3 The legal Profession

Text 1: Practice and Study of Law
1. Pre-reading tasks
   1. Scan the first section of the text and answer this question: which three branches of the legal profession does it mention?
   2. Read the first section and next to each paragraph write its topic in the margin, for example: 'the main division', 'barristers', etc.
   3. Read the rest of the text and answer the questions: a) what is legal aid; b) what three stages are necessary to pass in order to enter the profession of lawyer?

Barristers and Solicitors
A lawyer is a member of the legal profession who has become officially qualified to act in legal matters. In most countries there is only one legal profession: all the lawyers receive roughly the same professional education and qualifications, and do legal work according to their specialisation and choice. A distinctive feature of the legal profession in England and Wales is that it is divided into two branches: barristers and solicitors. They have different legal training and different qualifications, and do different types of work. Barristers are 'courtroom lawyers' concerned with advocacy in court, arguing cases in front of the judge, and solicitors mainly deal with legal work out of court. No one can practise both as a barrister and a solicitor at the same time, but it is possible to be doubly qualified or to transfer from one branch to the other. This division is almost unique to the British Isles: Scotland too has a division into advocates and solicitors, but many Commonwealth countries have not followed Britain in this respect, and some, like Australia, have removed the division.

The two types of lawyer in England differ in several important respects. Barristers have rights of audience (rights to appear) in any court in the land and are known collectively as the Bar. They do not have to work entirely for the defence or for the prosecution but may alternate between the two, appearing in one case on the side of the defence and in another on the side of the prosecution. All professional barristers are self-employed and usually work out of chambers, offices which they share for convenience, and have their work organised by the same clerk. A barrister's clerk arranges court appearances and conferences (meetings) between clients, solicitors and barristers. He also negotiates the barristers' fees. Generally, a barrister undertakes no work except through a solicitor, however a small number of specialist barristers do not go into court at all, advising professional people, such as accountants, on legal matters and writing opinions at the request of solicitors on difficult and complicated areas of the law. As a general rule, clients do not have direct access to barristers, without seeing a solicitor first, and they do not pay the barrister directly but through a solicitor. A document of instructions prepared by a solicitor for a barrister to follow in court is known as a brief. It usually contains an outline of the case, the evidence and proof available, and statements or interviews of witnesses.

Solicitors' work covers a much broader range: they advise commercial and private clients on business and property matters; they investigate and prepare cases which they then hand to barristers; they also deal with litigation which is settled out of court. Until quite recently, solicitors had the right of audience only in lower courts, where they could represent clients themselves, without the help of a barrister. Now solicitors can qualify for rights of audience in the higher courts; they are then called solicitor-advocates (this route is particularly favoured by City lawyers). Solicitors are employed often by industry or local authorities but usually they work in partnerships with other solicitors. A firm of solicitors would normally consist of partners, those who take part in management and have a share in profits, and associates, who are salaried employees without these rights. There are a great many firms, ranging from small one-man practices to large city practices employing hundreds of partners and associates. Solicitors by far outnumber practising barristers: at present there are over 100,000 solicitors as against some 11,000 barristers. The reason for this is obvious: only rarely will a citizen be faced with civil or criminal proceedings and require the
services of the barrister, but many often have to consult a lawyer to prevent matters going wrong, for example, when setting up a business or making a will, or buying or selling property. When a client goes to see a solicitor and tells him what he requires, this is called giving a solicitor instructions.

A solicitor appearing in court must wear a gown, and so must a barrister appearing in a civil case; in a criminal case a barrister wears a gown and a wig. Some barristers carry the letters 'QC' ('Queen's Counsel') after their name. They wear a silk gown instead of a stuff gown; hence, the phrase 'taking the silk'. In court, they appear as 'leading counsel' and are usually assisted by a junior (ordinary) counsel. QCs are expected to handle the most serious and difficult cases, and their fees are generally higher. The rank of QC dates back to the sixteenth century, and originally they were barristers selected to serve as counsel to the Crown. Nowadays, despite their title, they may appear on behalf of any person and conduct cases for or against the Crown. Solicitors with full rights of audience can also apply to become Queen's Counsel. After 10 or 15 years of practice barristers may become judges; solicitors of 10 years may also become judges but in lower courts. There have been discussions from time to time concerning merging the two professions but it does not seem likely that there will be a fusion.

There is, however, a certain breed of lawyer who regard themselves as a third branch of the legal profession: these are legal executives, who work in exactly the same way as many solicitors but who are not qualified solicitors, and subsequently cannot become partners in a legal practice. This route into the legal profession is taken by clerks working in firms of solicitors, who study while they are working. They take their qualifications at the Institute of Legal Executives (ILEX), and only Fellows of ILEX may describe themselves as 'legal executives'.

The general public usually refers to all people working in legal affairs as lawyers. An American will say 'I'm going to see my lawyer' but an Englishman will say 'I'm going to see my solicitor'. In the United States lawyers call themselves attorneys. In court, trial lawyers are referred to as 'counsel for the defence' and 'counsel for the prosecution'. The word counsel (US also counsellor) may be used as a vocative: a judge may say 'Counsel, approach the bench' if he wants to speak to one or both counsel in private. Solicitors who do mainly advisory work may be called legal advisers. There are other legal professionals with important public duties, such as notaries, who have the legal power to make a signed statement or document official.

**Fees**

*A rich lawyer, a poor lawyer and Santa Claus are walking along the street. They see a five-pound note. Which one picks it up? Obviously, the rich lawyer - because the other two don't exist!*

In the popular view, both barristers and solicitors are seen as devious legal practitioners who lead a wealthy and secure life. This may largely be true, but barristers in their early years have to undertake a broad range of work until they develop expertise, and since they are paid a fee for each piece of work, their earnings, particularly in the early years, are less secure than a solicitor's. If a barrister does not receive payment for his work, he cannot take action in court to obtain it. A solicitor, unlike a barrister, may sue for his fees.

The legal fees in any court case are called the costs of the case. The general principle is that the loser pays the costs of the winner. However, often litigants cannot afford to pay the costs; they may in this case apply for legal aid. If they qualify for it (if their income is below a certain level), the State will pay either their full legal fees or at least part of them. In criminal proceedings, legal aid may be granted if it appears to be in the interests of justice to do so; in civil proceedings, if the claimant has fair prospects of winning the case. The guilty party in a criminal case and the successful party in a civil case will be ordered to repay the money to the state. The body responsible for administering legal aid is the Legal Services Commission (LSC). The legal aid scheme (now called Community Legal Service) was set up in 1948 and is recognised to be one of the most important social advances of the last century-, and it undoubtedly provides many lawyers with their main source of income.

Now a new system of payment of fees has been approved for some civil cases. The method called 'no win, no fee', or 'the conditional fees scheme', has been imported from America. Under this system, a lawyer may agree to take on a case for no fee at all on condition that if the client wins and is awarded damages, the lawyer will receive his fee, which may also include an extra 'success'
fee. If the client loses, he may have to pay the other party’s costs, so the litigation is not entirely risk-free; however, the client may take out insurance to accommodate the risk. The scope of conditional fees is very limited - they are mainly allowed for personal injury cases.

There has always been a certain amount of *pro bono* work, i.e. legal work donated for the public good that lawyers agree to do for little or no remuneration. This practice, however, declined in the 1970s and now free legal services are provided by publicly-funded *Citizen’s Advice Bureaux* and by *law centres*.

**Private and Public Practice**

In many countries private practice exists alongside public. This means that lawyers may be self-employed or work for a private employer or, alternatively, they may be employed by the government and work as its employees and representatives. Criminal prosecutions in most countries are in the hands of the government. Formerly, most prosecutions were conducted by private barristers briefed by the Director of Public Prosecutions (DPP) or by the police. But this system effectively ended with the introduction of the Crown Prosecution Service (CPS) set up in 1986, thus allowing for the establishment of a body of official prosecutors, which relies on public prosecutors. Public, or crown, prosecutors are salaried lawyers employed by the government as its representatives in criminal matters.

Defence, too, until recently has been conducted by private barristers. The Access to Justice Act 1999 allowed a salaried Criminal Defence Service (CDS) to be set up in England and Wales, which would rely on the work of public defenders and gradually replace criminal legal aid. Public defenders are salaried lawyers employed by the government to represent indigent persons accused of crimes. This CDS scheme was severely criticised by both branches of the legal profession. Many lawyers felt that there was something unhealthy that the Government should have not only a monopoly in prosecutions but also a monopoly in defence work. They feared that if this system undermined the private sector, there would be no place for the client to go. The US and other common-law countries’ experience shows that compensation in public defender offices is often considerably lower than what the attorney could receive from a private client, and the work load is heavier. Although many public defenders are capable and committed lawyers, they are often young and lacking in experience and, in America, often exposed to political pressure. Nevertheless the UK Government went ahead with its plans and adopted the Criminal Defence Service Act in 2006. The Government’s intention is to create a system where public defenders work in parallel with private lawyers, thus giving defendants a choice of representative.

**Legal Education and Training**

In England, technically it is not necessary to have a university degree in law in order to enter the profession, but nowadays most people do because a degree will give exemptions from certain examinations and will allow one to move quickly to the next stage. After the academic stage comes the vocational stage, a period of training for the legal career. To qualify as a barrister, one must take a one-year Bar Vocational Course followed by the Bar Final examination. To qualify as a solicitor, one must take a one-year Legal Practice Course followed by the Law Society examination. And finally, candidates for both professions must complete a period of apprenticeship: twelve months of pupillage for a prospective barrister when he must work as a pupil, or trainee barrister, under the supervision of an experienced barrister; and two years on a training contract for a future solicitor, when he must work as a trainee solicitor (formerly called an ‘articled clerk’) with a firm of solicitors. Both pupils and trainee solicitors on training contracts must be paid. The peculiarity of the English system is that one has to decide whether one wants to be a barrister or a solicitor at the beginning of one’s education. In Scotland, for example, students may choose their specialisation towards the end of their studies and in the United States even later.

2. **Text 1 comprehension questions**

Read the text again and answer these questions.

1. What are the differences between barristers and solicitors regarding the type of work they do?
2. Why are there many more solicitors than there are barristers?
3. What privileges and responsibilities does the rank of Queen's Counsel give?
4. What are the similarities and differences between legal executives and solicitors?
On what conditions will the State pay legal aid in criminal and in civil cases?
Why do you think 'the conditional fees scheme' may be good for claimants and not so good for defendants?
In what respect are public prosecutors and public defenders similar and in what are they different?
What are the main criticisms of the institution of public defenders?

3. True-false statements
Confirm or refute these statements. Begin with a short answer, e.g. ‘Yes, it is/has/does, etc.’ or ‘No, it isn’t/hasn’t/doesn’t, etc.’ and add one sentence to prove your point.

1 Solicitors only do legal work out of court.
2 Solicitor-advocates have rights of audience only in lower courts.
3 Barristers must specialise either in defending or prosecuting work.
4 Queen’s Counsel cannot serve private clients.
5 Judges cannot be appointed from the ranks of solicitors.
6 Public defenders are to replace private lawyers.
7 A university degree in law is sufficient to start practising as a lawyer.

Definitions
Write definitions of the following legal personnel: barrister, solicitor, legal executive, Queen’s Counsel, barrister’s clerk, public prosecutor, public defender, pupil, trainee solicitor. Do not use dictionaries. When you have finished, use this checklist to test yourself:

5. Contrasting

<table>
<thead>
<tr>
<th>Type of work &amp; rights of audience</th>
<th>- advocacy in all courts</th>
<th>- legal work out of court</th>
<th>- legal work out of court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- advising professional clients</td>
<td>- advocacy in lower courts (solicitor-advocates in all courts)</td>
<td>- advocacy in lower courts</td>
</tr>
<tr>
<td>Form of employment</td>
<td>- private practice = self-employed</td>
<td>- private practice: partners (self-employed) or associates (salaried employees)</td>
<td>- private practice: only as salaried employees</td>
</tr>
<tr>
<td></td>
<td>- public practice: employed by gvt as public def. or prosecutors</td>
<td>- public practice: employed by gvt or industry</td>
<td>- public practice: employed by gvt or industry</td>
</tr>
<tr>
<td>Form of payment</td>
<td>- fees (paid through solicitor)</td>
<td>- fees from clients (associates get a salary, partners – profits)</td>
<td>- salary from private employers</td>
</tr>
<tr>
<td></td>
<td>- salary from gvt (for public)</td>
<td>- salary from public</td>
<td>- salary from public</td>
</tr>
</tbody>
</table>
Use the Notes from ex. 6 to write four sentences comparing and contrasting the work of lawyers. In your answers use the structure: ‘A and B are similar in that ... but they are different in that A ... (while B ... )’. For example: ‘Barristers and solicitors are similar in that both types of lawyer have rights of audience, but they are different in that barristers have rights of audience in all courts whereas solicitors can represent clients only in lower courts’.

6. Lawyers’ work and education

Use the Notes below to talk about the work of lawyers.

<table>
<thead>
<tr>
<th>Barristers</th>
<th>Solicitors &amp; solicitor-advocates</th>
<th>Legal executives</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 university degree</td>
<td>1 special training and exams without leaving work</td>
</tr>
<tr>
<td></td>
<td>2 one-year Bar Vocational Course</td>
<td>2 qualification as Fellow of ILEX</td>
</tr>
<tr>
<td></td>
<td>3 one year of pupillage</td>
<td></td>
</tr>
</tbody>
</table>

Use the Notes from ex. 6 to write four sentences comparing and contrasting the work of lawyers. In your answers use the structure: ‘A and B are similar in that ... but they are different in that A ... (while B ... )’. For example: ‘Barristers and solicitors are similar in that both types of lawyer have rights of audience, but they are different in that barristers have rights of audience in all courts whereas solicitors can represent clients only in lower courts’.

7. ‘Counsel’ or ‘council’?

a) Study the following examples and work out the meaning of the words in bold type. Translate them into your own language.

1. I served seventeen years on my local council.
2. The councillor in charge of roads objected to the plan.
3. The defence counsel warned the judge that he should stop the trial. (‘Counsel’ has the same form in the singular and the plural)
4. Priests counsel people who have serious problems.
5. Maybe we should see a marriage counsellor.

b) Complete the gaps with appropriate words.

1. The party secured the election of 24___________.
2. The hospital has trained ___________ who are used to dealing with depressed patients.
3. That afternoon a ___________ of ministers and generals was held at No.10.
4. She sought the help of a stress _____________.
5. The judge asked ____________ for the prosecution to explain his point.
6. Benjamin Davies Jr. was the first black New York City _____________.
7. The city ____________ has voted almost unanimously in favour.
8. Children who have suffered like this should see a ____________ experienced in bereavement.

(Note: in American English, the word ‘counselor’ may signify ‘member of a council,’ ‘lawyer’ or ‘adviser’; the word ‘counselor’ means ‘lawyer.’

c) Write five sentences to illustrate the meanings of the words above.

8. ‘To advise’ or ‘to consult’?
1) Match the examples (1 - 4) with the verbs' meanings (a - d). Translate the verbs into your own language.
<table>
<thead>
<tr>
<th>Examples</th>
<th>Meanings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 He advises us on tax matters. He advised us against this course</td>
<td>a to ask for advice or opinion</td>
</tr>
<tr>
<td>of action. Who advised you about these shares? (= who advised you to</td>
<td></td>
</tr>
<tr>
<td>buy them)</td>
<td></td>
</tr>
<tr>
<td>2 We'll advise you of any changes in delivery dates.</td>
<td>b to discuss something so that you can</td>
</tr>
<tr>
<td></td>
<td>make a decision together</td>
</tr>
<tr>
<td>3 I need to consult my lawyer about this.</td>
<td>c to give advice</td>
</tr>
<tr>
<td>4 We needed to consult each other nearly every day. (Some speakers of</td>
<td>d to inform (formal)</td>
</tr>
<tr>
<td>American English say 'consult with' instead of 'consult' )</td>
<td></td>
</tr>
</tbody>
</table>

2) Complete the gaps with ‘advise’ or ‘consult’. Say in which meaning - a, b, c or d - the word is used.
1. Solicitors __________ clients on business and property matters.
2. The Advice Bureau says an increasing number of clients __________ are them about Social Security changes.
3. She wished to __________ him about her future.
4. I think it best that I __________ you of my decision to retire.
5. He works for a newspaper __________ the editors on libel matters.
6. The Department of Education promised that they would __________ teachers before changing the school year's calendar.
7. The umpires _________ quickly.
8. The police are required to __________ suspects of their rights.

3) Write five sentences to illustrate the difference between ‘advise’ and ‘consult’.

Text 2: Professional Ethics

9. Legal terms
Before you read the text, match these terms (1 - 5) with explanations (a - e).

<table>
<thead>
<tr>
<th>1 cab rank rule</th>
<th>a an agreement between the prosecution and the defence by which the accused pleads guilty in return for a lesser charge and punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 divided loyalty</td>
<td>b barristers may not pick and choose their clients but must take the next client waiting, as taxi drivers do</td>
</tr>
<tr>
<td>3 immunity</td>
<td>c a lawyer has a duty to the client but he also has a duty to the court to conduct his cases honestly</td>
</tr>
<tr>
<td>4 vexatious claims</td>
<td>d freedom from prosecution</td>
</tr>
<tr>
<td>5 plea bargaining</td>
<td>e legal actions intended to harass others</td>
</tr>
</tbody>
</table>
10. Pre-reading tasks
1. Scan the text and answer the questions: a) which professional bodies regulate the conduct of barristers and solicitors; b) if a judge orders a lawyer to reveal confidential information given by a client, may he refuse to do so; c) what important privilege did lawyers lose recently?
2. Read the text and answer the questions that follow.

Regulating the Profession
Both barristers and solicitors are closely restricted in their professional conduct by the supervision of their respective governing bodies.

The governing body of barristers is the Inns of Court - the four legal societies which occupy the four sets of buildings under the same name in London and which have the exclusive right of admitting persons to practise at the Bar. When a barrister qualifies, that is, receives the necessary education and training, he goes through a ceremony known as a ‘Call to the Bar’. All practising barristers must belong to one of the Inns and to be a member of one of the six legal circuits, or geographical areas, into which the country is divided. The Bar Council sets standards for the bar and acts in matters of general concern to the profession. If a barrister falls below the high standards of professional conduct laid down for the Bar, he will be disciplined by the Senate, which can remove the barrister from the rolls, i.e. relieve him of his licence to practise.

The governing body for solicitors is the Law Society. It is responsible for the training of solicitors and regulating their conduct. When a solicitor qualifies, he is ‘admitted to the Rolls’, which means that his name will be entered on the roll of solicitors permitted to practise and he will receive a practising certificate. The Law Society has extensive authority in setting and enforcing standards for solicitors. By the nature of their profession, solicitors are sometimes trusted to handle very large sums of money and very valuable property on behalf of their clients. The Law Society sets rules as to how money held for a client is to be kept and to be shown in account books, which must be certified each year. In addition, it carries out spot-checks and audits to ensure that solicitors are complying with these rules. The Society maintains a client-compensation fund to reduce and relieve losses sustained from dishonest solicitors. A Solicitors Disciplinary Tribunal has the power to suspend or even strike off (disqualify) a solicitor. Grounds for disqualification may vary but, in general, the main reasons are conviction for a crime or dishonest handling of a client's funds.

Legal Ethics
Legal ethics can be defined as principles of conduct that members of the profession are expected to observe in the practice of law. In countries where lawyers are ordinarily salaried employees of the government, a higher priority is assigned to the lawyer’s duty to the state. However, the majority of English lawyers engages in private practice, therefore they have a duty to the client but also a duty to the court (this is sometimes called ‘divided loyalty’). Their chief interest lies in serving their clients and in securing justice, not in increasing their own income; the lawyer is engaged, it is said, in a profession, not in a business.

A barrister is required to accept any case for a proper professional fee regardless of his personal feelings, except when there are circumstances of conflicting interests of clients. This rule is known as the cab rank rule. It states that barristers may not pick and choose their clients but must take the next client waiting. The solicitor may choose any barrister he likes to represent the client, but the barrister has no choice: if he practises in the area concerned, he must accept the brief as long as a proper fee is to be paid. This rule, on the one hand, protects barristers against being criticised for giving their services to a client with a bad reputation and, on the other, it ensures that everyone has access to a specialist advocate, enabling even unpopular causes to obtain representation in court.

With regard to this last point, a question that worries many people not connected with the law is: how can a lawyer defend somebody, he knows is guilty? Here is what Dr Samuel Johnson, author of the great ‘Dictionary of the English Language’, said in answer to this question in the eighteenth century: ‘Sir, you do not know it [the cause] to be good or bad until the Judge determines it. .. An argument which does not convince yourself may convince the Judge; and if it does convince him, why, then, Sir, you are wrong and he is right! It is his business to judge; and
you are not to be confident that a cause is bad, but to say all you can for your client, and then hear
the judge’s opinion’ (cited in Rivlin, 2004, p.86).

So, if a person accused of a crime maintains his innocence, the lawyer cannot advise him to
plead guilty but must use all his knowledge and skill to defend him because everyone must have a
fair trial. Of course, sometimes clients invent a totally fictional defence for themselves and it is
obvious, to the lawyer at least, that the case is unlikely to succeed in court (for example, a burglar
who says that he thought ‘it was his own house’). In this case, the lawyer should outline the
options to the client very clearly and advise him to plead guilty. Sometimes, in serious cases,
defence lawyers negotiate with prosecutors a plea of guilty in return for a lesser charge and
punishment for his client. This procedure, called plea bargaining, is used when the prosecution is
prepared to drop a more serious charge against the accused or when the judge has informally let it
be known that he will minimise the sentence if the accused pleads guilty. But just because a
person confessed to his crime, it does not mean that he is going to get a lighter punishment. The
accused does not take part in these negotiations, but he is free to make up his own mind about the
proposals. If an agreement is reached, there will be no trial, and the judge will pass sentence. If
not, the case will go to trial, but the lawyer may still try to convince the court to acquit his client or
give him a lesser punishment.

If a person accused of crime admits it to his lawyer, the lawyer must advise him to plead guilty.
If he refuses to do so, the lawyer must withdraw from the case. What a lawyer cannot do is to
defend someone who tells him he is guilty or to invent a defence out of his own head. That would
be dishonest and would breach the lawyer’s duty to the court.

A lawyer must not reveal what he has been told by the client without the client’s consent.
This is a common law privilege given to clients who are represented by lawyers; the lawyers have
no choice in the matter: they cannot go to the police and tell them, for example, that their client
has confessed to murder. Furthermore, if the police approach them and ask for information, they
cannot reveal anything. However, this obligation does not apply when the client seems about to
commit a crime or when he sues his lawyer, for example, for malpractice. Confidentiality of a
client’s communications with his lawyer is one of the cornerstones of legal ethics. Lawyers are the
only professionals who are in this special position. Doctors, priests, newspaper journalists may
also sometimes receive confidential information, and normally a judge would not wish them to
break their ethical obligations, but if the interests of justice demand it, he will order them to do so
and they must disclose the information they have received. If they disobey, they will be fined or
sent to prison for contempt of court.

Lawyers’ Immunity

For more than two centuries, until 2000, lawyers enjoyed an important privilege: they could not
be sued by their clients even if a client thought that the case had been lost due to the lawyer’s
negligence. For example, in Rondel v. Worsley (1969), Rondel, a convicted criminal, sued his
barrister from prison for negligent conduct of his criminal defence, but his appeal was dismissed
on the grounds of immunity. However, in 2000, when a new case came up before the House of
Lords (Hall v. Simons), this rule was abolished. In the course of the discussion some ethical
problems came into focus.

Barristers’ immunity had long been justified by the existence of the cab-rank rule: indeed, since
barristers have no freedom of choice, they should be protected from vexatious clients whom any
sensible lawyer with freedom of action would have refused to act for. It was also argued that
removal of immunity would force advocates to sacrifice their duty to the court and to prefer the
interests of their clients to the interests of justice, for example, by not calling some witnesses to
court or not introducing evidence that is adverse to their client’s case. Another argument in favour
of maintaining the immunity was that the conduct of litigation is a very difficult art: it is easy to
commit what appear in retrospect to have been errors of judgment; therefore, it would be
extremely unfair to leave lawyers who act in good faith open to vexatious claims by dissatisfied
clients. However, vexatious actions are not the bane of the legal profession only - it is an
occupational hazard of other professional men, such as doctors, and the absence of absolute
immunity from negligence has not disabled members of other professions from giving their best
services to their clients. Besides, advocates are now professionally required to carry liability
insurance to cover their expenses in case they are ever successfully sued by a client.
As a result, the House of Lords ruled that, in criminal litigation, someone who is convicted of a criminal offence but believes that this was due to his lawyer’s fault must generally try to overturn the criminal conviction before suing the lawyer (a collateral civil challenge to a criminal conviction will be struck out as an abuse of process). In civil cases, it may now be easier to sue the lawyers, as immunity and collateral attack will not prevent the action. But the court made it clear that just because a client is dissatisfied with his lawyers, this alone would not give him the right to sue.

The Lords were faced with the dilemma of whether to take a decision ending the immunity themselves or leave it to Parliament, considering the fact that, besides common law, immunity is fixed in a statute (the Courts’ and Legal Services Act 1990, s. 62). Expressing the general opinion, Lord Hoffmann said, ‘... I do not think that your Lordships would be intervening in matters which should be left to Parliament. The judges created the immunity and the judges should say that the grounds for maintaining it no longer exist’ (Hoffmann, 2000).

11. Text 2 comprehension questions.

Answer these questions.
1 What sanctions can professional bodies impose on lawyers who are guilty of misconduct?
2 How does the Law Society control the work of solicitors?
3 Why does solicitors’ work need close supervision?
4 What is the disadvantage and advantage of the cab rank rule for lawyers?
5 How does a lawyer’s position differ from that of other persons who may receive confidential information?
6 Why must a lawyer make insurance provisions?
7 What must one do if he believes that his criminal case was lost due to his lawyer’s fault?
8 Why did the Lords have difficulty in ending immunity themselves: what legal principle stood in their way?