The Legal Aid, Sentencing and Punishment of Offenders Act 2012

By

Insert Your Name

Presented to

Instructor’s Name, Course

Institution Name, Location

Date Due

1. **The key difference between solicitors and barristers is: barristers have higher rights of audience and solicitors do not. Discuss this statement using examples.**

According to European Commission for the Efficiency of Justice (2014), though solicitors and barristers in England and Wales play almost similar roles in the legal profession, they have key differences. The major difference is that barristers have a higher rights of audience while solicitors do not. Solicitors deal with the public and interface with the clients. They perform all the legal work for the clients but lack the rights of audience in the higher courts. However, they have, and can practice the rights of audience in the lower courts which comprise of the magistrates and county courts (criminal and civil respectively), tribunals, and private hearings in the High Court (interlocutory hearings heard in chambers). The consideration of these facts and the comparison with the rights of audience availed to the barristers in accordance with the law depicts a major difference between the solicitors and barristers. According to the law, solicitors do not have the rights of audience in the High Court(s), which comprise the Crown (criminal) Court, the High Court (civil), the Court of Appeal, and the Supreme Court unless they possess the Higher Rights qualification (Grubbs, 2013).

The barristers have higher rights of audience as compared to solicitors. They specialize in advocacy and as such have higher rights of audience which allows them argue cases in court, irrespective of the level of the court. For instance, while solicitors only have rights of audience in lower courts, barristers have rights of audience even in higher courts such as the High Court, the Crown Court, the Court of Appeal, and the Supreme Court. The major role of barristers is the provision of legal opinion for solicitors and do so in consideration of particular question of law. Additionally, they are never instructed by clients but by the solicitors on behalf of the clients. Their rights of audience in the higher courts is automatic in accordance with the law. On the contrary, solicitors are instructed directly by the clients and maintain contact with the client with only rights of audience in lower courts (the County Court and the Magistrate Court) in exception of those awarded the higher rights of audience depending on their experience (European Commission for the Efficiency of Justice, 2014). However, they generally instruct barristers, prepare and draft documents, advise clients, and represent them in court.

Barristers are specialists given the rights of audience before every court but permitted direct access to a very limited rage of clients. The major difference between the two professions is the rights to audience. While barristers have rights of audience before every court, only solicitors with sufficient experience are given the rights of audience before higher courts. However, even in the high courts, most of the instructions to barristers come through the solicitors. The solicitors instruct the barristers to conduct advocacy in the High Court. While this difference is crucial, the judiciary in England and Wales are appointed from the professions, even though a vast majority comes from experienced barristers (European Commission for the Efficiency of Justice, 2014). All notwithstanding, in the Crown Prosecution Service, experienced barristers and solicitors enjoy the rights of audience and perform almost similar roles on qualification. Irrespective of their professions, solicitors and barristers undertake CPS training prior to performing roles in the Crown Court. This is done to ensure quality and high-standard of advocacy (Grubbs, 2013).

1. **(a). Summary of Gibson (2014)**

Kirstie Gibson offers a definitive analysis of the report of the Family Task Force in consideration of the Ministry of Justice’s response. The author offers background information of the Family Mediation Task Force, FMTF, and outlines its importance. According to the author, the FMTF was formed to address concerns of falling publicly-funded mediations and the rising litigants in person. The FMTF includes representatives from the Family Justice Council, Resolution, the Legal Aid Agency, the Ministry of Justice, and Her Majesty’s Courts and Tribunals Services. Additionally, it involves academics and family law practitioners. Gibson (2014) argues that there is a declining public spending on mediation and calls for the need of efficient measures to divert family disputes from the courts. Using the FMTF report, the author outlines the issues facing the mediation sector and offers recommendations significant for encouraging resolution of family disputes/cases out of court.

The author asserts that there is a rising number of litigants in person in the currently overloaded family courts. Gibson attaches the increase in LiPs to the falling publicly funded mediations, the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012, and the lack of referrals to mediators by the legal aid lawyers. According to the article, the implementation of LASPOA influenced the landscape for legal assistance in family disputes. The Act removed legal aid from most family law cases leaving aid for family mediation and help with mediation alone.

Gibson outlines the various recommendations made by the FMTF report that the Ministry of Justice accepted, rejected, and the recommendations that are still considered. Gibson concludes that the even with the significant fall in the family mediation, the recommendations of the report will not be implemented wholly. According to Gibson (2014), the practitioners will await updates from the Ministry of Justice and the implementation of the Legal Aid Agency funding of non-legally aided individuals for the sessions of mediation. Moreover, Gibson argues that the process is probably the most significant progress recorded stemming from the report. Further from the above mentioned, the author argues that the influence of the LASPO Act may or may not cause an increase in out-of-the-court mediations.

**(b). Critically evaluate the accuracy of the following statement: The Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 has succeeded in the intended aim of encouraging increased use of alternative dispute resolution (ADR), such as mediation.**

The LASPOA 2012 was created for the discouragement of unnecessary and adversarial litigation at the expense of the public, to direct legal aid to people who need it the most, improve quality and the value for money, and ensure significant savings. The achievement of these objectives depended mainly on the effectiveness of the Act in encouraging increased use of alternative dispute resolution. For instance, the Act was supposed to increase the number of mediations and reduce the cost incurred in funding other forms of dispute resolution (Parliament.UK, 2015).

Years after the creation and implementation of the Act it has achieved little success in encouraging the alternative dispute resolution, mainly mediation. According to the Justice Select Committee, the implementation of LASPOA has since caused a decrease in the number of mediations. The report attaches the fall in mediation to the termination of compulsory mediation assessment, which all litigants were supposed to attend before receiving private family law legal aid. However, the law removed legal aid from the family law causing a significant decrease in mediation (The Bar Council, 2014). However, the implementation of the Children and Families Act in 2014 has triggered increasing mediation following its provision that anyone person wishing to issue private law proceedings must to the family court must attend the Mediation Information and Assessment Meetings. Attending the MIAM encourages increased use of the alternative dispute resolution measures (Parliament.UK, 2015). However, the influence of the CFA 2014 cannot be attached to the LASPOA.

Additionally, there has been an increasing number of litigants in person, especially in family courts since the development and implementation of LASPOA 2012 (The Bar Council, 2014). This shows the ineffectiveness of the Act in encouraging the use of ADR. More so, the rise of LiPs in the family court depicts that most litigants do not engage in mediation as evident before the implementation of the law. As such, the Act seems to have failed in the achievement of one of its critical objectives. The process has led to increased delays in the courts and further burdens on the already limited court resources. These issues continue to cause major concerns in the administration of justice. In consideration of the concerns then it is clear that the LASPOA has achieved insignificant success in the promotion of ADR, especially mediation (Parliament.UK, 2015).

The major aim of implementing the LASPOA was to encourage increased use of alternative dispute resolution. However, the consideration of the different developments since its implementation shows its inefficiency in the achievement of its major goal. According to the report by the Justice Select Committee passed by the parliament, the Act led to a decline in the number of mediations. As a critical ADR, the declining mediations present the LASPOA 2012 as having failed in the achievement of its goals. According to the Ministry of Justice, the major cause of the declining mediations was due to the failure to provide legal aid funding through solicitors for family and other disputes. People facing disputes fail to engage in mediations mainly due to the lack of involving legal aid lawyers (Parliament.UK, 2015). The process, which is directly influenced by the LASPO Act 2012, continues to cause a declining number of mediations (The Bar Council, 2014). As such, the LASPO Act has not achieved its intended aim of encouraging people to engage in mediations and other alternative dispute resolution.

In conclusion, the LASPO Act of 2012 has not achieved its major objective of encouraging ADR such as mediation. However, the Act has depicted a greater influence on the law. Its amendment to include critical concerns such as the provision and promotion of legal aid as an available public service and the consideration of the importance of solicitors and quality public information would improve its effectiveness. The LASPO Act 2012 should include clauses that guarantee quality public information concerning mediation, efficient accessibility of the information, and the compulsory mediation assessment among others. In a report developed in September 2014, The Bar Council asserts there is a need to improve awareness on the services offered by the Act, make legal aid a publicly available service, and ensure the accessibility of information and services concerning mediation and other alternative dispute resolution techniques.

1. **List three things which you regard as essential for your exam preparation and briefly explain why.**

There are several things critical when preparing for examinations. Personally, I find effective notetaking when studying, reflection, and a studying schedule critical for sufficient preparation.

* **Schedule**

A learning/studying schedule is essential for a balanced and smart preparation. The schedule proves important in allowing sufficient study time for various subjects and breaks during the process of preparation. Additionally, it helps in the preparation of all the essential examination paraphernalia. It includes effective allocation of time, outlines when the date of exam, venue, the time, and all details that shape my preparation for exams. As such, an effective studying schedule forms one of my essential tools when preparing for an exam.

* **Notetaking when studying**

Notetaking helps me understand and remember important concepts during the exam. In preparing, therefore, I focus on effective notetaking to ensure sufficient understanding of the concept. Additionally, the notes make last-minute revision easier and fun. Even when I have short lecture notes, I ensure I take further simpler notes when studying to enhance my understanding. Therefore, notetaking remains one of my essential things in preparation for exams.

* **Reflection**

Reflecting before, during or after reading enables me to understand important concepts and remember them during the examination. The process boosts comprehension and enhances understanding. I also use reflection to measure the level of my understanding of the various units before exams. This allows me to improve on weak areas and maximize on my strong areas of the subjects.

Word Count (1944)

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