

Essay

1.a)

The English legal system comprises of two different branches, barristers and solicitors.

In the UK at the moment there are around 9,000 barristers and they are known collectively as the 'Bar'. The governing body for barristers is the Bar Council, which acts as a kind of trade union, safe guarding the interests of barristers and regulating barristers training and activities. All barristers belong to one of the 4 Inns – Inner Temple, Middle Temple, Grays Inn or Lincolns Inn. There are no significant differences between any of the Inns.

The majority of barristers work in private practices and they work as individuals. Barristers aren't allowed to form formal partnerships and they usually work from sets of 'chambers' in which a number of barristers are supported by a clerk or clerks. Although barristers are individuals, within their chambers they operate under the 'cab-rank rule'. This means that the barristers must accept any case within their area of competence, providing a proper fee is offered. This rule ensures proper representation for everyone.

The work of a barrister in a private practice is generally divided between the preparation of opinions, the drafting of pleadings and the presentation of cases in court and most barristers specialise either broadly, like in Common Law, Family or Chancery work or they specialise narrowly like in Criminal Law, taxation, libel, administrative law, intellectual property or admiralty work. Although barristers generally do not deal with the public, they do offer advice on legal matters to other professionals such as accountants.

There are also employed barristers who work full time for a particular employer such as large companies, a local authority, the civil service or the Crown Prosecution Service. Employed barristers are at the moment mainly concerned with preparatory work and giving advice, rather than with representing cases in court. The Access to Justice Act 1999 does however allow them to appear in court if they so choose. Barristers have rights of

audience in any court and they will usually be engaged by a solicitor on behalf of a client.

There are currently over 100,000 solicitors in the UK. The governing body for solicitors is the Law Society which is similar to the Bar Council in that it supervises training and discipline, as well as acting on behalf of the profession as a whole.

Solicitors work from offices, about 75,000 are currently in practice in towns, cities and villages throughout the country and about 5,000 are employed as legal advisers to organisations such as local government, commerce or industry or in the Crown prosecution Service. Some practising solicitors operate as sole practitioners but most are partners or assistant solicitors in firms, which vary in size from 2 to 200 solicitors.

Solicitors in private practice deal with the public directly and many firms handle a wide range of legal work, including conveyancing, divorce and related family matters, wills and probate, personal injury claims and criminal advice and representation.

Solicitors can employ other professionals but cannot enter into partnerships with them or be employed by them if they wish to continue practising. It has been suggested by the office of fair-trading that this rule be abolished and the provision of legal services be open to free competition.

Solicitors also have rights of audience in some courts and provided they have the right training required, they can become solicitor advocates, which would allow them to take the role of a barrister. Solicitor advocates used to only have limited rights of audience, limited to the magistrates court and the county court. Solicitor advocates now have higher rights of audience, made possible under the Courts and Legal Services Act 1990

Solicitors are paid by their clients and this is normally worked out by the time taken. The current rate is around £100 per hour. Under Law Society rules a solicitor should always specify his rate in advance. A client who is not satisfied with their solicitor's bill can refer it to the Law Society, which will reduce the bill if the charges are considered excessive.

1.b)

There is a big debate at the moment as to whether the two branches of the profession should be mixed in together to make just one branch. Most other countries operate with a single legal profession where individual lawyers may specialise, but all have the same qualifications and training and all are entitled to the same professional rights. The current debate is whether there is anything for the legal profession to gain by keeping the distinction between solicitors and barristers.

In 1990, the government imposed changes that have already removed many of the obvious differences of the professions.

Court and Legal Services Act 1990 (CLSA 1990) has allowed many changes. Under this act, solicitors have gained higher rights of audience. Higher court rights which were previously restricted to barristers are now open to solicitors with appropriate training and experience. Under the Access to Justice Act 1999, full rights of audience have been extended to employed barristers and solicitors on the same terms as those in private practices. Before the CLSA 1990 appointments to the Queens Council and appointment as a High Court Judge was restricted to barristers only. Following this act they have been opened to anyone with full rights of audience.

The CLSA 1990 has also removed immunity from suit meaning that both barristers and solicitors can be held responsible by a dissatisfied client in relation to his or her conduct of a case in court. This change can be seen in the case of Hall v Simmons 2000 in which solicitors appealed against the decision that they had no immunity from a suit in respect of allegedly negligent advice on a proposed settlement.

Although differences have been removed, many still remain. The training for barristers and solicitors is still different in the vocational and professional stages and people are expected to choose at an early stage which path they wish to go down in regards to the professions. Barristers work almost as individuals whereas many solicitors work mainly in partnerships or as employees.

The way they are paid is also different, barristers are paid a fee per case but solicitors are paid on an hourly rate and employed barristers and assistant solicitors are paid a salary. Barristers are still bound by the 'cab-rank' rule and must take any case within their professional ability, but solicitors can choose their clients.

I think it is true to say that the lines between the professions are being blurred. Some of the differences between solicitors and barristers have been lessened. Solicitors still deal directly with the public and barristers under the Bar Council rules cannot, but they can now take instructions and offer advice from certain professionals such as accountants and further changes are likely. Solicitors are seen as general practitioners and barristers as solicitors but the difference is lessening as many solicitors choose to specialise in particular areas of law. The ability for solicitors to become solicitor advocates is also a big step in removing the differences between the two professions.

If changes like these continue to be gradually made, the debate over fusing the two professions may well be solved with little effort, as the professions continue to grow similar.