5 Lawyers at work

Professional titles

Although many kinds of people working in or studying legal affairs are referred to as lawyers, the word really describes a person who has become officially qualified to act in certain legal matters because of examinations he has taken and professional experience he has gained. Most countries have different groups of lawyers who each take a particular kind of examination in order to qualify to do particular jobs. In Japan, a lawyer must decide whether he wants to take the examination to become an **attorney**, a **public prosecutor** or a **judge**. In England, the decision is between becoming a **barrister** or a **solicitor**. Barristers specialize in arguing cases in front of a judge and have the right to be heard, **the right of audience**, even in the highest courts. They are not paid directly by clients, but are employed by solicitors. Judges are usually chosen from the most senior barristers, and once appointed they cannot continue to practice as barristers. Solicitors do much of the initial preparation for cases which they then hand to barristers, as well as handling legal work which does not come before a court, such as drawing up wills, and dealing with litigation which is settled out of court. Solicitors also have a right of audience in lower courts, but in higher courts, such as the Court of Appeal, they must have a barrister argue their client's case. In general, it can be said that a barrister spends most of his time either in a courtroom or preparing his arguments for the court and a solicitor spends most of his time in an office giving advice to clients, making investigations and preparing documents. Many people believe the distinction between barristers and solicitors should be eliminated in England, as has already happened in Australia. The government is considering various proposals, but there are arguments for maintaining, as well as removing, the division.

Range of work

Even lawyers with the same qualifications and professional title may be doing very different kinds of work. Most towns in the United States, for example, have small firms of attorneys who are in daily contact with ordinary people, giving advice and acting on matters such as consumer affairs, traffic accident disputes and contracts for the sale of land. Some may also prepare defences for clients accused of crimes. However, in both the United States and other industrialized countries, lawyers are

becoming more and more specialized. Working in small firms, lawyers now tend to restrict themselves to certain kinds of work, and lawyers working in large law firms or employed in the law department of a large commercial enterprise work on highly specific areas of law. One lawyer may be employed by a mining company just to prepare contracts for the supply of coal. Another may work for a newspaper advising the editors on libel matters. Another may be part of a Wall Street firm of over a hundred lawyers who specialize in advising stockbrokers on share transactions.

As well as the type of work, the working conditions and pay among members of the legal profession also vary greatly. For some people, the image of a lawyer is someone who leads a very wealthy and comfortable life. However, it should not be forgotten that there are also lawyers whose lives are not so secure. The Wall Street attorney probably earns a high salary, but the small firm giving advice to members of the public on welfare rights or immigration procedures may have to restrict salaries in order to stay in business. There are lawyers in developing countries whose business with fee-paying clients subsidizes the work they agree to do for little or no payment for citizens' rights groups. Lawyers involved in human rights may even find their profession is a dangerous one. Amnesty International research shows that more than 60 lawyers investigating cases against people accused of political crimes were murdered in 1990. In countries where the government ensures that all people have access to a lawyer in an emergency, there are firms that specialize in dealing with people who would not be able to pay for legal services out of their own pocket. For example, in England anyone facing criminal prosecution is entitled to choose a firm of lawyers to represent him. If his income is below a certain level he will not be asked to pay: the firm will keep a record of its costs and will apply to the government-funded Legal Aid Board for payment.

Entering the profession

How does someone become a lawyer? As with doctors and other professionals enjoying a high level of trust because of the specialized knowledge, lawyers are subject to standardized examination and other controls to regulate their competence. In some countries in order to practice as a lawyer it is necessary to get a university degree in law. However, in others, a degree may be insufficient; professional examinations must be passed. In Britain, it is not in fact necessary to have a degree, although nowadays most people entering the profession do. The main

requirement is to have passed the Bar Final examination (for barristers) or the Law Society Final examination (for solicitors). Someone with a university degree in a subject other than law needs first to take a preparatory course. Someone without a degree at all may also prepare for the final examination, but this will take several years. In most countries, lawyers will tell you that the time they spent studying for their law finals was one of the worst periods of their life! This is because an enormous number of procedural rules covering a wide area of law must be memorized. In Japan, where there are relatively few lawyers, the examinations are supposed to be particularly hard: less than 5 percent of candidates pass. Even after passing the examination, though, a lawyer is not necessarily qualified. A solicitor in England, for example, must then spend two years as an **articled clerk**, during which time his work is closely supervised by an experienced lawyer, and he must take further courses. A barrister must spend a similar year as a **pupil**.

Regulating the profession

In most countries, once a lawyer is fully qualified he receives a certificate proving his right to sell his services. There are also insurance provisions so that if a lawyer is ever successfully sued by a client for professional incompetence there will be funds available to enable him to pay damages —which may be extremely large in the case of lawyers dealing with property transactions. Even if a lawyer is very competent, he must take care not to break the many rules of procedure and ethics set by the body which regulates his profession. In England, the body regulating the conduct of solicitors is the Law Society. Among other things, it sets rules for lawyers' accounting procedures and investigates complaints against lawyers by their clients. There is also a Solicitor's Disciplinary Tribunal with the power to suspend or even disqualify (or **strike off**) a solicitor. Since its members are themselves solicitors some people fear that it may not be completely impartial. But members of the public do, of course, have the right to sue their solicitor, for example, in an action for negligence (see torts, Chapter 8). However, since the 1967 case of Rondel vs. Worsley and the 1978 case of Saif Ali vs. Sydney Mitchell, barristers in England and Wales may not be sued for negligent services in the courtroom. One reason for this is the fear that almost anyone who lost a court case would try to sue his barrister.

In most legal systems, conversations between a lawyer and his client are **privileged**: the client should know that what he says will not be passed on to someone else without his permission. In theory, this could pose

difficult ethical problems for a lawyer; for instance, what should he do in a criminal case if he believes his client is guilty? The lawyer must first decide how sure he is of the client's guilt. It can happen that someone thinks he has committed a crime when in fact he lacked the necessary mental state to be guilty (see Chapter 7). In any case, it is the prosecution's job to prove guilt, not the defence's to prove innocence. A lawyer could therefore defend his client simply by trying to point out weaknesses in the prosecution case.

Another ethical problem for a lawyer arises when he has two clients whose stories contradict each other; for example, each says that he is innocent and the other person is guilty. In such a case the lawyer must transfer one of the clients to another lawyer.

Legalese

Although lawyers come from a variety of backgrounds and do a variety of work, as a profession they often appear rather remote and difficult to understand. Perhaps one reason for this is legalese—the strange and incomprehensible language so many lawyers seem to write and speak. This is not just a feature of English-speaking lawyers. People all over the world complain that they cannot understand court proceedings or legal documents.

Of course all professions have their own jargon. Economists commonly talk about junk bonds (the right to collect a debt which will in fact probably never be repaid); doctors about lacerations (cuts) and contusions (bruises); and English teachers about metalanguage (the words we use to talk about language). The use of some special words can be justified because they refer to matters which are important to a particular profession but not important to most people in everyday life. But sometimes it seems that jargon is a way of creating a mystery about a profession, of distinguishing people on the inside (economist, doctors, teachers) from those on the outside.

In recent times lawyers have made efforts to make their profession less mysterious. After all, their job is supposed to be to clarify matters for the public, not to make them more complicated! This is particularly so in the United States where lawyers openly advertise their services to the public and where special clothes and wigs, still a feature of the English system, have mostly disappeared. But it seems likely that legalese will survive for a long time to come. One reason for this is that old documents and reports of old cases have great importance in law, particularly in common law

systems. Another reason is that rewriting laws is a slow and painstaking process. The words must try to cover every eventuality, because people are always looking for a legal loophole, a way of avoiding a legal duty by making use of an ambiguity or an omission in law. Consequently if there is an existing law which has worked for a long time, even a law which contains old language in long and complex sentences, it is easier to retain the old law than write a new one. Even when a government draws up a new law it is often guided by the wording of an older law.

But perhaps the main reason that legalese still survives lies in the nature of law itself. As mentioned in the first chapter, laws are attempts to implement justice, government policy, or just plain common sense. In order to be effective they must be as unambiguous as possible. Everyday language is often very ambiguous, but this does not matter if we are dealing with familiar situations or talking to people we know. The law, however, has to regulate relations between people who neither know nor trust each other and who are in unfamiliar situations. It is an unfortunate necessity that this sometimes requires complex language which has to be explained by experts.

English legalese is characterised by:

1. Words and expressions which have no meaning for non-lawyers, some of them coming from Latin or French. For example:
   replevin—the right to take back goods which were illegally removed
   nemo dat (quod non habet)—the principle that a person has no right to property acquired from a person who did not legally own it
   cy-près—the court's right to grant property to another similar charity if the charity the donor hoped to benefit does not exist
2. Words which look like ordinary English but have a special meaning when used by lawyers. For example:
   nuisance—interference with someone's enjoyment of land
   consideration—something given or given up on making a contract
3. Formal words which most people understand but which are very old-fashioned. For example:
   hereinafter—from now on; below in this document
   aforesaid—previously mentioned
4. Very long sentences containing many clauses which limit and define the original statement. The fourth characteristic can perhaps, be best demonstrated by showing an extract from a law in force in England today: the 1837 Wills Act, amended by the 1982 Administration of Justice Act:
   "No will shall be valid unless:

(a) it is in writing, and signed by the testator or some other person in his presence and by his direction; and
(b) it appears that the testator intended by his signature to give effect to the will; and
(c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
(d) each witness either–
(i) attests and signs the will; or
(ii) acknowledges his signature in the presence of the testator (but not necessarily in the presence of any other witness), but no form of attestation shall be necessary."

What exactly does the above mean? If you think it could be written more simply, perhaps you would make a good lawyer!

Discussion

Ted writes out a will leaving all his property to his wife. He phones his friends Al and Bill to come over and witness the will. While he is waiting for them to arrive he signs his will. When Al and Bill arrive he shows them the will and says "You see I've signed it at the bottom." Al signs his own name and then leaves. While Ted is out of the room saying goodbye to Al, Bill signs the will. When Ted comes back in Bill says, "Look, here's my signature."

Do you think Ted's will would be valid under English law? Discuss this with other students.