Court, but the value of the claim, i.e. £100,000, takes it to the High Court in the Queen's Bench Division.

Court enforcement of timetables

Two recent cases indicate in relation to experts and their availability, that the courts are stressing the need to keep to timetables when fixing cases for hearing and that the expert witness, who is a professional person, owes an overriding duty to the court and not merely to his client. In *Linda Rollinson* v *Kimberley Clark Ltd* [1999] 7 Current Law 37 the claim was for damages for an injury sustained at work. The defendant sought to change the dates fixed for the trial because one of its expert witnesses was not available. The Court of Appeal dismissed the application. It was wholly inappropriate, said the court, for a solicitor to instruct an expert without regard to the expert's availability. Again, in *Matthews* v *Tarmac Bricks and Tiles Ltd* [1999] 7 Current Law 55 the defendant had caused difficulties by failing to give details of when expert witnesses would be available. The matter was, nevertheless, listed for trial. The Court of Appeal dismissed an appeal by the defendant. Lord Woolf's judgment includes a further point: that those holding themselves out as expert witnesses should be prepared to arrange or rearrange their affairs to meet the requirements of the court.

The trial

The parties and their witnesses will assemble for the trial.

Attendance of witnesses

As regards witnesses (except expert witnesses), it is not wise to assume that they will attend voluntarily, and their attendance should be encouraged by service on them of a witness summons. This is issued by the court and it requires a witness to attend court and give evidence or produce documents to the court. It should be served at least seven days before attendance is required. Failure to comply with a witness summons is a contempt of court punishable by fine and/or imprisonment.

Trial bundles and skeleton arguments

Except where the court rules otherwise, the claimant must prepare and file in court a trial bundle not more than seven days nor less than three days before the start of the trial. The bundle will include the documents relevant to the trial such as the claim form and statements of case and witness statements, together with a case summary indicating what points are or are not in issue and the nature of the argument on disputed matters. This summary is referred to in some courts, such as in the Chancery Division, as a skeleton argument.

The contents of the bundle should be agreed between the parties and if agreement cannot be obtained on all of the contents, a summary of points of difference should be included. Either party may, e.g., not agree on the inclusion of a document or documents. Bundles should be supplied for the trial judge, all the parties and for the use of witnesses. The advocates can then refer to the contents of the bundle as required during the trial.

Order of proceedings

Counsel for the claimant may, if allowed by the judge or the timetable for the case, make an opening speech giving the background to the case and the facts which are in issue. If such an opening speech is allowed at all, it must be very concise. The court may, however, proceed with the evidence, and, if so, the case begins with the claimant and his witnesses giving evidence.

The court requires that evidence be given on oath (or affirmation by a person who objects to swearing on the Bible). Documentary evidence such as a letter is not normally admissible and the writer must be called and give evidence on oath unless it is difficult or impossible to call him.

As in a criminal trial counsel for the claimant cannot ask his own witnesses 'leading questions'. A leading question suggests the answer, and, in our case, could consist of asking the claimant 'Did the defendant supply you with seed which was not of satisfactory quality or fit for the purpose?' An acceptable question to elicit facts would be: 'Tell the court the condition of the seed supplied to you by the defendant.' Nor is hearsay evidence admissible unless the provisions of the Civil Evidence Act 1995 are followed, which involves giving the other party notice of the intention to introduce hearsay evidence and, if requested, giving particulars of it. Hearsay evidence may be an oral or written statement made outside of court which is repeated by a party or a witness in order to prove that it is true. Thus, in our case, if the claimant were to say in evidence: 'My neighbour, Joe Bloggs, bought seed from the defendants and he told me he had the same problems as I did', this evidence should be given by Joe Bloggs since, if it is not, there is no chance for the defendant's advocate to cross-examine Joe Bloggs as he is not there. After the examination-in-chief the witnesses for the claimant may be cross-examined by counsel for the defence, the object being to discredit their evidence. After cross-examination counsel for the claimant may re-examine a witness.

Sometimes a witness will give an account of events which is totally different from that in the statement he gave to the claimant's solicitors; counsel for the claimant is not allowed to discredit his own witness unless the judge gives leave as he may do if he feels that the witness is prejudiced against the person who called him. Such a witness is called a hostile witness and his examination-in-chief is more like a cross-examination since it is designed to discredit his evidence.

At the end of the claimant's case it is the turn of counsel for the defence to produce evidence to refute it. The claimant does not have to prove his case beyond a reasonable doubt, as the prosecution in a criminal trial does, but must show that what he alleges is probably the right version, i.e. proof on a balance of probabilities. The court must be satisfied that it is more likely than not (or more probable than not) that the relevant fact is established (*R* v *Swaysland, The Times*, 15 April 1987).

The defence need not necessarily produce evidence. If the claimant's case is weak the defence may submit to the judge that there is no case to answer. In practice such a submission would very rarely be made because the court will usually 'put the defendant to his election'. This means that the judge will only hear the submission of no case to answer if the defendant elects not to call evidence to support his case. The judge is not forced to do this and may hear a submission of no case to answer; if he finds that there is a case to answer he may allow the defence to continue its case. Otherwise, the judge may allow the defence to make its submission of no case to answer and if the judge agrees, he will enter judgment for the defendant. If he does not, then, in effect, the claimant succeeds and will have judgment entered in his favour. Counsel for the defence can ask the judge to clarify the position before proceeding or not proceeding with the reasons why it is alleged there is no case to answer.

If there is no submission of no case to answer, the defence will call its witnesses who will be examined, cross-examined and re-examined.

Counsel for the defence then makes a closing speech showing how in his view the claimant's case has failed. The claimant's counsel then presents his view. Both will give an indication of what they think the damages should be. Either party may make a final Response, as it is called. This is on a matter of law only and may be with leave of the judge or by his invitation. Thus, a party may say, 'My learned friend referred to the case of *Bloggs* v *Snooks* on which I have not addressed you. I would be grateful if you would allow me to address you on that point.' Sometimes the judge will say to a party, 'What do you say about [a point raised by the other party in closing his case], Mr Taylor [counsel]?'

The judge will have remained largely silent during the trial, though he may have asked for an obscure point to be clarified. In fact a judge should not be too 'active' and interfering and if he is his decision may be overturned in an appeal court. The classic statement of the trial judge's function was given by Lord Denning in a civil appeal, *Jones* v *National Coal Board* [1957] 2 All ER 155 where he said:

> The judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies.

The statement is not confined to civil trials though in a criminal trial 'the truth' is a matter for the jury.

After the closing speeches, the judge considers the evidence and will then give judgment stating the grounds on which it is based, though if a judge requires more time to consider the case he may reserve judgment and give it at a later date. The judge will also decide the amount of damages unless there is a jury as there may be in an action for defamation (see below).

Civil jury

Section 69 of the Supreme Court Act 1981 (becomes Senior Courts Act 1981) gives the court discretion with regard to juries in civil cases, though a jury must be empanelled at the request of the defendant where fraud is alleged, or at the request of either party in cases of libel, slander, malicious prosecution and false imprisonment. If the trial is likely to involve long and detailed examination of documents or accounts or scientific evidence, the court has the discretion to refuse a jury trial even in these cases. There is also an exception in the case of libel and slander under the Defamation Act 1996 which introduces a summary (or fast track) procedure which gives sweeping powers of disposal to the court and provides for assessment of damages by a judge without a jury whether or not the parties consent (see further Chapter 21). Not all defamation cases are suitable for disposal by this 'fast track' method and trials for libel and slander in front of a jury will continue in those cases. In particular, libel actions involving issues or persons of national importance should be tried with a jury, even if complex documents are involved (*Rothermere* v *Times Newspapers* [1973] 1 All ER 1013). The percentage of jury trials in civil actions is very small and outside of the above areas the court is not likely to exercise its discretion to allow a jury. In *H* v *Ministry of Defence* (1991) *The Times*, 1 April, for example, the Court of Appeal held that it was normally inappropriate to order trial by jury for the assessment of damages in actions for personal injuries since the damages were based on consideration of conventional scales of damages known to the judiciary but not to a jury.

Juries are not used in Admiralty cases but there is a power to summon a jury in the Chancery Division. This power is, in practice, neglected.

A civil jury consists of 12 persons, though the parties may, in a particular case, agree to proceed with less. There is a right, under s 66 of the County Courts Act 1984, to ask for a jury of eight persons in a county court, where the case is an appropriate one, as where, for example, fraud, or malicious prosecution, or false imprisonment are alleged. These rights are rarely exercised. In addition, a coroner must, under s 8(3) of the Coroners Act 1988, summon a jury of 7 to 11 persons in some cases, e.g. where the deceased was in police custody, or death was the result of an injury caused by a police officer in the purported execution of his duty, and may accept the verdict of the majority if the dissentients are not more than two. Where there is no jury the judge determines the facts as well as the law.

Apart from a coroner's jury, a civil jury formerly had to be unanimous. However, under s 17 of the Juries Act 1974, the verdict of the jury in civil proceedings in the High Court need not be unanimous if:

(*a*) where there are not less than 11 jurors, 10 of them agree on the verdict; and
(*b*) where there are 10 jurors, nine of them agree on the verdict.

The verdict of a jury of eight persons in a county court need not be unanimous if seven of them agree on the verdict. The two hours' deliberation necessary for a criminal jury before a majority verdict is permissible is not required for a civil jury. It is enough if it appears to the court that the jury had such period of time for deliberation as the court thinks reasonable, having regard to the nature and complexity of the case. In civil cases the court may accept a verdict by *any* majority so long as both parties consent (s 17(5) of the 1974 Act).

Appeals

Consideration has already been given in Chapter 2 to the rights of appeal in civil cases.

Enforcing a judgment

Let us assume that the judge has given judgment to our claimant on his claim for a sum of money thought appropriate in the circumstances of the case. Let us suppose that the defendant is not prepared to pay these sums. How can a party to an action get the money the court has awarded him? Some of the more important methods available to *judgment* creditors are set out below.

(a) Execution. A claimant can ask the High Court to institute execution, which orders the sheriff's officer of the county in which the debtor's goods are located to seize through bailiffs the defendant's goods and sell them by public auction in order to pay the claimant. In the county court there is a similar procedure but it is based upon a warrant of execution issued to the court bailiff.

(b) The charging order. The court may make such an order over, say, the defendant's land or other property such as shares. If the money is not paid the claimant can have the property sold and recover his damages from the proceeds of sale. The Charging Orders Act 1979 defines the type of property in respect of which a charging order may be made. The 1979 Act widened the scope of property which may be made the subject of an order so that, for example, a charging order may now be made over a debtor's beneficial interest under a trust.

(c) The garnishee order (now called a third-party debt claim for procedural purposes). If the creditor knows that the debtor is owed money by a third party – where, for instance, there is a credit balance on the debtor's bank account or building society account – the creditor may wish to divert the payment away from the debtor to himself. This can be done by applying to the court for a garnishee order *nisi*. The order is addressed to the third party, e.g. the bank, forbidding it to pay the debt to the debtor and requiring a representative to attend before the court to show why the money (or part of it) should not be paid over to the judgment creditor.

The order is served at least seven days before the next court hearing on the matter and if at that hearing no cause has been shown as to why payment should not be made to the judgment creditor, the court can make a garnishee order absolute, requiring payment by the bank to the judgment creditor.

(d) Attachment of earnings. Where the defendant is in employment the claimant can obtain an attachment of earnings order through the county court. Under such an order the defendant's employer is required to deduct a specified sum from the defendant's wages or salary and pay the money into court for the claimant. The court sends the money to the claimant. Attachment is not available against the profits of the self-employed.

It will have been noted that, so far as (*a*) to (*d*) above are concerned, each of the ways of enforcing the judgment is aimed at a different aspect of the defendant's finances, that is:

(i) goods owned (order and warrant of execution);
(ii) wages or salary (attachment of earnings);
(iii) savings (garnishee order);
(iv) property (charging order).

Details of a defendant's finances can be obtained by what is known as 'oral examination' through the court.

(e) Equitable execution. The court may appoint a *receiver* where, for example, the defendant owns property. The receiver can take over income such as rent and apply it in order to pay the claimant. The judgment creditor of a person who is a partner can, under s 23 of the Partnership Act 1890, obtain an order charging that partner's interest in the partnership property and profits with payment of the judgment debt. If the judgment creditor feels that he will experience difficulty in getting the firm to pay over, e.g. the profit share of the partner concerned, he can ask for the appointment of a receiver.

The enforcement of a non-money judgment, such as an injunction, is by means of the offence of contempt of court. If a defendant fails to obey an injunction, he is in contempt of court and the court may, if the claimant applies, punish him. It may make, for example, an order for committal under which if the defendant still refuses to comply with the injunction, he may be imprisoned. Alternatively, the court may issue a writ of sequestration. This writ, which is directed by the court to commissioners, usually four in number, commands them to enter the lands and take the rents and profits and seize the goods of the person against whom it is directed. Thus, the court can in effect take control of the defendant's property until the defendant has complied with the court's order.

(f) Bankruptcy or insolvency proceedings. Where as here the debt exceeds £750, bankruptcy or company insolvency proceedings could be considered. This would at least ensure that an insolvency practitioner (generally an accountant) would be put in charge of the debtor's assets and ensure a fair and legal distribution of the assets between creditors as well as effectively preventing the debtor from dealing with them. These procedures are not available to a person who has registered a charging order because by so doing he has made himself

a secured creditor and only unsecured creditors can petition for bankruptcy or company winding-up.

Insolvent individuals and companies may try to avoid bankruptcy or liquidation by proposing to creditors, who must agree by a majority of three-quarters *in value*, *a voluntary arrangement*. This will not get the creditor all his money but will get him at least some of it. The arrangement operates under a supervisor who is usually an accountant and allows for so many pence in the pound to be paid over an agreed time span.

Enforcement outside of the UK

In these days of global trade, a claimant may wish to enforce an English judgment abroad. There are two situations as follows:

- ***Enforcement within the EU***. Article 26 of the Brussels Convention of 1968 was incorporated into English law by the Civil Jurisdiction and Judgments Act 1982. The Convention requires all member states to recognise and enforce the judgments of other member states.
- ***Enforcement outside the EU***. The Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 apply to the countries covered, which are mainly Commonwealth states. Elsewhere as, e.g., in the USA, it is a matter for the courts of the country where enforcement is sought.

Enforcing a judgment – reform

In March 2003 the government published a White Paper entitled *Effective Enforcement* that is designed to introduce in due course legal rules to improve the process for recovering civil debt. The proposals include most importantly:

- *a new court order* known as a data disclosure order that would oblige debtors to give their creditors personal information such as their full real name, address and credit details. The government feels that this will make it easier for creditors to track down those who go missing when ordered to pay their debts. The orders will strike a balance between the interests of creditors and respect for individuals' privacy;
- *in regard to attachment of earnings*, the system for recovery from pay packets is to be made faster, fairer and more effective, though there will be no application of a similar remedy to operate against the incomes of the self-employed. There will be powers for the courts to track down and redirect the orders against those who change their jobs;
- *there are also proposals to clean up the image of the civil enforcement industry* by licensing court bailiffs and freelance operators who should be able to offer debtors advice on court orders and discuss repayment options rather than operating as 'hired heavies' as some do;
- *there are proposals to streamline charging orders* and to protect vulnerable individuals who suffer anxiety from believing that their homes will of necessity be repossessed.

There is no timescale for any required legislation.

6

THE LAW-MAKING PROCESS I: UK LEGISLATION

The word 'source' has various meanings when applied to law. One may treat the word 'source' as referring to the *historical or ultimate origins of law* and trace the *development* of the common law, equity, legislation, delegated legislation, custom, the law merchant, canon law and legal treatises, as we have done in Chapter 1. But on the other hand, one may treat the word 'source' as referring to the *methods by which laws are made or brought into existence*, and consider the current processes of legislation, delegated legislation, judicial precedent and, to a limited extent, custom. In this chapter we shall be concerned with the *methods by which laws are made*, i.e. the *active* or *legal* sources of law and in particular the laws which are made by the Westminster Parliament and how they are interpreted by the judiciary.

The United Kingdom

There are within the United Kingdom two parliaments and two assemblies. However, for our purposes, there is one parliament and one assembly to consider. This text is concerned with the law of England and Wales and so no reference is made to the powers of the Scottish Parliament or the Northern Ireland Assembly.

The Welsh Assembly

The Government of Wales Act 1998 provides for an Assembly for Wales. It creates for the first time an all-Wales elected government. It has 60 members sitting in Cardiff. Elections are held every four years on a basis of proportional representation. Forty members are elected from Welsh Westminster parliamentary seats with a top-up of 20 from five electoral regions, four from each. The Assembly has a budget of several billion pounds (though only about one-half of the Scottish budget) and there are no taxing powers. Its legislative powers are currently confined to *subordinate legislation* for Wales. The Government of Wales Act 2006 will from May 2007 give the Assembly power to make *statutes* for Wales which, if approved by Parliament, will become part of the statute book. The First Minister will be appointed by the Queen following nomination by the Assembly. The Queen will also approve the First Minister's choice of other ministers, bringing the governance of Wales more into line with the Westminster model.

It has control over:

- health and education;
- training policy;

- local government and social work;
- housing and planning;
- economic development and financial assistance to industry;
- tourism;
- some aspects of transport;
- environment and national heritage;
- agriculture, forestry and fisheries;
- food standards;
- the arts.

The members of the Assembly are called Assembly Members (or AMs).

The Westminster Parliament

The Westminster Parliament consists of two chambers: the House of Commons and the House of Lords.

The House of Commons

This consists of 659 members, called MPs, who meet in London at Westminster. Elections are held at least every five years and all MPs are elected on a first-past-the-post basis. There is, in theory, a five-day week, but for MPs with constituencies outside London it is, in effect, a four-day week to allow them to return to those constituencies to conduct, e.g., surgeries for constituents. Most business is conducted between 11am and 7pm, except on certain days when debates start at 9.30am. The Commons sits for between 30 and 35 weeks a year and has a budget well in excess of £300 billion. Perhaps obviously, it has taxing powers limited only by the sanction that the electorate would not return a Parliament which adopted draconian taxing policies.

The House of Lords

This is the Second Chamber of Parliament and used to consist, in the main, of hereditary peers, though under the Life Peerages Act 1958 there has been added a number of persons from various walks of life who hold life peerages but whose descendants have no right to a seat when the life peers die, as the descendants of hereditary peers have. These peers are called the Lords Temporal. Then there are the Lords Spiritual, e.g., the Archbishops of Canterbury and York and certain other bishops of the Church of England. From 2009, when the Supreme Court becomes effective, the Law Lords will become the first judges of the Supreme Court but subsequently the link between that court and the House of Lords will end. In the meantime, the Law Lords do not take part in the legislative functions of the House of Lords.

Reform of the House of Lords

The system of hereditary peers was deemed to be undemocratic in that these peers followed on taking a seat in the Lords by inheritance, and were never subjected to election. There are also some arguments to suggest that the life peerage system is undemocratic in that it has been used by prime ministers to elevate to a life peerage certain of those who have lost an election, in some cases where they have lost a subsequent by-election or, in one classic case, where the life peer had as prospective MP lost two subsequent by-elections! In other words, having been rejected by the people once or even twice or three times, the ex-MP returned to the legislature via a life peerage.

The House of Lords Act 1999 received the Royal Assent on 11 November 1999. It effects the removal of the right of hereditary peers to sit and vote in the Lords. For the time being,

75 have been elected by their peers to remain until further reforms are agreed. The Conservatives won 42 seats, the crossbenchers 28, the Liberal Democrats three and Labour two. The proposals of the Royal Commission under Lord Wakeham were:

- a new 550-member (there are currently some 700) mainly nominated, partly elected second chamber;
- three options for the number of elected members – 65, 87 or 195;
- election through a regional voting system on the basis of proportional representation;
- an appointments commission to select suitable figures and maintain the political balance of the chamber;
- a minimum 20 per cent of independent crossbenchers;
- members to receive a daily attendance rate rather than expenses;
- increased powers to delay secondary legislation, e.g. statutory instruments, and to oversee constitutional legislation;
- the chamber's link with the peerage to end;
- representation from all Christian denominations and non-Christian faiths;
- the Law Lords will continue to sit in the chamber.

The above proposals have not been implemented but a committee of MPs and peers was formed and charged by the Prime Minister to put together a further compromise on Lords' reform. However, the committee reached the conclusion that there was no point in continuing its complicated work after the Prime Minister expressed his preference for a fully appointed second chamber. Accordingly, the committee decided to wind itself up. In July 2003 the government stated its intention to put in place a fully appointed (not voted) second chamber. The government has committed itself to removing the remaining hereditary peers and keeping the rest of the chamber much as it is. The government statement is as follows:

> There is no consensus about the best composition for the second chamber. For the time being the Government will concentrate on making the House of Lords work as effectively as possible in fulfilment of its important role. It remains the Government's policy, as set out in its White Paper in November 2001, that the remaining hereditary peers should be removed from the House.

The Department for Constitutional Affairs has undertaken to reform the Appointments Commission that handles new peerages and look again at the matter of how long a peer should serve in the House.

The Westminster Parliament has control of:

- foreign policy;
- defence and national security;
- the civil service;
- stability of fiscal economic and monetary system;
- border control;
- drug policy;
- common markets for UK goods and services;
- electricity, coal, oil, gas and nuclear energy;
- transport safety and regulations;
- social security policy and administration;
- employment legislation;
- abortion;
- broadcasting;
- equal opportunities.

The Westminster Hall debates

The House of Commons has another chamber sited in the Grand Committee Room off Westminster Hall. It sits in the morning and is designed to be non-confrontational and a forum for a reasoned discussion on select committee reports and to allow MPs to raise issues relating to their constituencies by seeking to get them on the agenda. Instead of the face-to-face arrangement of the Commons benches, this parallel chamber seats MPs in a semi-circle. The proceedings are presided over by the deputy speaker and the quorum is three. About one-and-a-half hours are given to a topic and cover such subjects as police numbers and issues of law and order in rural areas, together with ancient woodlands and tourism. The list is potentially endless.

The Westminster Hall debates have become more popular in recent times and sometimes there are more MPs at these debates than in the Commons chamber which of course is seldom well-attended except where matters such as the Budget are considered and for Prime Minister's Questions or where an international crisis is looming. In particular, debates have been initiated by the opposition parties and in terms of business MPs have used the system to initiate debates on, e.g. the government's action in putting Railtrack into the insolvency procedure of administration – somewhat hurriedly some thought, to the disadvantage of its shareholders.

From now on, in this and other chapters of the text, a reference to 'Parliament' means the Westminster Parliament.

Future developments

The Regional Assemblies (Preparations) Act 2003 received the Royal Assent on 8 May 2003. It makes provision for the holding of referendums about the establishment of elected assemblies for regions of England (except London). It implements the first stage of the White Paper, *Your Region, Your Choice: Revitalising the English Regions*, May 2002. It could lead to the setting up of assemblies in e.g. the North-East, the West Midlands and the South-West, among other regions. The Act does not itself permit the creation of elected regional assemblies. This will require further legislation.

Types of Bills

A session of Parliament normally lasts for one year commencing in October or November. During that time, a large number of Bills become law, most of which are *government Bills*. An Act of Parliament begins as a Bill, which is the draft of a proposed Act. The government is formed by the parliamentary party having an overall majority, or at least the greatest number, of members in the House of Commons, or more rarely by a formal coalition of, or more informal arrangement between, two or more parties who between them can command such a majority. The government is led by a Prime Minister who appoints a variety of other Ministers, such as the Chancellor of the Exchequer, the Home Secretary, the Foreign Secretary, and others to manage various departments of state. A small group of these Ministers, called the Cabinet, meets frequently under the chairmanship of the Prime Minister and formulates the policy of the government. An important part of this policy consists of presenting Bills to Parliament with a view to their becoming law in due course. Such Bills are usually presented by the Minister of the department concerned with their contents.

Queen's Speech

The legislative intentions of the government are given in outline to Parliament at the commencement of each session in the Queen's Speech. This is read by the Queen but is prepared

by the government of the day. Most government Bills are introduced in the House of Commons, going later to the House of Lords and finally for the Royal Assent. However, some of the less controversial government Bills are introduced in the House of Lords, going later to the Commons and then for the Royal Assent. Money Bills, i.e. those containing provisions relating to finance and taxation, e.g. the annual finance Bill, and other Bills with financial clauses must start in the Commons.

Private members' Bills

Members of either House whether government supporters or not have a somewhat restricted opportunity to introduce *private members' Bills*. Such Bills are not likely to become law unless the government provides the necessary parliamentary time for debate. Some, however, survive to become law – for example, the Murder (Abolition of Death Penalty) Act 1965. Those that are lost usually fail to be debated fully because influential and anonymous objectors work behind the scenes to ensure that they are taken towards the end of the session when parliamentary time is at a premium. In addition, the severe restriction of debating time for private members' Bills makes such time as is available an ideal stamping ground for the determined filibuster who wishes to talk the Bill out. In spite of all this, many more private members' Bills have reached the statute book in recent times.

Prorogation and its effect

A session of Parliament is brought to an end by the Monarch by prorogation and a Bill which does not complete the necessary stages and receive the Royal Assent in one session will lapse. It can be introduced in a subsequent session but must complete all the necessary stages again. This lapse is not, however, inevitable since there is a procedure under which the government of the day can by negotiation with the Opposition allow a Bill to carry on with its remaining stages in the next session. This procedure was used, e.g., with the Financial Services and Markets Act 2000 when it was at the Bill stage. The Bill was of great length and dealt with fundamental changes in the regulation of the financial services industry and the City of London as a financial market. By agreement it was carried over after the end of the 1998/9 session to the 1999/2000 session in order to complete its stages. Bills also lapse when Parliament is dissolved prior to a General Election. The above provisions do not apply to *private Bills* (see below) which because of the costs involved in promotion can complete their remaining stages in a new session. The sittings of Parliament within a session are divided by periods of 'recess'. Bills do not lapse when Parliament goes into recess.

Public and private Bills

Bills are also divided into *public* and *private* Bills. *Public Bills*, which may be government or private members' Bills, alter the law throughout England and Wales and extend also to Scotland and Northern Ireland unless there is a provision to the contrary. *Private Bills* do not alter the general law but confer special local powers. These Bills are often promoted by local authorities where a new local development requires compulsory purchase of land for which a statutory power is needed. Enactment of these Bills is by a different parliamentary procedure.

The Speaker of the House of Commons rules whether a Bill is public or private if there is doubt as where, e.g., the Bill might affect areas beyond that of the local authority concerned, as would be the case if a seaport authority forbade the export of live animals from the port.