

Judges Exam – Jan 2003

5a). There are two main types of judges; these are inferior judges and superior judges.

The Lord Chancellor plays a crucial role in the appointment of all judges.

The selection and appointment procedure for district judges, recorders and circuit judges is broadly the same. Suitably qualified candidates apply to the Judicial Appointments Department of the Lord Chancellor's Department (LCD) in response to an advertisement. References are taken up, and wider 'secret surroundings' are carried out by officials within the LCD. A shortlist is prepared and those candidates are interviewed by a panel of three – a circuit judge, an official from the Judicial Appointment Department and a lay member. The interview panel recommends candidates to the Lord Chancellor, who then makes the appointment.

To become a High Court Judge, candidates may either apply in response to an advertisement or be invited by the Lord Chancellor to consider the position. Considerable 'secret surroundings' are carried out. In addition, the opinions of all serving High Court judges are sought. Those candidates who are short-listed are then reviewed by the Lord Chancellor and the four Heads of Division (the Lord Chief Justice, the Master of the Rolls, the President of Family Division, and the Vice-Chancellor). Successful candidates are appointed by the Lord Chancellor.

Lord Justices of Appeal are always appointed from the ranks of High Court Judges. The Lord Chancellor will invite such judges to consider appointment to the Court of Appeal, having discussed their suitability with existing Lords Justices and Law Lords. The Lord Chancellor then makes a recommendation to the prime minister, who formally recommends the person to the Queen.

The statutory criteria for each type of Judge are as follows:

- District judge; 7 years as solicitor or barrister
- 10 years' rights of audience in crown or county courts
- Circuit judge; 10 years' rights of audience in crown or county courts
- High Court judge; 10 years' rights of audience in High Court
- Lord Justice of Appeal; 10 years' rights of audience in High Court
- Lord of Appeal-in-Ordinary; 10 years' rights of audience in High Court and the holding of high judicial office for at least 2 years

The dismissal of judges is very difficult. The system prides itself on having independence from pressures that might be put upon it by Government, the general public or other sources, therefore judges need to feel secure in their posts.

All judges of the Supreme Court – of the High Court rank and above – hold office ‘during good behaviour’; this means that they may only be dismissed by the monarch following the passing of a substantive critical motion through both Houses of Parliament.

It is possible for a judge to be removed on grounds of incapacity – through physical or mental ill-health – but this very much depends on the discretion of the Lord Chancellor.

As regards the removal of junior judges (up to the level of circuit judge), the Lord Chancellor has introduced procedures to reflect the Human Right Act 1998.

5b). To understand the different roles of judges, it is necessary to distinguish between the different levels in the hierarchy of judges and the courts over which they preside.

Generally, in civil courts, judges preside over the court, decide legal issues concerning admissibility of evidence and give a reasoned decision in favour of one of the parties. If the defendant is held liable, the judge decides the award of damages. In criminal cases tried in crown courts, the judge ensures that order is maintained, summarises evidence to the jury and directs them on relevant legal rules. If the defendant is convicted, the judge decides the sentence to be imposed. In appeal cases, judges have an important ‘law

making' role though the operation of the doctrine of precedent and statutory interpretation.

- District judges work in both county courts, where they preside over small claims cases and has administrative responsibilities, and magistrates' courts.
- Recorders (part-time) work in both crown courts and county courts.
- Circuit judges, like recorders, sit in both crown and county courts.
- High Court judges, on appointment, are assigned to a specific Division of the High Court. Queen's Bench judges go on circuit to crown courts, where they try all Class 1 offences (such as murder) and most Class 2 offences (all other serious offences for which a life sentence could be imposed). They also sit in the Court of Appeal (Criminal Division) together with a Lord Justice of Appeal.
- Lords Justices of Appeal sit in the Court of Appeal, either in the Civil or Criminal Division, usually in a panel of three.
- Law Lords sit in the House of Lords, where they hear final appeals, which must involve a point of law of 'general public importance'. Only about 70 cases are heard each year, the majority being tax cases.
- Senior judges are asked by government ministers to preside over judicial or public enquiries.

Judicial independence is essential to the theory of the 'rule of law'. Dicey analysed this important concept in the nineteenth century and stated that 'no

person is punishable except for a distinct breach of the law established in the courts' and not only is no man 'above the law, but that every man, whatever be his rank, is subject to the ordinary law of realm'.

There are many problems with the judicial role, these are, if there is lack of training on a judges part, this can affect the outcome of a case and may also affect the decision-making. There is also a lack of specialism in a certain area; this would be improved if a judge was appointed who had a specific area of interest that they can relate to. There are also issues with miscarriage of justice.

Other than those few problems with the judicial role, it appears to be working fairly well, without the judicial role, decisions to a case may be harder to finalise.