

Solicitors & Barristers

- 1) Describe the main differences between solicitors and barristers with regard to work and training.
- 2) Discuss the advantages and disadvantages of having a single legal profession.

1)

Background

The legal profession is largely middle class, partly due to the lack of funding for professional courses.

In 1999, ethnic minorities formed 8.5% of the Bar and 5% of solicitors. In 1998 ethnic minorities formed 16% of trainee solicitors and pupil barristers. Ethnic minority candidates find it more difficult to obtain training contracts, pupillage and tenancies: 7% succeeded compared to 45% of white students in 1993. Five QCs out of 69 in April 1999 were from an ethnic minority

Women make up 25% of practicing barristers and 33.9% of practicing solicitors (as at July 1998). Women earn less than men and men reach higher positions (LCD Report, Without Prejudice, 1994; and a Law Society survey, September 1999). Women make up 7% of QCs (as at October 1998); only nine out of the 69 new QCs in April 1999 were women. The Law Society and Bar Council have issued policies to prevent sex discrimination.

Solicitors

When people need legal advice, they contact a solicitor. Solicitors offer skilled advice on all kinds of legal matters, from buying a house to selling a business. Solicitors can decide whether or not to take a case. Most solicitors provide general advice and do 'paper work', e.g. writing letters, drafting contracts and tenancies, conveyancing, wills, divorce petitions.

Solicitors also represent their clients in court, mostly the lower courts; but some have advocacy rights in the higher courts.

Most solicitors are in private practice. They work in multinational City firms with hundreds of staff, in high

street offices as sole practitioners, and in firms of every size in between. Other solicitors have jobs in local government, law centres, the civil service, commerce and industry.

Solicitors deal with people from a broad cross-section of the community, and that's one of the reasons the governing body for solicitors, the Law Society, promotes equality and diversity in the profession.

Solicitors have been able to be promoted to all levels of the judiciary since the Courts and Legal Services Act 1990, prior to this they could only become circuit judges.

Solicitors are required to have a Law degree or any degree and a Diploma in Law, have completed a Legal Practice Course and a Training Contract, Professional Skills Course, and to have had their name added to roll of solicitors. Subsequently they must complete 16 hours of Continuing Professional Development per year for three years and 48 hours for each subsequent three year period.

Complaints were handled by the Solicitors' Complaints Bureau, until 1996, which was criticized for delay, inefficiency, favoring solicitors, maximum compensation of £1,000 and not being sufficiently independent of the profession (as powers delegated to it by Law Society). Replaced by the Office for the Supervision of Solicitors (OSS) which has the power to award up to £5,000 compensation, reduce or abolish the solicitor's fees and force them to rectify their mistakes free of charge. OSS assessed in the Legal Services Ombudsman's 1997 Annual Report: more user-friendly than SCB but backlogs in handling complaints. The OSS was criticized by Which? Magazine for not being sufficiently independent of the profession. It is still run by the Law Society. Complaints should be handled by a completely independent organization. Dissatisfied complainants can go to the Legal Services Ombudsman who can recommend that the OSS reconsider the complaint, and/or order compensation to be paid. Under the Access to Justice Act 1999, s49, the LSO can order the solicitor or the Law Society to pay compensation to the client. Solicitors can be sued for negligence. Solicitors can be suspended from practice or struck off by the Solicitors' Disciplinary Tribunal. The Law Society now has greater powers to inspect solicitors' files and accounts under the Access to Justice Act 1999, sched.7

Barristers

Barristers act on instruction from solicitors; they have little or no contact with members of the public. Direct access has been limited to overseas clients since 1973. Barrister work on the 'cab rank rule' meaning that if they practice in the required field the solicitor requires they must accept the case.

Barristers perform two roles. When specialist expertise is needed, they give opinions on complex matters of the law. When clients require representation in the higher courts, barristers provide a specialist advocacy service.

Barristers also do some 'paper work' e.g. drafting legal documents and providing written opinions.

Barristers are self-employed and cannot form partnerships. They work from shared chambers that are managed by a clerk. Seventy percent of barristers in the UK are based in London.

Barristers are required to have two Law Degrees or other degrees plus two Diplomas in Law and forty-two hours of advocacy training in the first three years of training. They must also join one of the four Inns of Court in London and have completed the Bar Vocational Course. Dining at the Inns of Court is now voluntary. They must be called to the Bar. One year pupillage or two six month pupilages must also be completed. They must find a tenancy in chambers or 'squat'. They can apply to LCD to become Queen's Counsel after ten years' experience. Promotion to all levels of the judiciary has always been possible.

Until recently, barristers could not be sued for negligent work in court as a result of the decision in *Rondel v Worsley* (1969) but could be sued for work outside court: *Saif Ali v Sydney Mitchell & Co* (1978). Barristers can now be sued for negligence since the decision of the House of Lords in *Arthur Hall & Co v Simons* (July 2000).

Complaints were made to the Bar Council until a lay Complaints Commissioner was appointed in 1997. The Complaints Commissioner can refer complaints to a Complaints Committee who can require barristers to reduce refund or waive fees and order compensation of up to £2,000 (although work in court was not covered because of immunity from being sued in negligence). Dissatisfied complainants can go to the Legal Services Ombudsman who could recommend that the Complaints Commissioner reconsider the complaint, and/or order compensation to be paid. Under the Access to Justice Act 1999 the LSO can now order that the barrister or Bar Council pay compensation to the client. Barristers can be disciplined and even disbarred by the Senate of the

Inns of Court for failing to maintain the standards of the Code of Conduct.

Main Differences

Solicitors undertake legal business on behalf of individual and corporate clients, whereas barristers advise on legal problems submitted through solicitors and present cases in the higher courts.

Barristers must pass professional exams before being called to the Bar, and they must then serve an apprenticeship with a qualified barrister for a year. Solicitors must also pass professional exams and serve a two year period of apprenticeship, called articles, in a solicitor's office. Once qualified in this way, a newly admitted solicitor is supervised for three years.

2)

The Royal Commission on Legal Services in 1979 (Benson) rejected suggestions that the present legal profession should be fused into a joint profession. But there are many good arguments in favour of fusion.

Many observers believe that a single legal profession, without the strict separation of the roles of barristers and solicitors, which exist at present, would mean that clients would receive a better service at a fairer price. The system of using two lawyers - a solicitor to deal with the early stages of a case, followed by a barrister to appear and speak for the client at the court hearing - can mean the duplication of work and additional unnecessary expense. A second expert, the barrister, entering the scene at a late stage, allows for errors, and some clients are unhappy about the way their cases are handled by barristers whom they do not meet until just before the trial, after many months of building up relation of trust with a solicitor.

ARGUMENTS FOR AND AGAINST THE UNIFICATION OF THE LEGAL PROFESSION

Against Unification

SPECIALISATION

The present system permits specialization. Small bodies of experts are available to a larger body of practitioners (solicitors). The barrister need only concern himself with the organization of the facts and the delivery of his case in court. He is not distracted by outside matters. The solicitor provides him with all the information he requires. If lawyers, and particularly barristers, take on other duties this expertise will be severely diluted.

AVAILABILITY

Under the existing system the whole Bar is available to solicitors looking for a suitable barrister to represent his client. In theory, at least, a barrister can be brought from any part of the country. This enables the client to have an opportunity of getting the most suitable advocate for his cause. If these barristers were absorbed into solicitors' practices, then they would only be available to clients in areas where they chose to take up practice. A client would have to be satisfied with the firm's own advocate, as a law practice would be unlikely to give away custom to a rival firm. The outcome would be that the client had less choice and less chance of hiring the best lawyer for his case.

DETACHMENT

Personal involvement of the barrister with the client is often an undesirable state of affairs. A detached barrister concentrates upon the legal issues and facts which are made available to him. He does not get sidetracked by personal involvement. The greater part of the personal conduct is left to the solicitor. This again is said to lead to greater efficiency.

WORKED WELL FOR CENTURIES

The system has worked well for hundreds of years; there is no reason to change.

EFFICIENCY

The present system isolates the barrister from the telephone and constant interruptions of his time. He is free to prepare his case for court unhindered.

OTHER COUNTRIES

Some other countries have adopted our legal system and accepted the principle of a two-tier profession. They would not have done so if they had not seen merit in it.

In most continental countries there are at least two types of lawyers - notaries and advocates. In the USA they...profession of "Attorneys and Counselors at Law", but in larger American firms a distinction is made between "court and office" lawyers.

EXPERTISE

Those who prosper at the Bar do so at the judgment of solicitors who are well able to judge the skills. The client is protected from his ignorance of the skills of the various barristers or lack of them. By this method only the most able survive. Many qualify, but few succeed in becoming established. The poor advocates are forced to give up.

It enables a relatively small Bar to become known, and to develop a mutual confidence in the Bench.

For Unification

EXPENSE

Fusion should bring about a reduction in costs. At present (except for Magistrates and County Courts), the employment of both a solicitor and a barrister is essential, and if a barrister is required in the lower courts (above) then once again a solicitor is necessary. This involves the payment of two fees and is very costly. If one lawyer was free to handle the whole case then costs must fall. **NOTE:** This argument does not mean that costs can be halved, because the work formerly performed by the two lawyers would have to be paid for, but it is realistic to assume that some reduction in costs would occur.

TIME

Fusion would save a lot of time. The present procedure required all matters to be communicated to the barrister via the solicitor. The client cannot even see the barrister unless taken to his office by the solicitor. These practices are directly responsible for long delays, which are not necessary and would not happen if one lawyer could conduct the whole case.

INEFFICIENCY

It is said that there are many cases where the solicitor could have probably done a better job for the client if he had been allowed to prepare the case and follow it through to the end. Good work has often been done by solicitors, only to see the case badly argued by a barrister in court. This is because he is too remote from the issues and often does not come into the case until the last moment. **NOTE:** It is also argued that solicitors are too close to the issues to argue the case well.

Some people say that the double manning of cases is also responsible for some inefficiency. It encourages the 'shrugging off' of responsibility. Responsibility can be pushed from one to the other and standards will fall.

OTHER COUNTRIES

In many other countries the profession is united and the system works well.

Some protagonists argue that if the barristers are absorbed into firms of solicitors then experts would still be available to all.