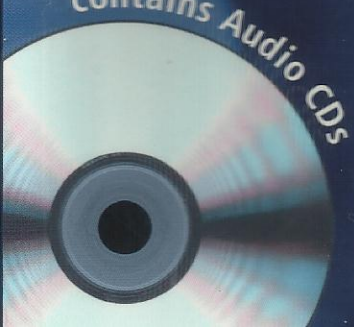
CAMBRIDGE Professional English

Introduction to International Legal English

A course for classroom or self-study use



Amy Krois-Lindner
Matt Firth
and
TransLegal®

Audio transcripts

Unit 1

Listening 1 / Audio 1.1

Heidi: So, how are things going? Are you having any trouble with the lectures?

Pavel: Well, I did at the beginning. I had to get used to the accents. It was very frustrating – people here speak very quickly, which makes it harder to understand! But now it's much easier – I can understand almost everything.

Heidi: I wish I could say the same. Sometimes I only understand half of what the lecturer says. I have trouble writing, too. That's more difficult for me than understanding what people say. But I can normally find someone to look at my work and make corrections.

Pavel: Yes, I think writing's the hardest thing to do in English. But we did do a lot of writing exercises in my legal English course at university. That definitely helped.

Heidi: Writing exercises? We didn't have any writing practice in the English course we took. We learned a lot of terminology, a lot about the common-law system, how things work in America and in the UK.

Pavel: Really? Our course was more practical – we worked on the language skills that lawyers need: writing, reading, even doing legal research in English. And we had to write lots of different things, texts that lawyers really have to write, like letters to clients, memos, that kind of thing.

Heidi: We had to give presentations about different institutions. I gave one about the US Supreme Court. We didn't really work on speaking or research skills, though; it was more important to present the terminology. I described how the US Supreme Court is set up and how it works.

Pavel: We gave presentations, too, but our presentations were on more practical topics. We did need to learn some terminology for those. We had to present case briefs, or talk about our own legal systems.

Heidi: We didn't talk about the laws of our country at all – only about the USA or the UK.

Pavel: We compared the laws of different countries quite a bit. We read a lot about other legal systems, other countries' laws. But we mainly practised speaking about our own legal system, and talked about how things work in our country. That was definitely the most useful thing we did.

Heidi: It sounds like your course was better than mine.

Pavel: I don't know if it was better, but it was certainly more language-based and more skills-based.

Heidi: Well, it certainly looks like you're better prepared than I am!

Listening 2 / Audio 1.2

Hello, everyone, and thanks for coming along. It's great that so many of you were able to make it this morning. I know that as you approach your mid-term exams, time is precious. With that in mind, I'll keep my talk brief.

OK, let me just start by introducing myself. My name's Jenny Waters, and I graduated eight years ago from this very university. I've been asked along to talk about the Barker Rose Graduate Recruitment Programme, a programme I'm sure will be of particular interest to you as second-year students. It's right now that you need to begin planning for life after university, no matter how far ahead this may seem at the moment.

I remember when I was sitting in this very lecture theatre listening to a talk similar to the one I'm about to give. I applied for a place on the Barker Rose Graduate Recruitment Programme shortly afterwards, and was made a partner last summer. Most of my lawyer friends who went to other firms have yet to become partners. Barker Rose may be more demanding than your average practice, but I know from my own experience that the rewards are worth it.

There are three main points I'd like to cover today. First, I'll start by giving you a little information about Barker Rose. I'll then go on to outline what we have to offer to new associates. Finally, I'll also talk a little about what we expect from our potential graduate recruits.

There'll be a few minutes available for questions at the end of my talk, but do feel free to interrupt me at any time. Don't worry about taking notes; I'll be handing out copies of the PowerPoint slides at the end of the presentation.

So, to start with, who are Barker Rose? We're an independent commercial practice that has grown from seven lawyers in 1979 to well over 60 today. This growth has resulted from our commitment to providing the highest-quality legal services to our clients. To accomplish this goal, we are committed to recruiting, and retaining, associates capable of helping us meet that commitment.

A new associate lawyer is generally assigned to a practice area compatible with his or her interests, while considering the needs of the firm. However, we remain flexible enough to allow all of our lawyers to explore various areas of practice.

Listening 2 / Audio 1.3

This brings me to my next point: what benefits can successful applicants to our Graduate Recruitment Programme expect? First, Barker Rose will pay your full course fees for both the Graduate Diploma in Law and the Legal Practice Course. We will also pay maintenance of £6,000 during your GDL and £7,000 through your LPC study year.

This leads directly to what I'm sure is an important question for all of you: what can you expect to earn? We offer competitive starting salaries for new associates. Following successful completion of the LPC, graduate associates begin work on a generous starting salary of £29,000, rising to £36,000 in their second year with us.

Associates also typically receive a year-end bonus, based upon the firm's profitability, hours billed and seniority. Year-end bonuses, if any, are subject to the discretion of the management. In addition to the salary and bonus, we provide a standard medical-benefits package, life insurance and an extremely competitive retirement plan. The firm's

'HR-10' plan for employees currently pays an amount equal to 10% of gross salary into a retirement fund after an employee has been with the firm two years. Voluntary dental insurance coverage is also available through our dental programme. It's also important to mention that Barker Rose is an equal-opportunities employer.

Now let's move on to what we expect in return. As I mentioned towards the start of my talk, we are committed to providing the highest-quality legal services to our clients. We can only ensure this by hiring lawyers prepared to show us that same level of commitment. This can mean long hours; associates are expected to bill 1,800 to 2,000 hours per year. You may not have all of your weekends free, and the work is certainly demanding. However, for the graduate student ready to rise to that challenge, the rewards are great indeed. Think to yourself – where do I want to be by the age of 30? Some of you will, I hope, be partners with Barker Rose.

To summarise, Barker Rose is a growing, successful, independent commercial practice. Our Graduate Recruitment Programme includes an excellent set of benefits for students prepared to commit themselves fully. We offer you the opportunity to work in those areas of law that interest you most, while allowing you the chance to explore various areas of practice.

Finally, I'd like to remind you about what I said at the beginning of my talk today. For those associates who have demonstrated the highest level of commitment to Barker Rose, you may be considered for partnership after seven years. And believe me, those seven years will pass more quickly than you think.

OK, that's everything I wanted to say about our Graduate Recruitment Programme. I'd be very happy to answer any questions you may have.

Unit 2

Listening 1 / Audio 2.1

Student 1: Can you take a quick look at this?
Student 2: Sure. What's it about?
Student 1: It's about remedies and damages and other things like that.
Student 2: OK, what do you want to know?
Student 1: I basically understand everything, but there's one thing that sounds weird. Here it says that if a contract is broken, the injured party can demand compensation for its loss, or 'damages'. I don't understand that. How can 'damages' be 'compensation for loss'? That doesn't make sense to me. When you damage something, you harm or hurt it. I don't get it.

Listening 1 / Audio 2.2

Student 2: Well, it's quite straightforward. 'Damage' and 'damages' are very similar words, but mean different things. It's like this: the word 'damage' *does* mean 'harm', of course, like when you damage your car if you drive into something. But 'damages' with an *–s* is the word for 'compensation', money that someone gets. In other words, the court awards damages, or money, to the non-breaching party.
Student 1: Thanks, now I get it!

Listening 2 / Audio 2.3

Good morning. I'll begin today's lecture on contract law with the subject of formation. More precisely, I will speak about the requirements for formation of contract. There are two main requirements – agreement and consideration. There is sometimes said to be a third element – the intention to create legal relations. However, in practice, this third element is not usually a problem, because even if the intention to create legal relations is considered a separate element, it's understood to exist automatically in the vast majority of cases.

Listening 2 / Audio 2.4

Good morning. I'll begin today's lecture on contract law with the subject of formation. More precisely, I will speak about the requirements for formation of contract. There are two main requirements – agreement and consideration. There is sometimes said to be a third element – the intention to create legal relations. However, in practice, this third element is not usually a problem, because even if the intention to create legal relations is considered a separate element, it's understood to exist automatically in the vast majority of cases.

What does 'agreement' mean in the context of a contract? 'Agreement' refers to the transformation of negotiations into a settled deal. This is the point when negotiations are at an end. The negotiating process is not a part of a contract. However, the law needs to be able to determine when the process of negotiation has ended and the parties have reached an agreement in their commercial arrangement. Traditionally, if you want to answer the question 'Have the parties reached agreement?', you apply the rules of offer and acceptance. When a proper offer has been made by one party and accepted by the other, then there is agreement at the moment of acceptance. We could even say there is agreement at the moment of communication of acceptance.

This process raises a number of questions. For example, was an offer made at all? Who makes an offer in certain types of transactions, for example, in auctions or tenders? Is a price list an offer? Is an advertisement an offer? It is then also necessary to answer further questions about the act of acceptance: for example, does acceptance have to be communicated? Can you accept by silence? Can you accept by just getting on with the commercial task? and so forth.

Let's move on to the subject of consideration. Consideration involves the idea of exchange. It refers to the value, service, information, etc. which is offered to another party in a contract in exchange for that party's agreeing to enter the contract. Put very simply, what we are talking about here is the price. A contract is not legally binding if each party does not offer at least some consideration to the other party. There are rules about what an exchange is and what parties can exchange in order for it to be good consideration. We will look at these rules next week after we have examined the requirements of offer and acceptance today. There is a relationship between the rules of offer and acceptance on the one hand and the rules of consideration on the other. All this will become clearer when we examine consideration in more detail.

Listening 3 / Audio 2.5

Mr Dawe: Thanks again for coming by. Before we go on, could you briefly take me through the current dispute?
Mr McKendrick: Of course. Right. As you know, Export Threads exports materials for the production of clothing.
Mr Dawe: Yes.

Mr McKendrick: Drexler Incorporated agreed to purchase a large quantity of goods under the conditions stated in the contract. We relied on Drexler to notify us of the date of shipment two weeks in advance so that we could arrange a port for the loading of goods. We couldn't do this because they failed to let us know by the agreed date. Now we would like to terminate the contract.

Mr Dawe: Well, I can understand why you *want* to terminate the contract. However, the fact that Drexler appear to be in breach does not necessarily mean that you *can* terminate the contract. They may sue you.

Mr McKendrick: This is what I wanted to check, but I really don't see how they could sue us. Surely if they're in breach of our contract, we should be able to end our business relationship?

Mr Dawe: No, not necessarily. The important point is whether or not the term breached is a condition or a warranty.

Mr McKendrick: A warranty? As in a guarantee? I'm sorry, I don't follow you.

Mr Dawe: It's like this. A warranty in this sense is a *non-essential* term. If there is a breach of warranty, a non-breaching party can sue for damages. However, a breach of warranty does not give the right to termination. A condition, on the other hand, is an *essential* term – in other words, it's a very important term. When such terms are breached, the non-breaching party may terminate the contract.

Mr McKendrick: OK, so we can end the contract if the term is a condition?

Mr Dawe: That's right. If we can show that the term breached *is* a condition, you'll be able to terminate the contract. And you'll also be able to claim damages for losses incurred.

Mr McKendrick: Right. And do you think we'll be able to show it's a condition?

Mr Dawe: Yes, I'm quite certain we will. The term in question isn't expressly stated as being a condition. That would have made things easier. However, just because it isn't stated as being a condition doesn't necessarily mean it isn't.

Mr McKendrick: Um ... what exactly are you saying? You're sure that the term *is* a condition?

Mr Dawe: Yes. I'll try to be a little clearer. This contract involves a chain of sales. In such cases, the need for certainty is very important. You relied on Drexler to notify you of the date of shipment two weeks in advance so that you could arrange a port for delivery. You also had to make sure that everything was in place for the loading of the cargo. You couldn't arrange this as a direct consequence of the late notice. In cases like this, the court will find the term to be a condition.

Mr McKendrick: So we *can* terminate the contract? That's good news. OK, so what should we do now? Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they couldn't take any action against us? It's probably best if I speak to my partners and see what they ...

Unit 3

Listening 1 / Audio 3.1

Maria: Now, here's an interesting case: Liebeck against McDonald's.

Fabio: Oh no, please, not the hot-coffee case. It's cases like that which give lawyers a bad name. It's the most famous frivolous lawsuit, isn't it? Imagine a woman getting millions of dollars just because she spilled a little hot coffee on herself! I mean, coffee is supposed to be hot! If it isn't hot, I want a refund!

Maria: Mm, well, there's more to it than that, of course. And you'd be surprised by the final settlement, too.

Fabio: OK, tell me. What's so important and interesting about the hot-coffee case?

Maria: Have a look at the facts: the claimant, a 79-year-old woman, bought coffee at a drive-through McDonald's and got really bad third-degree burns when she opened the container. She had to have medical treatment for two years.

Fabio: Well, yes, that's certainly very unpleasant, but getting damages of a couple of million dollars is really too much ...

Maria: Actually, at first she only tried to get $20,000 to pay her medical expenses. But McDonald's only wanted to give her $800. Can you imagine that? Well, then Liebeck and her lawyer tried a few more times to reach a settlement before the case went to trial, but McDonald's always refused. Probably because in other cases the courts had decided that coffee burns were an open and obvious danger, and McDonald's thought Liebeck couldn't win.

Fabio: Right. So what happened then?

Maria: Well, Liebeck filed suit for gross negligence, saying that McDonald's sold coffee that was 'defectively manufactured'.

Fabio: And what happened at the trial?

Maria: The evidence showed that McDonald's did actually serve their coffee much too hot. In fact, I've read that more than 700 people had been burnt in the years from 1982 to 1992 by McDonald's coffee.

Fabio: Ah, I see. So it wasn't just this one case.

Maria: That's right. The court found they knew their coffee was injuring people.

Fabio: So, what was the outcome of the case?

Maria: Well, the jury found for the claimant. They said that McDonald's was 80% responsible and Liebeck was 20% responsible. They said the warning on the coffee cup was too small and not sufficient.

Fabio: How much was she awarded in damages?

Maria: Well, at first Liebeck was awarded $200,000 in compensatory damages, which was then reduced by 20% to $160,000. They also awarded her $2.7 million in punitive damages. The idea was that McDonald's should pay her two days' worth of coffee revenues, which were about $1.35 million per day.

Fabio: Wow, that's a lot!

Maria: Well, the judge then reduced the punitive damages to $480,000. So the total amount of damages was $640,000.

Fabio: So she didn't get millions of dollars!

Maria: No, she didn't. The decision was later appealed by McDonald's and Liebeck, but they settled out of court for an amount less than $600,000. Nobody actually knows how much she got, as a matter of fact.

Fabio: So, what shall we do now? Do you fancy a coffee?

Listening 2 / Audio 3.2

Charles: Hello, are you one of the lawyers?

Nick: Er, no ... I'm one of the students. We can advise people on certain areas of the law, and we have volunteer lawyers available to assist us.

Charles: Er ... well, my case is quite serious. Could I see a lawyer, please?

Nick: Well, normally what we do is discuss the case with the client and then consult with the lawyers if necessary.

Charles: Can't I just speak to a lawyer directly?

Nick: I'm sorry, clients are always first interviewed by student volunteers. We then assess whether or not further support will be necessary.

Charles: OK, that's fine. Sorry, I'm a bit tense at the moment. I got a letter this morning saying that I was going to be sued.

Nick: Sued? We probably will need some help with this one. But could you first tell me what happened?
Charles: Sure. About four months ago, I bought a laptop. Nothing special, just a cheap laptop that could run what I need to write essays, surf the web and keep in touch with everyone.
Nick: And there was a problem with it?
Charles: Yes. There was a pixel burnt out in the centre of the screen. It wasn't very serious, but it did mean that there was an annoying red dot on the screen.
Nick: So you took it back to the shop?
Charles: Yes, I took it back the same day.
Nick: What did they say?
Charles: They refused to replace my laptop. They said that, under the guarantee, at least seven pixels had to be burnt out before they would give me a new one.
Nick: And you didn't accept this?
Charles: Of course not! If I'd known that the pixel was burnt out at the time, I'd never have bought it. Fair enough if the guarantee doesn't cover everything after a year, but the first time I turned the computer on, I saw it was faulty.
Nick: Did you see the laptop working in the shop before buying it?
Charles: No.

Listening 2 / Audio 3.3

Nick: OK. So what did you do when they refused to replace it?
Charles: Well, first I threatened to write to as many mailing lists as possible to tell people not to buy computers from Carmecom.
Nick: Unless they replaced the laptop?
Charles: Sure. But they didn't take me seriously.
Nick: I'm surprised at that.
Charles: Yeah? Well, anyway, I was absolutely furious when I left the shop. I refused to take the laptop back.
Nick: Did you leave the shop *without* the laptop?
Charles: Yes. But I didn't go very far.
Nick: What do you mean?
Charles: Well, this all happened in November. I figured that people would be buying computer stuff for Christmas, and that this would be a good way to hurt them.
Nick: To hurt Carmecom?
Charles: Well, at least to get them back. And to convince them to give me my money back!
Nick: You didn't just want a replacement?
Charles: Er ... no. Well, when I first went into the shop, I would have been happy with a replacement. That was before the idiot running the place had made me so angry. By the time I'd finished speaking to him, I was determined to get my money back and never have anything more to do with them again.
Nick: Right. Anyway, what happened next?
Charles: I stood outside the shop and told everyone who wanted to come in exactly what had happened. I told them not to buy anything from Carmecom, that their computers were rubbish and that if they did buy something, which then went wrong, they'd only have themselves to blame.
Nick: Ah, I see. How did they react to this?
Charles: The guy in the shop said he'd call his boss to see about a replacement and that they'd contact me in the next few days.
Nick: So they asked for your address – is that right?
Charles: Yes, that's right. I guess that was pretty stupid of me. Anyway, I got a letter from their lawyers this morning.
Nick: What did the letter say exactly?
Charles: They're threatening to sue me for defamation unless I sign a retraction. They say that I'm trying to damage their reputation by spreading lies about their business.
Nick: Well, they're probably just trying to stop you from taking your campaign any further.
Charles: It's hardly a campaign!
Nick: Well, if you first told them that you'd write to all of the mailing lists you know, and then you stood outside the shop telling people not to buy their computers, they're probably starting to get a little concerned about what's coming next.
Charles: Well, anyway – here's the letter. Take a ...

Unit 4

Listening 1 / Audio 4.1

Interviewer: Thank you for coming to speak to us, Professor Poulos.
Professor Poulos: My pleasure.
Interviewer: My first question to you is this: what major changes have you witnessed in terms of the types of white-collar crime being committed since you began practising?
Professor Poulos: For some time now, we've been seeing more white-collar crime being committed within corporations. I'm not sure if it's because the justice department is prosecuting more or whether there is indeed an increase. I do think that with the growth of technology, however, the opportunities for white-collar crime have increased greatly. For example, a lot of computer crime, which we categorise as white-collar crime, is one such area of increased opportunity. The internationalisation of the economy has led to more opportunities for white-collar crime. Before the federal government changed the sentencing of white-collar criminals, the very strict punishments given for what one would call regular, or street, crime drove many people from street crime to white-collar crime because it gave them more rewards for less risk.
Interviewer: What major changes have you seen in terms of who is committing white-collar crimes? Is it senior company management, mid-level mangers, employees, consultants ...?
Professor Poulos: Today, we're uncovering a lot from the high levels of the corporate structure. Enron is an example of this. Certainly, we're seeing a lot of crimes committed by high-level employees, and this has had a tremendous impact both on investing, and on the way people regard corporate governance.
Interviewer: What major changes have you seen in terms of the social harm or impact caused by white-collar crime?
Professor Poulos: While violent crime frequently has a big impact on the victims of that crime, it is usually fairly limited. But when you have a savings and loan scandal, as we've seen in the past, or an Enron scandal, those crimes affect millions of people. Enron impacted large, large numbers of people. These people were affected either directly or indirectly by the corporate malfeasance – the commission of wrongful acts – in the Enron case. Many retirement funds were adversely affected following investments in Enron. In a way, white-collar crime, in terms of the number of its victims and the devastating impact on its victims, ranks right up there among even the most heinous, violent street crimes imaginable.
Interviewer: So if you were to define the most socially harmful category of white-collar crime, would it be corporate crime as you have just described, or something else?
Professor Poulos: I have two thoughts on this. One of the most devastating forms of white-collar crime that I see is fraud on the elderly. It occurs with alarming frequency against our elder citizens, who are often easily taken in by these kinds

of scams. The other is the sheer mass of injuries inflicted on investors in cases like Enron, which adversely affect the system of investing in the US. Part of the slow recovery of the economy is the effect of white-collar crime on the investment environment.

Listening 2 / Audio 4.2

If the criminal has the bills for the falsely obtained credit cards sent to an address other than the victim's, the victim may not become aware of what is happening until the criminal has already inflicted substantial damage on the victim's assets, credit and reputation. The same is true of bank statements showing unauthorised withdrawals.

Listening 2 / Audio 4.3

So, could banks themselves do more to protect their customers? Banks often claim they will never send requests for confidential information by email. However, according to the report, some banks do just that. This sends out a mixed message, confusing vulnerable customers who cannot tell which emails are genuine and which are not.

Listening 2 / Audio 4.4

This is just the latest in a string of laptop losses that have affected employees at Sun, Cisco and IBM. It's unclear whether the laptops are being targeted because of the information they contain, or if it's just random theft.

Listening 2 / Audio 4.5

Seventy-two per cent of bins contained the full name and full address of at least one member of a household. Two in five contained a whole credit- or debit-card number that could be linked to an individual. One in five bins contained a bank-account number and sort code that could be related to an individual's name and address.

Listening 2 / Audio 4.6

Changing addresses

According to experts, members of the public are placing themselves at considerable risk from identity theft, and are being told that they must be more vigilant about discarding personal records.

With enough biographical information, a criminal can take over another person's identity to commit a wide range of crimes; for example, false applications for loans, fraudulent withdrawals from bank accounts, or obtaining other goods which criminals might otherwise be denied. If the criminal has the bills for the falsely obtained credit cards sent to an address other than the victim's, the victim may not become aware of what is happening until the criminal has already inflicted substantial damage on the victim's assets, credit and reputation. The same is true of bank statements showing unauthorised withdrawals.

If you think you may be the victim of identity theft, you should place a fraud alert on your credit report as soon as possible. You should then review your credit reports carefully. Look for enquiries from companies you haven't contacted, accounts you didn't open and debts on your accounts that you can't explain.

Once you have placed a fraud alert on your credit report, potential creditors must use what the law refers to as 'reasonable policies and procedures' to verify your identity before issuing credit in your name.

Listening 2 / Audio 4.7

Phishing

According to a report from the consumer group *Which?*, banks must be made more accountable for losses caused by so-called 'phishing' frauds.

Phishing involves people being fooled by fake emails, claiming to be from a bank, into giving out bank or credit-card details to online fraudsters. The term is also used to describe the practice of creating look-alike websites, often of banks and other financial institutions, and duping people into visiting them and giving out their personal information.

While banks generally repay money lost to victims of such crimes, they may refuse to compensate the same person more than once if the customer's negligence was a contributory factor. So, could banks themselves do more to protect their customers? Banks often claim they will never send requests for confidential information by email. However, according to the report, some banks do just that. This sends out a mixed message, confusing vulnerable customers who cannot tell which emails are genuine and which are not.

Listening 2 / Audio 4.8

Theft

Fidelity Investments have reported the loss of a laptop containing sensitive employee information on 196,000 current and former Hewlett Packard employees. The employees were told this week that they are at risk of identity theft and that they should take steps to protect themselves.

This is just the latest in a string of laptop losses that have affected employees at Sun, Cisco and IBM. It's unclear whether the laptops are being targeted because of the information they contain, or if it's just random theft.

Fidelity has good news for those affected. It appears the data was encrypted and the encryption key has expired on the machine, making the data more difficult to extract.

Listening 2 / Audio 4.9

Bin raiding

A shocking new survey has revealed the potential extent of 'bin raiding' by British fraudsters. The report shows how easy it is for ID thieves to obtain personal information from household rubbish. An examination of the contents of 400 domestic bins found that:

- 72% of bins contained the full name and full address of at least one member of a household;
- two in five contained a whole credit- or debit-card number that could be linked to an individual;
- one in five bins contained a bank-account number and sort code that could be related to an individual's name and address.

In the US, the practice has been recognised as a real risk to consumers and businesses for many years; 9.9 million Americans have been the victims of identity theft, at an average cost per person of $5,000.

Unit 5

Listening 1 / Audio 5.1

In today's talk, I'll be addressing the question of what a corporation is, specifically how it differs from a sole proprietorship or partnership. A corporation is a separate and distinct legal entity. This means that it can open a bank account, own property and do business, all under its own name. The main advantage of a corporation is that its owners, known as stockholders or shareholders, are not personally liable for its debts and liabilities. For example, if a corporation gets sued and is forced into bankruptcy, the 'owners' will not be required to pay the debt with their own money. If the assets of the corporation are not enough to cover the debts, the creditors cannot go after the stockholders, directors or officers of the corporation to recover any shortfall.

A corporation is managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of the corporation. These directors are elected by the stockholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

One major disadvantage of a traditional corporation is double taxation. A traditional corporation, known as a 'C-corporation', pays corporate tax on its corporate income (the first tax). Then, when the C-corporation distributes profits to its stockholders, the stockholders pay income tax on those dividends (the second tax).

One way to avoid double taxation is to choose to be taxed as a pass-through entity, like a partnership or a sole proprietorship. That way, there is only one level of taxation. The corporate profits 'pass through' to the owners, who pay taxes on the profits at their individual tax rates. Corporations that make this tax election are known as 'S-corporations'.

Listening 1 / Audio 5.2

So, as I was saying, corporations enjoy many advantages over other business entities. However, the main advantage of corporations – and remember this, all those future risk-takers among you – is that stockholders are not liable for corporate debts. This is the most important characteristic of a corporation. In contrast, in the case of sole proprietorships and partnerships, the owners *are* personally responsible for the debts of the business. If the assets of the sole proprietorship or partnership cannot satisfy the debt, creditors can go after each owner's personal bank account, house, etc. to make up the difference. As we've seen, if a corporation runs out of funds, its owners are usually *not* liable.

The second benefit of corporations is self-employment tax savings. Earnings from a sole proprietorship are subject to self-employment taxes. With a corporation, only salaries (and not profits) are subject to such taxes.

The third advantage of a corporation is it's continuous life. The life of a corporation, unlike that of a partnership or sole proprietorship, does not expire upon the death of its stockholders, directors or officers.

The fourth advantage is the fact that it's easier for a corporation to raise money. A corporation has many avenues to raise capital. It can sell shares, and it can create new types of stock, with different voting or profit characteristics.

The fifth and last advantage is the ease of transfer. Ownership interests in a corporation may be sold to third parties without disturbing the continued operation of the business. The business of a sole proprietorship or partnership, on the other hand, cannot be sold whole; instead, each of its assets, licences and permits must be individually transferred, and new bank accounts and tax identification numbers are required.

Right, let's move on to the disadvantages. The first of these drawbacks is the higher cost. Corporations cost more to set up and run than a sole proprietorship or partnership. For example, there are the initial formation fees, filing fees and annual state fees.

The second disadvantage is the formal organisation and the corporate formalities. A corporation can only be created by filing legal documents with the state. In addition, a corporation must adhere to technical formalities. These include holding board and shareholder meetings, recording minutes, having the board of directors approve major business transactions, and corporate record-keeping. If these formalities are not observed, the stockholders risk losing their personal liability protection. While observing corporate formalities is not difficult, it can be time-consuming. This is not the case with either a sole proprietorship or a partnership, both of which can commence and operate without any formal organising or operating procedures – not even a written agreement.

The third and final disadvantage is unemployment tax. A stockholder-employee of a corporation is required to pay unemployment insurance taxes on his or her salary, whereas a sole proprietor or partner is not.

Listening 2 / Audio 5.3

Zoe Cook: OK, you've all read Ms Solloway's letter. Any comments before we hear from Sara?

David Wright: Zoe, I'm sorry, but we've known for a long time now that we need to be more proactive on green issues.

Simon Travis: David, you've seen the press release we put out in Pavelh 2005 during the run-up to the Act. We all agreed on the policy statement concerning the environment, employment and our role in the community. This was all published well before the Act even got a mention in the press. How much more proactive can you get?

David Wright: Did the policy statement say anything about our sourcing of palm oil?

Simon Travis: Not specifically, no. But let's be realistic about this: how many people even know what palm oil is?

David Wright: Well, clearly this Pippa Solloway does, and the bottom line is that just about all the palm oil used in our own-brand products is sourced from South-East Asia. As far as the environmental impact is concerned, I couldn't say. But all it takes is one letter to the press and a few Internet searches on palm oil, and we'll lose all that goodwill we've built up from our customers over the years.

Simon Travis: Listen, Dave. We made sure that policy was carefully worded to give us some room for flexibility in the short term, but still committed us to a carbon-neutral future.

David Wright: Well, clearly the message isn't getting across, Simon. And whatever the policy may say, we need to get our facts straight on this one. This Pippa Solloway is a well-organised campaigner who means business. I'm telling you, this letter is only the beginning. I want people to see us as setting the agenda because we care about the future. I don't want them to think we're only acting in response to pressure.

Simon Travis: I think we're all agreed on that one. Our response needs to be swift. We start by sending Ms Solloway a copy of the press release of Pavelh 2005,

together with our policies on green, social and employment issues. What I want to avoid is her going to the press and saying we've given in under pressure.

Listening 2 / Audio 5.4

Zoe Cook: OK, let's look at this step by step. Sara, you've come up with a few ideas. Maybe you can talk us through your proposed strategy?

Sara Ball: Thanks. First, Simon – you're right. We are covered, at least in part, by the press release and policy statement. Ms Solloway's letter seems to be a cut-and-paste job from a green website. It's very likely that she's not aware of the palm-oil stats, and has just picked on one issue to gauge our reaction.

Zoe Cook: So if we go with Simon's suggestion, that's the end of it?

Sara Ball: No, but it will buy us time. It's one thing being seen to comply with regulations. Even better that we pre-empted the Act and put out our policy ahead of our competitors. But we need to be able to show that the policy really means something. Before we can comment on the specific issue of palm oil, we need to find out what the impact of our sourcing is on the local environment.

David Wright: And if it turns out that the allegations are correct?

Simon Travis: Then we thank Ms Solloway for drawing this to our attention. We assure her that we are seeking alternate sources for all our own-brand products, and that we'll do everything in our power to encourage the big brands to do likewise.

Zoe Cook: I agree. If it does turn out that we need to re-source, we need to find a way of spinning the issue to our favour. Simon?

Simon Travis: Well, that should be fairly straightforward. We let the media know that we're prepared to stand by our own policy initiatives and call on our competitors to follow our lead. They can wait until the regulations come into force if they want. In the meantime, we're doing everything necessary to comply with the new provisions.

Zoe Cook: OK, this brings us to our implementation of sections 172 and 417. Sara, maybe you could outline the law before I go on?

Sara Ball: Sure. Section 172 deals with directors' duties. It provides that in exercising the duty to act in the best interests of the company, directors must consider the impact of operations on the community and the environment.

Zoe Cook: And our position on this one is set out in our policy guidelines?

Sara Ball: Yes, it is. However, section 417, which Ms Solloway also mentions in her letter, discusses the contents of the directors' report and introduces a new regime for the reporting of business operations. Technically, we're under no obligation to provide a 417 business review for at least another 12 months. But if we can say that it's currently being produced and will be published within the next ... three weeks?

Simon Travis: Then we can turn the situation round to our advantage and maybe catch up on some of the marketing potential we failed to exploit when the policy was first published. Great!

Zoe Cook: I've made copies of sections 172 and 417 for everyone. We're on track as far as the rest of the Act is concerned, but I need to be sure that we'll be in compliance with these new provisions when they come into force. OK, if we can start by looking at section 172 paragraph 1, I ...

Unit 6

Listening 1 / Audio 6.1

Interviewer: This is an alumni profile of Michael Grant, a Senior Associate at Ravenstone, Altman and Ofner, LLP. Michael joined the firm four years ago and now advises a wide range of clients on information technology, communications, privacy, spam and intellectual property law, representing them in contentious matters in court. He is currently undertaking a Master's of e-Law at Monash University. Michael, what does your work at Ravenstone involve?

Michael: I advise on legal issues relating to information technology, negotiate and draft agreements, and I litigate cases in court. It's an extremely wide range of work, from drafting software licence agreements to advising on privacy and spam law to resolving disputes about copyright ownership.

Interviewer: What does a standard day at the office involve?

Michael: There isn't really a standard day, because the work mostly depends on what the clients need. But I usually spend most of the day reviewing documents, drafting agreements, meeting with clients and, of course, answering emails. Supervising junior lawyers is also an important part of most days.

Interviewer: What's the most difficult decision you've had to make in your career?

Michael: Changing firms! At the beginning of my career, I worked at a small firm specialising in patent law. I spent much of my time reading and analysing scientific and technical documents to determine in what ways an invention was new and innovative. I drafted and submitted patent applications to secure patents for the inventor. I also had to write patent drafts, which are incredibly detailed descriptions of the inventions in precise legal terms; they form the basis for the patents that are granted by the patent office.

Interviewer: Mm, sounds interesting ...

Michael: It was interesting, although at times extremely difficult and demanding. But I quickly realised that what I liked best was working closely with the other lawyers on litigation, defending or enforcing patents. I also particularly liked advising clients. Working with people was more exciting than doing all that research alone. I finally made the difficult decision to switch to another firm. But it was definitely the right decision!

Interviewer: What is the most enjoyable aspect of your job?

Michael: I enjoy being in the courtroom, litigating a case and bringing it to a satisfactory conclusion. And strangely enough, I also enjoy drafting contracts. There's something about the challenge of taking a complex commercial transaction and expressing it clearly and concisely that really appeals to me.

Interviewer: What is the most stressful or difficult aspect of your job?

Michael: Clients often require us to meet tight deadlines. Like buses, several always come at once! But because the work we do is usually based around transactions or court appearances, the high-stress periods typically only last for a few weeks before things start to return to normal.

Interviewer: What led you to be working at a commercial law firm?

Michael: I realised pretty early in my studies that I had an affinity for commercial law. After my second year, I completed an internship during the summer at a big commercial law firm which specialises in maritime law

and carriage of goods by sea. I learned a bit about what's known as 'dry work'.

Interviewer: Dry work?

Michael: Yeah, things like resolving charter party disputes, handling cargo claims and disputes concerning bills of lading and contractual claims. I also learned all the incoterms like FOB, CFR, CIF, EXW, and the rest.

Interviewer: I'm not sure that everyone will be familiar with *incoterms*. Could you briefly explain what they are?

Michael: Of course. Incoterms are a series of international sales terms that are widely used throughout the world. They're maintained by the International Chamber of Commerce.

Interviewer: Thanks. You were telling us about what you referred to as 'dry work'.

Michael: That's right. Some people might think the 'wet work' is more exciting, because it deals with collisions and groundings and salvage and torts. But I didn't do any of that – I was given the dry work and contractual stuff, which I liked. The challenge of shipping work is navigating through a maze of different conventions, laws and regulations which apply to the different areas. It was a valuable experience, but ultimately maritime law wasn't for me. So I got a look at two areas of commercial law – maritime law and patent law – before I finally discovered IT law.

Interviewer: Hm. What led you to return to postgraduate study?

Michael: When I was an undergraduate, there were no law subjects offered on information technology law, so the Master's is really the first chance I've had to sit down and study information technology law in an academic setting.

Interviewer: Do you have any career advice to pass on to current students?

Michael: Yeah – try out as many different types of work and areas of the law as you can! Then choose a career that you have a real interest in. Marks are important to employers, but more important is a genuine enthusiasm to do the job.

Listening 2 / Audio 6.2

Jenny Miller: Hello, Clive, thanks for coming by.

Clive Sanborn: That's fine. Always good to see you, Jenny. I've just gone through your agency agreements. There are a few points I need to check with you.

Jenny Miller: Sure.

Clive Sanborn: OK, first – when do you want to end them?

Jenny Miller: As soon as possible.

Clive Sanborn: And you haven't had any problems with your agents?

Jenny Miller: None at all. The agents have done a great job, sales are excellent. In fact, education authorities throughout France, Spain and Portugal are now putting in regular repeat orders.

Clive Sanborn: I see. That's a shame – if they were in breach of contract, we could possibly avoid paying them compensation. Right, so you've had no difficulties with them – it's just that you don't need them any more?

Jenny Miller: That's right, at least not in those countries. The number of new customers they're bringing in just doesn't justify the commission they're still getting from the repeat orders.

Clive Sanborn: And you want to end the agreements as quickly as possible without incurring too much expense?

Jenny Miller: Exactly.

Clive Sanborn: Well, as I said, unless the agents are actually in breach, they will certainly be entitled to some compensation, especially if you end the agreements without notice. Alternatively, you can wait for nine months and not have to pay a thing.

Jenny Miller: Nine months?! We can't wait that long!

Clive Sanborn: Well, I think it ... yes, clause nine of your agency agreement provides that: 'Where the contract has been agreed for an indefinite period it may be terminated by either party thereto giving, by registered letter, six months notice prior to the end of a calendar quarter.'

Jenny Miller: And we've just missed a calendar quarter!

Clive Sanborn: Unfortunately, yes.

Jenny Miller: So, how much are we talking about to end the agreement now?

Clive Sanborn: Well, commercial agents operating in the EU have been given a lot of protection recently. Your agreement doesn't provide for an indemnity, but the law does provide for generous compensation should you end it before the end of the contractual notice period.

Jenny Miller: And how would any compensation be calculated were we to end the agreements immediately?

Clive Sanborn: Each agent would be entitled to compensation on the termination of the agency agreement 'for the damage he suffers as a result of the termination of his relations with his principal'.

Jenny Miller: What kind of damages do the regulations provide for?

Clive Sanborn: Under the regulations, an agent will suffer damage when he is deprived of commission which proper performance of the agency agreement would have procured for him.

Jenny Miller: So basically we're talking about compensating for lost commissions during what would have been the notice period?

Clive Sanborn: More or less, yes – although there is no actual upper limit on the amount of compensation that may be granted. This is where the payment of compensation differs from the payment of indemnities.

Jenny Miller: How? Aren't they pretty much the same thing?

Clive Sanborn: Similar, but not the same. Indemnities are capped at one year's average commission. They will only be paid if specifically provided for in the agreement, and that's not the case here.

Listening 2 / Audio 6.3

Jenny Miller: Is it likely that we'd have to compensate beyond the notice period?

Clive Sanborn: It really depends on the circumstances, but probably not, no.

Jenny Miller: I imagine that we could make a generous-looking offer to discourage them from seeking full damages.

Clive Sanborn: That would probably work, yes. But compensation isn't limited to lost commission.

Jenny Miller: No?

Clive Sanborn: No. If you're serious about ending the agreements immediately, the termination may result in your agents being unable to, in the words of the regulations, 'amortise the costs and expenses which he has incurred in the performance of the agency contract on the advice of his principal'.

Jenny Miller: Do what to the costs?

Clive Sanborn: Amortise them, pay them off. As principal, Chance would normally reimburse the agent once they'd been invoiced.

Jenny Miller: So we need to cover any reasonable expenses? I'd assumed that was the case.

Clive Sanborn: Of course, the alternative would be to simply cancel the agreements and hope the agents don't sue for damages.

Jenny Miller: Phew ... that sounds a bit risky!

Clive Sanborn: Well, yes, I know it's hardly ethical business practice, but even so, you could save yourself quite a bit of money. There's a one-year limitation period for claims by the agents.

Jenny Miller: So as long as they don't claim for the next year, we'd be OK?

Clive Sanborn: Yes, and even if they did claim, they'd probably accept a decent settlement.

Jenny Miller: Clive, it's tempting – but I think the best thing would be for us to work out an acceptable compensation package.

Clive Sanborn: Sure. Oh, there is one other thing to consider. Essentially, what you're planning to do is breach the contract and offer compensation below what you would have expected to pay in commission fees.

Jenny Miller: That's right.

Clive Sanborn: OK, but have you considered the implications of having a number of well-trained, motivated agents who have just lost a steady income available to your business rivals?

Jenny Miller: We included a restraint-of-trade clause in the agreements. I remember we wanted five years, but the regulations would only allow us a maximum of two.

Clive Sanborn: That's right. Two years after termination of the agreement.

Jenny Miller: So if we cancel the contract immediately, our agents could start acting for our competitors in two years?

Clive Sanborn: Yes, whereas if you saw the notice period out, you'd be safe for another two years and nine months. Well, as safe as the law allows. The activities of your former agents would at least be severely limited.

Jenny Miller: Only limited? But they wouldn't be able to take our existing customers to rival companies, would they?

Clive Sanborn: It's like this. The regulations provide that any restraint-of-trade clause in an agency agreement will be valid if it's in writing and relates both to the geographical area or group of customers covered by the agency and to the kind of goods covered by the agency.

Jenny Miller: Which is why you insisted we adhere so strictly to the regulations.

Clive Sanborn: Exactly. If we'd drafted an unreasonably restrictive clause, there would have been a good chance that it would simply have been struck out were we to end up in litigation.

Jenny Miller: Oh, well, at least we don't have to worry about that happening.

Clive Sanborn: Actually, we can't be a hundred per cent certain. We need to consider whether or not a court would actually uphold the restraint-of-trade clause following your defaulting on the notice period.

Jenny Miller: And do you think it would?

Clive Sanborn: Well, remember, essentially what you're proposing is to breach the terms of the agreement. You couldn't expect too much sympathy from the court should your agents then find similar work with a rival company.

Jenny Miller: Phew. I can see that this is going to be more complicated than I'd thought. OK, I think I need to speak to Tom before we take any further action. Could you put together a few words on what we've just discussed?

Clive Sanborn: Sure, I'll outline the various options and possible consequences.

Jenny Miller: And if you could draft some kind of compensation package in case we decide to end the agreements, that would be great.

Clive Sanborn: No problem. I'll have it to you by Thursday.

Unit 7

Listening 1 / Audio 7.1

OK, I'll move on now to my next point. And this one is particularly important for potential investors in real property. It deals with the question of who's allowed to buy real property in Ukraine. Generally, both residents and foreigners are allowed to buy and sell property. Individuals and legal entities (by which I mean companies) are also permitted to do so. But I must point out that there are some significant exceptions.

The most important exception concerns agricultural land, or farmland, which foreigners are not allowed to own. This includes foreign entities. Even joint ventures, where Ukrainians and foreigners cooperate together, cannot buy farmland. And if a foreigner inherits agricultural land, he or she has to sell it within a year. So, it is not possible for foreigners to own farmland. Let me stress that although foreigners can't *own* farmland, they *are* allowed to lease it. And this also includes business entities.

The situation with *non*-agricultural land is quite different. In this case, it is possible for foreigners, either individuals or companies, to have ownership rights to land within or outside settlement boundaries. But I should stress that this is only under certain circumstances. These circumstances include, for example, if a foreigner or foreign entity buys buildings or other structures on the land. They are also permitted to have ownership rights to land if they want to build facilities for the purpose of carrying out business in Ukraine. So, if they plan to do business and buy existing facilities or construct new facilities for business, they may have certain ownership rights to land.

Now, let's turn to a very important point: the circumstances under which foreign ownership of land in Ukraine *is* possible. By this, I mean simply ownership of land itself, and not facilities on the land for doing business. A common way is for a foreign company to buy shares in a Ukrainian company that owns land. Many foreign companies take advantage of this indirect way of acquiring a right to land.

Listening 2 / Audio 7.2

Secretary: Novák and Fialová, how may I help?

Ms Cervera: Hello, can I speak to Ms Fialová, please?

Secretary: Certainly. Can I tell her who's calling?

Ms Cervera: It's Marta Cervera from Jacksons in Valencia.

Secretary: I'll put you through.

Ms Fialová: Hello, Ms Cervera?

Ms Cervera: Hello, yes. I'm calling about my recent email.

Ms Fialová: I thought so, good to hear from you. How can I help?

Ms Cervera: I wondered if it would be possible to discuss some of the points over the phone?

Ms Fialová: Of course.

Ms Cervera: Well, first, thank you very much for all of the detailed information you sent me. My partner and I are very interested in buying a property in Prague. Should we go ahead, we wondered if you could handle the conveyance.

Ms Fialová: I'd be very pleased to. It's a buy-to-let property that you're interested in, is that right?

Ms Cervera: Yes, that's right. We first considered the idea a year or so ago, but at the time it wasn't possible. An old insurance policy of mine has just matured, and we're now able to go ahead.

Ms Fialová: Well, you may have missed some of the real bargains. But there are still plenty of reasonably priced properties available.

Ms Cervera: So I've heard. I think I mentioned in my email that a colleague of mine had recently bought a property in Prague with your help. It was Jordi that suggested I call.

Ms Fialová: Really? How is Mr Forrat?

Ms Cervera: He's very well, thank you. He sends his regards.

Ms Fialová: Thanks, please send him mine.

Ms Cervera: Your email was very detailed, but I wonder if you wouldn't mind talking me through the essentials? I plan to visit some properties sometime next month, but would first like to be clear on the legal issues involved in property purchase in the Czech Republic.

Ms Fialová: Well, first you should know that it's quite bureaucratic; there's a lot of paperwork to complete. The whole process takes an average of about four months.

Ms Cervera: Four months? That does sound a long time. OK, so what do I need to know?

Ms Fialová: First, as an EU citizen, you can buy a secondary residence in Prague under exactly the same terms as citizens of the Czech Republic, and will be entered into the cadastral register.

Ms Cervera: The cadastral register?

Ms Fialová: Yes, or the cadastre. It's the public register of all real property in a country, in this case, in the Czech Republic.

Ms Cervera: Right, so I don't need to form a limited company first to own property? I thought I did.

Ms Fialová: No, this requirement has been repealed since we joined the EU. You can now own property directly. However, some people still choose to incorporate.

Ms Cervera: Mm-hm. Why? Are there tax advantages?

Ms Fialová: It depends. You're probably better off talking to a local accountant, but I do know that as a company, there are certain tax advantages.

Ms Cervera: Such as?

Ms Fialová: Well, for example, you wouldn't have to pay stamp duty – that's the property transfer tax, which would normally be levied by the state on the sale of real estate. Actually, over here, stamp duty is normally paid by the seller anyway.

Ms Cervera: OK, well, I guess I should look into this. If I did choose to form a company before buying, how long would incorporation take?

Ms Fialová: Sorry, can you say that again, please? You're breaking up.

Ms Cervera: Sorry, I'm calling you from my mobile on a train – we just went through a tunnel. I wanted to know how long it would take to set up a company.

Ms Fialová: About six to eight weeks. I know it sounds like a long time, but that can't be avoided. If you do decide to incorporate, then I can recommend a good company formation agent.

Ms Cervera: Great, thanks.

Ms Fialová: You're very welcome.

Listening 2 / Audio 7.3

Ms Cervera: OK, so are there any other costs I should know about?

Ms Fialová: Not really. There are a few other small fees, besides my own, like the cost of getting all the documents translated. I'll include all of this in my bill. I'm assuming you want Spanish versions of the documentation?

Ms Cervera: Yes, I do. I'd also like a copy of the contract in English. Do all of the documents need to be notarised?

Ms Fialová: For extra security, it is best to have them notarised. I can do this for you. There are some documents I'll have to draft myself, such as the purchase agreement.

Ms Cervera: Mm. Actually, I've already seen a copy of the standard form purchase agreement the estate agents use.

Ms Fialová: Right. Well, agents do often provide their own agreements. But it would certainly be good for me to read it through before you sign it. I may have to redraft it for you, and it should take the form of a deed. Anyway, we'll make sure that all of this is done properly.

Ms Cervera: OK, then I'll forward you the purchase agreement, together with all of the other documents I've collected so far.

Ms Fialová: That's fine. You said you'll be using money from an earlier investment. Does this mean you'll be buying the property outright?

Ms Cervera: No, we'll probably pay a deposit of around 25 per cent and finance the rest with a mortgage. If things go well, we may then invest in more flats.

Ms Fialová: Twenty-five per cent sounds about right. When it comes to foreign buyers, banks want to reduce their exposure to risk; they generally ask you to put down between ten and 30 per cent of the property value.

Ms Cervera: That's what I'd understood. Another question – sorry, I know I'm jumping around quite a bit here – we plan to view several properties, but there's one we're particularly interested in. However, it's still under development. Well, reconstruction work, actually – it's being given a complete facelift.

Ms Fialová: OK. Er, I'm sorry, what was your question?

Ms Cervera: Sorry, yes. According to the developer, they'll install a lift and underground parking. Would all of this be included in the purchase agreement?

Ms Fialová: Details of any uncompleted work should be included, yes. You could keep some of the purchase money in escrow so that the developer pays a penalty if the work isn't completed within, say ... when is the property supposed to be ready?

Ms Cervera: Ten months.

Ms Fialová: OK, then I'd suggest we stipulate that the work has to be completed within a year, otherwise the developer will pay a penalty.

Ms Cervera: Ah-ha. And what if the developer goes bankrupt?

Ms Fialová: That's rare in the Czech Republic. Most developers use their own money to finance reconstruction. You could keep your money in an escrow account for safety if you were concerned. What we do need to get done as soon as possible is the title search.

Ms Cervera: The title search?

Ms Fialová: Yes, it's essential to make sure that there are no problems hiding in the past that could prevent or delay sale.

Ms Cervera: What kind of problems?

Ms Fialová: Oh, the usual ... we need to check that there's been no fraud or forgery along the way that could affect the chain of title. We sometimes uncover disputes between heirs, unpaid liens ...

Ms Cervera: Liens?

Ms Fialová: A lien is simply a charge against property. If someone has used the property as security for a loan, we need to know that the lien has been satisfied. If not, the lienholder would have a legal claim against the property.

Ms Cervera: Right, sure. Well, it all sounds very complicated.

Ms Fialová: It's not as bad as it sounds, but we need to be thorough. There are a whole range of possible encumbrances that could prevent or delay the sale. One other thing we'll be looking for is any restrictive covenants that could limit your use of the property.

Ms Cervera: What, like no animals – that kind of thing?

Ms Fialová: That kind of thing, yes. Also easements.

Ms Cervera: Easements, I know. That means the right to use another person's real estate for a specific purpose.

Ms Fialová: Very good, so you're familiar with some aspects of property law?

Ms Cervera: Not really, but my grandfather once bought a piece of land without realising that the local farmers had the right to herd their sheep on it!

Ms Fialová: Well, sheep shouldn't be a problem, but there could be other rights of way that might interfere with any plans you might have for future development. I'm sorry, I'm expecting a call in a few minutes, so don't have much time left. Is there anything else you wanted to ask?

Ms Cervera: Just one more thing. I need to find a letting agency – I think it would be better to have an agency deal with the tenants than doing it privately. Can you recommend one?

Ms Fialová: Actually, yes, I do know someone – my brother.

Ms Cervera: Of course, Jordi said he was letting through your brother. Apparently everything is going very well.

Ms Fialová: I'm pleased to hear that. Marek does take his work seriously. I'll ask him to contact you to arrange a meeting when you're next in Prague. In the meantime, I'll ask him to send me a copy of the standard form tenancy agreement he uses. We can use this as a basis for your own tenancy agreement once we have the details of the property and your future tenants.

Ms Cervera: Thanks. Would Marek also be able to help in finding suitable tenants?

Ms Fialová: Of course. It might also be useful if you could come by to discuss the next stages when you've viewed the properties.

Ms Cervera: Yes, that would be good. I'll be in touch nearer the time. Thanks very much for your help.

Ms Fialová: Not at all, and thanks for calling. Goodbye.

Ms Cervera: Goodbye.

Listening 3 / Audio 7.4

Ms Cervera: Hello?

Ms Fialová: Hello, is that Ms Cervera?

Ms Cervera: Oh, hello. Ms Fialová, isn't it?

Ms Fialová: Yes. Do you have a moment?

Ms Cervera: Certainly.

Ms Fialová: Thanks. I've just received the translated tenancy agreement and wanted to check on a couple of things for Marek before he sends this and the original version for you to sign.

Ms Cervera: Sure, what do you need to know?

Ms Fialová: First, can I check what kind of agreement you wanted? Basically, it comes down to the Czech equivalent of the periodic tenancy or the shorthold tenancy. There are other options available, but I wouldn't recommend them for your circumstances.

Ms Cervera: The periodic is the one that is automatically renewed at the end of the tenancy period, right?

Ms Fialová: Yes. And the shorthold guarantees a fixed period, after which you need to sign a new agreement. It runs from month to month once the fixed term has passed.

Ms Cervera: OK. I think that's what we've decided would be best.

Ms Fialová: Yes, I think it probably is. Actually, before I forget, I don't have the full address here. All I have is the street name – Laubova.

Ms Cervera: It's Laubova 5.

Ms Fialová: Laubova 5. OK. So back to the fixed term. Shall we fix the tenancy period at six months? That's the statutory minimum. You can always sign another agreement when this one runs out. With a six-month initial term, you should have fewer problems getting rid of the tenants if there are any problems.

Ms Cervera: That sounds sensible. What else do you need to know?

Ms Fialová: OK. What about the rent? I have here that the tenancy starts on the first of September with a monthly rent of 12,000 Czech crowns to be paid on the 28th of each preceding month. My brother thinks you can probably get at least another three thousand more.

Ms Cervera: Really? OK, well, if he thinks so, then that's great! Actually, make it 14,000 crowns. I'd like the tenants to think they were getting a good deal, maybe it will encourage them to look after the place!

Ms Fialová: Well, OK. But remember, you do have the deposit. Is two months' rent OK? That's the standard sum here.

Ms Cervera: Sure. Two months should be enough if they do fall into arrears. Any major problems, and I'm covered by my insurance.

Ms Fialová: OK, I think that's it. We can easily change anything, but it's best to have the first drafts signed off as soon as possible.

Ms Cervera: Is there anything else you need from me?

Ms Fialová: No, that's it. I'll get a copy of the agreement for you to sign as soon as possible.

Ms Cervera: Great. And thanks again for all your help. Bye.

Ms Fialová: Goodbye.

Unit 8

Listening 1 / Audio 8.1

Professor Donelly: Professor Zhang, I was wondering if you could tell us more about the China International Economic and Trade Arbitration Commission. How is it structured?

Professor Zhang: Well, the CIETAC was set up by the Chinese Government in 1956. Its sole purpose is to settle international commercial disputes – that is, disputes between foreign firms and Chinese legal persons. As far as its structure is concerned, the CIETAC consists of three specialised committees. One committee is responsible for research on arbitration procedures and substantive legal issues, and provides advisory opinions. It also deals with arbitration rules and training arbitrators. The second committee edits the awards of completed cases. The third committee is responsible for the CIETAC's panel of arbitrators. It examines and reviews the qualifications and performance of the CIETAC's arbitrators.

Professor Ollsson: You mentioned that China is a party to different international conventions. Could you tell us more about these?

Professor Zhang: Certainly. I'm glad you asked. China is a signatory to two major conventions, the New York Convention of 1958 and the Washington Convention of 1965. This means that foreign arbitration awards are recognised and enforced in China. China has signed other bilateral and multilateral treaties with various countries. These treaties also affect the way arbitration is carried out in China. Another question? Yes, the young man in the blue sweater ...?

Nicholas O'Brien: Yes, thank you, Professor Zhang, my name is Nicholas O'Brien from ELSA. I'm afraid I didn't understand what you said earlier on about the right to appeal to the courts. Could you explain that a little more?

Professor Zhang: Of course. It's one of the main conditions that apply for parties who have entered into an arbitration agreement. When parties have entered into such an agreement, they give up the right to appeal to a judicial body. What this means is that disputes arising under an arbitration agreement can only be dealt with through arbitration. So, an agreement to settle disputes by arbitration made in China will exclude any recourse to judicial decision. The courts will refuse to hear cases in which prior arbitration agreements have been made.

Nicholas O'Brien: Thank you, Professor Zhang. I'd like to ask another question, if I may. We are holding a simulation of a well-known Chinese arbitration case tomorrow, the 'peanut kernel' case. Some of the students who will participate tomorrow are here today. I was wondering if you could give us any tips ...?

Listening 2 / Audio 8.2

Ms Cooper: Mr Tyler, I've read the letter from Ms Loushe's solicitor. I have to say, it does look as if you've got yourself into a rather serious situation. Could you tell me exactly what happened?

Mr Tyler: Well, I haven't seen Jaycee since last Tuesday, and this morning I got this letter. Her disappearing like that's caused me no end of trouble. She won't be getting her last month's salary, that's for sure.

Ms Cooper: Mr Tyler, I'm not quite sure you understand what Jay... Ms Loushe is alleging. If what she says is true, you could be paying quite a lot more than simply her final month's salary. Before I can give you any advice, I need to establish the relevant facts.

Mr Tyler: Er ...

Ms Cooper: Please do give as much detail as possible, and try not to avoid any facts which may be uncomfortable. It's better I hear everything now in order to avoid any unfortunate surprises later.

Mr Tyler: Right. Well, she's been with us for just over a year. We hired her 'cause the last secretary got pregnant. Actually, that one was pretty useless. We ended up firing her for professional negligence. Quite handy really, saved us having to pay maternity leave.

Ms Cooper: It's probably best just to stick to the facts surrounding this particular secretary's decision to leave.

Mr Tyler: Well, we've been losing lots of clients recently. We've also been losing a lot of lucrative contracts. There's one firm in particular that's managed to get in three offers just below our own. In the space of about a year, we've gone from rapid growth to virtual stagnation.

Ms Cooper: And you think that this is in some way connected with Ms Loushe?

Mr Tyler: I'm sure of it.

Ms Cooper: I see. Now, you say you've been losing business for about a year.

Mr Tyler: Yes, and it's no coincidence that Jaycee's been with us for the same length of time.

Ms Cooper: I think you'd better tell me just what you suspect Ms Loushe of having done. The letter makes reference to an allegation you apparently made against her concerning her theft of confidential information.

Mr Tyler: Yes. Well, I'd been trying to work out why we've been losing so many clients, when my wife told me about a play she heard on the radio about a secretary who got the sack from a firm of private detectives. When the woman in the play found out she was going to be sacked, she made a copy of the client list and sold it to a rival firm.

Ms Cooper: And do you have any *proof* that this is what Ms Loushe has done?

Mr Tyler: Well, when I got chatting to a friend down the pub about it, he said that she had something of a reputation. A bit of a gambler, apparently. I reckon she's been selling details of our clients and bids to rival firms in order to finance her habit. It's also possible that this one company is blackmailing her into continuing to sell secrets, but that's just one theory I'm working on.

Ms Cooper: So these are just suspicions?

Mr Tyler: Well, of course, I never actually saw her making copies of confidential information. But it's pretty obvious what's been going on.

Ms Cooper: I see. The letter also suggests that Ms Loushe is considering a claim for defamation. Why might that be? Was anyone else present when you made these allegations?

Mr Tyler: Yes, there was. I saw her and one of the other girls laughing about me the other day. Actually, it was the day after I'd been talking to my friend about her gambling. 'Don't think I don't know what's been going on!' I said. I wanted to warn her in front of the other girls in case they got any smart ideas about cheating me themselves.

Ms Cooper: And besides the other office workers, did you say anything to anyone else about your suspicions concerning Ms Loushe?

Mr Tyler: Yes, I called the personnel managers of some of the major construction firms in my area to warn them about her should she try to get a job with them. As far as I could see, I had no choice, it's a question of professional ethics.

Ms Cooper: Quite.

Listening 2 / Audio 8.3

Ms Cooper: Mr Tyler, from what you tell me, I have to advise you that if this does go to a tribunal, it will be very difficult for us to put together a convincing defence. Unless you were able to provide concrete evidence of the alleged theft, you'd have very little chance of avoiding substantial damages against you.

Mr Tyler: You mean she's going to get away with this?

Ms Cooper: Mr Tyler, I'm not entirely convinced that Ms Loushe can be blamed for your firm's current financial troubles. If I were advising Ms Loushe, I would certainly be encouraging her to take the case to a tribunal. Your best chance of avoiding litigation is to offer a settlement generous enough to make Ms Loushe think twice before going any further.

Mr Tyler: And just how much will I have to give her?

Ms Cooper: Well, that depends on several things. I think that first it might be useful for me to talk you through what is likely to happen should Ms Loushe decide to litigate.

Mr Tyler: Right.

Ms Cooper: OK, firstly the claim is for constructive dismissal. Ms Loushe has resigned in response to a repudiatory breach of contract by you, her employer.

Mr Tyler: Repudiatory?

Ms Cooper: Very serious. She is claiming that you have falsely accused her of stealing confidential information on very little evidence.

Mr Tyler: And you're sure I can't fight this?

Ms Cooper: If it goes to tribunal, the burden of proof will be on Ms Loushe to show that she resigned in response to a breach of contract so fundamental that she could not have been expected to continue working for you any more.

Mr Tyler: So it's up to her to prove her case? Well, that's good for me, isn't it?

Ms Cooper: It really depends on how difficult it will be for Ms Loushe to prove. After all you've told me, probably not very. To defend the case, we must show that the dismissal was 'fair'. Employment legislation provides for five permitted reasons: conduct, capability, redundancy, illegality or some other substantial reason.

Mr Tyler: And if I can't show this?

Ms Cooper: Then her dismissal will be held to be unfair. If this happens, you will be liable for both damages and costs. Generally speaking, costs are awarded to the prevailing party, the winning party. However, I must warn you that even if we are able to plead one of these five permitted reasons, the tribunal must then decide whether you have acted reasonably.

Mr Tyler: I gave her a chance to admit what she'd done! I didn't sack her on the spot, I think that was more than reasonable!

Ms Cooper: I don't think the tribunal will see it that way. A dismissal will usually be automatically unfair if an employer has failed to follow the statutory dismissal and disciplinary procedures. This is almost certainly the case here.

Mr Tyler: So how much will I have to pay?

Ms Cooper: The damages will be made of two separate awards, the basic award and the compensatory award.

Mr Tyler: Two awards?!

Ms Cooper: Yes. The basic award is calculated according to a formula based on age, length of service and gross pay. The compensatory award is to compensate for the loss suffered through being unfairly dismissed.

Mr Tyler: And how much will that be?

Ms Cooper: It's subject to a maximum which is currently £58,400. But remember, it's not just the tribunal action you could be facing, there's also the threat of a defamation suit to consider.

Mr Tyler: There's no way my company could afford all that.

Ms Cooper: Mr Tyler, I hope you agree with me that it is in your best interests to make a generous offer of a settlement before this goes any further. You may want to consider offering her the promotion and increase in salary to which her lawyers allude in their letter.

Unit 9

Listening 1 / Audio 9.1

Right, well, at this point, I would like to talk about the Laval case. This is considered by many to be a landmark case, one that is likely to have a considerable impact on labour policies in the European Union. The case should be seen in the context of the enlargement of the EU, and in the context of growing concerns over the use of less-expensive foreign workers to undercut local wages, the so-called 'wage dumping' phenomenon. It is believed that the case may have an impact in other countries that do not have a minimum wage, but instead rely on collective-bargaining agreements to protect workers.

So, what are the facts of the case? It involved construction workers from a Latvian company called Laval, who were employed to renovate and expand a school in the Swedish town of Vaxholm in 2004. The renovation work was handled by a subsidiary of the Latvian company, called L. and P. Baltic Bygg. Sweden's construction union accused the Latvian company of paying their workers wages that were far lower than allowed. Then the union blockaded three of the building sites. They wanted to pressure the company into signing a collective-wage agreement. This action forced the subsidiary that was handling the work, L. and P. Baltic Bygg, into bankruptcy. The workers went back to Latvia.

The lawsuit went up to the Swedish Labour Court, which called in the European Court of Justice. On December the 18th, 2007, the ECJ ruled that a Swedish trade union had no right to try to force a Latvian company to pay its workers a locally determined minimum wage. It held that because no minimum pay levels are set by Swedish law, the trade union was wrong to block the Latvian company's work site. While the court recognised the right of workers to take collective action, it said that the picketing in this case had restricted the right of the Latvian company to provide services. It declared the actions taken against Laval to be incompatible with the EU Posting Directive, which was adopted to ensure fair working conditions for workers sent by their companies to a different EU country.

The ruling declared that 'Such action in the form of a blockade of sites constitutes a restriction on the freedom to provide services, which, in this case, is not justified with regard to the public interest of protecting workers'. However, the court also said that 'the right to take collective action for the protection of workers of the host state against possible social dumping may constitute an overriding reason of public interest' in some cases.

What were some of the reactions to this case? Well, the European Trade Union Confederation – the ETUC – stated that it was disappointed. In its view, the ruling challenges the successful system of collective bargaining in Sweden and other Nordic countries. They feared that the decision could interfere with trade unions' ability to promote the equal treatment and protection of workers regardless of their nationality.

Listening 2 / Audio 9.2

Mr Connor: Good morning, Mr Jones. Please come in. Take a seat.

Mr Jones: Hello. Thank you.

Mr Connor: I realise you must be very concerned at the moment, but I'm hoping we'll be able to work out some kind of amicable settlement that all parties can accept.

Mr Jones: You really think so?

Mr Connor: Yes. It's not normally in anyone's interest to go to court if it can be avoided. I think it would be useful if I could outline what I understand the facts of the case to be. Then I'll explain the legal issues.

Mr Jones: OK.

Mr Connor: Please do stop me if I've misunderstood anything.

Mr Jones: Sure.

Mr Connor: Let's start with your current circumstances. Right, so you're co-owner of a small restaurant in Scotland, and are selling your half of the business in order to go into partnership with someone in Austria, to open another restaurant. Is that right?

Mr Jones: Yes. Although I've now sold my half of the restaurant in Scotland. And the person I'd planned to go into business with isn't Austrian. He's Turkish, but has lived in Germany most of his life.

Mr Connor: Germany? Not Austria?

Mr Jones: Yes, Germany. But he's living in Slovenia at the moment. He'll move to Austria to help run the restaurant. At least, that was the plan.

Mr Connor: OK. So he's Turkish, has lived most of his life in Germany, is currently living in Slovenia, but plans to move to Austria.

Mr Jones: Well, he planned to, until we hit this problem with his nationality.

Mr Connor: Can I ask why you decided to set up business in Austria?

Mr Jones: I'm getting married to an Austrian woman. She's from Innsbruck, where the restaurant is.

Mr Connor: I see. Can I just check, you're a British national, is that right?

Mr Jones: I have dual citizenship: my father's American. I've been living in the UK for much of the past ten years. My restaurant attracted a lot of tourists, and I liked to be there during the busy periods.

Mr Connor: And where do you live the rest of the time?

Mr Jones: Mostly in America. I'm still officially resident in Kentucky.

Mr Connor: That's where you have your permanent home?

Mr Jones: Yes. But as I said, I mostly live in the UK.

Mr Connor: So your domicile is America? That is, America is your official permanent residence?

Mr Jones: That's right, although I'm currently living in Scotland. Not for long though, I'll be moving to Austria shortly before the wedding.

Mr Connor: By which time I imagine you'd like to have all this resolved?

Mr Jones: Yes. If the new venture doesn't go ahead, I'll need to think seriously about how I'll be earning a living.

Mr Connor: Of course. OK, to pick up where I left off. You and Mr Kundakçı had agreed to the joint purchase of a restaurant in Austria, although you had never actually met.

Mr Jones: Yes. We knew each other through an online forum for caterers. We had planned to meet a while back in Munich to discuss our plans, but unfortunately Mr Kundakçı had to leave Germany quite suddenly.

Mr Connor: Suddenly?

Mr Jones: Yes. A very well-paid position in a five-star hotel in Ljubljana had come up, and Bilal – Mr Kundakçı – wanted to raise some more capital for the business.

Mr Connor: I see. And you had planned to buy the restaurant from an Italian national?

Mr Jones: Yes, Mr Piombo. He has several restaurants in western Austria. He's selling the one in Innsbruck to raise money for some new business venture.

Mr Connor: So you and Mr Kundakçı agreed to the joint purchase of a restaurant in Innsbruck. The restaurant is currently owned by a Mr Piombo, who is an Italian national. And I think you said in your email that you'd never actually met Mr Piombo either?

Mr Jones: That's right. I was put in touch with him by a friend in Russia – that's where Mr Piombo lives.

Mr Connor: I'd suspected that he might not live in Italy, that would have been too simple!

Mr Jones: Well, that's Europe for you!

Mr Connor: Quite. Now, you executed the initial contract documents per email followed by a postal exchange of hard copies.

Mr Jones: Yes. I paid my share of the deposit for the restaurant, but before the transaction was completed, Bilal told me that under Austrian law, he wasn't actually allowed to own property, so he wouldn't be able to sign the contract.

Mr Connor: He left it a little late to tell you, didn't he?

Mr Jones: Apparently, he'd hoped to get German citizenship, which would have allowed him to own property in an EU member state. Anyway, for whatever reason, he never applied.

Mr Connor: Leaving you all in a rather complicated mess. Is there no chance that you could finance the business alone, or find another partner?

Mr Jones: I doubt it. I don't have a particularly good credit rating, that's why I jumped at the opportunity when Bilal suggested we go into business together.

Mr Connor: Ah, I see. OK, I think I'm clear on the facts now. Unless I've missed something?

Mr Jones: No, I think that's everything. Do you think I'll have to go to court?

Mr Connor: I hope that nobody will have to. But if this does go to trial, we'll first need to consider which court has jurisdiction. In other words, which court is competent to deal with any of the legal aspects that might arise as a result of everything we've just discussed. I'm assuming you don't have any kind of written agreement with Mr Kundakçı?

Mr Jones: No, nothing.

Mr Connor: OK. So the issue of jurisdiction is one that the courts will have to decide.

Listening 2 / Audio 9.3

Mr Connor: The rules on which courts would have jurisdiction and which laws would be applied to each aspect of the case are defined in each country's laws. We need to find the most appropriate jurisdiction.

Mr Jones: And how do we do that?

Mr Connor: Well, there are essentially five stages to a case involving a conflict of laws. I can take you through them if you'd like.

Mr Jones: Please do.

Mr Connor: Certainly. First, there are several possible legal actions that could result from your current situation. For each of these, the court must decide whether it has jurisdiction. Courts are aware of the problem of forum shopping, and this will be considered when deciding whether or not any one court should hear a case.

Mr Jones: Forum shopping? Is that like shopping around to get the best deal in a case?

Mr Connor: Basically, yes. Forum shopping has been a problem for a long time in the US, and increasingly so in the European Union. In theory, the outcome of a case will be the same, no matter which court in which country finally accepts the case. However, the measure of damages might vary.

Mr Jones: I see. Actually, I think I read something about British expats moving to Spain to get divorced.

Mr Connor: That's one example, yes. Anyway, the second stage is to break down the cause of action into component legal categories. By cause of action, I mean the facts that give rise to a lawsuit or a legal claim. As I said, there are several potential claims here.

Mr Jones: Oh dear, and we're only at stage two. What about stage three?

Mr Connor: Actually, we're not quite past stage two yet. The characterisation of the cause of action may give rise to some incidental questions. Put simply, questions that arise in connection with the main claim.

Mr Jones: Such as?

Mr Connor: Let's say that you can't go ahead with the purchase. Mr Piombo then sues you. It might then emerge that Mr Piombo is not actually the rightful owner of the property anyway. Before a court could adjudicate on the main issue, it would have to decide whether or not Mr Piombo had the status claimed.

Mr Jones: To be honest, I'd not even considered that I might be sued – I wanted to see if there was any way of getting some kind of damages from Bilal.

Mr Connor: Well, it could be a little more complicated than that. Also, you need to consider whether Mr Kundakçı actually has any assets with which to pay any judgment. But let's worry about that later.

Mr Jones: Of course. So that's stages one and two. What about the third stage?

Mr Connor: Once the different legal issues have been determined, each of these will have one or more choice of law rules concerning which of the competing laws should be applied.

Mr Jones: So an Austrian court could apply Russian law?

Mr Connor: I couldn't answer that for certain. A key element in this may be the rules on renvoi. That's the process by which a court adopts the rules of a foreign jurisdiction with respect to any conflict of laws arising from a claim.

Mr Jones: I think I get the idea. So, stages four and five?

Mr Connor: These are quite simple. Once the question of the choice of law has been decided, those laws must be applied to reach a judgment. That's stage four. This may

also involve a fifth stage, which is securing cross-border recognition of any award.

Mr Jones: Mr Connor, I really do appreciate your talking me through all of this. It's an awful lot to take in. Can I just leave everything with you? I need to concentrate on my wedding.

Mr Connor: Of course. I'll put all of this in a letter outlining the various potential causes of action and how they would most likely be resolved. I'm sure we'll be able to settle this before things go any further.

Unit 10

Listening 1 / Audio 10.1

Throughout the centuries, differences among legal systems did not affect the functioning of each set of laws so long as societies remained independent from each other. In modern times, however, with advances in transportation and communication technologies, international trade is booming. This forces previously independent and alien legal systems to interact. The translator who bridges two or more legal systems is not only confronting different languages and the different ways they express meanings, but whole new worlds of complexity – as complex as each legal system. For these reasons, legal translators need not only language proficiency, but also a high level of familiarity with the legal systems of the countries originating and receiving the translated messages.

Listening 1 / Audio 10.2

The translation of a legal concept will fit into one of three categories. First of all, the concept can have a nearly identical equivalent in the target language (whether or not the words in the two languages are similar to one another), such as these Mexican legal words along with their United States equivalents: *homicidio*, which is homicide or murder, or *contrato*, a contract.

In the second category, the legal concept may have no easily identifiable equivalent, but with research, a somewhat similar concept can be found, such as *daños y perjuicios* – compensatory damages and loss of anticipated profits – or *daños morales* – non-pecuniary damages.

The third category are legal concepts with no near equivalent in the target legal system. For example, the Mexican legal concepts of *amparo* and *ejido* – which I'll go on to explain in a moment – have no equivalent under the United States legal system, and would have to be explained to the degree necessary for the particular context.

Words of the second and third categories require the translator to be especially careful when choosing terms in order to avoid misleading the reader or distorting the message. A translator has to use his or her judgment in choosing words, just like a lawyer uses his or her legal judgment when dealing with a case. The translator must ensure that the recipient of the message understands the concept in the way it is used in the original text. For example, if the translation pertains to a contract for the sale of *ejido* land, it might not be sufficient to refer to the land as 'cooperative farmland', but to clarify that it is land held communally which normally cannot be encumbered, transferred or sold.

A common error by translators who have not been trained to work with legal texts is to fall into the ever-present trap of false friends, as, for example, when the Mexican word *liquidación* is translated literally as 'liquidation' in reference to an employee. One might think of someone being executed, instead of the idea of 'final severance payment for an employee fired without cause', which is what the Mexican word denotes.

Finally, there are words which convey a different or unintended message due to culture. For example, the word 'dispute', a common piece of United States legal jargon, when translated as *disputa* in Mexico, evokes visions not of a legal conflict but of a nasty family argument.

Listening 2 / Audio 10.3

Gareth: Yes, exactly. Well, it sounds like you know the main differences between common- and civil-law systems. I'd like us to look at the speaking task now. I'm really very interested in what you have to say; I know very little about your legal system.

Michael: Um, sorry, Gareth, before we move on, can I ask a question?

Gareth: Of course, go ahead.

Michael: It wasn't mentioned in the reading we just looked at, but I keep seeing the word *equity* in other texts. Can you explain what equity is? I mean, equity in the sense of 'not law', not equity in the financial sense.

Gareth: Mm-hm. Ah, er, that's a tough one. Can anyone answer Michael's question? Beate?

Beate: Well, actually, I took my first degree in the UK, so I know something about this. Equity developed as a way of dealing with the inflexibility of the English legal system.

Martina: Well, most legal systems are quite inflexible. They have to be, otherwise you couldn't be certain how a case would be decided.

Michael: If lawyers knew how their cases would be decided, judges like us would be out of a job!

Martina: I wouldn't, I mainly hear criminal cases.

Gareth: You were talking about equity?

Beate: Yes, sorry. OK, so legal systems tend to be rigid and inflexible. This can lead to bad laws. Unless there is a way of continually correcting these, subsidiary systems or concepts may develop.

Martina: Have you prepared this talk?

Beate: No, but it was my dissertation subject. Anyway, these days, legislation normally corrects such defects. But there hasn't always been so much political will to pass new legislation.

Michael: Um, I'm sorry, but I still don't understand exactly what equity is.

Beate: Well, to understand it properly, you need to know some history.

Listening 2 / Audio 10.4

Beate: Well, to understand it properly, you need to know some history.

Michael: OK, then.

Beate: In the late Middle Ages in England, litigants could petition the king. Now, he would then refer cases to the Lord Chancellor.

Martina: Litigants are the parties in a legal case, right?

Beate: Yes. The claimant and the defendant.

Martina: And who is the Lord Chancellor?

Beate: Er, Gareth, how would you explain who the Lord Chancellor is?

Gareth: He's still a senior member of the British cabinet, appointed by the monarch on the advice of the prime minister. He used to perform several different judicial roles, but these were removed by the Constitutional Reform Act of 2005.

Martina: But he's still important?

Beate: Yes, he's still responsible for the efficient functioning and independence of the courts. The other responsibilities have now been given to the Secretary of State for Justice, which is quite a new position.

Gareth: That's right. Although both of those positions are held by the same person.

Michael: The same person?

Gareth: Yes. To be honest, I don't really know that much about the Constitutional Reform Act. I can email you some references though, if you're interested. OK, shall we get back to equity? Beate?

Beate: OK. So the Lord Chancellor could be petitioned by litigants. In dealing with these petitions, the Lord Chancellor developed a kind of legal system of his own.

Michael: A completely separate legal system?

Beate: No, it was never completely separate. It just made the common law less harsh or severe in certain cases. It also provided some new remedies where damages wasn't sufficient.

Michael: Ah, so that's the origin of the, um, so-called equitable remedies? Things like injunctions and specific performance?

Gareth: Yes. Equitable remedies are basically anything other than damages, which used to be the only available remedy. The Lord Chancellor set up his own court to administer equity.

Beate: There's an important case in English legal history, the Earl of Oxford's case. Was it in 1615?

Gareth: I couldn't say for certain. I'm sure you're right, though.

Beate: I think it was. In any case, it established that where there was a difference between the common law and equity, equity would prevail.

Martina: Do you still have these two systems in England?

Gareth: No. The Court of Chancery, the court that administered equity, disappeared a long time ago. I'm not sure exactly when.

Beate: It was abolished by the Judicature Acts 1873 to 1875. Since then, the common law and equity have been administered by the same courts. Equity still prevails, though, but you have to have clean hands.

Michael: Pardon?!

Listening 2 / Audio 10.5

Beate: Equity still prevails, though, but you have to have clean hands.

Michael: Pardon?!

Beate: You mentioned equitable remedies. The 'clean hands' doctrine is an equitable defence. It allows the defendant to argue that the claimant is not entitled to an equitable remedy if the claimant acted unethically or in bad faith with respect to the subject of the complaint.

Michael: Um, who has the burden of proof?

Beate: The defendant has the burden of proof to show the claimant is not acting in good faith.

Martina: Good faith? Is that the equivalent of *Treu und Glauben*?

Beate: Yes.

Gareth: Sorry, what was that? *Treu und* ...?

Michael: *Treu und Glauben*. It's part of German law. From what Beate said, it's basically the same as your concept of good faith. It has a similar effect to equity in certain cases.

Martina: I think that equity corresponds to certain concepts in the French Code Civil, but these haven't had quite the same amount of influence that the concept of good faith has had in Germany. Still, they're comparable to each other.

Beate: What the French do have is something similar called the doctrine of the abuse of rights. That has the effect of softening the harshness of the law in the same way as equity does in England. Well, maybe not in exactly the same way, but it's very close.

Michael: Um. Finally I'm beginning to understand equity. Thanks!

Gareth: Yes, thanks, Beate, that was fascinating ... Shall we take a break?