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Legal Education in England

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LEGAL EDUCATION IN ENGLAND

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During the reign of King Stephen (1135-1154), according to those who know about such things, Vacarius came to Oxford to teach Roman Law. It was not until 1755 that Sir William Blackstone became the first Vinerian Professor at Oxford. By so doing he gave the first university lectures in English law. These subsequently became the substance of his famous *Commentaries on the Laws of England.* His ideas on university training in the law of the land have had as much effect on legal education in the United States as his *Commentaries* have had on the profession, but the six-hundred year void between Vacarius and the Vinerian Professorship necessitated a system of legal training in England that probably will never be supplanted by university law schools.

The nineteenth century saw a great rise in the importance of the law schools, particularly at Oxford, Cambridge and London. They were largely responsible for the contributions of such men as Dicey, Pollock, Maitland and Holdsworth. Despite the great intellectual impetus given the law from this source, the universities failed to alter the essential training for qualification in the legal profession. In short, a man may receive an excellent university education in law, but he may not, as is usual in the United States, be called or admitted to practice by the mere process of passing of an examination. The final control in this regard reposes with the Council of Legal Education for barristers and The Law Society for solicitors. Thus, there are three sources of legal education in England. The possible combinations by which a student may pass through the maze are of extreme variety; each path has peculiar advantages and counterbalancing difficulties.

Assuming that the aspiring law student attends one of the qualified universities, he will find himself in a world remote from the actual practice of law. Strictly speaking, his training is that of jurisprudence: the science of law. He will, during his three-year course, study Roman Law (for which a working knowledge of Latin is essential, as many Americans has discovered to their horror and grief) Contract, Tort, Real Property, Criminal Law, Legal History, Jurisprudence, International Law and Constitutional Law.

The number of topics does not seem excessive, but the legal content is deceptive in its simplicity. The actual mechanics of university work seem so informal as to be non-existent. In the first place the academic year comprises three terms of eight weeks each—the rest is vacation. Some work must be accomplished during term, but the vacation figures quite differently in the academic scheme as a time for the accomplishment of the bulk of work and not for putting thoughts of learning out of mind. Lectures are

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given during term; attendance is optional. The average student undertakes to sit through four to six hours of them per week. However, one academic appointment each week is imperative: the tutorial. Every student is assigned a tutor under whom he will work throughout his career leading to a degree. The tutor attempts to guide the student into the paths of knowledge: he suggests books, lines of research that might repay attention, criticises, corrects, instructs. One hour each week is set aside for the tutorial conference, at which time the student reads a paper, usually of ten to twenty minutes duration, assigned the preceding week and dealing in detail with some phase of the subject under consideration. The remaining time is spent in discussion or altercation.

ONE SERIES OF EXAMINATIONS

In addition to these offices the tutor examines his pupil informally at the end of vacation period. He is thus able to make constant survey of progress, if any. But the student will find that he is under no compulsion to accomplish anything. He must work entirely on his own initiative, using his own discretion as to what facets of the law are of importance or difficulty, requiring intensive study or research. He is not compelled by the fear of "flunking out" at the end of term. The pressure is more subtle and, in its own way, just as effective as that requiring sporadic "cramming" of information that will be largely forgotten after the crisis has passed. The student has to fear but one examination, the Final, given at the end of his three-year course. In it he writes a series of three-hour examinations (usually nine to twelve in number at the rate of two a day), covering his entire course of study. A great deal of special work is required (for instance: ability to cite seven-hundred to twelve-hundred cases on appropriate points of law), but true "cramming" is a mental impossibility.

The very nature of the examination fosters a spirit of careful study and independent research. A typical three-hour paper may contain ten questions: the student is usually instructed to answer not more than five and will generally limit his choice to three or four. The underlying idea of examination is sharply contrasted with the American theory. The average American examination is constructed to discover what the student does *not* know. He fires a shotgun blast of answers at the examiner—his score is reduced where the shots are off the target. The English examination attempts to discover what the student knows. It does not assume that he is a digest of answers to most of the problems in law, but believes that a thorough knowledge and understanding of basic legal principles is desirable. Thus, the examiner adds points as the paper builds the solution to the problem. In theory, an excellent mark can be secured by answering but one question. The staggering amount of detailed knowledge that would have to be displayed precludes any general adoption of the single answer by students.

This scheme of things is intended to foster an independent frame of mind, a spirit of enthusiasm for research and profound

study among young men just beginning to develop their legal mentalities. Surprisingly enough, there is occasional success—criticism is seldom heard that some members of the profession never open a book after leaving law school. The university makes a tremendous contribution to allay doubts that this is truly a learned profession.

But the entire scene is not illuminated by the light of young minds waxing increasingly brilliant, fired by the fuel of texts and law reports. The leisurely atmosphere requires great individual determination if an education is to be acquired. Nor is the final examination a magic sieve through which only gems are passed. A high score is indicative of marked academic ability only; a mere pass does not necessarily mean that the student has absorbed anything that may be useful to him in the profession. The American coercive imperative "work or fail" may produce extreme apathy towards study, but those who survive the rigors are almost certain to have had a minimum store of knowledge hammered in. The shortcomings of either system cannot be denied.

TRAINING IS PURELY ACADEMIC

Moreover, the English universities make no attempt to train the student for actual practice. Lest this be regarded as defamatory, it should be noted that there is absolutely no reason why they should do so. The universities are little influenced by the whims of the profession—university wind seldom ripples the surface of the latter. The extreme split between professor and practitioner, so marked during the six centuries when English law was not a subject of university instruction, is a dominating factor in English legal education at the present day.

> The Council of Legal Education was established by the Honourable Societies of Lincoln's Inn, the Middle Temple, the Inner Temple and Gray's Inn, in pursuance of Resolutions passed by the four Inns of Court respectively in 1852 on the recommendation of a Joint Committee of the four Inns of Court on Legal Education dated Hilary Term, 1852.[1]

The purposes of the organization are described in its constitution, in part, as follows:

> The Council of Legal Education shall consist of twenty Masters of the Bench, five to be nominated by each Inn of Court. . . . To this Council shall be entrusted the power and duty of superintending the Education and Examination of Students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted for those purposes or in relation thereto.[2]

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[1] Council of Legal Education Calendar (1951).
[2] *Ibid.*

The most aged information we have concerning legal education (apart from the universities) is that contained in a royal writ of 1234 which commanded that all law schools in the vicinity of London be closed. As a result, presumably, the since repeated complaint that lawyers were not sufficiently educated, was first recorded in 1280. Various attempts had been made to strangle the infant profession, but the growing complexity of the law made technical training and practice an essential being in medieval society. For reason known only to himself, Edward I did not have the law schools reopened nor did he turn to the universities for assistance. His momentous decision, which excluded the university civilians from having profound influence on the common law, was made in 1292 by royal writ to Mettingham, C. J. of the Common Bench:—

> Concerning attorneys and learners ('apprentices') the lord King enjoined Mettingham and his fellows to provide and ordain at their discretion a certain number, from every county, of the better, worthier and more promising students . . . and that those so chosen should follow the court and take part in its business; and no others.[3]

These same provisions were promulgated by statute in 1402. The writ of 1292 made the law a closed profession. It placed education and admission under the control of lawyers.

BARRISTERS AND SOLICITORS

By the first quarter of the fourteenth century the profession had been split into two branches that still persist in England: barristers and solicitors. The former being "trial specialists" and a "hard core" of learned consultants; the latter dealing with the mass of non-litigious legal business. And from the first the ancestors of the barristers, though solely permitted to appear before the courts, separated themselves from control by the courts or Parliament. During the fourteenth and fifteenth centuries the Inns of Court were founded as professional societies. Gradually they became great colleges of law as well and assumed the functions of imparting knowledge to future barristers. No trade schools they, but rather graceful establishments: dancing, poetry, drama and the like were included in the curriculum. Sons of wealth attended them as "finishing schools" much as those sons of later years came to Oxford or Cambridge. Instruction was, as it is today, provided by leaders of the Bar. High standards were set and met by those who became a most learned, cosmopolitan and worldly profession.

The eighteenth century brought the "Age of Enlightenment" and the "Dark Age" in legal education. Examinations were abandoned, lectures fell into desuetude—a call to the bar meant nothing in the way of knowledge. The Inns were wholly restored to health

[3] Quoted in Plucknett, *A Concise History of the Common Law.*

in 1852 by the creation of the Council of Legal Education and its establishment of the present system.

Admission to an Inn of Court is the first condition precedent to ultimate practice as a barrister. The requirements are not complex:

> 1. An applicant must have passed an examination whose standard was not lower than that required for Matriculation at an English University and which included Latin.
>
> 2. He must produce certificates of good character from two responsible persons resident in the United Kingdom whose knowledge of him qualifies them to judge.
>
> It should be added that no person engaged in trade can be admitted as a Student unless in the opinion of the Benchers of the Inn to which he seeks admission his occupation is such as would be compatible with the profession of Barrister.[4]

The requirements for a call to the bar are equally straightforward: the student must keep twelve terms at an Inn of Court and must pass the Bar Examination. The condition of "keeping terms" is satisfied if the student takes six dinners each term in the Hall of his Inn (three per term if he be a university student). As there are four terms in each calendar year, the requirement may be satisfied in three years. And it is important to observe that the university student may "keep terms" at the same time that he is attending the university. The Examination, given three times each year, is in two parts.[5]

PART I.

I. Roman Law.
II. Constitutional Law (English, Dominion and Colonial and English Legal History).
III. Contract and Tort.
IV. Real Property,
or
Hindu and Mohamedan Law
or
Roman-Dutch Law.
V. Criminal Law.

PART II.
(*The Final Examination*).

I. (i) Criminal Procedure.
(ii) A Special Subject in Common Law and Construction of Documents.

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[4] A *Syllabus*, "Consolidated Regulations 1-4" of the Council of Legal Education.

[5] Syllabus for Michaelmas Examination (1951), Council of Legal Education.

II. The General Principles of Equity and Special Subject in Equity.

III. Company Law and
either
Practical Conveyancing
or
Divorce (Law and Procedure)
or
A Special Subject in Hindu Law
or
A Special Subject in Mohammedan Law
or
A Special Subject in Roman-Dutch Law.

IV. Evidence and Civil Procedure.

V. A General Paper on Common Law, Equity and Conflict of Laws.

Part I of the Examination is almost identical to the University Final Examination, with the result that the university law graduate may be exempted from this Part if he has attained a specified superior standing in his university examination. The university student may then be called to the Bar shortly after his three-year university course if he has kept the requisite twelve terms and if he passes Part II of the Examination. Assuming normal conditions (whatever they are) this means that the average student for the bar who enters the university or Inn of Court at the age of eighteen may be called to the Bar shortly after passing his twenty-first birthday.

The student of an Inn of Court pursues his work in an environment similar to that of his university counterpart. He attends lectures given by leaders of the Bar. He likewise attends tutorials, although there is little semblance between the university tutorials and those provided by the Inns of Court. For the tutorials of the Inns intend to introduce the student into the chambers of a barrister; to acquaint him with the work and practice of the profession. They are given on three levels: those designed to supplement the lectures leading to Part I of the Examination with particular reference to the proper approach to legal problems and the answering of examination questions; those dealing with the practical aspects of Part II of the Examination; and those provided for the young barrister who finds it impossible to read in chambers after his call to the bar.

It is after the "call" that education for the profession begins in earnest. As the average barrister assumes he will receive no substantial remuneration for five to six years after his call, he will have ample time for study and serious application to the task that may grant him generous rewards for his efforts. The usual procedure is to read in the chambers of an established barrister for a year after being called. For this privilege and for the in-

struction that he may receive from the practitioner, the "pupil" pays his "master" a sum of approximately $300. After this year he may stay on as a "devil"—This is to say that he may occasionally represent his "master" when the latter is unable to appear in Court and so build up a practice. Until he has proven himself learned as well as competent he can hope for no business. Lay clients may not contact him directly. He is forbidden by the ethics of his profession to accept litigation save through a solicitor. Thus, he may not trap the occasional client, but must first prove himself in court before the solicitors who are shrewd in judging his capabilities. Legal learning and competence are not merely nice or convenient for the young barrister: they are absolute essentials for survival.

THE LAW SOCIETY

The solicitors are by far the largest branch of the legal profession. All through the history of English law the training of their ancestors has been severely practical and so it is today. Moreover, they are not, as in the instance of the Bar, removed from the control of the courts and Parliament. But practical supervision of all matters relating to education and admission is under their own organization, The Law Society, whose authority derives from powers delegated by Acts of Parliament.

The forerunner of the present Society was formed in 1739 on the decay of the Inns of Chancery and was called "The Society of Gentleman Practisers in the Courts of Law and Equity". The Law Society received its present title in 1825 and almost immediately centered special attention upon the problem of education. At that time acquisition of legal knowledge depended almost entirely on what the young articled clerk, working in the office of a solicitor, might pick up through individual exertion, the supervision of his principal, or whatever other opportunity for guidance or instruction might be within his reach. The situation was haphazard in the extreme.

The Law Society began delivering lectures in 1833. Rules of Court were made in 1836 requiring that an examination be passed for admission to the Roll of Solicitors. Finally, in 1877, Parliament placed the control of all examinations within the power of the Society and attendance at law school was made compulsory by Parliament in 1922. The clerk is now insured sufficient instruction in the principles of law as well as the practice of his profession, and his period of formal training seems extended when compared with that of the barrister.

The would-be solicitor, as in the case of the would-be barrister, may or may not attend the university. The majority do not. Instead he enters into articles of clerkship with a practising solicitor, which bind him for five years. In recent years the complaint was voiced that those entering into articles were not required to pass a sufficiently probing examination. It was felt that the average clerk's store of knowledge was appallingly empty, especially in the Department of English Grammar and Composition. Conse-

quently, the standard of the Preliminary Examination was raised so as to make it comparable with the Matriculation Examination of London University. It includes within its ambit of enquiry: English Language and Composition; Latin grammar and Latin translation (the necessity for this is questioned by some); the History of Great Britain; Mathematics; Languages; Geography; Physics; Chemistry; English Literature. It must be passed before articles may be entered into.

During the five years of his articles the clerk must take and pass two further examinations: the Intermediate Examination, theoretical in content and corresponding with Part I of the Bar Examination but with the additional topic of "Trust Accounts and Book-keeping"; the Final Examination, dealing in detail with the law relating to the solicitor's practice, special emphasis being placed on legislation. To prepare for these examinations the clerk must spend a year in law school either at one of the qualified provincial universities or at the Society's own law school in London which has certain affiliations with the Law School of London University. The disadvantages of attending law school outside of London are real, for their courses of instruction are intended to encompass three years, each of the usual academic six months duration. At the Society's Law School, on the other hand, work is patterned to the needs of the clerk who is compelled to leave his office for a year so that he receives a full twelve months of instruction instead of the six that his provincial brother must ferret out from the university's standard three-year course. Then, too, with some additional work the London clerk may secure an LL.B. from London University, an almost impossible accomplishment in the provinces. But the expense and difficulty of attending in London precludes any extensive rural enrolment.

REQUIREMENTS OF A SOLICITOR

Very little advantage, save prestige, accrues to the future solicitor who takes a university law degree before entering into his articles. He is exempted from the Intermediate Examination (but not the section on Trust Accounts and Bookkeeping); he need not attend further in law school; and may serve his articles in three years. However, with three years at the university and three years in articles, he will spend six years in preparation for admission to the Roll of Solicitors while his non-university counterpart spends five. In more ways than this a university degree seems almost a disadvantage.

As contrasted with the five or six "hungry years" of the young barrister, the present-day solicitor enters into a life of relative prosperity immediately upon admission. The profession is not crowded and he may expect an average annual starting salary of approximately £500 ($1,400 which is fairly decent compensation in England) with "rapid increases" depending upon the factors that mean advancement or success. At the age of twenty-two years the young solicitor may be established in his profession.

Legal education for the individual in England is determined by the choice that he must make between the two branches of the profession. From an Olympian viewpoint it seems harsh that the rigid selection must be determined when the embryo legal mind is but seventeen or eighteen years of age. (Although there are certain arrangements whereby the practitioner may change over from one side of the profession to the other, such a step would entail obvious disadvantages and seems rarely to be undertaken.) Denying one's self at such a time, the thrill of trial work or the satisfaction of dealing directly with human problems seems repugnant to the American who at that age seldom has any fixed idea of making the law his career. True, the final decision may be delayed by university attendance, but such a route is closed to many in England. A university education has not yet become the "usual thing" as it is often regarded in America. Financial difficulties are insuperable for many. There are scholarships and government grants (indeed four out of five students at Oxford receive such aid), but "working your way through college" is almost an impossibility. Academic standards are very high—an excellent preparatory education is essential. Sons of wealth may be able to afford the university, but they must also have applied themselves to their books with considerable diligence to qualify for admission. Attending the university for a good time or to "mature" is virtually unknown in this age—it is an extremely important phase in the preparation for a career.

REQUIREMENTS OF A BARRISTER

It is often stated that the choice, aside from purely personal preference, should be based on the type of mind that the young man possesses: the barrister requiring the quick, perceptive, resourceful, mercurial mind so necessary for successful court work (actually, examples of this "mind" seem as truly rare in the courts of England as in those of the United States), while the solicitor should be painstaking, given to details, indefatigable, competent to deal with clients. Speaking as an iconoclast it appears that the basis of choice is not to be found so much in "mind" as in personal or family solvency. The bar requires a more extended academic education. Moreover, the long lean years after the call make it almost imperative that the young barrister have independent resources if he is to survive in the profession. The bar is the elite, the learned core. It has the reputation of being the branch of legal erudition—from it the judges are chosen, great professors are among its members, high governmental preferment is often bestowed on its leaders, and it is to the bar that the solicitor turns for advice on intricate or advanced points of law. Clearly it is the branch for those interested in high public attainment who have sufficient capital to see them through. The solicitor is the strong backbone of the profession, the general practitioner, and has little glamour associated with his name.

Still, the decision rests with the young individual, and in England, as in America, generalities are not confining walls for

each one with the intelligence and ambition to seek the education he desires and ultimately the profession of his choice.[6]

THE RESUMPTION OF CITIZENSHIP LOST BY MARRIAGE TO ALIENS

KAZUYOSHI AKITA *

Increased restrictions upon aliens and the possibility of another war have created a strong desire among many former citizens of the United States to regain their lost citizenship. Among this group are those women who lost their citizenship by reason of their marriage to aliens. It is with the problems of these women in their effort to regain their lost citizenship that this article will deal.

The American courts have followed three different and conflicting common law views as to the effect upon citizenship of American women who married aliens prior to 1907. The first of these three rules is that an American woman did not lose her citizenship solely because of a marriage to an alien, but that withdrawing from the United States, or going to and remaining in the foreign country of which the husband was a citizen might operate as a renunciation of the American citizenship of the wife.[1] The second view is that the marriage to the alien was sufficient to cause the loss of the wife's American citizenship, even though residence and domicile was continued in the United States.[2] The third position is that the wife did not lose her citizenship either through the marriage to the alien or by residence and domicile abroad.[3] The majority of the courts have followed the first rule, but the second view has been favored by a number of the courts. The third position has had little following.

THE EXPATRIATION ACT OF MARCH 2, 1907

Congress, however, in enacting the Expatriation Act[4] of March 2, 1907, which was the first statute dealing with this matter, took the second view. The Statute expressly provided that

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* Written while a student, University of Denver College of Law.

[1] Shanks v. Dupont, 3 Pet. 242 (U.S.), 7 L. Ed. 666 (1830); Comitis v. Parkerson, 56 F. 556 (1893); Wallenburg v. Missouri Pac. Ry. Co., 159 F. 217 (1908); In Re Fitzroy, 4 F. 2d 541 (1925); In Re Wright, 19 F. Supp. 224 (1937).

[2] Pequignot v. City of Detroit, 16 F. 211 (1883); In Re Page, 12 F. 2d 135 (1926); Petition of Drysdale, 20 F. 2d 957 (1927); In Re Krausmann, 28 F. 2d 1004 (1928).

[3] Petition of Zogbaum, 32 F. 2d 911, 913 (1929).

[4] 34 Stat. 1228 (3), 8 U.S.C. 17 (1940).