

Einführung in die Anglo-Amerikanische Rechtssprache = Introduction to Anglo-American Law & Language : Band I

von
B. Sharon Byrd

3. Auflage

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Language Exercises Unit I

I. Fill in the blanks with the correct verb. (The German verbs used for expressing the ideas in the following sentences are indicated in the infinitive form. The fact that the same German verb is used in more than one of these sentences does not mean that the English verb will be the same!):

1. The legislature ___ statutes. (verabschieden)
2. The German Civil Code ___ into a general part and four specific parts. (teilen)
3. The common law in the United States ___ from the common or unwritten law of England. (ableiten)
4. Judges in a common law system ___ by their previous decisions, referred to as precedents. (binden)
5. In an 1898 case, the House of Lords ___ that it was ___ by its own decisions and could not ___ from them, or ___ them, in future cases. (entscheiden [not: to decide!]; binden; abweichen; außer Kraft setzen)
6. In 1966 this decision ___ in an official announcement. (zurücknehmen)
7. The Lord Chancellor ___ this announcement. (bekanntgeben)
8. The doctrine of stare decisis ___ at least some degree of certainty in the law. (liefern)
9. On the other hand, one should not ___ to this doctrine too rigidly. (sich halten an)
10. Ms. Anderton ___ for attempting to handle stolen goods. (verfolgen)
11. She was only ___ for the attempt, because the crime ___. (verfolgen; nicht vollenden)
12. The trial court ___ the charges against Ms. Anderton, but its decision ___ by the court of appeal. (abweisen; aufheben)
13. On appeal to the House of Lords, the decision of the trial court ___ and Ms. Anderton ___. (aufrechterhalten, freisprechen)
14. In contrast, Mr. Shivpuri ___ of an impossible attempt to deal with heroin. (verurteilen)
15. Mr. Shivpuri claimed that he ___ on the law ___ in *Anderton*. (sich verlassen auf; darstellen)

II. Fill in the blanks with one or more terms:

The person initiating a law suit is called the 1. In order to initiate a law suit, one has to file a 2 or 3, which contains 4 or 5 or 6, all of which are words for “claims”. The person against whom the law suit is initiated is called the 7. A law suit is filed with the 8. A party who is dissatisfied with the decision of this court can 9 to a higher court. The party doing that is called the 10 and the other party is called the 11. In a common law system, judicial opinions contain principles of law in the 12, which function as binding 13 for future similar cases. In a civil law system, the primary source of law is contained in 14. A common law system also has written laws called 15. The highest court in England was the 16, which was headed by the 17, who was also the head of the British 18. The other judges on this court were called 19. A higher court’s opinion contains a description of the 20, which tells you what happened, and a statement of the 21, which tells you how the lower courts decided the case. Furthermore, the opinion contains a statement of the 22, which is the legal problem raised for the court’s decision and the 23, which is the solution to this problem. Anything the court says that is not necessary for its decision in the case is called 24. Another way to say that someone is responsible for paying for the damage he has caused is to say that he was held 25 for 26. Responsibility in a torts case is often based on 27, which means the failure to exercise 28 care under the circumstances.

III. Which of the following forms of action are actions ex contractu and which are actions ex delicto?

assumpsit – covenant – debt – replevin – trespass – trespass on the case – trover

IV. Match the following definitions to the above terms:

- a. form of action to recover damages to compensate for injury caused by the defendant’s unlawful interference with the plaintiff’s person, property or rights
- b. form of action to recover a specific sum of money the defendant owes the plaintiff
- c. form of action to recover damages to compensate for the value of personal property which the defendant has wrongfully converted to his own use, such as by finding the plaintiff’s property and keeping it for himself
- d. form of action for damages to compensate for the defendant’s failure to perform as promised under a simple contract, whereby the promise may be implied by law or expressly made by the defendant

e. form of action to recover personal property from defendant who unlawfully detains it, whereby the plaintiff may secure possession of that property on the posting of a bond or security at any time before judgment

f. form of action to recover damages to compensate for injury resulting from the defendant's wrongful act which was not an act of direct or immediate force but instead which caused the harm indirectly or as a secondary consequence

g. form of action for damages to compensate for the defendant's failure to perform as promised under a contract which is written and has been signed, sealed and delivered to the plaintiff

V. Fill in the blanks (some could require more than one word):

In the United States, two types of jury are used, the 1 and the 2. The former is responsible for handing down the 3, which contains the criminal charges against the accused. The latter is also referred to as the 4 and is classically composed of twelve members. The members of this 5 are selected from the 6, or the group of people who are qualified for and neither excused nor exempt from service. If a lawyer suspects that the jury commissioner has exercised discrimination in selecting this body, she may exercise a 7. The actual selection process for the twelve who will serve is called the 8. Lawyers can affect the composition of the 9 by exercising a 10 if there is good reason to believe that the person is unfit to serve. In addition, each of the lawyers has a certain limited number of 11 with which they may exclude persons without giving any reason for the exclusion. After the twelve have been chosen they are 12 and sworn in.

VI. Select the correct verb to complete the sentences. (The German verbs used for expressing the ideas in the following sentences are indicated in the infinitive form. The fact that the same German verb is used in more than one of these sentences does not mean that the English verb will be the same!):

1. The court ____ that discrimination in jury selection was unconstitutional. (entscheiden)
2. The lawyer ____ a peremptory challenge. (ausüben)
3. The defendant ____ for a writ of certiorari. The Supreme Court ____ the writ. (beantragen; stattgeben/ablehnen)
4. The lawyer ____ to impanel a twelve-person jury. The judge ____ the motion and impaneled six. (beantragen; ablehnen)
5. The defendant ____ by a jury of his peers. (beurteilen)
6. The grand jury ____ to determine the validity of the indictment. (zusammentreffen)
7. The trial jury ____ the defendant as charged. (verurteilen)

8. The trial court judge ____ the defendant to life imprisonment. (verurteilen)
9. Mr. Justice White ____ the opinion of the Court, in which Mr. Justice Stevens _____. (verkünden; zustimmen)
10. The prosecutor ____ the accused to trial. (anklagen)
11. The judge ____ the jury on the law. The jury was then _____. It ____ only 30 minutes before it ____ a verdict. (belehren; isolieren; beraten; [zu einer Entscheidung] kommen)
12. The witness ____ as to what she saw on the night of the crime. (bezeugen)
13. The Court of Appeals ____ the decision of the trial court, but the Supreme Court disagreed, so they _____. (aufrechterhalten; [Entscheidung] aufheben)
14. Florida law ____ for a jury of six persons. (vorsehen)
15. After the plaintiff ____ a prima facie case, the burden of proof ____ to the defense. (darlegen; Umkehr der Beweislast)

VII. Explain the difference between the following terms:

1. judgment – verdict – sentence
2. felony – misdemeanor – petty offense – capital crime
3. to overrule – to reverse – to remand
4. citation – quotation
5. deliberation – sequestration

VIII. Insert the correct prepositions:

The theory 1 adjudication 2 the adversary system, as usually stated, has two linked components. One is that party presentation will result 3 the best presentation, because each party is propelled 4 maximum effort in investigation and presentation 5 the prospect of victory; 6 contrast, a judge-interrogator is only interested in getting 7 the day and through his caseload. The other component of the theory is more complex and has to do 8 the psychology of decision making. It runs essentially as follows: Proof through evidence requires hypothesis; hypothesis requires a preliminary mind-set; if an active judge-interrogator develops the proof, his preliminary mind-set too easily can become his final decision; therefore, it is better to have conflicting preliminary hypotheses and supporting proofs presented 9 the parties so that the judge's mind can be kept open until all the evidence is 10 hand.

IX. Explain the difference between the following terms:

1. beyond a reasonable doubt – by a preponderance of the evidence
2. alternative dispute resolution – adjudication

X. Explain the difference between the following terms:

1. interrogatory – deposition – request for admissions
2. deterrence – rehabilitation – retribution
3. record – transcript
4. motion for a non-suit – motion for a directed verdict – motion for judgment notwithstanding the verdict
5. prejudicial error – harmless error
6. general verdict – special verdict

XI. Fill in the blanks, some of which may require more than one term:

In order to initiate a law suit the 1 must file a 2. The 2 contains allegations of the court's 3 over the person of the 4 and over the subject matter of the law suit. It also contains allegations of facts that make out a 5, and a 6, asking the court to award the 1 compensation for the injury the 4 has caused him. A 7 is attached to the 2, which is a formal order addressed to the 4 telling her to appear in court to defend against the law suit. If the 4 fails to do so, the court will enter a 8 against her. The 2 and 7 must be served on the 4, which is called 9. The 4 must respond to the 2 by filing either a 10, which asks the court to refuse to hear the suit because of procedural error, or a 11, which claims that the 2 fails to state a 5, or an 12. The 12 may contain 13, 14, 15, or 16. The 1 may respond to the 4's 12 in his 17, and the 4 may in turn respond to the 1's 17 in her 18. The 2, the 12, the 17, and the 18 constitute the 19. After they have all been filed either party may make a 20.

XII. Fill in the blanks with the correct terminology:

Ms. Mapp was 1 for possession of pornography in violation of Ohio law. The 2 had been gathered in an illegal 3 and 4 and used against her at 5. The U.S. Supreme Court held that 6 gathered in violation of a person's Fourth Amendment rights could not be used against that person. It thus extended the 7 to apply to criminal proceedings in a state court. The Supreme Court, however, refused to apply its 8 in *Mapp* 9 to overturn Linkletter's 10. That was because *Linkletter* came to the Court on 11 rather than on 12 as did *Mapp*.

For the police to be permitted to take someone into 13, they must first obtain an 14. If they want to inspect a person's home for proof that the person committed a crime, they must first obtain a 15. A judge may not issue one of these 16 unless it is based on 17, meaning there is good reason to think the person actually committed a crime.

XIII. Explain the relationship and distinction between the following terms:

1. direct attack – direct review – appeal – collateral attack – collateral review – petition for a writ of habeas corpus
2. statute of limitations – statute of repose – res judicata

Unit II

The Courts and their Jurisdiction