ООН,* ***внесенной*** *странами Азии и Африки, премьер-министр сказал... 2.* ***На вопрос о том****, каковы будут его комментарии по поводу резолюции ООН,* ***внесенной*** *странами Азии и Африки, премьер-министр сказал ... 3.* ***На просьбу*** *прокомментировать резолюцию ООН,* ***внесенную*** *странами Азии и Африки, премьер-министр сказал...*

***Being invited*** *too late Thomson could not go to the conference. — 1.* ***Так как*** *Томсона* ***пригласили*** *слишком поздно, он не смог поехать на конференцию. 2.* ***Будучи приглашен*** *слишком поздно, Томсон не смог поехать на конференцию.*

***Considered*** *from this point of view the question will be of great interest. — 1.* ***При рассмотрении*** *с этой точки зрения вопрос представит большой интерес. 2.* ***Если*** *вопрос* ***рассматривать*** *с этой точки зрения, он представит большой интерес (окажется весьма интересным). 3.* ***Будучи рассмотрен*** *с этой точки зрения, вопрос представит большой интерес (окажется весьма интересным).*

***Having encompassed a formal apology and compensation*** *totaling 2.3 million francs, France reached a settlement with the family of Fernando Pereira. —* ***Принеся формальные (официальные) извинения и заплатив компенсацию*** *в размере 2,3 миллиона франков, Франция достигла мирового соглашения с семьей Фернандо Перейра.*

Обстоятельственные причастные обороты могут вводиться союзами: ***when, while*** *— когда,* ***if*** *— если,* ***unless*** *— если... не,* ***until*** *— пока… не,* ***though*** *– хотя, хотя и,* ***once*** *— когда, раз и др.* Например:

***If given the opportunity****, this party will rapidly develop. —* ***Если этой партии предоставить (будут предоставлены) благоприятные возможности,*** *она будет быстро развиваться.*

## The Complex Object / The Objective Participial Construction

## Объектный причастный оборот (сложное дополнение)

Этот оборот представляет собой сочетание существительного в общем падеже или местоимения в косвенном падеже с причастием (*имя + причастие*), выступающее в функции сложного дополнения. Обычно переводится придаточным дополнительным предложением, вводимым союзами ***как, что*** или ***чтобы.*** Например:

*The judge wants* ***the case dismissed immediately****. — Судья хочет,* ***чтобы дело было немедленно прекращено****.*

Объектный причастный оборот аналогичен обороту “объектный падеж с инфинитивом”. Например:

*Их беспристрастность не предотвратила того,* ***что их рекомендации были сильно противоречивы. —*** *Their impartiality has not prevented* ***their recommendations being highly controversial*** *или: Their impartiality has not prevented* ***their recommendations to be highly controversial.***

После глаголов ***to have***[1] и ***to get*** объектный причастный оборот (**have/get** + *имя + причастие*) образует каузативную или побудительную конструкцию, которая означает, что действие совершается не лицом, обозначенным подлежащим предложения, а кем-то другим за или для него. В русском языке нет аналогичной конструкции или специальных средств для выражения каузативности, поэтому перевод ее

[1] Сочетание глагола ***to have*** с объектным причастным оборотом может и не иметь каузативного значения. Например: *For the time being professional diplomats* ***had their attention riveted*** *on Washington. — В тот момент* ***внимание*** *профессиональных дипломатов* ***было приковано*** *к Вашингтону.*

представляет значительные трудности. Конкретное значение этой конструкции зависит от контекста и может быть весьма разнообразным. Например:

*We must treat this as a national emergency issue and must* ***get this decision reversed****. — Мы должны рассматривать это как вопрос чрезвычайного значения (важности) для страны и должны* ***добиваться, чтобы это решение было изменено.***

## The Absolute Participial Construction

## Абсолютный причастный оборот (независимый причастный оборот)

Абсолютный причастный оборот — это сочетание причастия с существительным в общем падеже, которое, не будучи подлежащим главного предложения, является субъектом действия, выраженного причастием. Данная конструкция может выполнять в предложении функцию обстоятельства времени, причины, условия или сопутствующего обстоятельства.

Препозитивный независимый причастный оборот, т. е. стоящий перед главным составом предложения, может иметь как временное, так и причинное значение, что определяется контекстом. Например:

***Whole cities being razed to the ground during the war****, the building of houses was priority number one. —* ***Так как во время войны целые города были стерты с лица земли (разрушены до основания)****, строительство домов стало первоочередной задачей.*

В функции обстоятельства условия этот оборот выступает обычно в тех случаях, когда предложение относится к будущему времени, и переводится на русский язык соответствующим придаточным предложением.

Независимый причастный оборот часто вводится предлогом ***with***, который на русский язык обычно не переводится. Например:

***With the prices going higher and higher and the wages frozen,*** *it is becoming increasingly difficult for the British housewife to make both ends meet. —* ***Так как цены продолжают расти****, а зарплата заморожена, английским хозяйкам становится все труднее сводить концы с концами.*

Причастие ***being***, обычно в функции связки, может быть опущено. Такая "беспричастная" абсолютная конструкция переводится на русский язык придаточным предложением. Например:

***With unemployment now a crisis issue in many areas****, the Labor movement is stepping up its "right to work» campaign. — **Теперь, когда вопрос о безработице стоит очень остро во многих районах стран**ы, рабочие усиливают кампанию за "право на работу".*

Значение сопутствующего обстоятельства эта конструкция имеет в постпозитивной позиции, т. е. когда она стоит после главного состава предложения; переводится на русский язык самостоятельным простым предложением или простым предложением, входящим в состав сложносочиненного предложения и вводимым союзами ***а, и*** или ***причем, при этом***. Например:

*The cargo was badly damaged **by the fire, the owners suffering great losses.** — Груз был сильно поврежден пожаром, и **владельцы понесли большие потери**; Among the eleven members of the Security Council were five permanent members, that is the five victorious powers**, each one having the veto power.** — Среди одиннадцати членов Совета Безопасности было пять постоянных членов, то есть, пять государств-победителей, **причем каждый из них имеет право вето**.*

## THE GERUND AND GERUNDIAL PHRASES

## ГЕРУНДИЙ И ГЕРУНДИАЛЬНЫЕ ОБОРОТЫ

Герундий — это неличная форма глагола, которая выражает действие и обладает свойствами как глагола, так и существительного. Хотя герундий по форме совпадает с причастием I (окончание *–ing*), но это самостоятельная часть речи, которая кроме функций определения и обстоятельства может выполнять ряд других функций, которые часто совпадают с функциями инфинитива. В отличие от причастия I перед герундием может стоять предлог, существительное в притяжательном падеже или притяжательное местоимение. В русском языке соответствующая грамматическая форма отсутствует, поэтому при переводе возникают трудности. На русский язык герундий может переводиться именем существительным, глаголом в неопределен-

ной форме, глаголом в личной форме, входящим в состав придаточного предложения, деепричастием, а иногда и целым придаточным предложением. Способ перевода зависит как от той или иной функции герундия в предложении, так и от его лексического значения и сочетаемости слов в русском языке.

Герундий выполняет следующие ***функции*** в предложении:

**подлежащее** — переводится существительным. Например:

***Interpreting*** *enactments is the major role which English courts play in the legal system. — Толкование законов — это та важнейшая роль, которую играют английские суды в правовой системе.*

Сочетание ***there is no*** с герундием в функции подлежащего переводится на русский язык неопределенно-личным предложением. Например:

***There is no denying*** *that danger may be averted by this move. —* ***Нельзя отрицать****, что этим шагом можно избежать опасности;*

**часть составного глагольного сказуемого** — переводится существительным. Например:

*After the convictions the New Zealand Prime Minister David Lange, remarked that New Zealand would consider* ***repatriating*** *the agents. — После вынесения приговора премьер-министр Новой Зеландии Давид Ланж отметил, что Новая Зеландия будет рассматривать возможность* ***репатриации*** *агентов;*

**определение**[1] — переводится существительным или инфинитивом. Например:

*It must not be imagined that the law is always discoverable by the simple process of* ***looking up*** *and* ***finding*** *the right precedent. — Не следует думать, что законность определяется простым процессом* ***поиска*** *и* ***обнаружения*** *нужного прецедента;*

**дополнение** (как прямое — обычно после глаголов ***remember, mention, mind,*** так и косвенное) — переводится существительным, глаголом в неопределенной форме, глаголом в личной форме в составе придаточного предложения, вводимого словами ***то, что/чтобы***. Например:

*The speaker mentioned* ***having*** *to comply with international treaty obligation. — Выступающий отметил* ***необходимость*** *(затронул вопрос о необходимости) соответствовать обязательствам международного права.*

[1] Герундий в функции определения обычно следует за предлогом ***of***.

*This curious episode merits* ***being inserted*** *in a survey of the activities of the Security Council during that period. — Этот любопытный эпизод заслуживает* ***того, чтобы его включили*** *в обзор, посвященный деятельности Совета Безопасности за этот период времени;*

**обстоятельство:**

а) времени (после предлогов ***on (upon), after, before, in***) — переводится[1] деепричастием или глаголом в личной форме в придаточном предложении. Например:

***In trying*** *to devise ways to improve the machinery of the United Nations the Foreign Secretary displayed real ingenuity. — 1. Когда министр иностранных дел* ***пытался*** *придумать новые способы улучшения аппарата ООН, он проявил подлинную изобретательность. 2.* ***Пытаясь*** *придумать новые способы улучшения аппарата ООН, министр иностранных дел проявил подлинную изобретательность.*

***After reading*** *about a law system in Great Britain he understood its essence. —* ***Прочитав*** *о судебной системе Великобритании, он понял ее суть;*

б) сопутствующее, после предлогов ***besides***, ***instead of***, ***apart from*** — переводится глаголом в неопределенной форме, глаголом в личной форме как часть придаточного предложения. Например:

***Besides being extremely unpopular*** *this policy may lead to a complete failure of all their efforts. —* ***Не говоря уже о том, что эта политика не пользуется популярностью****, она может привести к тому, что все их усилия окажутся напрасными;*

в) образа действия, с предлогами ***in, by, without*** — после предлогов ***in*** и ***by*** герундий переводится деепричастием, сочетанием существительного с предлогами ***путем***, ***при помощи*** и т. п. или глаголом в личной форме в составе придаточного предложения. Например:

*It can be done* ***by sending*** *deputations to MPs. — Это можно сделать,* ***послав*** *депутации к членам парламента.*

*He admitted that he had made a mistake* ***in not supporting*** *this proposal earlier. — 1. Он признал, что допустил ошибку,* ***не поддержав*** *этого предложения раньше. 2. Он признал, что допустил ошибку,* ***что не поддержал*** *этого раньше предложения;*

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[1] В зависимости от сочетаемости слов в русском языке герундий может переводиться сочетанием предлога с существительным: ***after (on) arriving*** — *по прибытии,* ***after checking*** — *после проверки.*

г) причины (с составными предлогами ***owing to*** — *из-за, вследствие*, ***for fear of*** — *из опасения* и др.) — переводится глаголом в личной форме, существительным или деепричастием. Например:

*He did not dare to make public announcements about this plan* ***for fear of being criticized.*** *— 1. Он не осмелился открыто объявлять об этом плане из опасения, что его подвергнут критике 2. Он не осмелился открыто объявлять об этом плане,* ***опасаясь, как бы его не подвергли критике***;

д) условия (с составными предлогами ***in case of, in the event of*** *— в случае если,* ***subject to*** *— при условии,* ***without*** *— без*).

С предлогом ***without*** герундий переводится отрицательной формой деепричастия, сочетанием существительного с предлогом ***без***, сочетанием ***без того, чтобы*** и отрицательной формой инфинитива, в остальных случаях — обычно личной формой глагола или существительным. Например:

*They promised not to undertake any actions* ***without consulting their partners.*** *— 1. Они обещали не предпринимать никаких действий,* ***не проконсультировавшись*** *со своими партнерами. 2. Они обещали не предпринимать никаких действий* ***без консультации*** *со своими партнерами. 3. Они обещали не предпринимать никаких действий* ***без того, чтобы не проконсультироваться со своими партнерами.***

В сочетании с предлогом ***without*** герундий может выступать в функции обстоятельства условия, обстоятельства образа действия и сопутствующего обстоятельства. Функция его определяется контекстом предложения. Например:

а) обстоятельство условия:

*Their policy is based upon the conviction that they cannot possibly win* ***without smashing*** *by military force the resistance of the peace-loving nations — 1. Их политика основывается на твердом убеждении, что они не смогут победить,* ***не сломив*** *военной силой сопротивления миролюбивых стран. 2. Их политика основывается на твердом убеждении, что они не смогут победить,* ***если не сломят*** *военной силой сопротивления миролюбивых стран;*

б) обстоятельство образа действия:

*They can organize their work* ***without being interfered with*** *and* ***controlled by*** *big business — 1. Они могут организовать свою работу* ***без вмешательства*** *и* ***контроля со стороны*** *крупного*

*бизнеса. 2. Они могут организовать свою работу без того,* ***чтобы крупный бизнес вмешивался в нее и осуществлял над ней контроль;***

в) сопутствующее обстоятельство:

*On the opening day a new president was elected* ***without anyone objecting*** *— 1. В день открытия* ***без каких-либо возражений*** *был избран новый председатель. 2. В день открытия* ***единогласно*** *был избран новый председатель.* (букв.: без того, чтобы кто-либо возражал).

После словосочетания ***far from*** герундий переводится конструкциями: ***не только не...*** *(+ личная форма глагола),* ***но...***; ***вместо того, чтобы*** *(+инфинитив)...* либо ***отнюдь не*** *(+деепричастие)...* Например:

***Far from averting*** *this threat, this surrender will only bring about still tougher action later. —* ***Отнюдь не устраняя*** *угрозы, эта капитуляция приведет в будущем лишь к более жестким мерам.*

***Far from being*** *a triumph, it was the most ignominious surrender in modern diplomacy. — Это* ***не только не было*** *триумфом,* ***но*** *было самой позорной капитуляцией за всю историю дипломатии нашего времени.*

### ГЕРУНДИАЛЬНЫЙ КОМПЛЕКС

Сочетание герундия с существительным в притяжательном или общем падеже, притяжательным местоимением или группой слов, которые являются субъектом действия, выраженного герундием, составляет единое целое и может выступать в качестве члена предложения в тех же функциях, что и герундий. Герундиальный комплекс переводится на русский язык придаточным предложением, вводимым словами ***то, что...; тот факт, что...; (с тем) чтобы...; после того как...*** и др. Например:

*We look forward to* ***much attention being given to this question.*** *— Мы рассчитываем на* ***то, что этому вопросу будет уделено значительное внимание.***

Трудность, связанная с переводом герундиального комплекса, заключается в том, что если его субъект выражен существительным, то герундиальный оборот можно принять за причастный, т. е. за сочетание существительного с причастием. Например:

*When the conference of Foreign Ministers' deputies was subsequently held, the new formula was used by the Americans to prevent*

***an agreed agenda being drawn up.*** *— Когда впоследствии состоялась конференция заместителей министров иностранных дел, эта новая формула использовалась американцами с целью помешать* ***тому, чтобы была выработана согласованная повестка дня*** (букв.: … помешать бытию согласованной повестки выработанной, т. е. дополнением к глаголу *prevent* является не повестка, а герундий *being*).

Если бы словосочетание ***being drawn up*** было причастием в функции определения, то следовало бы перевести этот оборот как: *...использовалась американцами, чтобы помешать* ***согласованной повестке, которая в тот момент вырабатывалась***. Очевидно, что такое предложение лишено смысла.

## THE SUBJUNCTIVE MOOD

## СОСЛАГАТЕЛЬНОЕ НАКЛОНЕНИЕ

Формы наклонения глагола показывают отношение действия к реальности. Это отношение устанавливается говорящим. Он может представить действие как реальное (изъявительное наклонение), нереальное (сослагательное наклонение) или как просьбу или приказание (повелительное наклонение).

Все формы выражения нереальности встречаются главным образом в придаточных предложениях. Использование форм выражения нереальности необходимо в следующих случаях:

**в условных предложениях:**

а) действие и условие совершения действия вполне реальны и относятся к будущему времени. Например:

*If he* ***finds out*** *her address, he* ***will write*** *to her. — Если он найдет ее адрес, он ей напишет.*

б) действие и условие совершения действия маловероятны и относятся к настоящему или будущему времени. Например:

*If he* ***found out*** *her address, he* ***would write*** *to her. — Если бы он нашел ее адрес, он бы написал ей.*

в) действие и условие совершения действия абсолютно нереальны и относятся к прошлому времени. Например:

*If he* ***had found out*** *her address three days ago, he* ***would have written*** *to her. — Если бы он нашел ее адрес три дня назад, он уже написал бы ей.*

Во всех трех типах условных предложений союзы ***if***, ***provided***, ***in case*** и другие могут быть опущены, если в придаточном предложении имеются глаголы ***had***, ***were***, ***could***, ***might***, ***should***. В этом случае данные глаголы будут стоять перед подлежащим. При переводе перед ними следует поставить союз ***если (бы)***. Например:

***Were*** *she older, she* ***would*** *understand her parents. —* ***Если бы*** *она была старше, она бы поняла своих родителей;*

**в дополнительных придаточных предложениях** после глаголов ***insist, suggest, demand, order, propose и др.***

В придаточном предложении употребляется *should + инфинитив* для всех лиц. Например:

*Everybody insisted that the meeting* ***should start*** *ealier. — Все настаивали,* ***чтобы*** *собрание началось раньше.*

*He ordered that all should be ready at 7. — Он распорядился, чтобы все было готово в 7 часов.*

**в дополнительных придаточных предложениях** после выражений ***it is (was) necessary (important, requested, recommended, desirable etc.).***

В придаточном предложении употребляется *should + инфинитив* для всех лиц. Например:

*It is necessary that we* ***should be*** *present. — Необходимо, чтобы мы присутствовали.*

*It is impossible that she* ***should have said*** *it — Невозможно, чтобы она это сказала.*

**в придаточных предложениях уступки** с союзами и выражениями ***though, although*** *— хотя,* ***however*** *— как бы ни,* ***whatever*** *— что бы ни,* ***whoever*** *— кто бы ни etc. + модальный глагол may (might) + инфинитив.* Например:

***Though*** *he may (might) be tired (tired* ***though*** *he may (might) be) — Как бы он ни устал.*

*No matter how tired he may (m*ight) *be* ***he will go*** *to the concert. — Как бы не был он утомлен, он пойдет на концерт.*

***Whenever*** *you may (might) come, you are welcome. — Когда бы вы ни пришли, мы вам всегда рады.*

***Wherever*** *she may (might) live, she will always find friends. — Где бы она ни жила, она всегда найдет друзей.*

## HOW TO RENDER A TEXT

## ПЛАН РЕФЕРИРОВАНИЯ ТЕКСТОВ

**1. The headline** (Заголовок статьи текста).

— *The title of the article is...* — Название статьи…
— *The headline of the text under discussion is...* — Заголовок обсуждаемого текста…
— *The text is headlined...* — Текст озаглавлен…

**2. The author of the text** (Автор текста ).

— *The author of the text is...* — Автором текста является…
— *The text is written by...* — Текст написан (тем-то) …

**3. The main idea of the text** (Главная идея текста).

— *The text is about...* Текст рассказывает о…
— *The text touches upon...* — Текст затрагивает вопрос о…
— *The main idea of the text is...* — Главной идеей текста является…
— *The purpose of the text is to give the reader some information on...* — Цель текста — дать читателю некоторую информацию о…

**4. The contents of the text** (Содержание текста).

— *The text can be divided into two (three, four) logical parts*. — Текст можно разделить на две (три, четыре) логические части.
— *The author writes (states, thinks, emphasizes, informs) that...* — Автор пишет (утверждает, думает, подчеркивает, информирует), что...
— *Further the author says that...* — В дальнейшем автор пишет, что …
— *According to the text...* — В соответствии с текстом…
— *In conclusion...* — В заключение…
— *The author comes to the conclusion that...* — Автор делает вывод, что…

**5. Your opinion of the text (**Ваше мнение относительно прочитанного).

*— I found the article (the text) interesting (important, informative, problematic, dull, too hard to understand)...* — По-моему, текст интересен (важен, информативен, проблематичен, скучен, слишком сложен для понимания)…

**Фразы, которые рекомендуется использовать в пересказе текста**

— *The text deals with…* — В тексте рассматривается…

— *The title of the text gives an idea of…* — Название текста дает представ-ление о …

— *The text can be divided into two (three) logical parts…* — Текст можно разделить на две (три) логические части…

— *On the one hand..., on the other hand...* — С одной стороны... с другой стороны ...

— *First I would like to dwell on...* — Прежде всего я хотел бы остановиться на...

— *Thus for instance…* — Так, например…

— *In spite of all these differences...* — Несмотря на все эти различия...

— *The main reason for this decision...* — Главная причина этого решения...

— *A few comments on the extract (article) may be useful…* — Некоторый комментарий к этому отрывку может быть полезным…

— *In conclusion I would like to state briefly the main problem.* — В заключение, я хотел бы кратко сформулировать главную проблему.

— *As regards (this line, episode, the use of)…* — Что касается (этой строки, эпизода, использования чего-либо)…

— *The article is not intended to be strictly informative.* — Статья не стремится быть строго информативной.

— *It remains important.* — Это остается важным.

— *It is worth noting that...* — Стоит заметить, что...

— *It seems unlikely that...* — Кажется маловероятным, что...

— *At first there were fears that...* — Сначала имелись опасения, что...

— *It was caused by...* — Это было вызвано...

— *One of the consequences…* — Одно из последствий…

## Латинские слова и выражения, используемые в правовом английском языке

| | |
|---|---|
| ab initio (ab init.) | с начала, с возникновения |
| a contrario | от противного |
| A.D.=Anno Domini | н. э., нашей эры (от Рождества Христова) |
| addendum | дополнение, приложение |
| ad exemplum | по образцу, по примеру |
| ad finem (ad fin) | до конца |
| ad hoc | специальный, для данного случая |
| ad idem | тот же |
| a die | от сего дня |
| ad infinitum | до бесконечности |
| ad interim (ad int; a.i.) | временный, на время |
| ad legem | по закону |
| ad memorandum | для памяти |
| ad referendum | для дальнейшего рассмотрения |
| ad verbum | дословно, буквально |
| anni future (a.f.) | будущие годы |
| a fortiori | тем более, еще в большей степени |
| altera pars | другая (противная) сторона |
| anni currentis (a.c.) | сего года |
| anni futuri (a.f.) | будущие годы |
| ante bellum | будущие годы |
| ante diem | до этого дня |
| ante meridiem (a.m.) | до полудня |
| a posteriori | до этого дня |
| appendix | дополнение, приложение |
| a priori | до опыта, умозрительно |
| bona fide | добросовестно, чистосердечно |
| bona fides | добросовестность |
| bono sensu | в хорошем смысле |
| casus belli | повод к войне |
| causa activa | действующая причина |
| causa obligationis | обязательство |

| | |
|---|---|
| clausula rebus sic stantibus | оговорка, устанавливающая сохранение силы договора при неизменности обстоятельств |
| confirmatio | доказательство, обоснование |
| consensus | согласие, единодушие |
| consensus gentium | единогласное мнение народов |
| con tempo | в одно и то же время |
| contra pacem | против мира |
| copia vera | верная копия |
| corpus juris | свод законов |
| corrigenda | исправления, поправки |
| cui bono? | кому выгодно? |
| cui prodest? | кому на пользу? |
| cum hoc | после этого |
| de dato | датированный |
| de facto | в силу факта, де факто |
| de jure | в силу закона, формально; де юре |
| de lege ferenda | с точки зрения законодательного предположения |
| de lege lata | с точки зрения действующего закона |
| de rigore juris | по букве закона |
| dura lex, sed lex | закон суров, но это закон |
| exempli gratia (e.g.) | например |
| error facti | ошибка в деле, фактическая ошибка |
| error in forma | процедурная (формальная) ошибка |
| error in re | фактическая (по существу) ошибка |
| error juris | правовая ошибка |
| et alia ( et al.) | и так далее и тому подобное |
| et alii (et al.) | и другие |
| et caetera=et cetera (etc.) | и так далее |
| ex aequo et bono | по справедливости |
| ex analogia | по аналогии |
| ex consensus | с согласия |
| ex dono | в дар, в подарок |
| exemplum | пример, иллюстрация, образец |
| ex fide bona | по чистой совести |
| ex jure | по праву |
| ex jure humano | по человеческому праву |
| ex lege | в соответствии с законом |
| ex lex | вне закона |

| | |
|---|---|
| ex necessitate rei | в силу необходимости |
| ex officio | по должности, по обязанности |
| ex parte | в пользу одной стороны |
| explicite | в развернутом виде, ясно |
| ex post | позже, после, задним числом |
| ex post facto | после свершившегося факта |
| exprompto | внезапно, неожиданно |
| ex re | по поводу, по случаю |
| ex tempore | внезапно, без приготовления |
| extra jus | за пределами требования права |
| extra ordinem | экстраординарный |
| ex vi termini | в силу буквы, формально |
| facta concludentia | факты, достаточные для выводов |
| factum | дело, содеянное, факт |
| folio verso (f.v.) | на следующей странице |
| force majeure | непреодолимая сила, чрезвычайное положение (форс-мажор) |
| gratis dictum | бездоказательно, неубедительно |
| honoris causa (h.c.) | в знак уважения, по долгу чести |
| hoc est (h.e.) | так, это значит |
| hoc loco (h.l.) | на этом месте |
| hoc sensu (h.s.) | в этом смысле |
| honorius causa (h.c.) | в знак уважения, по долгу чести |
| ibidem (ib.; ibid.) | там же (в сносках) |
| idem (id.) | такой же, тот же, то же |
| idem quod (i.q.) | так же как |
| id est (i.e.) | то есть (т. е.) |
| id quod erat demonstrandum (i. q. e. d.) | то, что и требовалось доказать |
| in actu | в действии, в проявлении |
| in brevi | вкратце, кратко |
| in carne | собственной персоной |
| in casu, in casum | в случае |
| in corpore | в полном составе |
| inde | отсюда, поэтому |
| in diem | на день |
| in dubio | в сомнении, в недоумении |
| in esse | действительный, существующий |
| in facto | на деле, в действительности |
| in fine (i.f.) | в конце |
| infra (inf.) | ниже, дальше |

| | |
|---|---|
| in future | в будущем |
| in genere | в общем, вообще |
| in hoc casu | в этом (данном) случае |
| in indefinitum | на неопределенный срок |
| in integrum | в целом, полностью |
| in jure | на законном основании |
| in loco | на месте |
| in margine (i.m.) | на полях |
| in originali | в подлиннике |
| in pace | в мире, в покое |
| in pari passu | на равном основании |
| in parenthesi | в скобках, попутно, мимоходом |
| in persona | лично, собственной персоной |
| in prima instantia | в первой инстанции |
| in re | в действительности, фактически |
| in rebus | по поводу |
| in situ | в месте нахождения |
| in statu quo ante | в прежнем состоянии |
| in status quo | в состоянии, существующем теперь |
| inter alia | кроме того, между прочим |
| inter se | между собой |
| inter partes | между сторонами |
| in toto | целиком, полностью, в полном составе |
| ipso facto | в силу самого факта |
| ipso jure | в силу самого закона |
| jurata | клятвенное свидетельство, присяжные, суд присяжных |
| jus civile | гражданское право |
| jus cogens | общеобязательные нормы |
| jus gentium | международное право |
| jus romanum | римское право |
| loco citato (l.c.) | в цитированном месте |
| lex | закон |
| lex civilis | гражданский закон |
| lex non scripta | неписаный закон |
| lex specialis | специальный закон |
| liberum arbitrium | свобода выбора (воли) |
| literae procuratoriae | доверенность, полномочие |
| locus sigilli (l.s.) | место печати |
| mala fides | недобросовестность |

| | |
|---|---|
| mandatum | договорное обязательство, мандат |
| mandatum cum libera | неограниченное полномочие |
| manu armata | силой оружия |
| manu brevi | скоро, безотлагательно |
| medias res | существо дела |
| mens legis | дух, смысл закона |
| modus operandi | способ действия |
| modus vivendi | образ жизни, способ существования, временное или предварительное соглашение |
| mutatis mutandis | с необходимыми изменениями (поправками), с известными оговорками |
| ne varietur | изменению не подлежит |
| nolens-volens = volens-nolens | в силу необходимости, поневоле |
| nomen juris | юридический термин |
| nomine et re | на словах и в действительности |
| nota bene (NB) | заметь хорошо (отметка на полях книги для привлечения внимания) |
| nudis verbis | голословно, без достаточных оснований |
| omnium consensu | по общему согласию |
| optima fide | с полным доверием |
| opus citatum (op.cit.) | цитированное сочинение |
| pacta sunt servanda | договоры должны соблюдаться |
| pactum pacis | мирный договор |
| par in parem non habet jurisdictionem | равный против равного не имеет юрисдикции |
| pars pro toto | часть вместо целого |
| per analogiam | по аналогии (сходству) |
| per annum | в год, ежегодно |
| per capita | на душу населения |
| per contra | с другой стороны, |
| per diem | в день |
| per exemplum | например |
| per idem | посредством того же |
| per legem terrrae | по закону страны |
| per se | в чистом виде |
| post bellum | после войны, послевоенный |
| post factum | после того, как событие произошло |
| post meridiem (p.m.) | пополудни, после полудня |
| post postscriptum (P. P. S.) | второе добавление к написанному |
| postscriptum (P.S.) | добавление, постскриптум |

| | |
|---|---|
| prima facie | на первый взгляд, прежде всего |
| pro anno | в настоящее время |
| pro et contra | за и против |
| pro futurum | в будущем |
| pro forma | для видимости |
| pro interim | временно |
| pro nuno | в данный момент, в настоящее время |
| pro rata | соответственно, соразмерно |
| pro tempore (pro tem.) | временно, пока что |
| quaestio facti | вопрос факта |
| quaestio juris | вопрос права |
| quid pro quo | одно вместо другого |
| quod demonstrandum est | что и требуется доказать |
| quod vide (q. v.) | смотри это (там-то) |
| ratio decidendi | основание решения |
| ratio legis | дух и цель закона, основание закона |
| rebus sic stantibus | при неизменном положении вещей |
| regula juris | правовая норма |
| restitutio in integrum | восстановление в первоначальном виде |
| scilicet (sc.; scil.) | а именно, то есть |
| semper idem | одно и то же, всегда то же самое |
| sensu strict | в узком смысле |
| seguens, sequentes (seg.; sgg.) | следующее место (страницы) |
| sic dicta | так сказать |
| sine anno et loco (s.a.e.l.) | без указания года и места |
| sine die (s.d.) | без указания даты |
| sine jure | без права, незаконно |
| sine loco (s.l.) | без указания места |
| sine loco, anno, vel nomine | без указания места, года и даже названия |
| sine qua non | необходимое (обязательное) условие |
| status juridicus | правовое положение |
| status quo | существующее положение, статус-кво |
| status quo ante | положение, существовавшее прежде |
| status quo ante bellum | положение, существовавшее до войны |
| status quo post bellum | положение, сложившееся после войны |
| stricto jure | строго по закону |
| sub consensu | с (чьего-либо) согласия |
| sub specie | с точки зрения, под углом зрения |
| sui generis | своего рода |
| supra | см. выше (по тексту) |

| | |
|---|---|
| supra scriptum | выше написано |
| terra incognita | неизвестная земля, что-л. неизвестное, непонятное или непостижимое |
| toto corpore | всецело, полностью |
| ultra vires | вне компетенции, за пределами полномочий |
| ut infra | как сказано дальше |
| uti possidetis | формула взаимного признания прав воюющих сторон на занятые ими территории |
| ut supra | как сказано выше (раньше) |
| verbatim | дословно, слово в слово |
| verso | перевернуть (т. е. на обратной стороне) |
| verso folio | на обратной стороне листа |
| versus | против, в противовес |
| verte | см. на обороте, переверни |
| via | при (чьем-л.) посредстве, через |
| vice versa (v.v.) | наоборот, обратно |
| vide (v.) | обратись к, смотри там |
| videlicet (viz.) | а именно, то есть, например |
| vide (videbimus) infra (v.i.) | смотри дальше, ниже |
| vide supra (v.s.) | смотри выше |
| vidi | видел, посмотрел (помета) |
| vis legis | сила закона |
| viva voce | в устной форме, в беседе |

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