

## A note about the USA

The process is very similar in the United States. In the USA a new Bill has to be passed by Congress. Congress is constituted of two chambers. These are the House of Representatives and the Senate. Both chambers must approve the Bill. It then needs the signature of the President to become law.

**Exercise 2**

The second page of the book that Jack and Shelley have to read contains information on the subject of case law. Fill the gaps in the text with a word from the box below.

- |           |            |               |             |
|-----------|------------|---------------|-------------|
| ● binding | ● judgment | ● distinguish | ● precedent |
| ● judge   | ● instance | ● guidance    | ● common    |

**Case law**

Case law comes from judges. It is also known by two other names. These are:

- The (a) \_\_\_\_\_ law, and
- (b) \_\_\_\_\_-made law.

If a judge makes a decision on a point of law that has never been considered in court before, the judge's decision can become a statement of law. In the English legal system this statement forms the law for the future. It is called a (c) \_\_\_\_\_.

An important principle of the system of precedent is that the legal reasons for past decisions must be clear. For this reason, a (d) \_\_\_\_\_ given, or 'handed down', at the end of a case includes the judge's reasoning in giving his or her decision. In other words, as well as giving a summary of the facts of the case, a judge will also explain the principle of law he or she used in coming to the decision. These reasons for deciding the case are known as the 'ratio decidendi' and this is what creates the precedent for future judges to follow. The rest of what the judge says is known as the 'obiter dicta' and judges in future cases do not have to follow it. It can be problematic for lawyers to separate the ratio decidendi from the obiter dicta because the judgment does not contain any (e) \_\_\_\_\_ as to which is which.

There are two important factors in deciding whether a judge's decision becomes (f) \_\_\_\_\_ upon future cases, meaning that there is an obligation to follow it:

- The decision that forms the precedent must have come from a court senior to the court hearing the later case. Judges at the lower levels of decision-making, often called courts of first (g) \_\_\_\_\_, do not generally issue binding precedents.
- The facts of the later case must be similar enough to the facts of the precedent case. A judge can decide that the material facts of the case before him or her are sufficiently different to allow him or her to (h) \_\_\_\_\_ between this later case and the precedent.

It is also possible for a court in a later case to decide that the precedent created by an earlier case should no longer be the controlling law and a new precedent is set. This is called overruling. However, the later court must be of a higher level than the original court. The Supreme Court, which is the highest court in the UK system, can overrule its own earlier decisions. After The Supreme Court, some decisions can be overruled by the European courts.

Case law and statute are where most English law and certainly most English contract law come from.

To find out more or to read some cases you can visit the law reports website at [www.lawreports.co.uk](http://www.lawreports.co.uk)

To find out more about statute or to read some modern statutes from the UK you can visit the website of the Office of Public Sector Information (OPSI) at [www.opsi.gov.uk](http://www.opsi.gov.uk)