

Unit 1

Listening A

Lawyer: Well, maybe I should start by explaining how things work. You say that a writ has been served on you, informing you that an action has been filed against you for breach of contract. Is that right?

Client: Yes, I got that yesterday.

Lawyer: OK. That means that a complaint against you has already been filed with the court. Our next step will be to draft an answer to this complaint.

Client: How does that work?

Lawyer: In order to be able to draft an answer, I'll need information from you – facts, documents and the like – so that I can begin preparing your defence. Of course, we'll then also have to start building up evidence to support your defence. For example, we may wish to get affidavits – sworn statements – from potential witnesses supporting the statements you've made in your defence.

Client: Right. What happens next?

Lawyer: Well, it depends on how we wish to proceed. We should try to have the case dismissed as soon as we can. This will require filing motions. We'll also have to draft briefs clarifying our legal position, which we'll then submit to the court.

Client: I see. Do you think there'll be a trial?

Lawyer: That's hard to say exactly.

Client: If there is a trial, when will it take place?

Lawyer: When the time comes, the court will issue a notice to inform us of the date and time of the hearing.

Listening B

Javier: Hey, Robert, I've got a question for you. Why are the lawyers in the text we read referred to as 'attorneys'? What's the difference between 'lawyer' and 'attorney'?

Robert: The text deals with US law. 'Attorney' is a common word for 'lawyer' in the States. A friend of mine who practises in Virginia has the words 'Attorney-at-Law' on the sign outside his office.

Javier: Oh, I see ... And now I understand why the authorisation to represent someone in their legal affairs is called 'power of attorney'.

Robert: That's right. And the Head of the Justice Department in the US is called the Attorney-General.

Javier: So they mean basically the same thing. But what about the words 'barrister' and 'solicitor'? Those are definitely not the same. I just can't remember which one means what ...

Robert: Those two terms are used mostly in the UK and other common-law jurisdictions, except the US. A barrister is a lawyer who has the right to represent clients in a higher court. Solicitors provide legal advice, do research and generally prepare cases for their clients. They can represent their clients in the lower courts as well.

Javier: That's it! But what about 'advocate'? We've got the word *abogado* in Spanish, but you almost never hear that word used in English to talk about a lawyer ...

Robert: Well, you do hear it sometimes, but not very often. It's used in Scottish law, for example. Also in a few other common-law jurisdictions, like the Channel Islands or the

Isle of Man. 'Advocate' is a general term; he or she defends someone in court and gives legal counsel. But mostly 'advocate' is used to talk about someone who supports an idea, like in the phrase 'He's an advocate of free speech' or something like that. I guess the thing to remember about all these words is that knowing the definition is not enough – you need to understand something about their usage, how and where they are used, for example...

Listening C

Studying law in Germany is quite different than in the US. In the US, you have to have completed an undergraduate degree before going to law school, which is at a post-graduate level. The only prerequisite for the German law student is the *Abitur*, which means they have graduated from the *Gymnasium*, a rough equivalent of high school.

The curriculum in the German system is divided into three types of course and deals with the following three subjects: civil law, administrative law and criminal law. The student needs to complete a cycle of courses for each subject twice, once at a beginner's level and once at an advanced level.

First, there are the basic lectures. Here, there is little interaction between teacher and student, unlike the Socratic method used in the first year of American law studies, when a professor asks a student at random to paraphrase and then defend the court's argument in a specific case. Attendance is not mandatory, so students attend those lectures which they feel are interesting or important for the practice of law.

The second type includes required courses in which students are given assignments and take tests. Tests are hypothetical cases which the students are asked to resolve in class using only the statutes themselves. This is certainly different from the US, where emphasis is placed on legal precedent and case law. Specifically, at an early stage, American law students are expected to understand the difference between law and fact, and be able to analyse why different judgments are rendered by the court based on very similar facts. This ability to analyse fact and see important distinctions in similar cases is invaluable to lawyers practising in an adversarial system.

The third type of course involves working in groups in which students go over the three subjects under the guidance of senior students (called *Referendare*) who have completed the law curriculum and have passed the first part of the German equivalent of the bar examination, which is called the *Erste Staatsexamen*.

Finally, the student takes the *Erste Staatsexamen*, which is administered by the State. The exam consists of seven five-hour written tests: four in civil law, two in administrative law and one in criminal law. It's pretty tough, but I guess you would say that about your bar examination, too.

After passing, the student has the title of *Referendar*. For a period of two years, the *Referendar* rotates between clerkships both with the state and private lawyers. (This is also different than in the US, where you don't have to do a clerkship as part of your education.) During this time, when doing the clerkships, the