

Part A – The Legal Professions – A Critical Analysis**1.0 Introduction**

The English legal profession, which applies in England and Wales, is separated into two different types of lawyer: the solicitor and the barrister. There are similarities and areas of overlap in both jobs. A solicitor deals with a whole spectrum of legal issues whereas a barrister usually specialises in one area and advises solicitors when asked. Solicitors are usually employed in a partnership as part of a solicitor's firm and their governing body is The Law Society. Barristers are usually self-employed and specialise in advocacy. After fifteen to twenty years a barrister can progress to the Queens Counsel (QC's) by application. The Queen on the advice of the Lord Chancellor appoints QC's. QC's 'represent the top ten percent of barristers' (Keenan, 2002) and due to this many applications are turned down and barristers may have to apply many times. The governing body for barristers is The BAR Council.

The following report aims to critically analyse the legal profession.

2.0 Training

Training in the professions is a long and intensive course. Firstly to become a solicitor or a barrister an individual would need to get their BA in law or if a different degree level course is studied they would have to take a conversion course that lasts a year in which tuition fees apply. From this stage the individual may have already got themself into owing a large debt as the average postgraduate for 2004 tops £10,000 (Average Student Debt, <http://news.bbc.co.uk/1/hi/education/1939528.stm>, BBC.co.uk 2004, [Accessed: 28/05/2004]). Then the individual would have to pay additional fees, as solicitors would have to take the Legal Practice Course (LPC), which lasts 9 months at a cost of £6000. Would be barristers have to take the Bar Vocational Course (BVC) for one year and fees are approximately £7000 -£11,000 depending on the location it is taken (Careers - Financial Planning, <http://www.legaleducation.org.uk/Careers/financial.php>, [legaleducation.org.uk](http://www.legaleducation.org.uk) [Accessed 28/05/04]). A problem with this is that many may not be able to pay with cash and may have to take up a loan, which would incur extra costs like interest.

After the legal practice course a solicitor becomes a trainee for two years with a solicitors firm and can earn a salary of around £20,000. Some firm's though pay part or full LPC fees. Once the BVC is taken the individual then joins an Inn of Court where they take 1 year's pupillage and will shadow a barrister's work. After the first 6 months of pupillage the trainee can appear in court and conduct their own cases. During this time pupil earns a minimum of only £10000. The problem with this is that with such a low wage how will pupils be able to pay for living costs, as well as debt repayments, with the limited amount of grants available? Pupils can apply for loans but would increase debt repayments. After pupillage barristers will join the junior council where the salary can reach and be in excess of £90.000 per annum (Tillson, 2004).

3.0 Reforms in the Professions.

3.1 Liability of Negligent Work

There have been recent reforms in the professions in the way solicitors and barristers conduct their work. 'Until recently both solicitors and barrister were immune from action in negligence arising from the conduct of a case in court' (Keenan, 2002). This reform is helpful, as clients in the past with a good case have had their case go against them due to insufficient work from their legal team. In 1967, concerning case of Rondel v Worsley, the House of Lords saw it fit that barristers could not be held negligent for their advocacy in any case. The House then also applied immunity from liability for negligent conduct to the role of solicitors in the case of Salif Ali v Sydney Mitchell & Co (1978). The case of Arthur Hall and Co v Simons (2000) was the turning point of this situation and the House of Lords saw it fit to hold both professions liable for improper work.

3.2 Direct Access

In the past it used to be that only solicitors could have contact with the barrister involved. 'The rules have now been relaxed to allow members of professional bodies ... direct access to a barrister, and since 1996, members of the public whose cases have been prepared by trained Citizens' Advice Bureaux staff' (Keenan, 2002). This reform allows barristers to have a better understanding of a case concerning the client, as the solicitor may have overlooked some aspects of the case.

3.3 Merging the Professions

For quite a while now there has been a debate of whether the professions should be. An argument for merging is that it could eliminate the amount of time and half the effort wasted on cases, making the process quicker. At present, solicitors have to send their brief to a barrister, which takes time. If merged there would only have to be one person dealing with the case. Fusion would also cut the cost to the client for their legal case as they would not have to pay fees for both. Also last minute changes mean that a new barrister could be appointed to deal with a case, which means they may not have a thorough understanding of the case. Merging would extinguish this and would mean solicitors can enhance and utilise their skills more practically.

There are arguments against the merging of barristers and solicitors, the first meaning it would break up working relationships between small groups of specialist barristers. Merging also means that the lawyers' workload would be dramatically increased. This means that training would become even more intensive as there would be a lack of expertise, as the specialist element of the barrister would be eliminated. Also, the expense of a case may not necessarily be cheaper as barristers have a fixed fee no matter how long the case takes. At the moment solicitors are paid by the hour and merging would make them more expensive as they may have to take a longer time in preparing the brief and would 'clock -up' many client hours. Merging also gives rise to the fact that standards of advocacy may fall, as lawyers may not have enough experience in advocacy. The role of a barrister is to be an expert in their field, which is developed over a long period of time and if the professions were merged this would be lost. At present solicitors are able to do some amount of advocacy work due to the Courts and Legal Services Act 1990 and the Access to Justice Act 1999 which gave all solicitors automatic rights of audience in all courts.

Bibliography

1. Keenan D. and Riches S. (2002), Business Law (6th Edition), Longman
2. Tillson J. (2004), lecture notes

Appendix A

SCHEDULE 2

"GUIDELINES" FOR APPLICATION OF REASONABLENESS TEST

Sections 11(2), 24(2)

The matters to which regard is to be had in particular for the purposes of sections 6(3), 7(3) and (4), 20 and 21 are any of the following which appear to be relevant—

- (a) the strength of the bargaining positions of the parties relative to each other, taking into account (among other things) alternative means by which the customer's requirements could have been met ;
- (b) whether the customer received an inducement to agree to the term, or in accepting it had an opportunity of entering into a similar contract with other persons, but without having to accept a similar term;
- (c) whether the customer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);
- (d) where the term excludes or restricts any relevant liability if some condition is not complied with, whether it was reasonable at the time of the contract to expect that compliance with that condition would be practicable;
- (e) whether the goods were manufactured, processed or adapted to the special order of the customer

Taken From: Unfair Contract Terms Act 1977