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Lesson Six

The Legal Profession

In this lesson we are going to have a look at the notion of legal occupations and explain basic terms which refer to the people who work in these jobs.

The most general term is a **lawyer** who according to *Black's Law Dictionary*, is "a person learned in the law; as an **attorney, counsel** or **solicitor**; a person licensed to practice law."

In practice, legal jurisdictions **exercise their right** to determine who is recognized as being a lawyer; as a result, the meaning of the term "lawyer" may vary from place to place. Below we are going to discuss the basic differences across Anglophone countries.

In England and Wales the legal profession is **split** between the solicitors' and barristers' professions and lawyers usually hold one title.

In the USA an individual licensed to practice law is referred to as an **attorney at law** or, more often, simply an **attorney** - the terms barrister and solicitor are not typically used. Nonetheless, attorneys within the United States usually must be "**admitted to the bar**", i.e. must be **granted permission** by a particular court system to practice law in that system. Then attorneys are permitted to conduct all aspects of litigation and appear before those courts where they have been admitted to the bar.

A **bar association** is a professional body of lawyers. In many Commonwealth jurisdictions, the "bar association" comprises lawyers who are qualified as barristers or **advocates** (collectively known as "**the bar**", or "members of the bar"), while the "**law society**" comprises solicitors.

The **Inns of Court** in London are the professional associations to one of which every barrister in England and Wales (and those **judges** who were formerly barristers) must belong. Today there are only four Inns remaining: Gray's Inn, Lincoln's Inn, The Inner Temple and The Middle Temple.

A **solicitor** is a lawyer who traditionally offers legal services outside of the courts. They have more direct contact with clients whom now they also frequently represent in courts not only lower but more and more often higher courts (High Court, Court of Appeal), i.e. they **act for a client** (as an attorney – tu: pełnomocnik). Solicitors may **conduct litigation** by making applications to the court, writing letters in litigation to the client's opponent. They may specialise in many areas of law but usually they choose one area of specialisation. To become a solicitor a law student must enroll with the Law Society as a student member and take a one-year course called the **Legal Practice Course** and then usually undertake two years' **apprenticeship**, known as a **training contract**.



A barrister is not an attorney and is usually forbidden, either by law or professional rules or both, from "conducting" litigation. This means that while the barrister speaks on the client's behalf in court, the barrister does so when instructed by a solicitor. This difference in function explains many of the practical differences between the two professions. Barristers are also engaged by solicitors to provide specialist advice on points of law. Barristers are rarely instructed by clients directly (although this occurs frequently in tax matters). Instead, the client's solicitors will instruct a barrister on behalf of the client when appropriate.

John Cleese as barrister Archie Leach in "A Fish Called Wanda"

The practical difference between the two professions is twofold:

1. A barrister will usually have **rights of audience** in the higher courts, whereas other legal professionals will have more limited access, or will need to take additional qualifications to do so. In this regard, the profession of barrister corresponds to that part of the role of legal professionals found in civil law jurisdictions relating to **appearing in trials** or **pleading cases** before the courts.
2. Barristers used to have a major role in **trial preparation**, including **drafting pleadings** and **reviewing evidence**. In some areas of law, that is still the case. In others, it is relatively common for a barrister to only receive a "**brief**" from an instructing solicitor to represent a client at trial a day or two before the **hearing**.
3. Barristers often have a more specialised knowledge of case-law and precedent. When a solicitor in general practice is confronted with an unusual point of law, they sometimes seek the "**opinion of counsel**" on the issue.
4. In court, barristers are often visibly distinguished from solicitors by their **apparel**. For example, in Ireland, England and Wales, barristers usually wear a horsehair wig, stiff collar, **bands** and a **gown**. As of January 2008 Solicitor advocates are also be entitled to wear a wig, but wear a different gown.

GLOSSARY

to act for a client	- reprezentować klienta
to admit to the bar	- zostać przyjętym do palestry
apparel	- strój
to appear in trail	- pojawić się w sądzie
apprenticeship	- aplikacja
attorney	- 1. pełnomocnik 2. US prawnik
attorney at law	- US prawnik
band	- stójka
The Bar	- palestra
Bar association	- palestra
barrister	- adwokat, obrońca
brief	- akta sprawy
to conduct litigation	- prowadzić sprawę w sądzie
counsel	- adwokat, doradca
to draft pleadings	- przygotować pisma procesowe
to exercise the right	- korzystać z prawa
fused	- połączony
to grant permission	- uzyskać pozwolenie
gown	- toga
hearing	- rozprawa sądowa
judge	- sędzia
Inns of court	- londyńskie korporacje adwokackie
The Law society	- Izba Adwokacka
lawyer	- lawyer
Legal Practice Course	- staż w kancelarii prawniczej
to plead cases	- bronienie spraw w sądzie
to review evidence	- 1. oceniać materiał dowodowy 2. przesłuchiwać świadków
right of audience	- prawo do wystąpień w sądzie
solicitor	- adwokat
split	- podzielony, rozdzielny
trail preparation	- przygotowanie sprawy sądowej
training contract	- staż

EXERCISES

1. Match the terms below with the descriptions.

Attorney Solicitor Judge Advocate Lawyer Barrister Client Counsel

1. A member of the legal profession who can advise clients about the law and represent them in court
The term is _____
2. *US* a lawyer
The term is _____
3. *GB* a lawyer who is qualified to plead in the higher courts

The term is _____

4. *GB* a lawyer who advises clients on matters of law, draws up legal documents, and prepares cases for barristers

The term is _____

5. A barrister or group of barristers who conduct cases in court and advise on legal matters

The term is _____

6. A person who speaks on behalf of another in a court of law

The term is _____

7. A public official with authority to hear cases and pass sentences in a court of law

The term is _____

8. Someone who uses the services of a professional lawyer

The term is _____

2. Choose the most appropriate underlined word.

(1) Barristers/solicitors/ are specialists in advocacy, presenting cases in court under instruction from a (2) solicitor/advocate or another designated professional. A (3) barrister/solicitor/ has rights of audience in all courts on contentious matters.

(4) Barristers/solicitors/ can specialise in different areas of law including criminal law, common law including family, housing and personal injury law, chancery law and commercial law. Most (5) barristers /advocates work on a self-employed basis, from chambers. An increasing number of employed (6) barristers/solicitors work in private and public organisations.

In Scotland, (7) solicitors/advocates have a comparable role and have rights of audience in all Scottish courts

3. The list of barristers' activities below has been jumbled. Work out the correctly ordered descriptions of barristers' jobs.

Barristers are generally involved in the following range of work activities:

- law interpreting understanding the and;
- mastering cases legal managing and;
- relevant researching law of points;
- opinions writing professionals other and solicitors advising and;
- for cases preparing court;
- court in arguments presenting;
- cross and examining witnesses examining -;
- matters law evidence on of and advising;
- legal drafting documents;
- settlements negotiating.

4. Divide the mixed list of activities into two groups: one comprising the activities of solicitors and another comprising the activities of barristers.

write letters in litigation to the client's opponent
conduct litigation
make applications to the court
appear in trials
prepare trials
wear a horsehair wig, stiff collar, bands and a gown
plead cases before the courts
draft pleadings
instruct barristers on behalf of clients
have rights of audience in the higher courts
review evidence
provide specialist advice on points of law
prepare 'briefs' for barristers
usually choose one area of specialisation
speak on the client's behalf in court when instructed by a solicitor
represent clients in courts
have more direct contact with clients

ANSWERS

1.

1.Lawyer 2.Attorney 3.Barrister 4.Solicitor 5.Counsel 6.Advocate 7.Judge 8. Client

2.

1. barrister 2. Solicitor 3. Barrister 4. Barrister 5. Barrister 6. Barrister 7. Advocates

3.

- understanding and interpreting the law;
- mastering and managing legal cases;
- researching relevant points of law;
- writing opinions and advising solicitors and other professionals;
- preparing cases for court;
- presenting arguments in court;
- examining and cross-examining witnesses;
- advising on matters of law and evidence;
- drafting legal documents;
- negotiating settlements.

4.

Solicitors

- have more direct contact with clients
- represent clients in courts
- conduct litigation
- make applications to the court
- write letters in litigation to the client's opponent
- usually choose one area of specialisation
- instruct barristers on behalf of clients
- prepare 'briefs' for barristers

Barristers

- speak on the client's behalf in court when instructed by a solicitor
- provide specialist advice on points of law
- have rights of audience in the higher courts
- appear in trials
- plead cases before the courts
- prepare trials
- draft pleadings
- review evidence
- wear a horsehair wig, stiff collar, bands and a gown

have more direct contact with clients	represent clients in courts	conduct litigation
make applications to the court	write letters in litigation to the client's opponent	usually choose one area of specialisation
instruct higher lawyers on behalf of clients	prepare 'briefs' for other lawyers	speak on the client's behalf in court when instructed by another lawyer
provide specialist advice on points of law	have rights of audience in the higher courts	appear in trials
plead cases before the courts	prepare trials	draft pleadings
review evidence	wear a horsehair wig, stiff collar, bands and a gown	examine witnesses

Flash Cards

Cut the cards, mix them and put face down. Students work in pairs. They uncover the cards and divide into two piles: solicitors and barristers.