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CONCISE COLLEGE TEXTS

THE ENGLISH LEGAL SYSTEM

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THE ENGLISH LEGAL SYSTEM

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PREFACE

The purpose of this book remains that of providing students with a straightforward introduction to the English Legal System.

Increasingly, students in various disciplines and at all levels are being called upon to acquire a knowledge of the English Legal System; this is a development which will be welcomed by all who believe "Lux gentium lex." In writing this text book for such students I have consequently felt justified in omitting footnotes and in restricting detail in the cause of readability. At the same time I acknowledge the inevitable repetition, the occasional half-truth and the persistent over-simplification which such a treatment involves. In the outcome I shall be well satisfied if, as a result of reading this book, students are encouraged to further their acquaintance with the English Legal System.

If it is asked in what way this book differs from others with the same, or a similar, title I would emphasise that the attempt here is to describe the various elements of the system as they now exist. Legal history is dealt with only to explain the present institutions and practices. Other than for a cursory survey of the classification of the various branches of the law, no attempt is made, as in some treatments, to deal at length with the legal principles developed in those branches, nor is there the same emphasis on procedure to be found in some books.

The English Legal System, like the substantive law, is not exempt from change. In the years which have elapsed since the second edition the two Royal Commissions on Legal Services and on Criminal Procedure have reported and a multitude of minor amendments have affected the system. These have called for textual alterations to almost every chapter with substantial rewriting in the chapters dealing with the Legal Profession, Procedure, Tribunals, Legal Aid and the Changing Legal System.

Legislation in progress includes a Criminal Justice measure, which would amend some of the sentencing powers referred to in Chapter 7, and an Administration of Justice Bill to amend the law on Civil Liability.

I have again used recent case and statute examples where appropriate and the latest available statistics.

I remain grateful to the editorial staff of the publishers for their help and efficiency, to my students, past and present for their questioning interest and to my wife who has helped in innumerable ways.

Cumnor, Oxford.
January 1982

KEITH J. EDDEY

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Chapter 1

THE LEGAL PROFESSION

1. *BARRISTERS AND SOLICITORS*

In the English legal system a practising lawyer must hold one of two professional qualifications; he must either have been admitted to practise as a solicitor or have been called to the Bar as a barrister. This division of the legal profession is of long standing and each branch has its own characteristic functions as well as a separate governing body. No unqualified individual, however well versed in the law, can practise as a lawyer; and the restriction is so complete that were he to attempt for reward to do the work of a solicitor or barrister, he would at once come into conflict with the law and in certain circumstances he could well be prosecuted.

The barrister is usually thought of primarily as an advocate, since this is the work in which he is most often engaged. He has the exclusive right of audience as an advocate before all the superior courts, and he can also take cases in the inferior courts if he wishes to do so. When acting professionally barristers are known as "counsel." In total there are, at the last count, 4,600 barristers in practice, a number which is small enough to make this branch of the profession a closely-knit unit. One result of this factor, as will be seen in the next chapter, is that the senior judges in the English legal system are drawn exclusively from the ranks of experienced counsel.

The solicitor can be an advocate in the inferior courts but he is more familiar to the public in his role as a general legal adviser. There are approximately 37,000 solicitors in practice and their offices are a familiar feature in the business centres of cities and towns throughout England and Wales.

A significant difference between the two professions is that members of the public are able to call at a solicitor's office and seek his advice in a personal interview; whereas a barrister can only be consulted indirectly through a solicitor. It can be seen that there is a possible analogy in these circumstances to the medical profession, with the solicitor being regarded as a general practitioner and the barrister as a consultant. The analogy must not be taken too far however, since the legal knowledge of the newly qualified barrister is not to be compared with that of the senior partners of a firm of solicitors, whose legal experience may extend over many

years and cover diverse fields of law. In many instances too the solicitor is more of a specialist than the barrister, particularly where the latter is an advocate with a common law practice.

Apart from the barristers and solicitors who are involved in the private practice of the law, it is necessary to remember that a large number of professionally qualified lawyers are employed in central and local government, in commerce and industry and in education. Many of these, because they are not engaged in the practice of the law, would not be included in the figures given above.

2. TRAINING

(i) Barristers

A would-be barrister must first register as a student member of one of the four Inns of Court. The Inns of Court are Gray's Inn, Lincoln's Inn, Inner Temple and Middle Temple. All these institutions are to be found in close proximity to the Royal Courts of Justice in London. These four establishments, to one of which every barrister and judge must belong, have a long history as the original homes of the earliest advocates to practise as a profession.

The regulations which govern entry to the profession have been changed to give effect to the recommendations of the Ormrod Committee Report on Legal Education (1971) which had proposed that there should be common entry requirements to the legal profession followed by professional training for each branch of the profession. It is intended that in future the normal pattern will be for the Bar student to obtain a law degree and then proceed to a vocational course, highly practical in nature, the passing of which will result in his being called to the Bar. Students who do not have a law degree have to take and pass a group of examinations in law subjects before proceeding to the vocational course. There are detailed provisions for exemptions and as to the courses offered under the auspices of the Council of Legal Education which is a body operating on behalf of the Senate of the Inns of Court. Whilst studying to become a barrister the student is required to attend his Inn of Court to obtain an awareness of the ways of the profession which he is intending to join. His attendance is enforced by the requirement that he is present for a number of dinners each legal term.

Even after his call to the Bar the student's training is not, at present, complete, because if he intends to practise as a barrister he has to undergo a process known as pupillage. This involves his understudying a junior counsel in his day to day

practice for a period of 12 months. To balance the picture it is necessary to stress that many individuals who qualify as barristers do not intend to enter practice after their call; this is especially so in the case of many students from overseas. No pupillage requirement applies to these students.

(ii) Solicitors

Training for the would-be solicitor has long been a combination of examinations in law, and the understudying of a solicitor in practice. This latter process involves the student in spending a period of time as an articled clerk.

The Ormrod Committee Report has resulted in changes in training requirements for the solicitors' branch of the legal profession just as it has changed requirements for training for the Bar. Again, the usual method of entry will be by the student graduating in law and then proceeding to a series of vocational examinations. However, the general membership of the Law Society was anxious to allow non-law graduates and mature staff to continue to qualify as solicitors in appropriate cases, and they rejected the Ormrod Report's emphasis on a law degree as the sole qualification for entry to the profession. For the non-law graduate there will be an educational stage to be passed before the vocational stage can be attempted. For all students a period in articles will be compulsory.

When the student has completed his articles satisfactorily, and passed all the examinations to which he is subject, he may then apply to the Law Society to be "admitted." This process is effected by the Master of the Rolls formally adding the name of the new solicitor to the roll of officers of the Supreme Court. From the date of admission the student becomes a solicitor of the Supreme Court of Judicature and as such an officer of the court, but he may not practise until he has taken out an annual practising certificate individually issued by the Law Society. There is a substantial annual fee payable to the Law Society for the practising certificate and an additional payment to the compensation fund is also required. This is the fund from which payments are made by the Law Society to clients who have suffered financial loss through the misconduct of a solicitor. In order to obtain his practising certificate the solicitor also has to comply with very detailed regulations governing solicitors' accounts and indemnity insurance.

3. ORGANISATION

The organisation of the two branches of the legal profession