BULLETIN

LAW ASSOCIATION

Bulletin No. 8 September, 1966

Annual General Meeting

The third A.G.M. of the Association will be held on Monday, 19 September, in the "Winter Gardens", Cora Hotel, Upper Woburn Place, London, W.C.1. at 6 p.m. After a short business session a paper will be given on "The Freedom of Services in the field of Insurance as treated by the OECD and Common Market". We have been fortunate in securing Dr. Marcel Grossmann, who will be visiting England at this time, to address us on this subject. Dr. Grossmann is Professor of Economics and Insurance, The Graduate School of Economics, Business & Public Administration, St. Gallen, Switzerland.

Your Committee has agreed to provide light refreshments before the meeting and these will be served from 5 p.m. onwards. A bar will also be available.

It is hoped that you will come yourself, bring your friends and make the meeting as widely known as possible.

Hamburg Congress

The second World Congress of Insurance Law which has occupied much of our time during the past year was held at Hamburg from 28 July to 2 August. Seven of our members attended the Congress and we are greatly indebted to those who prepared reports on some of the themes of the Congress. Elsewhere in this issue we are printing an article by the Chairman giving an account of the Congress and members will also find a report of the business sessions in this bulletin.

Election to the Council of A.I.D.A.

It is a pleasure to report that at the General Meeting of A.I.D.A. which took place in Hamburg on 2 August, one of our Vice-Presidents, Mr. Gordon W. Shaw, was unanimously elected to the Council of A.I.D.A. in place of the late Prof. Denis Browne.

Membership

We are pleased to welcome to corporate membership Messrs. Bowen, Sessel & Goudvis, Solicitors in Johannesburg. Mr. D.H. Schneider, one of the partners in this firm, invites any member who may be visiting South Africa to get in touch with him.

Change of address

Members are asked to note that the Hon. Secretary has changed his address, and that all communications in future should be sent to him at the British Insurance Law Association, 21, Aldermanbury, London, E.C.2.

The Law Commission

The first annual report of the Law Commission laid before the Lord Chancellor has now been published and is available from H.M.S.O., price 3/6d. It is interesting to note the immense amount of work which has been accomplished in the period of nine months since the Commission laid its first programme before Parliament in October last year. Much of the report is of interest to our members as it is concerned with changes in branches of the law which impinge upon insurance at many points.

Memoranda is invited by the joint working party set up by the Law Commission and the Scottish Law Commission to deal with exemption clauses in contracts. The terms of reference of the working party are: "To consider what restraints, if any, should be imposed on the freedom to rely upon contractual provisions exempting from or restricting liability for negligence or any other liability that would otherwise be incurred, having regard in particular to the protection of consumers of goods and users of services."

It would be helpful if any member contemplating making a submission to this joint working party would first get in touch with the Secretary of this Association.

Damages in Personal Injury Cases

A colloquium on Damages in Personal Injury Cases is to be held at the University of Southampton under the chairmanship of Professor H. Street of Manchester University. The colloquium will run from Wednesday, 21 September (starting at 4 p.m.) until Friday, 23 September, ending at lunchtime. A number of overseas participants will be attending. The charge will be about £5:10:-d including the cost of papers distributed beforehand. The colloquium is organised by the United Kingdom National Committee on Comparative Law with the co-operation of the British Institute of International and Comparative Law. It is open to anyone interested, and will be housed in a modern hall of residence near the University.

Particulars may be obtained from the Colloquium Organiser, Mr. Alec Samuels, Law Faculty, The University, Southampton.

Insurance Companies' Bill

Extract from Weekly Hansard No. 695 (15-21 July, 1966)

18 July - Column 44

"BILL PRESENTED
Insurance Companies

Bill to increase the minimum paid-up share capital and margin of

solvency required by an insurance company to which the Insurance Companies Act, 1958 applies; to give powers of inspection to the Board of Trade in relation to those matters; and to provide that such an insurance company transacting motor insurance business shall make to the Board of Trade certain stipulated returns during its first five years of operation, presented by Mr. Keith Stainton; supported by Mr. William Hamling, Mr. Patrick Jenkin, Mr. Eric Lubbock, Mr. Peter Mills, Mr. Edward M. Taylor, and Mr. John Wells; read the First time; to be read a Second time upon Friday, 2nd September and to be printed. (Bill 82)"

House of Lords and Judicial Precedent

In a statement made in the House of Lords on 26 July, the Lord Chancellor announced on behalf of himself and the Lords of Appeal in Ordinary that the rule of judicial precedent, whereby past decisions of the House of Lords were accepted as absolutely binding upon themselves, would be relaxed in the House of Lords when it was in the interest of justice to do so. This change is not intended to modify the practice in other courts. In making this statement the Lord Chancellor said:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.

Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose therefore to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law. This announcement is not intended to affect the use of precedent elsewhere than in this House."

JUSTICE

In our June issue we gave details of JUSTICE and members may like to know that the Association has now become a corporate member of JUSTICE.

Around the Courts

Some of the cases which have come before the courts recently and are likely to be of interest to our members include the following:

Fundamental Breach of Contract

In Suisse Atlantique Societe D'Armement Maritime S.A. v. N.V. Rotterdamsche Kolen Centrale, the respondents agreed to charter a vessel from the appellants for the carriage of coal from the U.S. to Europe for a total of "two years'

consecutive voyages". Periods of laytime were agreed within which the respondents were obliged to load and discharge the vessel on each voyage and demurrage was payable at the rate of 1,000 dollars a day. During the period of the charter eight round voyages were made, whereas the appellants contended that there could have been a further six voyages if the loading and discharging had been completed within the laytime. The demurrage amounted to much less than the alleged loss suffered by the appellants, and at a later stage they contended that the demurrage clause exempting the respondents from liability and their failure to make a full number of voyages amounted to a fundamental breach or breach going to the root of the contract.

It was held by the House of Lords that the demurrage clause was an agreed damages clause and not an exemption clause and that, accordingly, on a true construction of the charter party, the appellants were not entitled to claim that damages were at large.

The case is important because the House of Lords took the opportunity of examining many decisions concerned with fundamental breach of contract and the circumstances in which it may limit or exclude the operation of an exemption clause. It is noteworthy that the Law Commission in its first annual report (referred to elsewhere in the bulletin) agrees with Lord Reid who said in the course of his speech that the solution to this complex problem is one which calls for urgent legislative action. (1966) 2 W.L.R.944.

A Stranger to the Contract

Early common law cases permitted a stranger to the consideration for a contract to sue on it provided there was some tie of natural affection or some family relationship between the "stranger" and one of the contracting parties. Cheshire & Fifoot say that in the nineteenth century "such cases were denounced as unworthy concessions to sentiment". In Tweddle v. Atkinson (1861) 1 B.& S.393, it was categorically stated: "it is now established that no stranger to the consideration can take advantage of a contract, although made for his benefit". This was reaffirmed by Lord Haldane in Dunlop v. Selfridge (1915) A.C. 847 in the famous words: "Our law knows nothing of a jus quaesitum tertio arising by way of contract". But in the recent case of Beswick v. Beswick, two important qualifications to the doctrine were recognised Briefly, the facts were that old Peter Beswick entered into a written agreement to sell his business of a coal merchant to his nephew in consideration of certain payments to be made to Peter Beswick for the remainder of his life and an annuity of £5 per week to his widow after his death. On the death of Peter Beswick, the nephew refused to pay the annuity and the action was brought by Peter Beswick's widow, as his administratrix and in her personal capacity, to enforce the agreement.

The Court of Appeal held that the widow was entitled as Beswick's personal representative to enforce the agreement by way of specific performance. It was also held that by virtue of S.56(1) of the Law of Property Act, 1925, the widow could enforce the agreement in her personal capacity, although she was not a party to it.

Whether S.56 would apply to a commercial contract or a contract in writing for the sale of goods as distinct from a contract for the payment of an annuity which was more readily acceptable as an "agreement over property" within the meaning of S.56(1) is uncertain. The Law Revision Committee which considered this problem in 1937 was extremely doubtful. The Committee recommended that where a contract by its express terms purports to confer a benefit directly on a third party, the latter should be entitled to enforce it in his own name. The Law Commission has included this subject in its first programme and Beswick's case emphasises the need for early legislation to declare the law on the matter. (1966) 3 All E.R.1.

Waiver of Condition Precedent

In Lickiss v. Milestone Motor Policies at Lloyd's, a motor cyclist brought an action against his insurers who had repudiated his claim to indemnity in respect of damage to a taxi-cab for which the motor cyclist had been held liable. By Condition 1 of the policy, the insured was required to give notice in writing to the insurers "as soon as possible after the occurrence of any accident" and to "forward immediately any letter, notice of intended prosecution, writ, summons or process relating thereto." The accident occurred on 17 May, 1964 and a notice of intended prosecution was sent to the insured but he did not inform his insurers. The latter learned of it from the police and on 23 June they wrote to the insured saying "It would be appreciated if you would let us know why you have not notified us of these proceedings since we will wish to arrange your defence." Liability was subsequently denied by the insurers on the ground that there had been a breach of the condition.

The Court of Appeal, reversing the decision of the court of first instance, held that the insurers' letter of 23 June amounted to a waiver of the condition. Further, since the insurers had received all the necessary information about the prosecution from the police, it was unnecessary for the motor cyclist to give the insurers the same information under Condition 1 of the policy and the insurers could no longer rely on that condition.

Lord Denning M.R., said: "The law never compels a person to do that which is useless and unnecessary. If insurers obtain all material knowledge from another source so that they are not prejudiced at all by the failure of the insured to tell them, they cannot rely on a condition to defeat the claim." (1966) 2 All E.R.972.

A Strange Form of Compensation

In Andrews v. Freeborough a girl aged 8, was injured in a motor accident from which she died a year later without ever having regained consciousness and without pain or appreciation of what had happened to her. In an action brought by her father as administrator, damages of £500 and £2,000 were awarded for loss of expectation of life and for loss of faculty respectively. On appeal and cross appeal as to quantum, it was held by the majority of the

Court of Appeal that the award should be upheld. This seems to be the first case in which damages for loss of faculty, as distinct from loss of life, have been awarded in an action by a personal representative based on a survival of a cause of action arising by virtue of S.1 of the Law Reform (Miscellaneous Provisions) Act, 1934. It is interesting to note that Winn, L.J., in a dissenting judgment said: "it remains, I think, true that it is a somewhat strange form of compensation which is neither received by the person entitled to be compensated nor even awarded to him or her on his or her own right." (1966) 2 All E.R.721.

Not a Frolic of His Own

In A. & W. Hemphill Ltd. v. Williams, the facts were that a Boys' Brigade was returning to Glasgow from its summer camp in Bendreloch. The lorry in which the boys and their luggage were travelling was involved in an accident and the pursuer, a boy aged 16, was seriously injured. The driver of the lorry was negligent but his employers, the defenders argued that at the time of the accident he was acting outside the scope of his employment since he had made a detour, at the request of his passengers, from the route he was instructed to take. The Lord Ordinary rejected this argument and awarded the pursuer damages of £24,000 against the defenders on the grounds that they were vicariously liable for the negligence of their driver. This decision was affirmed by the Court of Session.

On appeal to the House of Lords, it was held that the deviation could not be described as a "frolic of his (the driver's) own because of the presence of the boys and the baggage whom the servant was required qua servant to drive to their destination." In other words, the deviation was not entirely for the servant's purposes. If the lorry had been empty or had contained little of importance, the deviation might well have constituted a "frolic of his own". The presence of the passengers was held to be a decisive factor and despite the deviation the defenders remained liable for their servant's negligence. "The Times", 23 June, 1966.

The Wagon Mound (No. 2)

Overseas Tankship (U.K.) Ltd. v. The Miller Steamship Co. Pty. Ltd. and Another. When Wagon Mound (No.1) came before the Judicial Committee of the Privy Council in 1961, the charterers of the vessel were held not liable in negligence when oil discharged from the Wagon Mound was accidentally ignited and set fire to the wharf. It was held that risk of fire was not foreseeable. The case is important in that it made foreseeability the test of liability in negligence and the previous decision in Polemis which made the defendant liable for all the direct consequences flowing from his negligence, once negligence had been established, was no longer regarded as good law.

Wagon Mound (No.2) arose out of the same incident and was a claim made in nuisance and in negligence by the owners of the S.S."Corrimal" which was moored to the wharf and also sustained damage. In New South Wales, the claim succeeded on the ground of nuisance but failed on the ground of negligence.

On appeal and cross-appeal to the Privy Council, both were allowed with the curious result that the same damages were awarded in negligence but not in nuisance. Although the two decisions seem to be inconsistent, the distinction lies in the difference between the findings of facts made by the trial judge and the Judicial Committee's application of the law to the facts.

On the evidence which was led their Lordships held that a reasonable man in the position of engineer of the Wagon Mound should have realised that there was a real risk of the furnace oil on the water igniting and the fact that the realisation of the risk would only occur very exceptionally would not, in the circumstances of this case, justify him in failing to take action to prevent the risk. Thus, the risk was foreseeable and negligence was established. It was also held that in nuisance, as in negligence, liability depends upon foreseeability thus reversing the finding of the trial judge whose decision in nuisance was based on direct consequences and not on foreseeability. (1966) 2 All E.R.709.

Correspondence

The Secretary
British Insurance Law Association. 10 June, 1966

Dear Sir,

There is just one paragraph in Professor Heuston's paper on "The impact of insurance on the Law of Torts" published in your 7th bulletin on which I should like to comment. Before doing so I must first say how much I appreciated listening to Professor Heuston's masterly survey of the situation, and would add that broadly speaking I agree with the proposals for reform he makes in relation to motor insurance.

Those who are not very familiar with the law relating to the Industrial Injuries scheme may, however, find the last paragraph on page 13 of the bulletin a little misleading. It runs as follows:

"Loss insurance already exists in England for industrial injuries. The workman recovers benefit from an administrative agency because the accident has happened in the course of the employment and the premiums (or, more properly, weekly contributions) have been paid to cover just that eventuality. Payment is made directly to the injured person and not to an insured who has become legally liable to a third party. To put it another way, the loss itself is compensated and this is done directly by way of payment by an administrative agency to the injured party - or to his relatives if he has been killed."

My comments are:-

1. The accident suffered by the workman must not only have 'happened in the course of the employment' but also have arisen out of the employment. The burden of proving that the accident arose in the course of the employment rests

on the person making the claim for benefit. There is, however, a presumption that an accident arising in the course of an insured person's employment arose out of that employment in the absence of evidence to the contrary.

2. It is not necessary for the premiums (i.e. the weekly contributions) to have been paid in order for benefit to become payable under the Industrial Injuries Act. As long as it can be shown that the industrial accident arose out of and in the course of insurable employment - that is to say, employment in respect of which contributions should have been paid, that is all that matters.

3. The injured person is the insured person. The Act specifically provides to this effect. Furthermore, section 3 of the Industrial Injuries Act, 1965 (which consolidates the Industrial Injuries Acts, 1946 - 1964) provides for contributions to be paid on behalf of the insured person by the employer, and of course the employer has a right to deduct such contributions from the employee's wages or salary.

Yours sincerely,

Edgar Jenkins

27, Combemartin Road,
Southfields,
London, S.W.18.

Report of the Debate with German Students

The debate between members of the Association and the German students from the Institute of Insurance Law of Cologne University had a most unorthodox ending. The motion was split into two parts, one part being heavily defeated and the other being carried by a comfortable majority.

The motion before the house was "That premium rates and policy wordings should be subject to State control". Mr. H.A.L. Cockerell, O.B.E. who was in the chair, invited Prof. Dr. E. Klingmuller, Director of the Institute of Insurance Law of the University of Cologne, to propose the motion. In doing so, Prof. Klingmuller pointed out that there are many ways of giving protection to policyholders, who have to be safeguarded from unfair practices. Insurance is an invisible and intangible service, the quality of which cannot be tested in advance. It is possible to compare premiums only when common conditions exist, but these conditions must be supervised by a competent institution since tradition is not strong enough to provide an effective control. The need for standardisation of terms is particularly important where compulsory insurance (e.g., motor) is concerned.

Referring to the solvency of insurance companies the speaker thought it essential to ensure this in the interests not only of policyholders but also of injured third parties. Yearly audits and returns are not enough; there ought to be some specific strategy in relation to investment of premiums and

the creation of reserves. The speaker found himself in some difficulty in proposing the motion as a whole. He favoured control rather than supervision, (the former being active and the latter tending to be passive in practice,) over policy conditions. He wanted the control modified, however, in regard to premium rates.

Prof. Dr. P. Broess who supported the proposer of the motion also favoured state control of policy wordings, especially as it protects the individual insured who is less able to look after his interests than is a large corporate body. He thought that, in exercising control,the state also had a duty to ensure that policy wordings did not become in consequence inflexible. Prof. Broess considered state control of premiums to be possible only where there is an objective basis of calculation such as is found in life and health insurance in Germany. He thought it suitable also for motor insurance where statistics were available to calculate a tariff common to all insurers. In concluding his succinct speech, Prof. Broess said that he was content with the present system of government control in Germany and would not wish to see it extended to other branches of insurance.

The main speakers from the Association opposing the motion were Mr. G.E.I. Clements, LL.B. Fire Manager of the Bedford General Insurance Co. Ltd. and Mr. K.S. Cannar, B.Sc., Claims Manager of K.G.M. Policies. Mr. Clements said that there could not be a compromise between a state system of insurance and a free enterprise. The proposition, he thought, envisaged a partial control which amounted to a compromise and that could not be successfully achieved in practice. Dealing with state control of rates, the speaker said that it would be impossible for a government to lay down a system of uniform rates for motor insurance. Companies have a rating system but flexibility in the system to enable bad risks to be penalised and other factors to be taken into account in individual risks is the very essence of free enterprise.

The underwriter should be free to quote appropriate rates and the client free to accept these or go elsewhere. The alternative would be a full state scheme.

The speaker conceded that a better case could be made for state control of policy wordings but he thought that it would stunt the growth of insurance cover. Under our present system there are many standard forms of wording but companies are free to make their own modifications and this has often resulted in some of the best innovations in this country leading to improved cover for policyholders. If conditions are state controlled they tend to become hidebound and innovations are more difficult to achieve.

The speaker agreed that it was important for the state to exercise control to ensure protection for policyholders, but pointed out that the solvency of companies was not part of the motion.

Mr. Cannar said that his objection to the motion was that it involved greater interference by the state with the liberty of the individual. He agreed that some control of a social service is needed, particularly for

individuals rather than for large corporations. Most countries have adequate financial controls through Company Acts, and in this country there is the Insurance Companies Act, 1958. But the need for financial control does not imply that there should be control of the products, their shapes and sizes (e.g., policy wordings), or of the prices for these products. Tradition and a free market with competition are a safeguard for policyholders. Brokers also have an important role to play in this respect since they secure the best cover and best terms for their clients and so constitute a further safeguard. Mr. Cannar referred to an article in "The Times" on the difficulties the U.S.A. experience with rising costs and delays in getting premium increases agreed. The report noted that 134 increases in home-owner and private automobile lines had been granted in 44 states in 1965.

Prof. Kate Pierson of Hawaii University, speaking from the floor, said that the figures which Mr. Cannar quoted from "The Times" were not really significant. There are 50 states in America each with its own regulations which complicate business for insurance companies. Yet companies still prefer State regulations to Federal regulations. Policy wordings are standardised by custom and by inter-company arrangements but not by state control. Rates are fixed by the companies and are submitted to the Insurance Commissioner for approval.

Views expressed by some of the visiting students included the following:

The individual policyholder is in a feeble position as against omnipotent insurance companies and therefore state control is desirable.

If people were better informed in insurance, state control would not be necessary.

A free market is good for England but control is better for Germany.

It is not possible to condemn freedom merely because some people do not use their freedom.

Dr. Jakobi said tangible goods like motor cars can be evaluated and tested. Insurance is a security and not tangible like a motor car; therefore standardisation is necessary. He thought state control to be a more effective way of achieving this than tradition or agreements.

One German speaker said that he was not in favour of controls for conditions or rates.

Members of the Association who contributed to the debate included a representative from Lloyd's who asked: "If the Government is to control rates will it also control losses?" He went on to point out that a Lloyd's underwriter invests his fortune in the business and is liable to the limit of his personal resources and so it would not be reasonable to control the rates for the risks he accepted.

Mr. Wyeth replied to an earlier speaker who said that state control in Germany was necessary because there were only fourteen insurance companies operating there. There are only fourteen companies, suggested Mr. Wyeth, because of state control. Remove the state control and the British companies would be pleased to move in!

Dr. Jenkins, as might be expected, favoured some control. His thesis was that insurance passes through three stages. First it is voluntary; secondly, some measure of compulsion becomes necessary as with workmen's compensation insurance and subsequently with motor insurance; the third stage is a state take-over. Uniformity of wording is essential otherwise insurance lays itself open to the type of criticism applied to motor insurance in the recent article in "WHICH".

Another speaker said that the question of state control must in some measure be influenced by the law affecting insurance policies. Where there is a very strong body of case law on the interpretation of policy conditions, the case for state control is weak, but where the case law is sparse, the argument for state control is stronger.

In winding up for the opposition, Mr. Clements asked:

"Do you want a free market or not?"

"Do you want competition or not?"

In his concluding speech, Prof. Klingmuller agreed that compromise was not successful. Yet compromise seemed to be the mood of the meeting and on a motion from the floor it was unanimously agreed to divide the motion so that two votes were taken. The motion for control of rates was defeated while the motion for control of policy wordings was carried.

Mr. Bruce, Assistant General Manager of the "Cornhill" in some well-chosen words expressed the appreciation of all present to the principal speakers and complimented those from Cologne on their erudition and the excellence of their English. The evening concluded with a buffet supper, and a pleasant feature at the supper was the presence of members' wives and lady friends who helped to entertain the visitors.

"General Principles of Insurance Law"

Members will welcome the first of a four-volume project on "General Principles of Insurance Law" by one of our own members, Professor E.R. Hardy Ivamy. The first volume, price 97/6d, is published by Butterworth.

The Economic Treatment of Automobile Injuries

"The suffering and dying have called forth two kinds of treatment. The better recognised kind is medical treatment, which staves off death and minimizes pain and disability among the living. The less recognised kind of treatment is economic - the restoration to the injury victim or to his

dependents of some part of the economic well-being that has been snatched away from them by loss of income and by the costs of medical treatment." This is the starting point of some research which has been carried out in the U.S.A. and which is dealt with in an article in the Michegan Law Review December, 1964, Volume 63, No. 2 by A.F. Conard, Professor of Law at the University of Michegan.

The article is slanted towards the plight of injury victims rather than the problems of the jurists. The recommendations which Prof. Conard make include:

(1) Tort actions would continue, but damage rules should be revised to deduct from recoverable damages the amounts that injury victims have recovered or can recover from health insurance, rehabilitation programs, social security, and disability insurance.

(2) Measures should be taken to enhance the personal responsibility of tort-feasors. Suggested for consideration are exclusion of punitive damages and psychic damages from insurance coverage; denial of unconditional bankruptcy discharges for personal injury judgments; permitting insurance companies to set up safety incentive rates without regard to "actuarial justification".

The Hon. Secretary has a reprint of this article which can be loaned to any interested member of the Association.

A note for your diary

The first meeting of the Association to be held after the A.G.M. will be on Wednesday, 7th December, when Dr. B. Rudden, a lecturer in law at the University of Oxford and a Fellow of Oriel College, will give an address on "Soviet Insurance Law". Dr. Rudden is the author of the recent book under the same title published by A.W. Sijthoff, The Netherlands. The venue will be the "Winter Gardens" of the Cora Hotel, Upper Woburn Place, London, W.C.1.

Further details will be circularised later but in the meantime members are asked to note the date in their diary.

LEGAL EDUCATION SURVEYED

A fascinating "Survey of Legal Education in the United Kingdom" by J. F. Wilson has been published by the Society of Public Teachers of Law and is obtainable from The Institute of Advanced Legal Studies, 25 Russell Square, London, W.C.1., price 7s. 6d.

Undergraduate students of law at universities numbered 5,283 in 1965-6, compared with 2,005 in 1938-9. London University accounts for 552 of the increase, Scotland for 544, and the provincial universities for 1,905. Although the numbers at Oxbridge have risen slightly their percentage share, for England and Wales, is now only 28, compared with 62 in 1938-9. Despite the general increase in numbers, only half the applicants for university places who were qualified to enter could get a place last year. Many are driven to take external LL.B. courses at colleges of further education. Over 1,000 students registered for that degree in 1965-6, but less than 40% are likely, on past experience, to complete the course. There were 625 students at Holborn College of Law alone. Students doing post-graduate work at a university number 654 only, and 70% (in 1964)came from overseas. University teachers numbered 614, including 223 part-timers.

The report gives the views of teachers on university facilities. Libraries are considered by the majority in all universities to be more or less adequate, but nearly two-thirds of Oxbridge teachers think their secretarial assistance inadequate.

In England and Wales most university syllabuses for law degrees are confined to legal subjects but 57% of law teachers would like to see non-legal courses introduced in usubjects such as sociology, economics, philosophy or politics. 58% of teachers favoured joint honours degrees, law being combined for preference with social science subjects.

In most university courses about two-thirds of the subjects are compulsory. There is usually a wide range of optional subjects but the general opinion was that courses on comparative law, air law, shipping law, banking, insurance, or business law could best be studied at post-graduate level. However Hull offers maritime law and Southampton is running an experimental course on business law in its undergraduate course.

Teaching methods are considered. While lectures are still the main form of teaching, tutorials are usual and 90% of teachers expressed the view that they were essential. Most would prefer for that purpose a group of not more than six students. 87% considered regular essay-writing essential.

Examinations consist mainly of three-hour papers with a choice of five or six questions out of nine. There is a growing tendency to set problems in order "to test the student's ability to apply general principles and to reduce reliance on pure memory work". 52% of teachers supported an examination at the end of each year of the course, in order to reduce the burden on the student's memory.

While teachers almost unanimously support the problem question, 44% considered that a good memory was an important attribute for a lawyer and should not be ignored. 54% favoured testing the undergraduate's ability to use reference books and law reports, but in practice few universities are able or willing to make copies of such material available in the examination room, except at postgraduate level. Support for the introduction of a dissertation was limited to 14% of teachers.

Most law graduates enter the legal profession. In 1963 slightly more than 50% entered articles with a solicitor in private practice; 5% took up articles in local government; and 10% went to the Bar.

Practitioners were asked whether in choosing an articled student or a pupil they would prefer a graduate. Three-quarters of the barristers and two-thirds of the solicitors said "Yes". The only ones who had reservations were non-graduates but even among them, a majority would choose a graduate clerk or pupil.

The question whether for the practitioner a degree in law was to be preferred to a mixed degree or one in some other subject caused some division of opinion. Solicitors were more in favour of candidates with a degree in law than barristers. A similar reaction was obtained to the question whether, if they had their time again, they would read for a law degree. 47% of barristers (the majority of those expressing an opinion) and 70% of solicitors indicated a personal preference for a law degree.

The report also examined law teaching at colleges of further education. The great bulk of it is related to courses for the National Certificate or Diploma in Business Studies. There are 12,000 students for these.

At least thirty-four professional bodies require passes in one or more legal subjects. "Unfortunately, from the college standpoint the syllabuses for nominally identical subjects tend to vary considerably between the various professional bodies with the result that it is difficult to combine candidates for different examinations in the same class!". The report remarks that a qualifying course in the English Legal System may have to meet the requirements of as many as thirty different syllabuses and that the task of the colleges would be greatly simplified if the bodies concerned could get together in an attempt to achieve a uniform syllabus.

The inadequacy of many technical college law libraries is stressed. Out of 225 reporting only ten have more than 500 law books. (A university law library, it is considered, needs 10,000 books). Nearly a third of the colleges do not subscribe either to law reports or to any legal periodical and the majority of full-time lecturers hold no legal qualification.

The Bar examinations are under review. Part I has hitherto consisted of five subjects which may be taken one at a time. This, says the report, "is obviously not satisfactory from an educational point of view and to a large extent accounts for the high failure rate". (This statement is not explained). From 1966 the five subjects will become six, which must be taken in two groups of three each. A candidate must take all three subjects of Group A before he proceeds to Group B. Group B must also be attempted as a whole. If a candidate fails in more than one subject of a group he must take the whole group again. No candidate may take a group or subject more than four times save in exceptional circumstances. Roman Law will no longer be compulsory.

Provision is made for dispensations from Part I subjects to graduates. The standard for dispensation in most subjects is that of a second-class honours mark. No dispensations are granted for Part II, though the subjects of it have similar syllabuses to those for degrees.

Bar papers contain a blend of essay-type questions and problems, with a tendency for the proportion of problems to increase. Less choice is allowed than in university examinations - usually eight questions out of twelve. Some papers have a compulsory question.

The report describes the facilities for academic and practical training. Barristers were asked whether they considered the provision for legal education to be adequate. 61% considered it inadequate. Among barristers of five years' standing or less the percentage dissatisfied was 82.5. Criticism lessened as standing at the Bar lengthened but in no group did a majority consider the provision adequate. Criticisms were directed to the inadequacy of teaching facilities and practical training.

The examinations themselves came in for much criticism. "A considerable number of practitioners were strongly of the opinion that the Bar examinations were of far too low a standard and constituted little more than a memory test. ... The opinion was expressed by many barristers that ... the courses should be designed to provide the student with a firm grasp of basic principles and an ability to assess the value of these principles in the context of the society they were designed to serve, rather than to concentrate on imparting detailed information which could be learned from the text book."

The Law Society's examinations are generally regarded as more stringent. Part I consists of six subjects, almost identical with those for the Bar. A student is required to pass in three at one sitting. Thereafter he may take one or more of those remaining. "These regulations are obviously designed as a compromise between the desire to test the student's overall grasp of a substantial range of subjects at one examination and the desire not to penalize the candidate who is unable to reach the necessary standard in all six subjects at one sitting. It is also argued that permission to take three subjects, instead of six, enables the candidate to obtain a more thorough knowledge of each subject and discourages cramming."

Dispensation from Part I is available to United Kingdom law graduates on a subject-for-subject basis.

There are no dispensations from Part II, which consists of seven subjects, at least three of which must be passed at one sitting. Thereafter one or more of the remaining subjects may be attempted, as for Part I.

Papers are of three hours' duration. Eight out of ten questions must normally be attempted. Two are normally compulsory. Compared with degree papers more emphasis is placed on breadth of knowledge than on depth.

Every intending solicitor, other than a law graduate, is required to attend a full-time nine-months' course for Part I at the College of Law or an approved technical college, of which there are seven. There are also full-time six-months' courses for Part II which, although optional, are attended by the majority of students. The courses are intensive. Facilities for them are overtaxed.

The system of articles for practical training is well-known. There is a shortage of solicitors today. Although 22,000 practise in England and Wales 5,000 more are needed. The possibility of full-time courses of practical training lasting for twelve months as an alternative to articles is under consideration.

The majority of solicitors (53%) questioned thought that the present provision for legal education was inadequate. The proportion of the dissatisfied was, as with the Bar, in inverse ratio to the length of time since qualifying. Among those who had qualified within the past five years it was 68%. Training under articles was reported to be often haphazard. The range and quality of experience was apt to vary. Teaching facilities were thought by some to be inadequate. There was a strong plea for less cramming and dictated, notes, and more concentration on tutorial discussion and the production of an educated solicitor in the widest sense. The report points out the dilemma for the Law Society. Either the subjects in Part II would have to be reduced in content or the training period would need to be lengthened, with a consequent deterrent effect on recruitment.

No strong feelings were expressed about syllabuses by those questioned though a number of practitioners "still thought that some of the courses were too theoretical and would prefer the introduction of a more practical flavour".

The report examines various possibilities for rationalization which have been suggested. It concludes that a joint scheme of education for barristers and solicitors would be practicable. Other possibilities examined are the creation of an academy of law, the institution of a practising degree at universities, and a compromise solution involving a closer integration of law degrees and professional training.

Legal education in Scotland is treated separately. In many ways it is more logical than the English system. Since 1961 the four university law schools have provided full-time three-year degree courses of pass standard, with an extra year for Honours students. There is close liaison between academic study and professional training. Degree courses usually have some non-legal content. Combined honours degrees are favoured. Admission to the Faculty of Advocates is by means of an LL.B. degree with first or second class honours or an ordinary law degree together with an ordinary arts degree. Additionally, the Intrant has to lodge a thesis in Latin on an assigned subject and must be prepared to defend it. This so-called public examination takes place a year after graduation. The year is spent as a (gratuitous) devil to a member of the Faculty.

The Law Society of Scotland requires its students to serve an apprenticeship with a practising solicitor. Exemption from the Society's examinations is available to students with a law degree covering the relevant subjects. No courses are provided for the examinations.

In conclusion the report draws attention to the problems that have arisen from expansion and the need for more financial support for legal research. At present 62% of all post-graduate students in the United Kingdom are registered at the University of London.

The need for more co-ordination in the requirements of professional bodies, to simplify teaching at Colleges of further education, is stressed.

A basic reappraisal of the whole structure of professional legal education is envisaged, with greater consultation and co-operation between the two professional bodies and the university law schools. It is recalled that in 1934 Lord Atkin's Legal Education Committee advocated a standing Advisory Committee with representatives of the three interests concerned. The report considers that such a body would be extremely valuable today.