



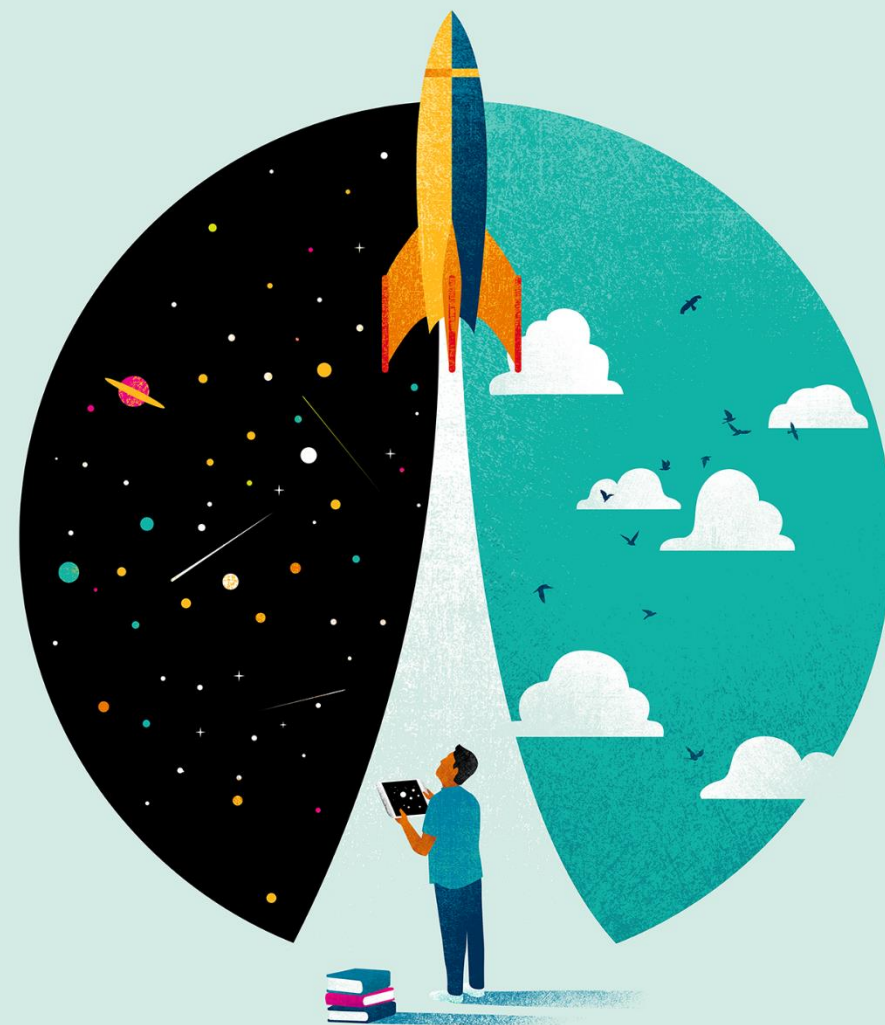
Pearson

S. Parastatidou • J. D'Andria Ursoleo • K. Gralton

Legal English

A new, blended resource for teaching English
for Legal purposes

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What's in *Legal English*?

What makes *Legal English* so special?

- A brand-new, integrated resource for teaching and learning English for Legal purposes.
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 - ✓ **students attending University**, as a textbook for Legal English courses during their **Bachelor's Degree** or **Master's Degree**;
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242 pages

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Topics covered in *Legal English*

10 thematic Units:

UNIT 1 1 Introduction to the English Legal System

UNIT 2 17 Contract Law

UNIT 3 33 Torts and Insurance Law

UNIT 4 49 Business Structures

UNIT 5 65 Company Law

UNIT 6 81 Criminal Law

UNIT 7 97 Property Law

UNIT 8 113 Intellectual Property Law

UNIT 9 129 ADR and Litigation

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plus...

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and...

Answer Key and Audio scripts

Easy-to-use Unit structure: Exercises for each Lesson

70 EXERCISES UNIT 5 – LESSON 1

1. Read the text and complete it with the missing words from the box.

directors • file • force • issue • limit

After the Companies Act came into 1. in 2006, companies were no longer required to state their authorised capital and thus, today, there is no automatic 2. on the total number of shares a company is able to 3. When a company wishes to increase their share capital, the 4. need to make a Statement of Capital, state the names of the shareholders and 5. a Form INO1 with the Registrar of Companies at Companies House.

UK V US VOCABULARY TIP
Public Limited Company UK, PLC (Public Limited Company)
UK Ltd (Limited)
US, Corp (Corporation)
Limited Company UK, Ltd (Limited)
US, Inc (Incorporated)

2. Read the following statements (1-6) and decide whether they are True (T) or False (F). Correct the false ones using the space provided.

- 1 A private company can raise money by offering shares to the general public. T F
- 2 For business owners, having a private company means risking personal assets. T F
- 3 Private companies must have Ltd or Limited after their name. T F
- 4 PLC stands for Private Limited Company. T F
- 5 The minimum startup capital for a public company is £50,000. T F
- 6 A public company must list its shares on the stock exchange. T F

3. Answer the following questions (1-5) in four words or less using the space provided.

- 1 What does separate legal personality mean?
- 2 What is the corporate veil?
- 3 Who owns a company?
- 4 Who runs and manages a company?

4. Complete the table with information on how to set up a company.

File an application with the Registrar of 1. Registration fees: Paper form: 2 Electronic: 3
Registration takes the form of 4. For taxation purposes register with 5. Taxes companies need pay are: 6. The Acts companies are governed by: 7. Lawyers trading as companies follow rules of: 8.

5. Answer the following questions (1-5) in four words or less using the space provided.

- 1 Who do the assets of a company belong to?
- 2 Can a company have a mortgage in its name?
- 3 What are the exceptions for Directors being liable for debt incurred in the company's name?
- 4 What are some disadvantages of being a company?
- 5 What are some advantages?

6. Listen to the audio and complete the text with the missing words.

Prior to the Companies Act (2006), incorporated 1. had two important documents. A Memorandum of Association stated, inter alia, the company's objectives, its 2. structure and stated the 3. of authorised capital. Authorised capital (also called nominal capital) was the maximum amount of capital a company was allowed to 4. In addition to the Memorandum of Association, companies had, and still have, Articles of Association which can be described as the 'internal constitution' of the company. The Articles set out the 5. of the Directors, state any limits placed on the directors, and the powers given to the Board of Directors. It also states the 6. reserved for shareholders. Companies incorporated prior to 2006 may still have the above type of Memorandum of Association even though it is not in the same form under the 2006 Act.

71 EXERCISES UNIT 5 – LESSON 2

1. Read the text and complete it with the missing words from the box.

breach • concept • continued • order • personally • require

A Company's Articles of Association may 1. shareholder approval when making a donation to a political party. Where directors are required to obtain shareholder approval and do not, they will be 2. liable under the Companies Act 2006. This means that a Judge will 3. the director to reimburse the Company up to the amount of the donation. Finally, although directors are not liable for company debts due to the 4. of separate legal personality, in circumstances where directors have 5. to allow a company to trade whilst insolvent, these directors may attract personal liability if their conduct amounts to a 6. of their director's duties.

2. Match the two parts of the sentences (1-6) and (A-F) to make true sentences.

- 1 Companies are artificial persons
 - 2 Directors act on behalf of companies
 - 3 Both common law and legislation regulated the duty of Directors
 - 4 Directors do not owe a duty to creditors and other directors.
 - 5 Shareholders can bring actions
 - 6 Occasionally Courts find a duty of Directors to Creditors.
- A but now these duties are written into CA 2006.
B on behalf of the company.
C for example when trading whilst insolvent.
D and carry out their decisions.
E even if they have separate legal personalities.
F but to the company itself.

3. Read the following statements and decide whether they are True (T) or False (F). Correct the false ones using the space provided.

- 1 If a Director acts beyond their powers, this is called *ultra vires*. T F
- 2 Directors must promote the success of the Company for the benefit of Employees. T F
- 3 Directors must exercise independent judgement without professional advice. T F
- 4 A Court will take a Director's skills, knowledge and experience into account. T F

4. Answer the following questions about breach of Director's duty.

- 1 What four sources can a Director apply to, to avoid liability for breaching their duties?
- 2 What is the first step for talking legal action against a breaching Director?
- 3 What does it mean if a company obtains an 'Account of profits'?
- 4 Do equitable remedies for Director's breach compensate the company?
- 5 What can a company do to recover damages for a Directors breach?

5. Complete the word search.

B O A R D	B R E A C H	R E C I D I S D E M	D I R E C T O R	D U T Y	W O R D S
O D A N E R I E C H I I O	A M J C E S R O A L C R	R L A U I Q T I N R I B T	D C C N S U A V E G R E	I R E C S I T A L H E I C	R E S T I T U T I O N B O
E D O I O A T I C L E M	C I Y O N B O V T D E R P	T H N E L R E M E D Y A	O O D T C E Y E R L D Y	R R B R E A C H E R L Y	T L D E L E G A T E R S T

BOARD
BREACH
COMPANY
CONFLICT
CREDITOR
DAMAGES
DELEGATE
DIRECTOR
DUTY
EQUITABLE
INJUNCTION
RECESSION
REMEDY
RESTITUTION
SHAREHOLDER
STATUTORY

6. Listen to the audio and complete the text with the missing words.

Apart from disqualification, Directors may also be criminally liable for their 1. especially where there is a breach of the Health & Safety 2. and regulations. The Corporate Manslaughter and Corporate Homicide Act 2007 3. only to companies and where a Company's actions lead to the death of an employee or a customer, and the Court finds that the management of the company is blameworthy, the Directors may be prosecuted for 4. negligence manslaughter. Directors may also be sentenced to imprisonment. Other instances, where a Director may be imprisoned include where they have been found 5. of taking bribes. This offence carries a maximum prison sentence of 10 years and/or an unlimited 6. being imposed.

72 EXERCISES UNIT 5 – LESSON 3

1. Read the text and complete it with the missing words from the box.

corporate • human • parent • proxy • resolution • subsidiary

Shareholders may be individual persons or 1. shareholders. Corporate shareholders are companies that own shares in other companies. Usually, when there is a group of related companies, certain companies such as the 2. company, may hold shares in a 3. Under the Companies Act 2006, corporate shareholders need to appoint a 4. being to act on behalf of the company at general meetings. This may be done either by a 5. or by the physical presence of a corporate representative. Corporate representatives are usually appointed by the Board of Directors who pass a 6. to allow the representative to exercise the same powers as those reserved for individual shareholders.

2. Read the following statements (1-5) and decide whether they are True (T) or False (F). Correct the false ones using the space provided.

- 1 Preference shares carry the right to higher dividends and voting rights. T F
- 2 Shareholders carry the risk of all the Company debts. T F
- 3 A Subscriber is a new Shareholder in a company. T F
- 4 Once shares have been issued, a Company can issue new shares. T F
- 5 Every time shares are traded after issue, the Company earns a fee. T F

3. Answer the following questions (1-4) in four words or less using the space provided.

- 1 What needs to be on the Register of Shareholders for private companies?
- 2 Which companies need to have a Register of Shareholders?
- 3 When does Companies House need to be notified about the register for private companies?
- 4 Why do Public Companies not need to list all their Shareholders at Companies House?

4. Circle the correct word(s) in each of the following sentences.

- 1 Under Section 33 of the CA 2006, Shareholders are obliged to follow the Company's Articles / Shareholder Agreement.
 - 2 A Shareholders' Agreement is between Shareholders / Shareholders and the Company.
 - 3 The Shareholders' Agreement is optional / required by law.
 - 4 Shareholders have / do not have the right to access the Company's financial records.
5. Match the words (1-5) with their explanations of Shareholders' rights and powers (A-E).
- 1 Derivative claim
 - 2 Minority Shareholders
 - 3 Register of Charges
 - 4 Register of Shareholders
 - 5 Requisition
- A a list of Creditors holding security over Company assets
B list of Shareholders held at Companies House when Shareholders seek help from the Courts
C when Shareholders force the company to hold a General Meeting
E Shareholders with less than 50% of shares
- 1 2 3 4 5

6. Listen to the audio and complete the text with the missing words.

Minority shareholders have statutory 1. and are protected against unfair prejudice. In addition, a minority shareholder may also apply to commence a derivative claim where there has been fraud on the minority. If a minority shareholder is 2. in bringing a derivative claim, the remedy will be for the benefit of the company and will not be 3. to the shareholder. This is because a derivative claim is brought in the name of the company. Alternatively, if a shareholder starts legal 4. in their own name, the remedy will be awarded to them personally. The latter is particularly 5. because if the shareholder is unsuccessful, they will be liable to pay 6. and costs to the company and any other third party, personally.

73 EXERCISES UNIT 5 – LESSON 4

1. Read the text and complete it with the missing words from the box.

attempt • challenge • convince • financial • notice • owing

A creditor who wishes to start bankruptcy proceedings, may serve a bankruptcy 1. known as a Statutory Demand on the debtor. The amount 2. must be at least £5,000. The debtor has 21 days to pay the amount stated in the statutory demand. Alternatively, if the debtor wishes to 3. the amount claimed, they must file an application to set aside the demand. A debtor may 4. to pre-empt a creditor's application for bankruptcy, by filing their own bankruptcy application online. In doing so, the debtor may be able to 5. the court that they are trying to do their best to bring themselves out of their 6. difficulties and that the process of bankruptcy should be delayed.

2. Match the two parts of the sentences (1-6) and (A-F) to make true sentences.

- 1 Liquidation is solution for insolvency that
 - 2 Administration is a way that a company
 - 3 Receivership is a way for secured creditors to recover
 - 4 LLPs can also use many of the procedures of insolvency.
 - 5 After a creditor has served a statutory demand,
 - 6 The court must be satisfied the company fails
- A while sole traders and traditional partnerships use bankruptcy laws.
B means a company comes to an end.
C they can commence insolvency proceedings against the company.
D a debt owed to them by an insolvent company.
E the Cash Flow Test and the Balance Sheet Test.
F can be rescued from insolvency.
- 1 2 3 4 5 6

3. Read the following statements and decide whether they are True (T) or False (F). Correct the false ones using the space provided.

- 1 Employees are considered preferential creditors. T F
- 2 Secured creditors are only paid after the debts of Unsecured Creditors have been paid. T F
- 3 A statutory demand will trigger liquidation as soon as it is paid. T F
- 4 An Administrator is a person appointed to trade the company out of insolvency. T F

4. Complete the crossword.

ACROSS

2 The appointment of a practitioner to manage the company and attempt to save it from insolvency.

4 The winding up of a company due to insolvency.

5 When a company's debts are greater than their assets.

8 A type of Creditor owed a debt by a company without holding security over the Company's assets.

9 A measure that the Court is satisfied the Company cannot pay its debts. (4, 4)

10 The debt collection actions of Creditors are frozen.

DOWN

1 An official request for payment of a debt. (9, 7)

3 A type of Creditor that has the right to have their debt paid before other creditors.

6 The appointment of a practitioner by a Secured Creditor to enforce their security.

7 A type of liquidation commenced by the Company itself.

5. Listen to the audio and complete the text with the missing words.

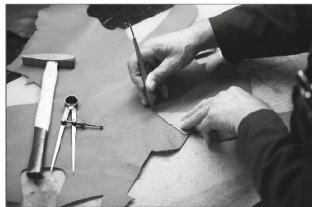
Like companies, individuals may also face insolvency. Traditionally, the 1. 'bankruptcy' is used for individuals. An individual may 2. insolvent when they have cash flow problems because they have either borrowed too much and are unable to meet the repayments of their 3. lost their jobs, are part of an unsuccessful business or partnership 4. or are a Director of a company and have attracted personal liability by giving personal guarantees for the Company's loans. Bankruptcy for individuals may be for a 5. of one year up to 15 years, especially if their 6. is somewhat reckless.

Easy-to-use Unit structure: *Case Study*

CASE STUDY: THE CORPORATE VEIL OF PROTECTION

A precedent-making case in the Common Law

Salomon v A Salomon & Co Ltd (House of Lords) [1896] UKHL 1



The Facts

Mr Salomon made leather footwear. His sons wanted to join the business by becoming partners. Salomon changed the business into a Company instead. He then sold the business to the Company. The price paid by the Company was later found to be in excess of the real value of the business.

His children and wife became subscribers. His two eldest sons were appointed Directors. The Company had 20,007 shares. Mr Salomon was given 20,001 of the shares and paid for them using his old business, A Salomon & Co Ltd. Each share was valued at £1 each.

On 1 June 1892, the old business was transferred to the Company. The Company also gave Mr Salomon £10,000 in debentures. Debentures are another name for a loan document which is used to lend money to a Company. Debentures are normally subject to a charge, which means that they are secured. Mr Salomon used his debentures to get a loan of £5,000 from Edmund Broderip.

Following the incorporation of the Company, there was a fall in boot sales. Eventually, Salomon's business got into financial trouble and failed. It defaulted on the interest payments on the debentures held by Mr Broderip. Broderip brought legal action to enforce his security and the company was placed into liquidation. Broderip successfully recovered his £5,000. After the payment, there were some assets left in the Company but these were only valued at £1,055. Salomon claimed these remaining assets as his own by enforcing his debentures. This left nothing for the unsecured creditors. The Company's Liquidator argued that the security Salomon held should not be paid, and that Salomon should be liable for the Company's debts personally. In other words, the Liquidator invited the judges to lift the Corporate Veil and impose personal liability on Salomon. Salomon brought legal action to prevent this.

The Liquidator, who was acting on behalf of the Company, counter-claimed. He wanted Salomon to pay back the sums he received from the business and have the debentures cancelled. He also claimed that Salomon had breached his fiduciary duties owed to the Company because the Company paid an excessive price for Salomon's business. The Liquidator claimed that the incorporation of the Company was fraudulent and Salomon's main intention was to defeat the Company's unsecured creditors.

The Decision of the House of Lords

The Lords held that the Company had been properly constituted in law and it is not within the "functions of judges to read into the statute limitation".

In other words, the Lords said Mr Salomon had acted properly and there was no evidence that he incorporated the business to defeat his unsecured creditors. In absence of fraud or *male fides* on the part of the directors, the Court will not lift the corporate veil.

Why does this case matter?

Salomon's case is still the leading authority for the separation of legal personality between subscribers, directors and the Company. This principle has been applied to subsidiary companies as well which are treated as separate entities to the parent company.

Following the Salomon landmark decision, Parliament and the Courts have tried to find exceptions to the principle of separate legal personality. These exceptions cover situations where crime or fraud has been committed. In such cases, the Courts will lift the corporate veil and directors will be held responsible.

Outside civil law, the English Courts have been proactive in lifting the Corporate Veil where there has been **Corporate Homicide**. The Court of Appeal in the **Herald of Free Enterprise** disaster held that a Company is capable of committing manslaughter.

PIT STOP 2

Put a cross (X) in the correct box.

Under what circumstances would it be unlikely for a Court to lift the corporate veil?

- a A Director uses company money to pay for his holiday in Hawaii.
- b A Director uses confidential information to compete with the company for his own benefit.
- c A Director uses company money to buy jewellery for staff members.
- d A Director suggests an investment for the Company which is rejected, so he invests himself.



Facts

The **Herald of Free Enterprise** was an eight-deck car and passenger ferry. The vessel was designed to load and unload quickly but there were no watertight compartments. The owners of the vessel were Townsend Thoresen and the vessel was operated by P&O European Ferries (Dover) Ltd and it was registered in Dover, UK.

On 6 March 1987, the vessel left the port of Zeebrugge in Belgium but the bow door was left open. The vessel quickly filled with water and capsized within minutes. One hundred and ninety-three people died.

The causes of the accident were (i) that failure on the part of the employee to close the bow doors (ii) the supervisor's failure to make sure the bow doors were closed and (iii) the captain departing the port without knowing whether the bow doors were closed. The Court examined the work practices of Townsend Thoresen and found that there was a "disease of sloppiness" and negligence at every level of the Corporate ladder. The Court also criticised the design of the vessel holding that it too contributed to the accident.

In October 1987, the coroner's inquest gave a verdict of *unlawful killing* and seven people involved in the company were charged with **Gross Negligence Manslaughter**. The operating company, P&O European Ferries (Dover) Ltd was also charged with **Corporate Manslaughter**. In the end, the five most senior people were acquitted but this case established the precedent that Corporate Manslaughter is a criminal offence under English law.

The Court said that for company to be held liable, the controlling mind must be someone who is in a position of control of the company's affairs, so that it can be said that the company is thinking and acting through this person. If so, the actions and guilt of the person is transferred onto the Company.

PIT STOP 1

Answer the following questions related to the text you've just read.

- 1 What did Mr Salomon do instead of making his sons partners in his business?
- 2 Who was the majority shareholder in the new Company?
- 3 What did Salomon use as security for his £5,000 loan from Mr Broderip?
- 4 What triggered the Company to be placed into liquidation?
- 5 What did the unsecured creditors want the court to impose on Mr Salomon?
- 6 Why did the Liquidator want Salomon to repay money to the Company?

OVER TO YOU!

What do you think of the outcome of the two company law cases? Did the Court come to a fair and just conclusion in each case?

Easy-to-use Unit structure: *Writing Corner*

80

WRITING CORNER

Notes for giving advice to a client

1. You are a young lawyer at a London law firm. A coffee shop owner, Adam Smith, has written to your law firm asking for advice. Below is his letter to the law firm. Read the letter, then answer the related questions (a) using the spaces provided.

Dear Mr Youngun,

My name is Adam Smith and I am the owner of The Coffee Cup, a local café in Soho, London. I bought the business a few years ago through my company, The Coffee Cup Limited. Due to COVID-19, the café was closed. I have since reopened, but my takings are very low as there are very few customers.

I am worried and I believe that I will soon have financial problems because with the café as it is, I do not have the money to pay my coffee bean suppliers. I received a statement from them saying that I owed them £5,000 for previous deliveries of coffee beans. They are becoming very impatient and they have threatened me with legal action. Last night I also received a call from the landlord who is demanding the rent for the café. I pay £2,000 per month as rent for the shop but I haven't paid the rent since March 2020, when I was forced to close down the café.

What can I do? Everyone keeps calling and saying that I need to pay the money immediately. I have never been in arrears before and I have never missed an instalment. I am worried that I will lose my coffee shop, my home and other assets.

Yours sincerely
Adam Smith

a. Do you think Adam Smith is at risk of losing his coffee shop, his home and assets? Why?/Why not?

.....

.....

.....

2. A lawyer at the firm, Matthew Youngun, has already responded to the letter. Read the letter below.

Dear Mr Smith,

Thank you for your letter.

We understand that this is a very stressful situation for you. In your letter, you state that The Coffee Cup Limited is the owner of the café business

and we assume that the Company is the lessee of the café premises. If this is so, your suppliers and the landlord cannot force you to pay them as the debts have been incurred by the Company. A Company has a separate legal personality from its directors. If you are a director of the Company, and carried out your duties in good faith, then the law will protect you from liability.

We recommend that you speak to your suppliers and your landlord and try to come to some agreement about the payment of the outstanding sums. This type of agreement is called a **Creditors Voluntary Agreement**. If your suppliers and landlord do not accept this type of agreement, the other options available to you include a **members' voluntary liquidation**, a **creditors voluntary liquidation** or **compulsory liquidation**.

We would like to invite you to come into our office for a meeting, so that we can explore which option is best for you.

Yours sincerely,
Matthew Youngun, Solicitor

3. Matthew Youngun is currently on leave and this client file has been passed to you. Adam Smith is coming to the office this afternoon to discuss his legal situation. Look at Lesson 4 in this Unit and make notes on the legal options mentioned in Matthew Youngun's letter so that you can discuss them with Adam Smith.

Client Meeting Notes

Client Name: Adam Smith Date:

a. Creditors' Voluntary Agreement

.....

b. Members' voluntary liquidation

.....

c. Creditors' voluntary liquidation

.....

d. Compulsory liquidation

.....

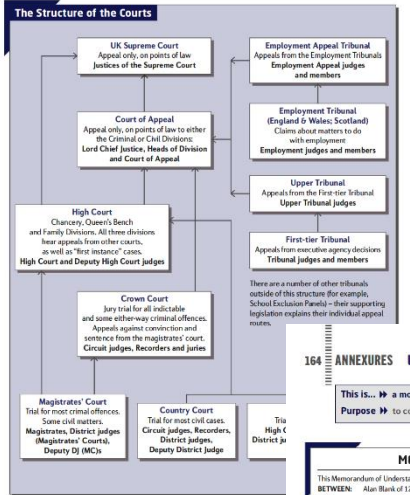
Annexures

ANNEXURES

These annexures can be used for classroom exercises for the purposes of learning Legal English concepts mentioned in the units of this book.

ANNEXURES UNIT 1 – LESSON 2 The English Court System

This is... → a Diagram of the Hierarchy of the English Court System
Purpose → to graphically illustrate the relationship between the UK Courts and the different Tribunals



ANNEXURES UNIT 2 – LESSON 2 The structure and purpose of a Memorandum of Understanding

This is... → a model version of a Memorandum of Understanding
Purpose → to communicate the understanding of the parties

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into on 18 September 2020.

BETWEEN: Alan Blank of 13 Downing Street, London, WC2N 2DL, United Kingdom
AND: XYZ Limited, registered office at 10 Bond Street, London, WC2N 1GH, Unit

WHEREAS both parties are involved in research and development and desire to collaborate and/or vaccine to combat a new world pandemic virus.

WHEREAS

In this Agreement the following shall mean:
 "virus" shall mean "a small collection of genetic codes, surrounded by a protein coat";
 "biomedical" shall mean.....
 "Confidential Information" means any information that may be reasonably considered of a confidential nature or of a sensitive nature.
 This will include each clause as the obligation of the parties, the scope of their professional services, profit sharing and confidential information.

Scope of Professional Services
 The Parties agree that no contractual relation is created by this MOU but agree that they will collaborate in good faith in a coordinated manner to fulfil the aims of finding a new treatment medicine and/or vaccine.

Profit Sharing
 Profits and commission payments due between the parties will be agreed and paid as soon as possible but no later than one month of the conclusion of the calendar year.

Confidential Information
 Any information that may be disclosed by the parties shall not be disclosed to any third party without the prior consent of the other party.
 This part of the Contract will include Termination, Entire Agreement, Modification, Applicable Law and Court of Jurisdiction.

Termination
 Each party may terminate this MOU at any time and for any reason by providing thirty days' advance written notice to the other Party.

Entire Agreement
 This MOU together constitutes complete and exclusive understandings between the Parties concerning its subject matter and supersedes all prior or contemporaneous understandings, written or oral, concerning the subject matter of this MOU.

Modification
 Any modification or amendment of any provision of this MOU will be effective only if it is in writing and signed by the Parties.

Applicable Law
 This Agreement shall be governed by the laws of England.

Court of Jurisdiction
 The Courts of England and Wales shall have exclusive jurisdiction over any disputes arising from this MOU.

Agreed and Accepted for and on behalf of _____ Agreed and Accepted for and on behalf of _____

Dated: _____ Dated: _____

The execution at signature parts of the Contract (Alan Blank) The execution at signature parts of the Contract (XYZ Limited)

ANNEXURES UNIT 4 – LESSON 2 Partnerships

This is... → a Partnership Agreement
Purpose → to set up the terms of a Partnership

PARTNERSHIP AGREEMENT

THIS PARTNERSHIP AGREEMENT is entered into on 11 November 2020, between Alex White of 17 Windor Road, Liverpool, England, L1 0AN (electronics engineer) and Cecile Mathers of 98 Castle Street, Liverpool, England, L1 1ED (designer).

The Parties agree as follows:

- Commencement Date:** This Partnership shall commence on 20 November 2020.
- Name of the Partnership:** The Partnership shall trade under the name of White & Mathers Partners.
- Principal place of business:** The principal place of business of the Partnership shall be: _____
- Purpose:** The business of the Partnership is set forth below and includes any other business related thereto:
 - carry out the custom-made design of household electrical appliances;
 - provide after-sales consultation and servicing.
- Term:** The Partnership shall commence on and continue until dissolved by mutual agreement of the partners.
- Capital contribution and distribution of profits and losses:**

Name of Partner	Capital Contribution	Distribution of Profit and Loss
Alex White	70%	70%
Cecile Mathers	30%	30%

Profits and losses shall be divided at the close of each fiscal year. The profits and losses of the Partnership shall be divided between the partners in accordance with the above schedule.

- Control:** The partners shall have exclusive control over the business and each partner shall have equal rights in the management and conduct of the partnership business. Any disputes arising from matters connected with the Partnership business shall be decided by a third party mediator chosen and agreed upon by the partners. Where any dispute cannot be resolved by the partners within 28 days following the conclusion of the mediation, the parties may refer the dispute to an arbitrator whose decision shall be final.
- Retirement:** Where a partner intends to sell their interest in the Partnership business to the remaining partners, the remaining partners shall purchase the exiting partners portion of the Partnership business. No partner may sell their business to a third party unless it is offered to the remaining partner first by serving 28 days with notice.
- Dissolution:** In the event of retirement, expulsion, bankruptcy, death, or insanity of any partner, the remains right to continue the business of the Partnership under the same name on their own account is preserved.
- Applicable Law:** This Agreement shall be construed in accordance with the laws of England and Wales.
- Court of Jurisdiction:** The Courts of England and Wales shall have jurisdiction in relation to any disputes arising out of

Dated:

Signature _____ Signature _____
 ALEX WHITE CECLIE MATHERS

ANNEXURES UNIT 5 – LESSON 2 Directors

This is... → a Memorandum of Association for a company (with a share capital)
Purpose → to set up the company and the Memorandum of Association for how the company is run, governed and owned

COMPANY HAVING A SHARE CAPITAL

Memorandum of association of [Insert company name]

Each subscriber to this memorandum of association wishes to form a company under the Companies Act 2006 and agrees to become a member of the company and to take at least one share.

Name of each subscriber	Authentication by each subscriber

Dated _____

Answer Key and Audio scripts

Answer Key and Audio scripts

208 Answer Key and Audio scripts – UNIT 9

UNIT 9 ADR and Litigation

Lesson 1

WHAT IF...

Answer Key: They would need to do a BATNA analysis, in other words, they would need to consider other forms of dispute resolution such as mediation, arbitration or litigation or they would have to simply walk away and cut their losses.

Exercise 1

Answer Key: 1 different, 2 decide, 3 disadvantages, 4 orderly, 5 resolving, 6 silences.

Exercise 2

Answer Key: 1 T, 2 F BATNA (best alternative to a negotiated agreement) is a negotiation theory, 3 T, 4 F the interest-based approach gives a party a better understanding of the other party's wants and needs.

Exercise 3

Answer Key: 1 D soft, 2 C hard, 3 E hard/soft, 4 A hard, 5 B soft.

Exercise 4

Answer Key: 1 misconception, 2 currency, 3 risk.

Exercise 5

Answer Key: 1 zone of possible agreement, 2 their underlying interests, 3 the consequences of failure to finding a resolution.

Exercise 6

Answer Key: 1 part, 2 outset, 3 common, 4 final, 5 party, 6 first.

Audio script: Whilst preparing to take part in a negotiation, parties should think carefully about what their opening offer should be and whether they should make it at the outset of the negotiation. Anchoring is a cognitive bias and describes a common tendency to give a lot of weight to a first offer put forward in a negotiation. Parties show an anchoring bias and generally, the final settlement is based on the first sum proposed. Strategically speaking, this may be especially useful as a party may gain an edge and pull or anchor the other side into accepting it. Remember that in a negotiation, the final outcome will be a reduction of what is first offered, and your opening offer will have to be rigorously defended and justified.

Lesson 2

WHAT IF...

Answer Key: If a party refuses, and the matter proceeds to a Court hearing, a judge may order the refusing party to pay the costs of the litigation, even if they win the case.

Exercise 1

Answer Key: 1 setting, 2 telling, 3 prepare, 4 decide, 5 write, 6 executed.

Exercise 2

Answer Key: 1 T, 2 F A mediator cannot impose any decision, 3 F Many jurisdictions insist on mediation before legal proceedings are begun, 4 F Its high costs is one of its disadvantages, 5 T, 6 T.

Exercise 3

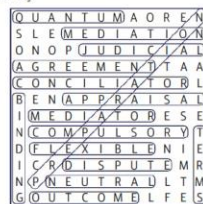
Answer Key: 1 is not required, 2 signed, 3 without, 4 cannot, 5 suggestions, 6 Advisory.

Exercise 4

Answer Key: 1 senior representatives of the parties who are not personally involved the dispute, 2 They can issue a non-binding advisory opinion, 3 a senior retired judge or Queen's Counsel, 4 By adding the instruction To Determine to the written appraisal, 5 Only on limited grounds such as irrelevant fact being considered, 6 By setting the parameters in a clear and precise way, for example deciding that the Judicial Expert determination be on one issue such as liability, and not the quantum of damages.

Exercise 5

Answer Key:



Exercise 6

Answer Key: 1 third, 2 dispute, 3 merits, 4 outcome, 5 formal, 6 experts.

Audio script: A mediator is a neutral third party who facilitates and brings the parties closer to finding a settlement to their dispute. The mediator may suggest different options or solutions but should not advise on the law or the merits of the case. The aim is to help the parties find common ground and suggest possible solutions which are more suitable than the win-lose outcome of court proceedings. Even though there are no formal statutory qualifications to be a mediator, many have undertaken some form of formal training and are recognized experts in specialist areas such as construction and engineering, maritime matters and family law.

Lesson 3

WHAT IF...

Answer Key: The award may not be enforceable under the mutual recognition rules of the New York Convention but may be enforceable under other Agreements such as Trade Agreements or Bi-Lateral Country Conventions.

Exercise 1

Answer Key: 1 settle, 2 located, 3 matters, 4 connection, 5 liability, 6 appeal.

Exercise 2

Answer Key: 1 alternative dispute resolution clause, 2 prior to commencing legal proceedings, 3 parties can choose their

Arbitrator, 4 helps understand the technical aspects of the dispute, speeds up the process and reduces the change of error in a decision, 5 an award, 6 with great difficulty, they are expressly designed to be final.

Exercise 3

Answer Key: 1 F Not having fixed rules is one of the advantages of Arbitration because it can be arranged to suit the particular needs of each case, 2 F they are private and confidential, 3 T because so many countries are signatories to the New York Convention, 4 T these cases are better served by the Courts, 5 F The parties cover all costs, including the venue and Arbitrator's time, 6 T.

Exercise 4

Answer Key: 1 writing, 2 control, 3 Arbitrator(s), 4 can, 5 usually.

Exercise 5

Answer Key: 1 resolving, 2 flexible, 3 voluntary, 4 procedural, 5 Olympic, 6 provided.

Audio script: The Court of Arbitration for Sport (CAS) was set up with the idea that it would be devoted to resolving disputes involving sport. This arbitral institution would be a specialised body capable of settling disputes on the international stage. It was hoped that the system would be flexible, quick and inexpensive. The CAS was set up as voluntary as parties were not obliged to submit to its jurisdiction. The CAS became operational on 30 June 1984. The statute setting up the CAS also introduced a set of procedural Regulations. Initially CAS was composed of 60 members appointed by the International Olympic Committee, the International Federations, the National Olympic Committees and the IOC President. Over time, the CAS became independent of the IOC which had provided funding since its creation.

Lesson 4

WHAT IF...

Answer Key: Parties need to be careful when commencing legal proceedings to make sure they start proceedings in the correct Court, Division and List. If they make mistakes, the Judges will most probably allow them to transfer to the correct Court and List, but this will come at a heavy cost – they will need to pay the costs of the opposing party. Before filing proceedings it is recommended to get advice from a barrister.

Exercise 1

Answer Key: 1 govern, 2 litigate, 3 cover, 4 control, 5 making, 6 setting, 7 ensuring, 8 comply, 9 brings, 10 imposing.

Exercise 2

Answer Key: 1 D, 2 B, 3 C, 4 F, 5 A, 6 E.

Exercise 3

Answer Key: 1 Direction from the court to the parties for preparation of their case, 2 Both parties must make all documentation applicable to the case available to the other side, 3 Cost management, 4 Small Track.

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Exercise 4

Answer Key: 1 T, 2 T, 3 T, 4 F they are allocated to Small Track.

Exercise 5

Answer Key: 3 litigation, 7 defendant, 8 evidence, 9 witness
ACROSS 1 fast track, 2 County Court, 4 claimant, 5 judgement
DOWN 6 hearing

Exercise 6

Answer Key: 1 balance, 2 prove, 3 doubt, 4 breach, 5 term, 6 loss.

Audio script: In civil proceedings, the Claimant must prove their case on the balance of probabilities. This is different from criminal cases, where the prosecution must prove the defendant's guilt beyond reasonable doubt. In each matter a lawyer needs to consider what elements they need to establish, the facts that support the elements, the evidence available and other evidence that may be needed to succeed in the case. For example, for a breach of contract, the elements to establish are that there is a contract, there is a breach of an express or implied term, and the quantum of damage or loss suffered by their client. In many cases, experts will be needed to assist the court in deciding the amount of damages to be awarded.

CASE STUDY

PIT STOP 1 Answer Key: 1 It set out the terms of a proposed deal for Pennzoil to buy a large shareholding in Getty. 2 It was signed by Pennzoil and Gordon Getty. 3 Because the Getty Board rejected Pennzoil's offer and the sale was not approved. 4 That the deal was not finalized, but subject to Agreement. 5 They petitioned and obtained an injunction. 6 Texaco made their own offer to acquire Getty. Getty accepted the Texaco offer and a definite agreement was signed.

PIT STOP 2 Answer Key: 1 proceedings, 2 compensatory, 3 lien, 4 writ of execution, 5 bond, 6 settled.

WRITING CORNER

Answer Key: 1 A. 1 Freshworld Ltd, 2 £60,000, 3 £10,000, 4 engage in alternative dispute proceedings, 5 She does not want accept because she thinks it is disrespectful.

Answer Key: 2. 1 settle, 2 award, 3 costs, 4 damages, 5 action, 6 application.

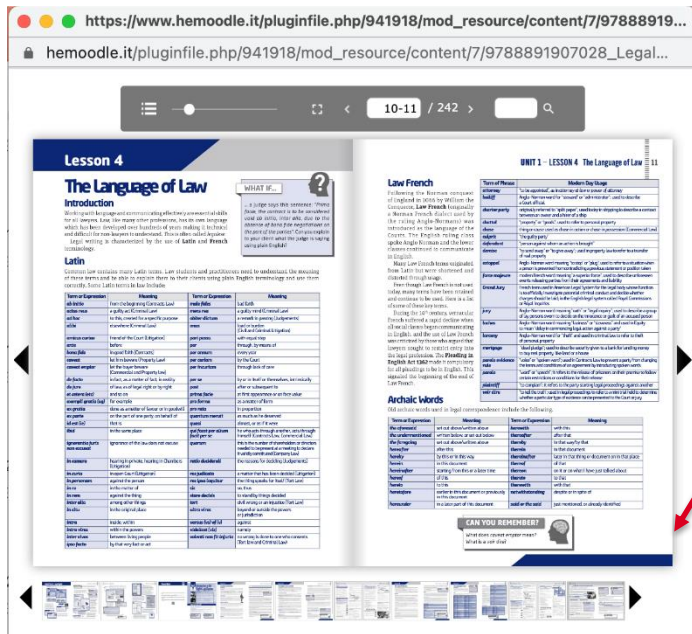
Answer Key: 3. (model answer)

Dear Ms. Steele, Thank you for your email. We recommend that you take steps to enforce the judgement against Freshworld by asking the Court to issue a writ of execution. A writ of execution involves a Court Officer going to the judgement debtors' premises and taking their chattels to be sold at public auction. The proceeds of the sale are then paid to the judgement creditor. Your sincerely,
(your name)

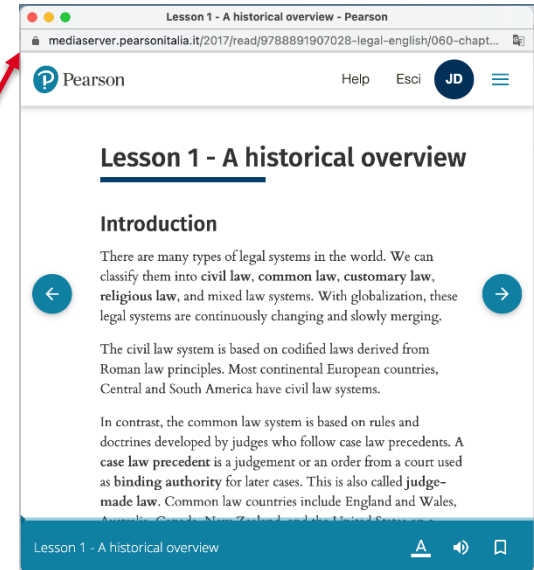
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Match the words with their definitions.

- The ending of a partnership Dissolution
- A partner being forced to leave a partnership Expulsion
- Acronym for Alternative Dispute Resolution Joint and Several
- An equal number of votes at a meeting Deadlock
- Where partners are liable separately and jointly ADR
- The information about a company printed on stationery Letterhead

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