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A

ABH

See ASSAULT.

Absolute privilege

The word *privilege* means a *special right or immunity*, and is used in many legal contexts. *Absolute privilege* is a defence to an action in DEFAMATION and is available where a statement, which would otherwise be defamatory, is made

- in Parliamentary proceedings, by a member of either House of Parliament;
- in the course of judicial proceedings;
- in fair, accurate and contemporary reports, either in either print or broadcast media;
- by one very high-ranking officer of state (such as a MINISTER OF THE CROWN or a very senior CIVIL SERVANT) to another, but the limits of who is protected are unclear.

The *absolute* nature of *absolute privilege* means that, unlike *qualified privilege* (see DEFAMATION), it cannot be defeated in any circumstances.

Absolute title

See REGISTERED LAND.

Abstract of title

When land is being sold, the *seller's* solicitor must satisfy the *buyer's* solicitor (with the *seller* and the *buyer* also being known as the *vendor* and *purchaser*) that she has good title to the land. Historically, an important stage in this process was the preparation, and delivery, of an *abstract of title*, although the modern practice is to prepare, and deliver, an *epitome of title*.

In the case of land with unregistered title (see TITLE TO LAND), an abstract of title contains a summary of the contents of the various deeds

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and other documents which, taken together, establish the seller's ownership of the land. With the widespread use of photocopying machines, the practice has changed to the use of *epitomes* (rather than *abstracts*) of title. An *epitome of title* consists of a collection of photocopies of all the relevant documents.

In the case of land with registered title (see REGISTERED LAND), the seller will prepare, and deliver, both

- photocopies of the entries which appear on the register of title, together with a copy of the filed plan which identifies the land; and
- either an abstract or other evidence relating to matters (such as OVERRIDING INTERESTS) in respect of which the register does not provide conclusive evidence; together with
- photocopies or abstracts of any other documents which are noted on the register.

Abuse of a dominant position

The concept of *abuse of a dominant position* is a key part of EU Competition Law. It raises two questions:

- what is a dominant position?

and, assuming there is a dominant position,

- what counts as an abuse of it?

A dominant position arises where one firm dominates a particular market. The market may be defined by its *substance* or its *geographical* area. Both possibilities may give rise to difficulties in purely practical terms.

For example, a firm which specialises in importing and selling bananas may have a dominant position in that market without having a dominant position in the wider market for fresh fruit. In this case, the question will be whether, in market terms, bananas are interchangeable with other fresh fruit, or whether they form a market on their own.

Similarly, where a firm dominates a particular market within some (but not all) member states, the question is whether or not the dominant position extends to a *substantial part* of the EU market.

Conduct constituting *abuse* of a dominant position includes

- unfair trading conditions such as imposing unfair prices;
- prejudicing consumers by limiting production, markets or technical developments;

- placing some firms at a competitive disadvantage by differentiating between the terms of business offered to them and those offered to their competitors;
- requiring firms to accept obligations which have no connection with the subject-matter of their contracts.

Abuse of power

There is an implied requirement that decision-makers functioning within the public sector shall use in a lawful manner whatever powers the law has conferred upon them. While a detailed knowledge of what is meant by *lawfulness* and *unlawfulness* in this context can only be acquired by studying ADMINISTRATIVE LAW, the underlying principle is that any exercise of power is unlawful if it involves an *abuse of power* (for example, by using the power for an improper purpose, or by failing to exercise a discretion by reference to legally irrelevant considerations).

The Queen's Bench Division of the HIGH COURT controls abuse of power through JUDICIAL REVIEW.

Abuse of process

Where a court is satisfied that allowing a case to continue would cause significant unfairness to one or more of the parties, it may terminate the proceedings on the basis that their continuation would be an *abuse of process* (or, to use a slightly fuller form of the expression, an *abuse of the process of the court*).

Acceptance

See CONTRACT.

Accession

- 1 Where a treaty exists between two or more states, the process by which additional states become parties (or *accede*) to the treaty is known as *accession* to the treaty.
- 2 When the King or Queen dies or abdicates, his or her heir accedes to the throne. *Accession* to the throne takes place on the date of the death or abdication, and must be distinguished from the formal act of *coronation* of the new monarch.

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Accessory

There are four ways of being an accessory to the commission of a CRIME, namely:

- by *aiding* (which means *helping*) the principal offender to commit the offence (for example, by lending her a gun or a car for use in the commission of the offence);
- by *abetting* the principal offender – although the precise meaning of *abetting* is unclear; and it is difficult, if not impossible, to think of a situation which would count as abetting which would not also count as at least one of the other three ways of being an accessory;
- by *counselling* (which means *advising* and/or *encouraging*) the principal offender to commit the offence); and
- by *procuring* (which means *causing*) the principal offender to commit the offence.

In order to be guilty of being an *accessory*, the person doing the *aiding*, *abetting*, *counselling* or *procuring* must do so before the principal offence is committed, although there are also offences of giving various kinds of assistance to offenders after they have committed their offences.

Acquis communautaire

The French phrase *acquis communautaire* (which may be pronounced *ack-ee com-mune-oh-tare*) is sometimes used to describe the whole body of European Community law.

See also SOURCES OF EUROPEAN COMMUNITY LAW.

Acquittal

An *acquittal* is the decision of a court that the PROSECUTION has not proved guilt beyond a reasonable doubt.

Before the Criminal Justice Act 2003, acquittal was an absolute bar to any further proceedings in respect of the same charge in all cases. This proposition sometimes appears in the French phrase *autrefois acquit* (which may be pronounced *oh-ter foyz a-kwit*), and which simply means that the defendant has been acquitted on another occasion.

Now, however, where there has been a trial ON INDICTMENT, the COURT OF APPEAL can order a retrial where the prosecution shows that new and compelling evidence has become available.

Act of God

The expression *Act of God* carries no religious implications, meaning simply a natural event, such as a storm or a flood, which could not be foreseen or prevented.

Act of Parliament

The fact that, in practice, the GOVERNMENT commonly dominates the HOUSE OF COMMONS, makes it easy to overlook the fact that neither the Government nor the House of Commons actually *is* PARLIAMENT. The true position is that, subject to one exception, a BILL will not become an *Act of Parliament* unless it has been passed by both the House of Commons and the HOUSE OF LORDS and has received the Royal Assent (see BILL). (The exception arises where the procedure under the PARLIAMENT ACTS 1911 AND 1949 has been used, in which case a Bill may proceed to the Royal Assent even though it has not been passed by the HOUSE OF LORDS.)

See also CONSOLIDATING ACTS; PUBLIC GENERAL ACTS; and PRIVATE ACTS.

Act of State

The doctrine of *act of state* relates to

- acts which are done by either the GOVERNMENT or its agents;
 - when implementing government policy concerning the United Kingdom's relations with another sovereign state;
 - which the government has either authorised in advance or ratified subsequently.

Acts of state usually involve interference with property rights – for example, setting fire to a barracks in Africa in order to liberate slaves.

A court which is satisfied that a claimant's case arises from an act of state must refuse to allow the case to proceed. Where this happens, the claimant's only course of action will be to seek compensation through political channels, rather than legal ones.

Actual bodily harm

See ASSAULT.

Actual notice

See NOTICE.

Actus reus

In order to establish that a DEFENDANT has committed a CRIME at COMMON LAW the prosecution must prove both the relevant *actus reus* (or guilty *act*) and the relevant *MENS REA* (or guilty *mind*). (The first word of the phrase *actus reus* may be pronounced in the obvious way, while *reus* may be pronounced *ray-us*. The first word of the phrase *mens rea* may be pronounced in the obvious way, while *rea* may be pronounced *ray-a*.)

The *actus reus* of an offence is what the defendant has done, when viewed from an external point of view (as distinct from his state of mind, which will determine whether the *mens rea* was also present). Common examples include appropriating property belong to another person (which is the *actus reus* of THEFT) and possessing an offensive weapon in a public place.

Adjectival law

Although many areas of law are concerned with matters of *substance* (for example, what must the prosecution prove in order to secure a conviction for MURDER) and so is called SUBSTANTIVE LAW, many areas are concerned with *procedural* matters (for example, what EVIDENCE will the court be willing to admit when deciding whether the prosecution has proved that the DEFENDANT has committed murder), and so is called *procedural law*. *Adjectival law* is simply another expression meaning exactly the same things as *procedural law*.

Adjournment

A court will *adjourn* a case which it is unable to deal with to its conclusion.

Adjournments may be for very short periods (for example, for lunch) or for much longer periods. When adjourning, the court must either specify when the hearing will resume, or adjourn indefinitely, with the parties being informed subsequently of the time and date when they must return to court. Adjourning indefinitely is usually called *adjourning sine die*. (The Latin phrase *sine die* is usually pronounced *sy-nee dye* and is translated as *without a day* – which means, of course, *without a day being specified*.) An alternative way of designating indefinite adjournments is *d/tf*, which is short for *date to fix*, meaning *to a date to be fixed*.)

See also BAIL.

Adjudication

- 1 In its broadest sense, *adjudication* means the process of deciding disputes judicially (or in a judge-like) way.

- 2 In a narrower sense, *adjudication* is a form of ALTERNATIVE DISPUTE RESOLUTION which is a statutory requirement for certain classes of CONTRACT (see, for example, the Housing Grants, Construction and Regeneration Act 1996) and may be agreed by the parties in others. It is normally subject to short time limits and the award (which is made by a person called the Adjudicator) is binding unless it is changed by ARBITRATION or court order.

Administrative Court

The *Administrative Court* is a specialist section of the Queen's Bench Division of the HIGH COURT, dealing with PUBLIC LAW cases. The cases it deals with were previously known as the *Crown Office list*.

Administrative decision-making

Until the 1960s, the court took the view that the remedies which were available by way of what are now called *claims for JUDICIAL REVIEW* would vary according to whether the decision-making process which was being challenged was *administrative, judicial or quasi-judicial*. More particularly, the remedy of *certiorari* (a Latin word which may be pronounced *sir-shore-rare-eye* and was the name of the old remedy which has now been replaced with a *quashing order*, whose function is self-evident) was originally available only in the context of *judicial* decision-making. The distinctions between the three categories were as follows.

Administrative decisions were those where the decision-maker was under no legal duty to weigh the evidence or the arguments, or to solve any issue. The means by which she proceeded to make her decision was left entirely to her discretion.

At the other end of the spectrum, *judicial* decisions were those where there was a dispute between two or more parties, who must be given an opportunity to present their cases; and where disputes of fact and law would be resolved respectively by weighing conflicting evidence and conflicting legal arguments, before making a decision by applying the law to the facts.

However, the court was originally unable to quash decisions which did not fall into the *judicial* category and accordingly it invented a category which fell midway between the two extremes and to which it gave the name *quasi-judicial*. Decision-making processes in this category involved disputes between two or more parties, and the presentation of opposing cases with regard to the facts. They may, or may not, have involved arguments as to the law; but, even when they did, the result was not

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determined by the straightforward application of the law to the facts, but by a process characterised by *administrative discretion*. The court then persuaded itself that decision-making processes which fell into the *quasi-judicial* category were sufficiently like those which were truly judicial for the remedy of *certiorari* to be available to quash the decisions which they produced.

The idea of a spectrum of decision-making processes, with purely judicial and purely administrative functions at opposite ends, is still useful. However, the term *quasi-judicial* is now more or less redundant, with the court taking a much more fluid approach to cases falling between the two extremes, and no longer feeling the need for a label to characterise the middle ground.

Administrative Law

Administrative Law provides the legal framework within which public bodies and public officials perform their functions. There is often a particular emphasis on identifying the limits of their powers and the legal mechanisms which are available to keep them within those limits.

Administrative tribunals

There are many *administrative tribunals* (often referred to simply as *tribunals*) covering a wide variety of matters. Tribunals dealing with social security matters are typical examples.

The common characteristic of these tribunals is that they are all created by statute in order to provide ways of resolving disputes which are speedier, more informal and more expert with regard to the subject-matter of the disputes, than the courts.

Tribunals will typically consist of a legally qualified chair, together with two lay members who will sit on either side of the chair (and who are, therefore, commonly called 'wing members').

Tribunals must be distinguished from *statutory inquiries*. The essential difference between them is that tribunals are almost always independent bodies which decide cases, while inquiries (such as *public local inquiries* dealing with appeals against adverse decisions made by local planning authorities) are part of the machinery of government. Thus, inquiries either report to a MINISTER OF THE CROWN so that she can exercise her discretion on an informed basis, or (increasingly) exercise discretion on behalf of the Minister.

In addition to the kinds of tribunals and inquiries outlined above, there is a third possibility. This arises where a Minister of the Crown sets up a

body for the specific purpose of inquiring into, and reporting on, a particular matter of public concern. Historically, the *ad hoc* nature of these inquiries led to a lack of consistency in their creation, but the Tribunals Act 2005 introduced a comprehensive framework for such inquiries.

The fact that a *Tribunals Act* deals with what are, essentially, *inquiries* creates a regrettable element of confusion. However, it does point up the fact that, in addition to the meaning outlined above, the word *tribunal* is sometimes used in a general sense to mean *decision-maker* – for example, ‘the meaning of an ordinary word of the English language is a question of fact to be decided by the tribunal of fact’. (The identity of the tribunal of fact will depend on the circumstances, with the main possibilities being a decision-maker such as a LOCAL AUTHORITY or a SECRETARY OF STATE, or, in the context of a court, the MAGISTRATES, the JURY or the JUDGE.)

Administrator

- 1 In the law of *succession*, a man who deals with the estate of someone who has died either without leaving a *WILL* (in other words, who has died *intestate*) or has died leaving a will but has not appointed an *executor*, is known as an *administrator*. (At one time it was common, where the relevant person was a woman, to use the terms *executrix* and *administratrix*, since these are the feminine forms of the words in Latin. However, on the common-sense basis that both *administrator* and *executor* are now English words, they may be used for both sexes without offending too many people.)

In the first situation, the administrator obtains *letters of administration* from the PROBATE REGISTRY, and then distributes the estate in accordance with the rules set out by statute.

In the second situation, the administrator obtains *letters of administration with the will annexed* and then distributes the estate in accordance with the instructions contained in the will.

- 2 In company law, an *administrator* is a person appointed by the court to administer the affairs of a company which is unlikely to be able to pay its debts. The court must be satisfied that putting the company into administration will be in the best interests of its creditors.

Admissible evidence

See EVIDENCE.

ADR

See ALTERNATIVE DISPUTE RESOLUTION.

Adult

A person becomes an *adult* on reaching the age of 18. An adult is also sometimes described as being a *person of full age*.

Adversarial procedure

For practically all purposes, judicial proceedings in English law are *adversarial*. This means that the parties present their versions of the facts and their submissions as to the relevant law, and the court decides who shall win. It is no part of the courts' responsibilities to perform an *inquisitorial* function by conducting its own inquiry into the facts of the case.

Adverse possession

Adverse possession, which non-lawyers usually call *squatters' rights*, is the means by which a person may acquire what amounts to a kind of title to land which they are occupying unlawfully. In order to establish title by adverse possession, it is necessary to show that the adverse possession has not been maintained by force; has been open (or, in other words, not secretive); and has not been permitted in return for payment. The Latin phrase for these three requirements is *nec vi, nec clam, nec precario* and may be pronounced *neck vee, neck clam, neck preck-ah-ree-oh*.

The basic rules are that:

- the occupation must have been for at least 12 years; and
- the occupier must have occupied the land as if she were the owner and with the intention of occupying it.

Where title to the land is an unregistered freehold (see ESTATES IN LAND), the true owner's title is extinguished and the possessory owner acquires a *fee simple* estate. This is a new and independent estate, rather than a transfer of the true owner's estate.

Where title to the land is an unregistered leasehold (see LEASE), the possessory owner will still obtain a *fee simple* and the leasehold will be extinguished. However, as against the owner of the freehold reversion, the 12 year period will not start to run until the date on which the lease would have expired, because until that date the freeholder would not have been entitled to possession of the land.

Where title to the land is registered, there are two important differences. First, the twelve-year period is broken down into two periods of 10 years and 2 years respectively. More particularly, after being in adverse possession for 10 years, the possessory owner may apply to the Land Registry, asking to be registered as the owner. The Registrar will then notify the registered owner, as well as certain other people (such as those who have lent money on MORTGAGE) who are interested in the land.

If the Registrar receives no objection, she will grant the application and register the possessory owner as the owner.

If the Registrar does receive any objections, she must refuse the application unless there are circumstances (including certain boundary disputes) which make it appropriate that the application should be granted. If the application is refused, but the registered owner does not begin proceedings to recover the land within two years, the possessory owner may apply again to the Registrar, asking to be registered as the owner of the land. On this occasion, the Registrar must grant the application.

However, and this is the second important point of difference from the position where title is unregistered, the possessory owner will gain only the title which the registered owner has lost. In other words, a possessory owner who displaces a registered leaseholder will gain only that leasehold interest, rather than the freehold. Once the lease reaches its expiry date, however, the possessory owner will be in adverse possession as against the freeholder. In other words, time will start to run in respect of the freehold (with the same 10 year and 2 year timetable applying again), and the possessory owner of a leasehold will have to wait rather longer before she acquires the freehold.

Advocate-General

The role of *Advocate-General* in the Court of Justice of the European Communities (more usually known simply as the *EUROPEAN COURT OF JUSTICE*, or *ECJ*) has no equivalent in the domestic English legal system.

The role of the Advocate-General is based on that of the French *Commissaire du Gouvernement* in the *Conseil d'État* (the French constitutional court), who is sometimes described as the 'disembodied conscience of the court'. (It might be more accurate to use a phrase such as 'the embodiment of the conscience of the court'; but, despite its inaccuracy, the other phrase is well established.) More particularly, the Advocate-General is under a duty to act impartially and independently, in order to assist the Court by presenting legal arguments leading to reasoned decisions, which the Court may (or may not) choose to adopt.

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Although there appears to be some similarity between the role of the Advocate-General and that of an English COUNSEL TO THE COURT, the appearance is misleading for two reasons.

First, an Advocate-General is an integral part of the ECJ and will appear in every case, while it is rare for an English court to have a counsel to the court.

Secondly, the function of the Advocate-General is to give a reasoned opinion as to what she thinks the relevant Community law is, which the judges may simply adopt in a very short judgment. Counsel to the court, on the other hand, appears at the invitation of the court in order to present whatever arguments are possible in support of an important point of view which would otherwise be unrepresented.

A fortiori

The Latin phrase *a fortiori* (which may be pronounced *ay for-she-or-eye*) literally means 'from the stronger case', but may be translated more colloquially as 'all the more so'. For example, 'Any inexperienced student who skims this book is likely to increase her understanding of legal terminology; *a fortiori* if she studies it carefully'.

A-G (or AG)

A-G (or AG) is the abbreviation for *Attorney-General* – see LAW OFFICERS OF THE CROWN.

Agent

In the law of CONTRACT, an *agent* is a person who acts on behalf of another person, who is known as the *principal*. In general terms, an agent who negotiates a contract between her principal and a third party will not acquire any personal liability (or benefit) under the contract. However, where a person falsely claims to be acting as an agent, she will be liable to a third party for *breach of warranty of authority*.

An agent who negotiates a sale of property on behalf of its owner may agree with her principal that she will become personally liable to pay the purchase price if the purchaser defaults. In return for accepting this risk, the agent will usually require to be paid more for her services than she would otherwise receive. An agent who agrees to work on this basis is called a *del credere* agent. (*Del credere* may be pronounced *del cred-air-reh.*)

Agent provocateur

The French phrase *agent provocateur* (which may be pronounced *arje-on pro-voc-a-tur*) describes a person who behaves in such a way that someone else commits an offence which they would not otherwise have committed – for example by offering to buy controlled drugs from someone who would not otherwise have sold them to that person. A person who commits an offence as the result of the activities of an *agent provocateur* will not be able to use those activities in order to establish a defence, but the court does have a discretion to exclude evidence obtained as a result of them. The criteria according to which the court will decide whether to exercise this discretion are (i) whether the offence was already being committed before the *agent provocateur* became involved (in which case, strictly speaking, she is not really an *agent provocateur* at all); (ii) whether the defendant would have committed the offence anyway; and (iii) whether the defendant had a propensity to commit offences of the type for which she is being tried.

An *agent provocateur* will be guilty either of the offence of INCITEMENT (if the defendant had not committed an offence before she became involved), or as an ACCESSORY if the offence was already being committed.

Aggravated burglary

See BURGLARY.

Aggravated damages

See DAMAGES.

Aggravated vehicle taking

See CONVEYANCE.

Agreement for a lease

In almost all cases, a LEASE which is a legal estate (see ESTATES IN LAND) can be created only by DEED. However, one of the MAXIMS OF EQUITY states that *equity* (see COMMON LAW) *looks on that as done which ought to be done*, and, therefore, once a specifically enforceable *agreement for a lease* comes into existence, the agreement will be as good as a lease in the eyes of equity. For many practical purposes, an equitable lease created by an agreement for a lease is as good as a legal lease, although the exceptions are by no means unimportant. For example, where the agreement relates

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to land with unregistered title, it may be defeated by a *bona fide PURCHASER for value without notice* of the equitable interest.

An equitable lease created by an agreement for a lease is often called a *Walsh v Lonsdale* lease, after the leading case of that name, reported at (1882) 21 Ch D 9. By statute, such a lease must be in writing if it is for a period of 3 years or longer.

Alibi

An *alibi* is a defence to a criminal charge in which the defendant pleads that she was somewhere else when the crime was allegedly committed. At one time, the defence was allowed to produce alibi defences (and witnesses to support them) as surprises at the trial. Now, however, advance notice of an alibi defence and of the witnesses who will support it, must be given to the prosecution.

(The word *alibi* has acquired the status of being a loan-word in English, but in its original Latin it simply means *elsewhere*.)

Alternative dispute resolution

Alternative dispute resolution (which is often abbreviated to *ADR*) is a general expression which includes a number of procedures which the parties to a dispute may choose as an alternative to pursuing court proceedings. The main possibilities are ADJUDICATION, ARBITRATION, CONCILIATION and MEDIATION.

Amicus curiae

See COUNSEL TO THE COURT.

Annuity

An *annuity* is a sum of money payable annually, usually for the lifetime of the recipient.

Anton Piller Order

See SEARCH ORDER.

Appeal

Proceedings by way of *appeal* almost always involve the *appellant* asking the court which is hearing *appellate* jurisdiction to substitute its own

decision for that of the original court or decision-maker. The exception occurs in *appeals by way of case stated*. These appeals are on points of law only. The appellate court receives a statement of the facts as they were either agreed by the parties or found by the original court or decision-maker, together with a statement of the law as the original court or decision-maker understood it to be. The appellate court is then asked whether that understanding of the law and the decision based on it were correct.

Where an appeal by way of case stated is allowed, the appellate court will usually send the case back to the original court or decision-maker for further consideration, but it may, in an open-and-shut case, substitute its own decision.

Appeals, other than appeals by way of case stated, may be on either *matters of fact or points of law* or both. The details will depend on the rules governing the kind of appeal in question, which in turn will depend on the identity of the original court or decision-maker and the identity of the appellate court. For example, a defendant who is convicted by a magistrates' court may appeal on the facts to the Crown Court, but must go to the High Court by way of case stated if the appeal is on a point of law.

Many appeals apart from appeals by way of case stated are sometimes described as being *by way of re-hearing*, but this can be misleading. An appeal to the Crown Court against conviction by the magistrates' court will be a true re-hearing, with the witnesses giving their evidence again. However, in most other appeals which are described as being by way of re-hearing, the appellate court will not re-hear the witnesses, but will confine its consideration of the merits of the appeal to the records of the original court or decision-maker. While this may seem to blur the distinction between *appeal* and JUDICIAL REVIEW, there remains the basic point that in an appeal the focus of the appellate court is on the *correctness of the decision*, while in judicial review the focus is on the *legality of the decision-making process*.

See also CIVIL PROCEDURE RULES.

Appeals Committee

See HOUSE OF LORDS.

Appellant

See APPEAL.

Appellate

See APPEAL.

Appellate Committee

See HOUSE OF LORDS.

Arbitration

Arbitration is a form of ALTERNATIVE DISPUTE RESOLUTION which arises when the parties to a contract agree that disputes arising from the contract will be resolved by an independent person called an *arbitrator*, rather than by pursuing legal proceedings through the courts. The parties either agree on who is to be the arbitrator, or appoint someone else to make that decision.

From a procedural point of view, arbitration is much less formal than court proceedings, and provided an arbitration is conducted fairly, the usual rules of evidence need not be followed.

The 'judgment' of an arbitrator is called an *award*.

Articles of association

The constitution of a company is contained in two documents, namely its *memorandum of association* and its *articles of association* (which are generally referred to simply as its *memorandum* and *articles*).

The *memorandum* specifies

- the company's name and registered office;
- its objects (or, in other words, the things it may lawfully do);
- the amount, if any, of its authorised capital;
- if appropriate, the fact that it has *limited liability* (see LIMITED COMPANY).

The *articles* specify matters concerning the internal arrangements and management of the company, such as

- the issue and transfer of shares;
- alteration of share capital;
- company meetings; and
- the appointment and powers of directors.

Assault

Assault may be both a TORT and a CRIME, but the word does not have exactly the same meaning in both contexts.

The tort of *assault* is committed where the defendant puts another person in immediate fear of a *battery*. (*Battery*, which is a separate tort, is committed where the defendant applies unlawful force to the body of another person.)

At COMMON LAW, the *crimes of assault and battery* have the same meanings as they do in tort. However, the offences of assault under ss. 47, 20 and 18 of the Offences Against the Person Act 1861 (which are presented here in ascending order of seriousness) are much more important in practice. They all involve the infliction of some degree of harm, and therefore, by implication at least, they all include *battery* within the definition of *assault*.

Section 47 of the 1861 Act deals with *assault occasioning actual bodily harm*. For the purposes of this provision, *actual bodily harm* (which is often abbreviated to *ABH*) means any bodily harm unless it is both trifling and transient. In practice, therefore, it usually means injuries such as bruising and minor abrasions, but it is not limited to physical harm and includes psychological harm (such as medically recognised stress). However, a mere emotion (such as fear) is not sufficient.

Section 20 of the 1861 Act deals with *malicious wounding* and the infliction of *grievous bodily harm*. (In this context, *wounding* means *breaking the skin*, and *grievous* simply means *really serious*.) In practice, a broken bone will usually be treated as bringing an assault within the scope of s. 20.

Section 18 of the 1861 Act deals with *wounding or causing grievous bodily harm* provided there is an *intention* either to cause grievously bodily harm or to resist or prevent the lawful apprehension or detention of any person.

All the offences mentioned above are more serious (and therefore carry heavier maximum penalties) when they are *racially aggravated*, under s. 32 of the Crime and Disorder Act 1998. An offence is racially aggravated if the defendant is motivated by hostility towards members of a racial group, or if, at the time if the offence, she demonstrates racial hostility towards the victim.

Assault by penetration

See RAPE.

Assent

Where property has been inherited under a WILL or on an INTESTACY, an *assent* is the document by which a PERSONAL REPRESENTATIVE transfers the legal estate in the property to the person who is inheriting it.

Assignment

Certain transfers of property are known as *assignments*. For example, if a landlord (L) has granted a LEASE of land to a tenant (T) for 10 years, but T wants to move when the lease still has some time to run, her sale of the unexpired term will, technically, take the form of an assignment to her purchaser, T2. (In fact there will often be a covenant in the lease controlling possible assignments, with a typical requirement being to obtain L's consent.)

Similarly, if at some stage during the lease, L decides that she would rather have money now than possession of the land at the end of the lease, she can assign the *freehold* reversion to L2.

Changing the context, if someone who is owed money wishes to transfer the benefit of the debt to another person (so that the debt becomes payable to that other person), the transfer will be an assignment of the debt.

Assumption of risk

A defendant in a TORT case will have a defence if the claimant has voluntarily accepted the risk of suffering the harm which she did in fact suffer and in respect of which she is bringing the action. For example, a passenger who was injured when a light aircraft crashed could not recover damages because she knew, before they took off, that the pilot was drunk.

Attempt

It is a criminal offence to *attempt* to commit a criminal offence which is either an INDICTABLE OFFENCE OR AN OFFENCE TRIABLE EITHER WAY, even though the attempt is unsuccessful. In order to secure a conviction, the prosecution must show that the defendant did something which was more than merely preparatory to committing the offence.

A defendant who makes a mistake of fact may still be convicted of an attempt, provided she would be guilty of the substantive offence if the facts were as she believed them to be. For example, a defendant who shoots someone who is apparently asleep, with the intention of killing them, is guilty of attempted MURDER even though, unknown to her, the 'victim' had died from a heart attack a few minutes earlier. Where, however, the mistake is one of law, she will not be guilty of attempting to commit an offence. For example, a defendant who attempts to do something, wrongly believing that what she is attempting to do is a criminal

offence, cannot be guilty of attempting to commit something which is not, as a matter of law, an offence.

Attorney-General

See LAW OFFICERS OF THE CROWN.

Audi alteram partem

See RIGHT TO A FAIR HEARING.

Automatism

Where a defendant is alleged to have committed a criminal offence which is based on conduct over which she had no control, she may have the defence of *automatism*. In order to establish this defence, she must establish that she was subject to a complete absence of voluntary control, which was caused by an external factor, and that she was not responsible for her condition.

So, for example, she would have the defence of automatism to a charge of dangerous driving if someone threw a brick at her while she was driving with the driver's window fully open, with the result that she was knocked out and lost control of the car. On the other hand, if her loss of control was due to an epileptic fit, the *internal* nature of the cause of her lack of control would mean that she would not have the defence of automatism (but see below for the defence of *insanity*).

Similarly, if her condition was due to self-induced intoxication through alcohol or some other drug, she would be responsible for her condition and would not, therefore have the defence of automatism.

Although excluding *internal* causes from the definition of automatism may seem unfair, where a defendant's complete absence of voluntary control is due to an internal cause she will often be able to plead *insanity*. In order to establish this defence, she must prove that, at the time of the alleged offence, she was

- suffering from a disease of the mind (which means, in this context, *impairment* of the defendant's faculties of *reasoning*, *memory* and *understanding*);
- the impairment must be complete (although it may be only temporary), so that, for example, mental confusion or loss of concentration will not be enough; and
- the result must be that either

20 Key Concepts in Law

- the defendant did not know the nature and quality of her conduct;
or
- if she did know the nature and quality of her conduct, she did not know it was wrong.

Pausing only to note that these principles are often known as the *M'Naghten Rules* (after the leading case of *M'Naghten* [1843-60] All ER Rep 229), it is obvious that the meaning of *insanity* in this context is by no means the same as the medical, or even the everyday, meaning of the word. (*M'Naghten* is pronounced *MacNorton*.)

When a plea of insanity succeeds, the defendant will be found *not guilty by reason of insanity* and (despite the fact that she has been acquitted) may be subject to anything from indefinite detention in a special hospital (such as Broadmoor) to an absolute discharge (except where the charge was murder, in which case the judge has no alternative but to order indefinite detention in a special hospital).

Where the defendant claims to be insane at the time of her trial (rather than at the time of the conduct alleged to constitute an offence, which is the situation dealt with above) the court must decide whether she is fit to plead. The issue here will be whether she is unable to give, receive or understand communications relating to the trial. Where the defendant is found to be unfit to plead, the court has a discretion to choose from a wide variety of orders, up to and including indefinite detention in a special hospital, such as Broadmoor.