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*forthcoming

A Dictionary of **Law**

SEVENTH EDITION

Edited by JONATHAN LAW
ELIZABETH A. MARTIN

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unregistered, and on the date of the adverse possession. If the land is unregistered, the effect of the Limitation Act 1980 is that in most cases adverse possession for 12 years or more extinguishes the title of the paper owner. The squatter becomes legally entitled to the land. In the case of registered land, where the limitation period of 12 years has been completed before 13 October 2003, 12 years' adverse possession will oblige the paper owner to hold the land on trust for the squatter under section 75 of the Land Registration Act 1925. The squatter is entitled to apply to the Land Registry to have the title transferred into his name. Where the limitation period of 12 years has not been completed before 13 October 2003, the Land Registration Act 2002 applies. After 10 years' adverse possession, the squatter may apply to be registered as the proprietor of the land. The Land Registrar will write to the registered proprietor and others interested in the land (such as mortgagees) to inform them of the application. Those notified have 65 working days to reply objecting to the application. If no objection is received, the squatter will be registered as proprietor in place of the original paper owner. If an objection is received, the paper owner has a further two years to eject the squatter; otherwise he can make a further application to be registered as proprietor. In a few exceptional cases, the squatter may be registered as proprietor despite the paper owner's objections, for example in cases where the real boundary between two properties has been in its present position for more than 10 years but the filed plan shows a different boundary.

The decision in *Pye v Graham* [2002] UKHL 30, [2003] 1 AC 419 was the subject of an appeal by Pye Ltd (who lost land worth an estimated £10M to adverse possessors) to the European Court of Human Rights. In *J.A. Pye (Oxford) Ltd. v UK* (App no 44302/02) [2005] ECHR it was held that the Limitation Act 1980 as it applied to registered land was in breach of Protocol 1, Article 1, which would have entitled Pye Ltd to compensation from the UK government. However, the UK referred the case to the Grand Chamber of the European Court of Human Rights and, by a majority, the decision of the original Chamber was reversed.

adverse witness *n.* A witness who gives evidence unfavourable to the party who called him. Unless the witness is deemed a *hostile witness, his credibility may not be attacked by the party calling him (although contradictory evidence may be called). If, however, the witness is deemed hostile the party calling him may be allowed to introduce evidence of a previous inconsistent statement made by that witness. *See also UNFAVOURABLE WITNESS.*

advice on evidence *n.* The written opinion of counsel identifying the issues raised in a civil or criminal case and advising counsel's instructing solicitor in relation to the evidence to be called at trial.

advisory jurisdiction *n.* The jurisdiction of the *International Court of Justice under which it can render legal opinions, similar in kind to declaration (*see DECLARATORY JUDGMENT*) under English municipal law. In contrast to the contentious jurisdiction of the Court, states are not parties to the proceedings and there is no claimant or defendant to the action. The Court proceeds by inviting states or international organizations to provide information to assist the Court in its determination of point of law at issue.

The authority of the International Court of Justice to give advisory opinions is found under Article 96 of the UN Charter. Under this Article the Court is empowered to give such opinions on legal questions at the request of the UN Security Council or the General Assembly. Moreover, the power to request advisory opinions on legal questions arising within the scope of their activities also resides in other organs of the United Nations and its specialized agencies if they have been authorized by the General Assembly to do so.

When an advisory opinion is sought upon a question actually pending between two states each of them is entitled to have an *ad hoc* judge on the bench. The request for an advisory opinion must be made by the United Nations to assist it in the discharge of its function; provided the opinion relates to a legal question it is immaterial that it affects political issues (*Admission of New Members Case* [1948] ICJ Rep 57). Consent is not

required for an advisory opinion. Among the International Court of Justice's most prominent advisory opinions are *UN Admissions (Competence of General Assembly) Case* [1950] ICJ Rep 15; *Genocide Reservations Case* [1951] ICJ Rep 15; and *PLO UN Mission Case* [1988] ICJ Rep 12.

advocacy qualification *n.* A qualification authorizing a person to act as an *advocate under the provisions of the Courts and Legal Services Act 1990. There are separate qualifications for different levels of the court system, but the rights of those already entitled to appear as advocates at any level of the system at the time when the Act came into force are preserved.

advocate *n.* 1. One who exercises a *right of audience and argues a case for a client in legal proceedings. In magistrates' courts, the county courts, tribunals, coroners' courts, and the European courts both *barristers and *solicitors have the right to appear as advocates. In most Crown Court centres, the High Court, the Court of Appeal, and the House of Lords barristers have traditionally had exclusive rights of audience. However, the provisions of the Courts and Legal Services Act 1990 allow solicitors with appropriate experience to qualify for rights of audience similar to those of barristers and acquire *advocacy qualifications for the Crown Court, High Court, Court of Appeal, and House of Lords. In many tribunals there are no rules concerning representation, and laymen may appear as advocates. Advocates no longer enjoy immunity from law suits for negligence in relation to civil or criminal litigation. 2. In Scotland, a member of the Faculty of Advocates, the professional organization of the Scots Bar.

Advocates-General *n.* Senior law officers who assist the *European Court of Justice in its task of reaching a judgment in the cases brought before it. They are characterized by their independence and impartiality. Following the hearing of the case they deliver in open court an "opinion" that is not binding on the judges, but which reflects the views of someone with the same standing as a judge.

adwoson *n.* A right of presenting a clergyman to an ecclesiastical living. The adwoson is an incorporeal *hereditament that gives the owner (or patron) the right to nominate the next holder of a living that has fallen vacant. It may exist *in gross* (i.e. independently of any ownership of land by the person entitled) or may be *appendant* (i.e. annexed to land so that it may be enjoyed by each owner for the time being). The right is usually associated with the lordship of a manor.

aequitas est quasi aequalitas *See EQUALITY IS EQUITY.*

affidavit *n.* A sworn written statement of evidence used mainly to support certain applications and, in some circumstances, as evidence in court proceedings. The person who makes the affidavit must swear or affirm that the contents are true before a person authorized to take oaths in respect of the particular kind of affidavit. Under Part 25 of the *Civil Procedure Rules applications for *search orders and *freezing injunctions must be supported by affidavit evidence. *See also ARGUMENTATIVE AFFIDAVIT.*

affiliation order *n.* Formerly, an order of a magistrates' court against a man alleged to be the father of an illegitimate child, obliging him to make payments towards the upkeep of the child. Affiliation proceedings have been abolished by the Family Law Reform Act 1987 and financial provision for illegitimate and legitimate children is now the same (*see CHILD SUPPORT MAINTENANCE*).

affinity *n.* The relationship created by marriage between a husband and his wife's blood relatives or between a wife and her husband's blood relatives. Some categories of people related by affinity are forbidden to marry each other (*see PROHIBITED DEGREES OF RELATIONSHIPS*). The relationship of blood relatives is known as *consanguinity. *See also INCEST.*

affirm *vb.* 1. To confirm a legal decision, particularly (of an appeal court) to confirm a

fact that it is up to each state to determine whether an individual comes under the classification of refugee contained in Article 1 of the Treaty.

In the UK, the procedures for applying for political asylum and for appealing against a negative decision have been significantly tightened up by the Immigration and Asylum Act 2002, the Nationality, Immigration and Nationality Act 1999, and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004. *See also* DEPORTATION; IMMIGRATION.

Asylum and Immigration Tribunal A tribunal that hears and decides appeals against decisions made by the Home Office in matters of *asylum, *immigration, and nationality. Set up under the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, it came into being on 4 April 2005 and is the successor to the Immigration Appeal Tribunal. It is administered by the *Tribunals Service and subject to the supervision of the *Administrative Justice and Tribunals Council.



• Website of the Asylum and Immigration Tribunal

at sea *See* PRIVILEGED WILL.

attachment *n.* A court order for the detention of a person and/or his property. Attachment can be used by the courts for the punishment of *contempt of court.

attachment of earnings An order made under the Attachment of Earnings Act 1971 by which a court orders the payment of judgment debts and other sums due under court orders (e.g. maintenance) by direct deduction from the debtor's earnings. Payment is usually in instalments, and the debtor's employer is responsible for paying these to the court.

attempt *n.* (in criminal law) Any act that is more than merely preparatory to the intended commission of a crime; such an act is itself a crime. Section 1 (1) of the Criminal Attempts Act 1981 provides: "If, with intent to commit an offence to which this section applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence." For example, shooting at someone but missing could be attempted murder, but merely buying a revolver would not. One may be guilty of attempting to commit a crime that proves impossible to commit (e.g. attempted theft from an empty handbag; *see* IMPOSSIBILITY).

attendance centre A nonresidential institution that offenders under the age 25 may be ordered to attend if they have not previously been sentenced to prison or detention in a young offender institution. Attendance, which is outside normal school or working hours, is for periods of up to 3 hours on a single day, to a minimum of 12 hours and a maximum of 36 hours. An **attendance centre requirement** may be imposed on an offender aged 16 or over as part of a *community order or as part of a *suspended sentence order, generally when it is felt that a custodial sentence is not required but a fine or other order would be too lenient. In the case of an offender aged 16 or under an **attendance centre order** may be imposed in the form of a *youth community order.

attestation *n.* The signature of witnesses to the making of a *will or *deed. Under the Wills Act 1837 as amended the testator must sign or acknowledge his signature (*see* ACKNOWLEDGMENT) in the presence of two witnesses who must both be present at the same time and who must each sign (attest) in the testator's presence. The signature of each party to a deed must be attested by one witness. *See also* EXECUTION OF WILL.

attorney *n.* A person who is appointed by another and has authority to act on behalf of another. *See also* POWER OF ATTORNEY.

Attorney General The principal law officer of the Crown. The Attorney General is usually a Member of Parliament of the ruling party and holds ministerial office, although he is not normally a member of the Cabinet. He is the chief legal adviser of the

government, answers questions relating to legal matters in the House of Commons, and is politically responsible for the *Crown Prosecution Service, *Director of Public Prosecutions, *Treasury Solicitor, and *Serious Fraud Office. He is the leader of the English Bar and presides at its general meetings. The consent of the Attorney General is required for bringing certain criminal actions, principally ones relating to offences against the state and public order and corruption. The Attorney General sometimes appears in court as an *advocate in cases of exceptional public interest, but he is not now allowed to engage in private practice. He has the right to terminate any criminal proceedings by entering a **nolle prosequi*. *See also* SOLICITOR GENERAL.

attornment *n.* An act by a bailee (*see* BAILEMENT) in possession of goods on behalf of one person acknowledging that he will hold the goods on behalf of someone else. The attornment notionally transfers possession to the other person (constructive possession) and can thus be a delivery of goods sold.

auction *n.* A method of sale in which parties are invited to make competing offers (bids) to purchase an item. The auctioneer, who acts as the agent of the seller until fall of the hammer, announces completion of the sale in favour of the highest bidder by striking his desk with a hammer (or in any other customary manner). Until then any bidder may retract his bid and the auctioneer may withdraw the goods. The seller may not bid unless the sale is stated to be subject to the seller's right to bid. Merely to advertise an auction does not bind the auctioneer to hold one. However, if he advertises an auction without reserve and accepts bids, he will be liable if he fails to knock the item down to the highest outside bidder. An auctioneer who discloses his agency promises to a buyer that he has authority to sell and that he knows of no defect to the seller's title; he does not promise that the buyer of a specific chattel will get a good title.

Auctions can either result in a sale between a business seller and consumer buyer or between consumers (non-traders) who are both selling and buying. The law applicable differs depending on if a business sale is involved. Sales on eBay and similar sites on the internet are often by way of auction and can either be from a business to a consumer or consumer to consumer.

auction ring A group of buyers who agree not to compete against each other at an auction with a view to purchasing articles for less than the open-market value. The profit earned thereby is shared among the members of the ring, or a second "knock-out" highest bidder and the profit shared among the members. Under the Auctions (Bidding Agreements) Acts 1927 (as amended by the Criminal Justice Act 1967) and 1969 it is a criminal offence for a dealer to participate in an auction ring and a seller is given the right to set aside the contract of sale if one of the purchasers is a dealer in a ring.

audi alteram partem *See* NATURAL JUSTICE.

Audit Commission A statutory public body that takes responsibility for audit arrangements in respect of local government and the National Health Service in England and Wales. Originally established under the Local Government Finance Act 1982 and now consolidated under the Audit Commission Act 1998, its full title is the Audit Commission for Local Authorities and the National Health Service in England and Wales. All accounts of local authorities and certain other bodies provided for in the Audit Commission Act must be audited annually. Auditors appointed under the Act are either officers of the Audit Commission or private accountants or firms of accountants. If any transaction is found to have involved unlawful expenditure, the auditors may obtain a court order for repayment by the persons responsible. A similar body for Scotland, **Audit Scotland**, was created in 2000.

audit exemption All companies are required to appoint auditors, unless exempt (Companies Act 2006 s 475). Small and dormant companies are exempt (s 477, s 480)

Council of the European Union (Council of Ministers) The organ of the EU that is primarily concerned with the formulation of policy and (in conjunction with the *European Commission and *European Parliament) the adoption of *Community legislation. The Council consists of one member of government of each of the member states of the Community (normally its foreign minister, but other ministers may attend instead for the consideration of specialized topics), and its presidency is held by each state in turn for periods of six months. The Council is serviced by a Committee of Permanent Representatives (COREPER). This consists of senior civil servants of each state and its primary function is to clarify national attitudes for the assistance of the Council in reaching its decisions. It also disposes on behalf of the Council of matters that are not controversial. Decisions of the Council are taken by a unanimous vote (*see also* VETO) or, in most cases, by **qualified majority voting (qmv)**. Each member state has a number of votes approximately proportional to the size of its population, with a total of 345 votes; in qmv 255 votes are necessary to pass a measure. In addition, any country can require that the countries in favour must account for 62% or more of the total EU population. *Compare* EUROPEAN COUNCIL.

Council of the Inns of Court A body, comprising representatives of the four *Inns of Court, the *Bar Council, and the Inns of Court and Bar Educational Trust (*see* COUNCIL OF LEGAL EDUCATION), that coordinates the work of the three organizations represented. When the Council of the Inns of Court and Bar Council disagree, the latter's policy is implemented if it has the support of two-thirds of the profession.

Council on Tribunals A body set up by the Tribunals and Inquiries Act 1958 to supervise the constitution and working of *administrative tribunals and inquiries. It was replaced by the *Administrative Justice and Tribunals Council in November 2007.

council tax A form of local tax levied on all private households (with some exceptions) to contribute to the cost of local government. In general, all the residents of a dwelling are jointly liable to pay the tax. Council tax was introduced by the Local Government Finance Act 1992 and took effect from April 1993, replacing the community charge. The tax is based on the capital value of the dwelling owned or rented by the occupiers. Each dwelling is assessed to see which of eight price bands (A to H) it falls within. The amount of the charge is set by the local council.

The amount payable can be reduced by discounts (e.g. there is a 25% discount where only one adult occupies the property), benefits for those on low incomes, and reductions for disabilities where homes are adapted for disabled persons. Council tax is a personal charge. When ownership of a property is transferred, the liability to unpaid council tax remains with the person on whom it was assessed.

counsel 1. *n.* A barrister, or barristers collectively. 2. *v.* In criminal law, to encourage or advise a principal in the commission of an offence. Counselling is one form of accessory liability in criminal law (*see also* AID AND ABET; PROCURE). An accessory may be held liable for having counselled the principal's offence, irrespective of whether the accessory's counselling was causally related to the principal's offence (*R v Calhaen* [1985] QB 808).

Councillors of State Persons appointed under the Regency Acts 1937 to 1953 to exercise royal functions while the sovereign is ill (but not totally incapacitated, in which case the functions pass to a *regent) or temporarily absent from the UK. They are appointed by the sovereign by letters patent, which must specify the functions delegated to them. These must not include the function of dissolving Parliament, except on the sovereign's express instructions, or that of creating new peers. The persons to be appointed are the sovereign's spouse and the four next in line to the throne (omitting anyone not qualified to be Regent or intending to be abroad during the period of delegation).

count *n.* *See* INDICTMENT.

costs in any event

who specializes in drawing up *bills of costs. Some work in solicitors' firms and some in independent firms of costs specialists.

costs in any event An order for costs made in *interim proceedings by which the winner of the hearing in question shall be paid the costs of that stage in the proceedings whatever the outcome of the trial. *Compare* COSTS IN THE CASE.

costs in the case An order for costs made in *interim proceedings by which the costs of the hearing in question are payable in accordance with the order for costs to be made at the final trial. This will usually have the effect that they are paid by the overall loser of the litigation. *Compare* COSTS IN ANY EVENT.

costs officer The judge or officer of the court who determines the amount of costs payable in a detailed *assessment of costs. The costs officer may be a **costs judge** (an official of the Supreme Court, formerly known as a **taxing master**), a district judge, or an authorized officer of a county court, a district registry, the Principal Registry of the Family Division, or the Supreme Court Costs Office.

costs reserved An order for costs made in *interim proceedings by which the costs of the hearing in question are reserved for the decision of the trial judge rather than decided by the master or district judge at the hearing itself.

costs thrown away Costs either unnecessarily incurred by a party as a result of some procedural error committed by the other party or properly incurred but wasted as a result of a subsequent act of the other party (e.g. by amending the claim form or statement of case).

council housing Residential accommodation provided for renting by local authorities (primarily by district and London borough councils, who, as housing authorities, have a general statutory duty to meet housing needs in their areas). Authorities may build new properties and acquire existing ones for the purpose. The allocation and management of housing stock is in general within their sole discretion, but statute does impose certain priorities (e.g. towards homeless persons) and the Housing Act 1980 (now repealed) gave their tenants a measure of security of tenure. There are also financial restraints, such as restrictions on the proportion of capital receipts available for house building, imposed by central government. Certain tenants of council housing have the right to purchase the freehold of a council house or a long lease of a council flat at a discount. The Housing Act 1988 introduced measures under which council housing can be transferred to the private rented sector if tenants so desire. A new regulatory framework for social housing was introduced by the Housing and Regeneration Act 2008, which established the *Tenant Services Authority. *See also* HOMES AND COMMUNITIES AGENCY.

councillor *n.* (in local government) *See* LOCAL AUTHORITY.

Council of Europe A European organization for cooperation in various areas between most European (not just EU) states. The assembly of the Council of Europe elects the judges of the European Court of Human Rights. The Council's fundamental role is the maintenance of pluralist liberal democracy and economic stability in Europe. To this end member states have endorsed the preservation of individual rights as being a, if not the, vital method of achieving these aims. The Constitution of the Council of Europe provides that each member must ensure "the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." This provision was implemented by the creation of two human rights treaties, the *European Convention on Human Rights 1950 and the *European Social Charter 1961.

Council of Legal Education A body established by the four *Inns of Court to supervise the education and examination of students for the Bar of England and Wales. It administered the Inns of Court School of Law in Gray's Inn. In 1997 the **Inns of Court and Bar Educational Trust** was founded and took over responsibility of the Council.

barratry

For tax purposes, there may also be a bare trust where property is held for an infant or an adult without mental capacity. However, for such property to be treated as being held on a bare trust the incapacity (whether by virtue of age or mental condition) of the beneficiary must be the only reason for his not being absolutely entitled (*Tomlinson v Glyn's Executor and Trustee Co* [1980] 45 TC 607).

barratry *n.* 1. Any act committed wilfully by the master or crew of a ship to the detriment of its owner or charterer. Examples include scuttling the ship and embezzling the cargo. Illegal activities (e.g. carrying prohibited persons) leading to the forfeiture of the ship also constitute barratry. Barratry is one of the risks covered by policies of marine insurance. 2. The former common-law offence (abolished by the Criminal Law Act 1967) of habitually raising or inciting disputes in the courts.

barring of entailed interest See ENTAILED INTEREST.

barrister *n.* A legal practitioner admitted to plead at the Bar. A barrister must be a member of one of the four Inns of Court, by whom he is called to the Bar when admitted to the profession. To qualify as a barrister it is necessary to have either a qualifying law degree or to have completed a graduate diploma in law. It is then necessary to complete the Bar Vocational Course, colloquially known as "bar school." Thereafter barristers take a pupillage, which is usually with a set of chambers, before seeking a permanent place as a "tenant". The primary function of barristers is to act as advocates for parties in courts or tribunals, but they also undertake the writing of opinions and some of the work preparatory to a trial. Their general immunity from law suits in negligence for criminal and civil litigation has been abolished. With certain exceptions a barrister may only act upon the instructions of a solicitor, who is also responsible for the payment of the barrister's fee. Barristers have the right of audience in all courts; they are either Queen's Counsel (often referred to as **leaders** or **leading counsel**) or junior barristers. See also ADVOCACY QUALIFICATION.

baseline *n.* The line forming the boundary between the internal waters of a state on its landward side and the territorial sea on its seaward side (see TERRITORIAL WATERS). Other coastal state zones (the contiguous zone, exclusive economic zone, and exclusive fishing zone) are measured from the baseline.

basic award See COMPENSATION.

basic intent Any criminal offence for which recklessness or negligence will suffice to establish the *mens rea* element may be considered an offence of basic intent. Compare SPECIFIC INTENT. See also INTOXICATION.

battered child A child subjected to physical violence or abuse by a parent, step-parent, or any other person with whom he is living. A battered child may be protected if the other parent (or person who is looking after him) applies for an injunction under the Family Law Act 1996, but only if the child is living, or might reasonably be expected to live, with the applicant. The Act applies to children under 18. When a child is suffering, or likely to suffer, significant harm, a local authority may apply for a supervision order or care order under the Children Act 1989. See also EMERGENCY PROTECTION ORDER.

battered spouse or cohabitant See DOMESTIC VIOLENCE.

Battered Woman Syndrome A psychological syndrome suffered by a person (typically a woman) as a result of prolonged and extreme physical and emotional abuse by her partner. Battered Woman Syndrome has informed the basis for partial defence to murder in cases where the battered woman kills her abusive partner, although there is no formal legal defence properly referred to as Battered Woman Syndrome; rather, the evidence of abuse and its psychological effects upon the battered woman may provide the basis for a defence of provocation or diminished responsibility (*R v Ahluwalia* [1992] 4 All ER 889 (CA)). While Battered Woman Syndrome has been criticized for its

failure to account for the wide range of responses that battered women may experience in response to severe abuse, it has provided one set of reasons explaining why battered women may be unable to escape from an abusive partner.

battery *n.* The intentional or reckless application of physical force to another person. Common battery is a criminal offence (punishable with a fine and/or six months' imprisonment) as well as a tort, even if no actual harm results. The consent of the victim is a defence to common battery. If actual harm does result, however, the consent of the victim will provide a defence only when the injury is inflicted for good reason (e.g. in the course of a sport or medical treatment). Consent has been rejected as a defence where actual harm was inflicted in the course of consensual sado-masochistic activities (AG's Reference (No 6 of 1990) [1991] 2 All ER 1057). Compare ASSAULT; GRIEVOUS BODILY HARM.

bay *n.* A well-marked roughly semicircular indentation on a coastline. What does or does not constitute a bay can be of relevance in determining a state's control of its coastal waters. The test is a geographical one, taking into account relative dimensions and configuration. The following three considerations have been taken into account when making this determination: (1) the depth of the indentation relative to the width of its mouth; (2) the economic and strategic importance of the indentation to the coastal state; and (3) the seclusion of the indentation from the highway of nations on the open sea. The above factors, however, do not apply to a small number of so-called "historic bays". These have been claimed as internal waters on the basis of historic title. For example, the estuary of the River Plate in Argentina is claimed as internal waters, as is the vast Hudson Bay of Canada, which embraces about 580 000 square miles. See also TERRITORIAL WATERS.

bearer *n.* The person in possession of a bill of exchange or promissory note that is payable to the bearer.

beauty contest A method used by an employer contemplating entering a single-union agreement, in which a number of unions are invited to present proposals for collective bargaining arrangements within an establishment. After reviewing the proposals the company decides to recognize the union that best meets its criteria.

bed and breakfast The sale of shares on one day and their repurchase the next day. This has traditionally been undertaken in order to trigger a loss that can then be put against gains that would otherwise be subject to capital gains tax. The taxation of Chargeable Gains Act 1992 s 106A makes the arrangement ineffective for shares sold and repurchased within a 30 day period. There are, however, no provisions that stop the bed and breakfasting of other assets and the arrangement is sometimes made for e.g. works of art. An imaginative use of the bed and breakfast anti-avoidance provisions was demonstrated in *Davies v Hicks* [2005] STC 850, in which the taxpayer contrived to avoid a tax charge on a sale for £1,676,000 when a trust was moved from UK trustees to trustees in Mauritius.

Beddoe order An order made by the court granting trustees permission to incur expense on behalf of the trust by bringing or defending an action. The order protects the trustees against claims by the beneficiaries that the action should not have been brought and enables the trustees to recover the costs from the trust property. If an order has not been obtained, these consequences may not follow, and the trustees may be personally liable to the beneficiaries for any loss incurred on behalf of the trust and also may themselves have to pay any costs to the trust arising from the action. The name derives from the case *Re Beddoe* (*Downes v Cottam*) [1893] 1 Ch 547.

belligerent communities, recognition of The formal acknowledgment by a state of the existence of a civil war between another state's central government and the peoples of an area within its territorial boundaries. Such recognition brings about the conventional operation of the rules of war, in particular those humanitarian restraints

soliciting

soliciting *n.* 1. The offence by a prostitute of attempting to obtain prospective clients in a street or public place (Street Offences Act 1959 s 1). It is punishable by a "fine at level 2 on the standard scale on a first conviction and at level 3 on a subsequent conviction. Any act committed by the prostitute (even smiling provocatively) may constitute soliciting (*DPP v Bull* [1995] QB 88), but an advertisement inviting men to visit her is not soliciting. "Street" is widely defined to include roads, lanes, bridges, courtyards, alleyways, passages, etc., open to the public, as well as doorways and entrances of houses on the street, and ground adjoining and open to the street. If a prostitute in a private house invites them in, or even merely by sitting at the window illuminated by a red light, this may be considered soliciting "in a street". 2. The offence by a man of persistently accosting a woman in a public place for the purpose of prostitution (*see also* KERN CRAWLING) or persistently accosting anybody in a public place for immoral purposes. "Persistently" requires either a number of single invitations to different people or more than one invitation to the same person (Sexual Offences Act 2003 s 1-2, 4).

solicitor *n.* A legal practitioner admitted to practise under the provisions of the Solicitors Act 1974. Solicitors may take a three-year law degree at university, then a one-year legal practice course (LPC), followed by two years as an employee under a training contract (previously called **articles of clerkship**), after which they are admitted as solicitors. Those taking a non-law degree will need to spend at least one further year at a university undertaking a graduate diploma in law (GDL) before undertaking the legal practice course. Practising solicitors must possess a "practising certificate. Solicitors form much the larger part of the English legal profession (*compare* BARRISTER), often undertaking the general aspects of giving legal advice and conducting legal proceedings. They have "rights of audience in the lower courts but may not act as advocates in the Supreme Court (except in chambers) or the House of Lords unless they have acquired a relevant "advocacy qualification under the terms of the Courts and Legal Services Act 1990. A solicitor may be sued for professional negligence and owes the duties of a "fiduciary to his client; these include the duty to preserve the confidentiality of the client's affairs.

solicitor and own client basis of costs A basis of "assessment of costs on which is calculated the sum that a privately represented client must pay his own solicitor. On this basis, all costs are allowed provided that they are of a reasonable amount and have not been unreasonably incurred.

Solicitor General A law officer of the Crown immediately subordinate to the "Attorney General. The Solicitor General is usually a Member of Parliament of the ruling party. He acts as deputy to the Attorney General and may exercise any power vested by statute in the latter (unless the statute otherwise provides) if the office of Attorney General is vacant or the Attorney General is unable to act through illness or has authorized him to act.

Solicitors' Code of Conduct Rules, made by the **Solicitors Regulation Authority** (SRA), the regulatory body of the "Law Society, governing the professional practice, conduct, and discipline of solicitors. They replaced the Solicitors Practice Rules from July 2007.

SEE WEB LINKS

- Full text of the Code, with practice guidance, from the website of the Solicitors Regulation Authority

Solicitors' Disciplinary Tribunal A tribunal established under the Solicitors Act 1974 for hearing applications and complaints against solicitors. It has the power to strike the name of a solicitor off the roll and to restore the name of a solicitor previously struck off, suspend a solicitor from practice, and order the payment of a penalty. The members of the tribunal are practising solicitors of not less than ten years' standing and some lay

sovereignty

members. They are appointed by the "Master of the Rolls. Appeals from decisions of the tribunal can be brought to the High Court of the Master of the Rolls. *See also* OFFICE FOR THE SUPERVISION OF SOLICITORS.

SEE WEB LINKS

- Website of the Solicitors Disciplinary Tribunal

solicitor's lien The right of a solicitor to retain papers or property of his client as security for the payment of his costs. There are two types of lien: a retaining lien, i.e. a right to retain property already in his possession until he has been paid costs due to him; and a lien on property recovered or preserved, i.e. a right to ask the court to direct that personal property recovered under a judgment obtained by his exertions stand as security for his costs of the recovery. By statute the second type of lien has been extended to confer upon the court the power to make a "charging order over real and personal property recovered or preserved in proceedings by the solicitor.

solus tie A form of "restraint of trade sometimes incorporated into a mortgage, often for the acquisition of certain types of commercial premises, most often petrol stations and public houses (*Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269 (HL)). A *solus tie* seeks to limit the mortgagor's choice of commercial supplier by incorporating a provision into the mortgage deed that determines the source from which the mortgagor may obtain his supplies during a predetermined period. *Solus ties* and other restraint of trade clauses can be found in contracts other than mortgage contracts; the principles that underpin the law's dislike of such clauses, which are held to impose an unreasonable restraint on the borrower, are of general application and do not originate from the law of mortgages.

sources of international law The sources of public international law are to be found in Article 38(1) of the Statute of the "International Court of Justice. They are "treaties, "customary international law, "general principles of law, and, as subsidiary sources, judicial decisions and the teachings of the most highly qualified "publicists of the various nations.

sovereign *n.* *See* CROWN.

sovereign immunity The exemption of the sovereign or other head of a foreign state and foreign governmental departments from the jurisdiction of the English courts. The principles governing this exemption are now contained in the State Immunity Act 1978 and are consistent with the European Convention on State Immunity. The immunity granted is no longer absolute; it is subject to numerous exceptions outlined in the Act (*see* ABSOLUTE THEORY OF SOVEREIGN IMMUNITY). Subject to modifications, the Diplomatic Privileges Act 1964 extends to foreign sovereigns the same privileges and immunities as are granted to heads of diplomatic missions. It is now clear under English law that such immunity does not apply to former heads of state who are alleged to have committed crimes against humanity.

sovereignty *n.* Supreme authority in a state. In any state sovereignty is vested in the institution, person, or body having the ultimate authority to impose law on everyone else in the state and the power to alter any pre-existing law. How and by whom the authority is exercised varies according to the political nature of the state. In many countries the executive, legislative, and judicial powers of sovereignty are exercised by different bodies. One of these bodies may in fact retain sovereignty by having ultimate control over the others. But in some countries, such as the USA, the powers are carefully balanced by a constitution. In the UK sovereignty is vested in Parliament (*see* SOVEREIGNTY OF PARLIAMENT).

In international law, it is an essential aspect of sovereignty that all states should have supreme control over their internal affairs, subject to the recognized limitations imposed by international law. These limitations include, in particular, the international law