

London Calling

APRIL 2000

Star Search: U.K. Firms

Canvas the World for
Top Legal Talent

Legal Education Gets Competitive

Cyberbranding—and Other Trademark Tales

Finding U.K. Lawyers After Hours

Plus:

Brand and Trademark Rankings
from New City Media

London Calling

April 2000

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Libel Tourism Makes Its Mark

Among U.S. lawyers, London has a reputation as “A Town Called Sue.” At press time, the House of Lords was deliberating whether the English courts are a *conveniens* forum in which the lovable Russian media baron Boris Berezovsky (alongside a chum of his from Aeroflot) should be suing *Forbes* magazine for libel. But why England? What Boris might have heard is that while the weather isn’t pleasant, the courtroom climate looks kindly on the well-heeled litigant maligned by the press. If the libel emanates from or has slipped onto our pleasant shores (a couple of hundred copies of some Middle Eastern rag or a late-night CNN broadcast), there’s scope for the upstanding to wipe the mud from their tarnished reputations.



“Libel tourism,” says Stephens Innocent Finers partner Mark Stephens, “is booming tremendously.” Film stars, close relatives of international despots, and a whole troupe of respectable Russian businessmen have all taken jurisdictional advantage of the absence of the constitutional protection of freedom of speech, let alone the burdensome proposition that evidential burden should lie on the plaintiff. (Here we *know* that the press is probably guilty, unless the reverse can be grudgingly shown.) Spoilsports say that vindicating tycoons and celebrities when no one else will threatens to jade the reputation of the whole system. The U.S. Supreme Court refuses to recognize U.K. court orders arising from libel cases, sanctimoniously claiming that British libel laws are anti-thetic to the U.S. Constitution on 14 separate grounds and contrary to the spirit of human rights. Which could be thought of as defamatory—in spirit, if not in law.

Celtic Tiger Roars

Just across the Irish Sea, the Dublin legal market is booming. Cynics point to the fact that the republic has recent substantial support from the EU. But nonetheless, Ireland has been fantastically successful in attracting foreign investment—notably from the U.S., the

U.K., and Germany. Almost all of the U.S.’s major IT and software houses have their European headquarters in Dublin, including Dell, Microsoft, and Intel. Not only has this stimulated the indigenous high-tech industry, but it’s put Ireland firmly on the strategic map for a number of other European players.

One attraction is Dublin’s low corporate tax rate. Another is the well-educated, English-speaking workforce. And although employment is at full capacity and property prices are high, Dublin’s big firms (like Matheson Ormesby Prentice, William Fry, Arthur Cox, Mason Hayes & Curran, and A&L Goodbody) are submerged by big-ticket corporate transactions and IT-related projects. Not surprising then that they can’t get enough staff. Said one, “If 30 qualified solicitors walked into my reception area right now, I’d hire them all on the spot.”



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Judging Lawrence

Lawrence Collins QC, partner at Herbert Smith, the U.K.’s sixth-ranked law firm by size, recently became the first solicitor to become a High Court judge direct from private practice. Collins joined Herbert Smith in 1968 and was made partner in 1971. He already has a number of firsts under his belt: Three years ago, he was one of the first two solicitors ever to be made silk (given the rank of Queen’s Counsel). He also made legal history as the first solicitor to sit as a Deputy High Court Judge, and the first to lead a case in the House of Lords (representing the government of Chile in its involvement in the extradition of Auguste Pinochet). On announcing the appointment, Lord Irvine, the Lord Chancellor, said it marked “another step in the diversification of the judiciary without any reduction in the first-rate ability of those who sit on the bench.”

LLP Bill Going Through the House

At press time, a bill that would enable U.K. law firms to become limited liability partnerships was passing through the House of Lords. Law firms have been increasingly concerned that they should be able to follow the U.S. model. But the passage of the bill has not been smooth. One government minister, Lord McIntosh of Haringey, strongly opposed calls for partnership law to be applied to LLPs. “The only basis on which we can put the bill forward is to say that, in return for the benefit of limited liability, a price has to be paid,” he declared. “The price that has to be paid is the price of transparency and, in general, of the application of as many as possible of the rules applying to limited companies.” He made it clear that LLPs would only be partnerships to the extent that they would be taxed like partnerships.

Advertising Supplement

London

Calling

Quick guide to the legal profession of England and Wales—and its language

If public is private and assistants are associates, what’s a high street practice in lower case? Understanding this issue of *London Calling* might take more fluency in the Queen’s English that you’re ready to muster. Here’s some help, courtesy of lawyer/journalist Tom Blass, who wrote the articles in this issue.

There are approximately 82,000 lawyers in England and Wales; 72,000 are solicitors and the remainder barristers. In most cases, solicitors are the first point of call, with barristers consulted for their advocacy services.

The European Court of Justice (ECJ): The highest court in the EU.

Assistants: The English equivalent of associates. The term describes solicitors in commercial practice who have completed their period of traineeship (articles) but have yet to make partner.

Barristers: Advocates, practicing out of sets of chambers. They have greater rights of audience than solicitors, and are usually engaged by solicitors to represent their clients in court, or to give advice on the contentious aspects of a matter. Senior barristers may apply for the title of Queen’s Counsel (QC), which is otherwise known as making silk. The bar, in England and Wales, refers to the profession of barristers. The professional body regulating the conduct of barristers is the Bar Council.

Solicitors make up the bulk of the legal profession of England and Wales. Solicitors must pass the Legal Practice Course and undertake a two-year period of traineeship before they can be considered to have qualified. Their conduct is regulated by the Law Society.

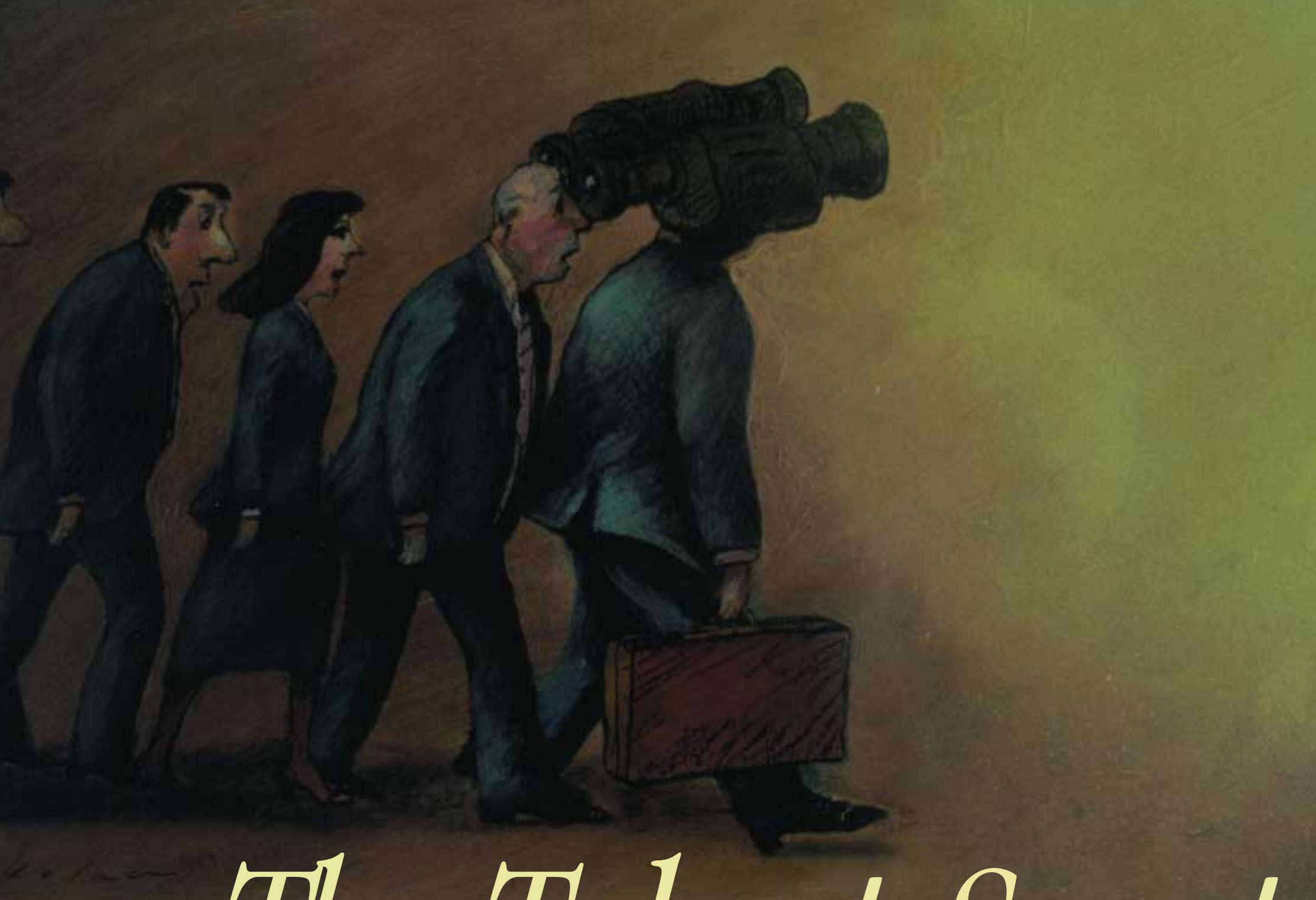
Chambers: Barristers practice out of sets of chambers (often known simply as either chambers or sets). Although barristers are sole practitioners, they share the cost of chambers. Work is distributed by clerks, usually remunerated on a percentage basis. Different sets build reputations for practice in different areas of work.

Public school: Fee-paying schools, similar to private schools in the U.S. The seeming-paradox stems from the fact that the origins of many public schools lie in charitable institutions established for the benefit of the sons of members of the old trade guilds, otherwise unable to afford an education.

Pupillage: The term used to describe the year-long apprenticeship a barrister must serve before being granted a tenancy (a permanent place in chambers). Pupillage is not guaranteed to aspiring barristers; nor is tenancy guaranteed after completion of pupillage.

High street practice describes the kind of law practice to be found in any village, town, or high street in the U.K. Typically, high street practices offer conveyancing, personal injury, criminal, family, and employment-related legal services. Firms are often only a few partners strong.

City firms The finance center of the U.K. is the City of London, the famous square mile within the larger metropolitan area. As a consequence of the concentration of banks and other financial institutions within the area, the U.K.’s most significant and internationally focused firms are located within the City.



The Talent Scouts

The legal profession in the U.K. is growing fast. But not so the number of lawyers to do the work. Which makes recruitment an increasingly creative—and competitive—endeavor.

While the legal profession in the U.K. has never been as popular, profitable, or global as it is at present, recruitment presents a considerable challenge. It isn't that no one wants these jobs. Graduates of all disciplines and calibers are clamoring to get a foot on the ladder of commercial practice. Helen Lachlan, recruiting officer of Lawrence Graham, a medium-sized City practice, sighs, "There is no shortage of candidates. We receive more than 1,000 applications every year for 17 or 18 trainee placements. But all firms are chasing the same profile. If you fit the criteria they're looking for, you're guaranteed several offers. If you don't, you probably won't get any." A headhunter underlines the paradox of modern recruitment: "It's a candidate-driven market," she says, "with client-driven characteristics." Firms are going far and wide to get top quality people: The U.S., Australia, and Ireland are all legitimate hunting grounds. And all the while, they're having to stave off the counter-threat posed by dot coms, in-house legal departments, U.S. law firms—and of course, each other.

Nick Woolf, head of legal recruitment for executive headhunter Norman Broadbent Selections, says that while practically every kind and level of commercial solicitor is in demand, the real prize is "the perennially attractive three- to

five-year-qualified lawyer." A number of phenomena explain their scarcity. In part, law firms can blame their own knee-jerk reaction to the threat of recession at the very beginning of the decade for putting a damper on recruitment volumes. Geoff Griffen, head of recruitment at Berwin Leighton bemoans, "The legal profession as a whole made the mistake of trying to match supply with demand. Law firms are typically not good at strategic succession planning. But they're starting to develop a longer-term mindset." (One example of which, of course, is to employ human resources professionals.)

There has been, in the last year or so, a noticeable seachange in those practice areas that are currently recruitment favorites. Private equity lawyers are now hot property. This is partly on the back of the IT revolution, or at least, says

money" that everything is in flux. One product of the expansion of the commercial profession is that there are a number of firms that until recently were only 30 partners strong which have become large international organizations, with complex management structures in place and offices on four continents. Despite a marketing spiel which will invariably tell potential recruits otherwise, this sort of rapid growth makes it decidedly more difficult to maintain the collegial culture firms used to boast about. Woolf believes that outside of some smaller commercial practices, "all staff loyalty has gone. . . . The management structures are such nowadays that most people, even at partner level—just think of themselves as employees."

It's certainly true that firms are thinking big. Geoff Golden, an American recruitment officer at Allen & Overy is

Another noticeable shift in the dynamics of the U.K. legal market is the increased tendency for partners to jump ship. Here lies an uncomfortable Catch-22: Partners are losing their "assistants" so fast that they can't get the work done—or attract more assistants. So they move to a firm with more assistants, not realizing that the same phenomenon is just as likely to repeat itself there.

Woolf, "the smarter firms are dovetailing private equity with their ICT [information and communications technology] groups." In descending order, Woolf observes that corporate/corporate finance, project finance, derivatives, and e-commerce are all active recruitment areas. (In the case of the latter, he adds that many firms "don't really know what [e-commerce] is," but nonetheless feel that it is a practice area that ought to be factored into the recruitment strategy.)

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In any event, Woolf says that "everyone is making so much

charged with attracting U.S. law graduates to the firm. He says he has little trouble persuading the cream of the crop to join a City firm like A&O. "This year I visited Harvard Law School and saw more than 140 students," he says. "We had to turn away between 40 and 50 interested LL.M.s. We'll have at least 25 of them on our summer school program. And they're all stars." He says he can show them that the firm is committed to nurturing quality, and to a global vision—often attractive to older students who have had some experience working abroad. The U.S. component of Allen & Overy's worldwide practice is well known in the London market. Currently the firm has U.S. attorneys working not only in its London and New York offices, but in Moscow, Milan, and Hong Kong. Golden believes it's only a matter of time before A&O has the largest U.S. law practice outside the U.S.

Golden observes that recruiting out of U.S. schools is easier than from U.K. law schools. "Students are much more thor-

oughly benchmarked than they are in the U.K.," he says. "And most of the time they've got a lot of work experience, like a clerkship, or paralegal placement, under their belts." He admits that integration between U.K. and U.S. lawyers can be "... complicated. You have to be sensitive to a lot of issues." This includes remuneration for new associates in line with U.S. rates, which are currently substantially higher than starting rates in the U.K. Golden boasts that the attrition rates among U.S. recruits is very low. Naturally, many eventually wish to return to the U.S. if they are not already practicing there. The firm's hope is that by building a strong presence in the U.S.—which may one day include Washington in addition to New York—it can stem the flow of outbound "conquering heroes."

The flip side of the transatlantic recruitment market is

The flip side of the transatlantic recruitment market is that the U.S. firms in London are in active hiring mode—and they've got the money to prove it. U.S. firms have a reputation among U.K. assistants as being unforgiving treadmills where, in return for admittedly generous financial packages, lawyers both young and old are worked to within an inch of their souls.

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To an extent, this may be propaganda. It may also be partly true: In the experience of Geraldine Hetherington, managing director of Daniels Bates recruitment, the attitude prevalent among young assistants is usually, "Who cares?" As she recalls, "Yesterday I had a 15-month qualified lawyer [in his mid-twenties] at a top 20 U.K. firm. He had just been offered a job at a U.S. firm that carried a hefty salary increase of 50 percent. But there was no way he was going to accept a salary package of less than around 100 percent of his current salary—which many U.S. firms are offering." Hetherington points out that it is the new players in the U.K.—U.S. firms

setting up shop in London from scratch—that are offering comparatively "ridiculous" wages. As firms get better settled in, hiring power starts to wane. "It just isn't commercially viable to sustain paying over the odds for junior lawyers," says Hetherington. "The firm just can't bill it back."

From the young lawyer's perspective, there are a number of associated disadvantages inherent in going to work with such an outfit. They're on their own, there's no infrastructure or support, and all of a sudden, they've moved from the hub of a firm's operation to the outer perimeter. Generally, the young single lawyer in his or her mid-twenties doesn't give two hoots about such (relatively minor) drawbacks when the earning potential is so high. But when lawyers get into their early thirties, quality-of-

life considerations begin to take over from the brute appeal of raw cash.

It's less complicated financially to lure assistants to the U.K. from other parts of the English-speaking world, where salary expectations are considerably lower. Every City law firm has its complement of Australian and New Zealand lawyers. They're excellently trained in common-law jurisdictions and often bring considerable experience in blue-chip transactions and top-flight law. The recruitment problem that they pose is their inevitable return. "All firms would prefer to be recruiting English lawyers as a first choice, because they're trying to recruit for the future," says Nick Woolf. "The Aussies and Kiwis are really a quick fix—though admittedly a very good one."

Again, the traffic isn't all one way: Good U.K. lawyers are welcomed in the Antipodes with open arms, warm weather, and a lifestyle for young professionals which, from an office

window in London between September and March, can seem utopian.

But foreign climes and funny money only account for some of the inevitable bleed law firms have to account for. There has always been a steady flow of lawyers moving from private practice into

ISP as head of business development. The numbers of lawyers leaving private practice for more traditional in-house roles—for example, the banking, corporate, or energy sectors—remains steady. Lawrence Graham's Helen Lachlan has observed, though, that, "in a law firm, there's a real divide between fee-earners and support staff. Often, when lawyers move in-house, they find that all of a sudden

But foreign climes and funny money only account for some of the inevitable bleed that law firms have to account for.

industry, and that's a trend that will doubtless be exacerbated by the ubiquitous phenomenon of the dot-com brain drain. Already, recruiters predict that a stream of lawyers at all levels will succumb to the promise of an equity stake yielding fruits beyond the dreams of avarice. Media/IT specialist London firm Olswang has lost many people already, and a rival firm will soon be announcing that its joint head of ICT is leaving to join the European subsidiary of a U.S.

they belong in this 'second-tier' grouping, that they're no longer core to the business." There are other realizations too. While in-house salary packages are priced very competitively, incremental annual increases are usually lower. There is something of a negative perception attached to going in-house. As one recruiter put it, "In every major law firm, there are some that won't make the partnership. They make the perfect fodder for moving out of private practice."

Half Horizontal

For above-average lawyers, firms will go out of their way to persuade them to stay. In days gone by, progress was measured in terms of years served. Diligent plodding and loyalty could lead to eventual partnership. Now firms are weeding out the plodders and examining what they can do to expedite the rise of their young stars. Traditionally, assistants are remunerated by virtue of the numbers of years

age: "In some smaller [commercial firms]," says Nick Woolf, "it isn't unknown for lawyers to [make partner] at 28 or 29." Geoff Griffin, head of recruitment at Berwin Leighton, confesses that his firm has introduced changes that will enable more rapid career progression than the previous structure would have allowed. "We've recently introduced a bonus scheme based on departmental performance, individ-

Firms now will go out of their way to persuade above-average lawyers to stay. In days gone by, however, progress was measured in terms of years served.

that they've been at the firm since qualifying. And some maintain the position that solicitors are paid similar salaries regardless of the performance of their department. A number of firms, however, including Clifford Chance, Berwin Leighton, and Olswang, admit that they offer bonuses to assistants, in line with comparable industries and professions. Offering *ex gratia* payments throughout the year is one tool. Another is making up partners at a much younger

ual performance, and exceptional achievements," he explains. "But that is only one aspect. It's also important to offer the right development opportunities, which means providing the practical work experience necessary to become partner at an earlier age. We have made up assistants at five years qualified. Whether we make up assistants at four years qualified remains to be seen." Which means it's just around the corner. ■

Half Horizontal

TRAINING GROUNDS

For British students, there are many routes into the law. But some may still be better than others.

Before setting foot in a law firm, the average U.K. graduate is, on average, some six years younger than his or her U.S. counterpart. Not that they arrive on the same rung, of course: The U.S. lawyer is admitted as an associate. The U.K. lawyer is encumbered by the status of “trainee,” a badge worn for two years before being deemed, in the eyes of the firm and the world, a qualified lawyer. And the academic histories of the two will have been substantially different: The U.S. lawyer will have spent at least seven years in university education. By contrast, the English associ-

ate will have spent three years studying law at degree level and a year training either for private practice or for the bar, before being admitted as a trainee. (Alternatively, students obtain a degree in a non-law subject before taking Common Professional Exams, which permit them to go on to the vocational stages of their education and then to professional training.) Only one-third of the U.K. students who qualify as lawyers will eventually practice.

There are three stages in a lawyer’s training in the U.K.: degree-level law, vocational training, and traineeship/pupil-

GOOD FELLOWSHIP

Funding of higher education at graduate level in England and Wales has been something of a political football since the beginning of the Thatcher era, and it continues to be to this day. Since the end of the Second World War and the creation of the welfare state, access to education has been, in theory at least, a sacrosanct clause in our unwritten constitution. Traditionally, having won a place at a university or polytechnic, students were guaranteed both the payment of their tuition fees by central government, and, additionally, a maintenance grant for living expenses. By the late '80s, a decision had been made to freeze the size of maintenance grants and to provide access to loan facilities, instead, with payback schedules designed to be sympathetic to future earning expectations. Since then, there have been further shifts toward reducing the state's obligations as a source of funding: students are expected to contribute upwards of \$1,650 per annum from their own or family funds.

By contrast, there has never been an obligation on the part of the state to contribute to the fees or maintenance of post-graduate students (this includes law students undertaking the vocational stage of their training). Local authorities do have the discretion to assist the funding of the post-graduate education of students, but, in practice, this is rare. Students wishing to practice as solicitors have often secured training contracts before they begin the Legal Practice Course. It is common for their prospective employers to sponsor the student through this stage, paying tuition fees and contributing to upkeep. Prospective barristers are usually recruited while undertaking their vocational training (the Bar Vocational Course) and in the majority of cases use independent means or bank loans to complete the course, although some scholarship opportunities do exist.

lage. The majority of students aspiring to be lawyers take a three-year law degree, culminating in an LLB. During these three years, law is taught as an academic subject—a knowledge of case law and substantive law is more important at this stage than the “real life” context of the law in action. Not all students take this route: It is possible to undertake a degree course in a non-law related subject such as the humanities or science before going on to take a truncated version of a full degree in law, a course which takes one academic year to complete.

The Common Professional Examinations (CPE), or “conversion” course, is, unsurprisingly, a popular route into law—particularly among mature students and those who have come to their vocation later in life. Among legal academics, it elicits a very mixed response. It isn't surprising that some believe it provides an inadequate legal education—cramming in three years of study and missing some aspects of the full degree course. Whether these fears are borne out in practice is a moot point: Lawyers who've taken the CPE route often excel during their traineeship. Little evidence suggests it adds up to lawyers whose grasp of the law is any less complete than that of their more comprehensively trained colleagues.

Institutions offering law at degree level do not teach the vocational stages. To this extent, what is described as “law school” in the U.S. is fundamentally different from “law school” in England and Wales. “Law school” in England and Wales (the Scottish system is substantially different) describes the institution at which one studies on either the Legal Practice Course (LPC), the path taken by aspirant solicitors, or the Bar Vocational Course (BVC), which barristers must complete before joining chambers. There is a sense that students regard the vocational stages as little more than a grueling formality required before they can enter the profession.

EDUCATION AND CLASS

Students know that old-fashioned snobbery still plays a part in the recruitment process and in the collective unconscious of many legal institutions—in both law firms and sets of chambers, forms of discrimination between

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“good” universities and those that don’t enjoy that reputation are still extant. Education and class in England have always been and continue to be intrinsically linked. The image of a judiciary the bulk of which attended public school before going up to Oxford or Cambridge ought to be ridiculous parody. Unfortunately it is not. The politics of education is no less intricate and sensitive in the U.K. than it is in the U.S., but because of the importance of law—and, in a sense, because of its unwritten status of *primus inter pares* among the professions—it becomes particularly acute within the ambit of legal education.

Despite concerted efforts, the law has not successfully shaken off the impression of being an institution dominated not only by white, middle-class men, but white, middle-class men from Oxford and Cambridge. Some firms and chambers have successfully managed to move toward becoming “institution neutral.” Others, particularly barristers’ chambers, remain anachronistic pockets of Oxbridge lawyers in the very worst of old-school-tie tradition. Nigel Duncan, a lecturer at the Inns of Court School of Law, laments that for a pupillage selection committee to consider a poor Oxbridge degree to be better qualification for a place in chambers than a top degree

obtained elsewhere is still not an uncommon occurrence.

PREPARATION FOR “REAL LIFE”

Both in the profession at large and within the legal education establishment, the polarization between commercial law and high street practice is becoming more prevalent. Many City firms, for instance, complain that trainees could be better prepared for “real life” than they currently are, although they concede that developments occur in commercial practice with such rapidity that it may be unfair to expect law school faculties to keep abreast. Nonetheless, a consortium of eight City firms (lead by Slaughter and May, and including Allen & Overy, Clifford Chance, Freshfields, Herbert Smith, Linklaters, Lovells, and Norton Rose) have collaborated on the creation of what they describe as “an enhanced” Legal Practice Course. Law firms spend millions on sponsoring the vocational training of students whom they’ve recruited early in their university careers. It’s not surprising that there was a sense among some of the bigger players that they wanted more of a hand in the training that their sponsored trainees were receiving. While publicly the firms have played down their dissatisfaction with the LPC

Half Horizontal

course, insiders say that these firms saw the need to create such a course because they felt that what is presently available isn’t up to scratch.

David Lewis, senior partner at Norton Rose, played a hands-on role in the development of the “City LPC.” He claims, “the new LPC will impose more exacting standards. We found that our trainees were getting bored. The pass mark was far too easy. Too many people were coming out of the course with distinctions.” If Lewis’s hopes are realized, the City firms will find that the next generation of young qualified lawyers are better prepared, have received more rigorous training, and are able to undertake a higher quality of written research than their predecessors. Lewis insists, “We don’t want young specialists. But we want [trainees] who know their law and have flexible minds.” The course won’t be entirely different from the existing course—but it will contain more elements of corporate work in the form of “add-ons.” Lewis notes that one of the characteristics of students with above-average ability is that they can “do in one hour what the rest can do in one-and-a-half hours.” He thinks one of the faults of the current system is that it tries to cover the whole profession—from big City practice to sole practitioners on the high street.

There are, sporadically, calls from within the teaching profession in England and Wales to look at the ways in which the two sides of the law—barristers and solicitors—could benefit from more joint training. There are similarities within areas of practice that cut across disciplinary bounds. And increasingly, solicitors are gaining rights of audience in the higher courts. But, it is argued, there is an underlying difference between the professions. Solicitors try to prevent conflicts; barristers resolve them. One leading legal academic, Philip Knott, has argued that because the profession is in a state of flux, arising from forces including globalization and multidisciplinary partnerships, that “joint training looks increasingly anachronistic in such an environment where specialization is becoming a necessity for survival in an increasingly specialized world.” This, perhaps, holds the key to the future of legal education in the U.K. As the legal market becomes more focused on industry niches, law schools will have to align themselves more closely with the commercial exigencies of the industry. And as Lewis predicts: “They’re going to have to be more competitive, because competition is the name of the game.” ■

Qtr

Qtr

The graphic consists of two main parts. On the left, there is a grid of letters in a light blue font on a white background, arranged in a shape that resembles a map of the United Kingdom. The letters are organized into rows and columns, with some missing, creating a word search-like pattern. On the right, there is a large, colorful abstract shape composed of various geometric forms in shades of blue, red, green, yellow, and purple, set against a dark blue background. The overall composition is modern and visually striking.

The Business

of Brands

Gray markets. Cybersquatting. Brazilianization. When it comes to defending brands in Britain, says one IP lawyer, “Things are happening almost faster than we can keep up with.”

*I*n the last few decades, Britain has become an acutely “brand aware” nation. Not only has unprecedented wealth creation generated a broader consumer base than existed before, but globalization and the increased freedom of movement of goods within Europe has provided the nation with more choice. Manufacturers too, are more aware of the value and potential of brands and, as a consequence, of the importance of IP law and lawyers. It’s an area of practice that has undergone some metamorphosis in the last few decades. Client demands have driven consolidation within the industry. Not long ago, the filing and registration of marks and appearing before the trademark registry in a proceeding opposing a registration were largely undertaken by independent firms of patent and trademark agents. This still occurs, but the trend now is for IP practices to operate as “one-stop shops,” offering trademark registration via a trademark agent attached to the law firm, in addition to contentious and non-contentious IP legal services. As the U.K. is still in the throes of

technological revolution, it isn't unusual for law firms to combine IP with the IT and telecommunications departments.

Brands are big business and, increasingly, have a global dimension. The issue of parallel importation and the creation of a "gray market" in branded goods is being followed keenly by consumers in the country that is being described—even by an official campaign—as "Rip-off Britain." Campaigners assert that British consumers regularly pay prices substantially higher than those paid by counterparts in continental Europe. Unsurprisingly, a number of retailers have capitalized on the disparity, purchasing bulk volumes of imports from outside of the European Economic Area (EEA), without the express permission of manufacturers. This has been welcomed by

budget-conscious consumers, but not by brand owners, who are concerned that products are being distributed with little regard to their own strategic planning or profit forecasts. A paradigm of this has been the distribution by supermarkets of U.S. clothing brands, including Calvin Klein, Nike, and Levi's.

Just how the issue of gray-market trading will be resolved is still very much in the pipeline. The current English authority is that of *Davidoff v. A&G Imports*, which effectively asserts that once products have been legitimately sold by their manufacturers, a brand owner has exhausted its right to the brand-protected merchandise, (subject to any contractual restrictions on resell). Notwithstanding jurisprudential objections to a gray market in their goods, manufacturers are worried that batch-

es of goods subject to parallel importation may be diluted by counterfeit products. (This is one of the matters at the heart of litigation by Levi's against U.K. supermarkets. It's also a matter of some concern to software manufacturers, notably Microsoft, the products of which are notoriously easy to fake.)

U.K. Liberalism, EU Protectionism

Davidoff has been referred to the European Court of Justice, and IP lawyers await the ECJ's findings. It's a case with enormous economic and political significance, not least because it underlines something of the (hotly debated) differences between the U.K. and the EU. Before the signing of the Treaty of Rome, European countries had their own approaches to the exhaustion of international

rights. As a consequence of harmonization, there exists exhaustion within Europe by virtue of the doctrine of the free movement of goods and services. But for goods stemming from outside Europe and the EEA, the picture is rather different. Paul Walsh, head of IP at Bristows, notes that "it shows that the U.K. is very much on the laissez-faire, free-trade end of IP rights in general. There is innate suspicion of monopolies here. Continental Europe is very much more protective of trade."

This dissonance between EU protectionism and the more libertarian approach of the U.K. courts is borne out by the semantics of the association/confusion debate (neatly illustrated by the cases *Sabel v. Puma* and *Canon v. Pathe*). In essence, a number of jurisprudential models exist within Europe to determine whether "confusion," or

New City Media's—The Insider's Guide to Legal Services:

Brands & Trade Marks

One of the most recently published volumes in New City Media's "Insider's Guide" series is a carefully researched book on the brands and trade mark practices at U.K. law firms. As New City Media's editor Mark Brandon wrote in his introduction, "In our conversations with clients, it has become apparent that many...are unclear about the ser-

vices available...or that law firms are different from one another." To point out the differences, the company has created a star-based ranking system as an outgrowth of its research. While these rankings don't necessarily reflect the opinions of American Lawyer Media, we found them worth reprinting, with New City Media's permission.

The Insider's Guide trade mark practice of the year

Linklaters & Alliance	★★★★★	During the course of the research, Linklaters & Alliance received more favorable mention than any other firm; praise was unalloyed: the management of the practice, the quality of the assistants, use of IT and, most importantly, the sheer intellectual resource available to the firm. Its registration practice is perceived as excellent value for money and as incredibly well-managed; on litigation, it is certainly expensive but perceived as good value
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The Insider's Guide top trade mark lawyer in the U.K.

Tony Willoughby	★★★★★	Roundly admired by fellow lawyers; described by clients as "a rare Willoughby & Partners combination—friendly yet tough and commercial." Not overly academic but "really knows his stuff."
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The Insider's Guide top trade mark rising star in the U.K.

Richard Kempner	★★★★	An extremely thorough case manager' who is "very, very Addleshaw Booth & Co knowledgeable," according to clients; bright, friendly, and highly proactive
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London—money no object

What you're getting: The all-round IP service — major resource both at partner level and below; excellent pedigree and bags of technical expertise; good corporate, commercial and tax back-up for maximum exploitation of IP assets

Linklaters & Alliance	★★★★★	Our top choice overall: interesting focus on the international practice and the most highly regarded filing practice among law firms; blue chip client base speaks for itself. Good quality and strength in depth; Robert Swift in particular is extremely well-regarded by clients
Lovells	★★★★★	Of all the majors takes the broadest approach to brands, exemplified by its "trade law" focus; expensive, but worth the money; good international reach and genuine commitment on that front; Michael Golding stands out.
Simmons & Simmons	★★★★★	Helen Newman is one of the most highly-respected trade mark practitioners in London, and the firm's client base bears out client faith in her and her team; good international focus; underpartnered compared with its main rivals
Clifford Chance	★★★★	Good all-rounders; the largest filing practice of any law firm, good litigation experience and a client list replete with household names; top international practice; perhaps fewer star players than other firms
Herbert Smith	★★★★	Classic litigators, good degree of partner involvement and sensible, commercial approach; seems well-g geared; an air of quiet confidence which is well-justified, with some good younger partners having brushed away a few cobwebs
Freshfields	★★	A fairly newly-minted resource, but the feed from the corporate department and the charm of some of the individuals involved makes Freshfields one to watch; reasonable choice for non-contentious or corporate brands work, less so on the contentious side, but perceived as expensive; keeping quality consistent will obviously be a test in a practice which is growing so fast

London—less expensive

What you're getting: The all-round IP service—as above—but for a variety of reasons, less expensive; tends to be smaller corporate department, sometimes less resource or star quality in support departments, such as tax, employment or pensions, or simply better value...

Baker & McKenzie	★★★★★	Major international network which is better resourced and organised than any, plus some excellent lawyers in the London practice; lacks the corporate clout of the other majors, but IP is more central to its practice
Eversheds	★★★★★	Isabel Davies leads the charge at the national firm, where the London office is as strong as any; less classically "City" than the majors, but without the corporate muscle or international reach - London is very good, regions are patchy

merely “association” produced in the mind of the public is sufficient to give rise to a cause of action for trademark infringement. In the Benelux countries (Belgium, The Netherlands, and Luxembourg), the threshold is very low. A combination of trademark and product both being similar or identical to a pre-existing mark and product can, if it is proved to engender association with its rival, be sufficient cause of action. The test traditionally applied by the courts of England and Wales, by contrast, looks at whether the public is genuinely *confused* as to



the origin of the goods. The current thinking of the ECJ is that a “global appreciation” (in the sense of looking at all the circumstances) of the marks and the products must be apprehended by the court in deciding whether infringement has occurred.

Domain Strategies

But if Europe is generating the kind of lawyerly discourse that IP lawyers thrive on, the global phenomenon of the Internet is perhaps of immediate concern to a greater number of clients. Margaret Briffa, name partner at the boutique practice of Briffa, reflects that a new seam of work for practices like hers lies in representing start-up companies. Briffa has observed that this is a sector which, in its enthusiasm, often considers

London—less expensive Continued

Taylor Joynson Garrett	★★★★★	Gets less credit than it deserves: a well-balanced resource, good experience and genuine commitment to IP, technology and lifesciences
Denton Wilde Sapte	★★★★	The only major firm to split contentious and non-contentious so definitively; broader practice than it gets credit for, and some persuasive individual practitioners
CMS Cameron McKenna	★★★	Low profile, but nonetheless impressive group which has succeeded in forging together two contrasting practices to good effect
SJ Berwin & Co	★★★	Has shed its filing practice, but still maintains a good reputation particularly on the litigation side, and strength in depth is evident below partner level

London—classic IP firms

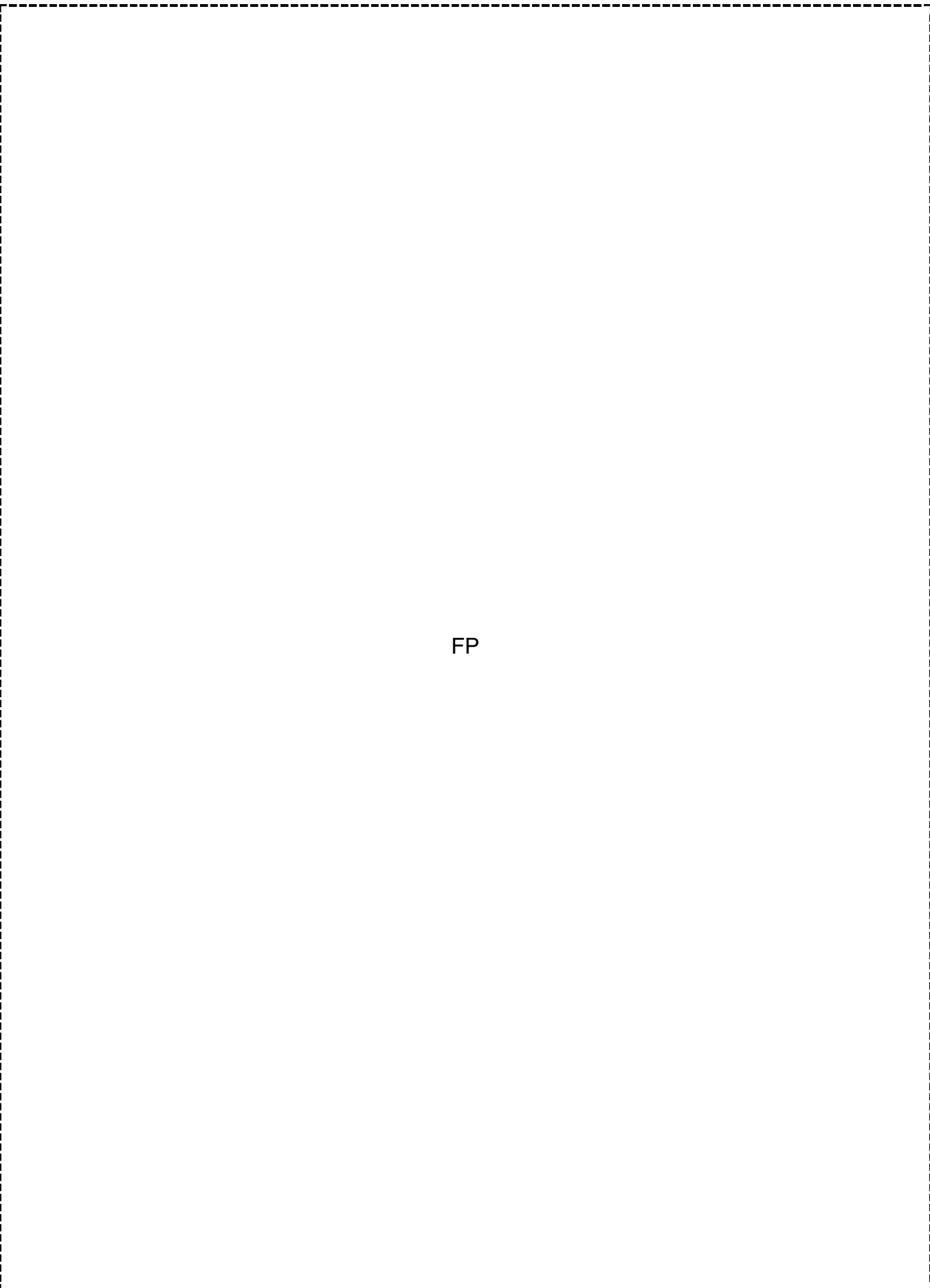
What you're getting: The “classic” IP service—lots of technical expertise, fantastic litigation experience, but without the huge corporate and commercial resources of the City majors; pricewise, can be just as expensive as the top of the City, but arguably greater strength in depth

Bird & Bird	★★★★★	Greater IP/IT all-rounders than Bristows, with expertise spread across a greater number of lawyers and a broader sector appeal; less expensive than one might think
Bristows	★★★★★	Brands specialism tends to be focused on traditional industries, rather than new media, but has the right pedigree for most industries and is roundly and effusively praised by clients

London—the niche firms

What you're getting: IP, pure and simple. Some firms may provide additional commercial services in a limited fashion

Willoughby & Partners	★★★★★	A bundle of reported cases, some excellent individual practitioners and a leading international anti-counterfeiting practice; needs to watch that its tough reputation does not spill over into aggression
Briffa & Co	★★	Alternative approach, one of our personal favorites; undertakes IP-related commercial work for clients as well
Henry Hepworth	★★	More than a niche firm, in that it has a good media practice; one to watch with newly reinforced resource
Llewelyn Zietman	★★	Recent losses have knocked morale but much of the core is still there; also does commercial litigation and has a referral relationship with Boodle Hatfield for work it cannot undertake



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on-line brand protection last, if not least. "What happens is that people are looking for venture capital on the strength of their brand, having already filed for their trademarks," Briffa says. "They then find that a [legitimate] business is already using their name as a domain name—and have to rethink their entire business strategy."

To date, little legislation vis-a-vis IP and the Internet has been passed, and lawyers are looking to the common law for guidance. A decision (colloquially known as the "one-in-a-million" case) in the court of appeal last year equips the English courts with a common law equivalent of recent U.S. anti-cybersquatting legislation. While the U.S. legislation outlaws the registration of domain names "where there exists evidence of bad

faith," the court of appeal did much the same. In finding against a company that had registered domains using the trademarks of a number of well-known U.K. brands, including Sotheby's, Virgin, and Marks & Spencer, the presiding judge said that the brands had been infringed upon and that the domains had been wrongfully registered and used as "instruments of fraud."



Peter Cockcroft of Titmuss Sainer Dechert reflects that increasingly, "[the firm's] criminal litigation department is joining forces with the IP team, because of the preva-

England & Wales—some alternatives...

What you're getting: Our other choices; arguably more commercial than some of the City majors, almost certainly less expensive; good in their various ways and with a persuasive, sensible outlook and good track record

Macfarlanes	★★★★	A growing force on IP; good commercial advice, but don't expect flexibility on fees; good client feedback and some rising stars below partner level
Addleshaw Booth & Co	★★★	Considerable resource already in Leeds and Manchester makes it one to watch as it expands in London; Richard Kempner is very well-regarded by clients
Gouldens	★★★	Alternative City choice, aggressive marketers with a commercial approach and less expensive than the rest of the City; quality practitioners through the ranks, not just at partner level
Hammond Suddards	★★★	A curious mix of the classic and the commercial; persuasive, influential and practical, but lacks the profile of some of its rivals
Olswang	★★★	Definitely on the up; good client feedback and a balanced team, with a headstart in digital media
Titmuss Sainer Dechert	★★★	Solid commercial choice, more relaxed than most and certainly less expensive; very friendly style and some top-drawer experience in a range of sectors; one of our favorites
Walker Morris	★★★	One of the better regional performers with a growing filing practice; motoring in the right direction and picking up some good clients
Dibb Lupton Alsop	★★	One of the fastest-growing one-stop shops around, backed up by a broad practice and accessible from many locations in the U.K., but needs to work on consistency
Hewitson Becke + Shaw	★	Out-of-London choice with a twist; persuasive approach and surprisingly good cv
Nabarro Nathanson	★	Recovering from its turbulent past; still suffers from the sector-based approach of the firm in general, but perhaps hungrier than some of the larger firms
Dickinson Dees	★	Newcastle is just three hours from London, and the fees are incredibly attractive...

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lence of counterfeits and wrongful use of domain names.” He adds, “we’re also seeing a new variant of what used to be called ‘Brazilianization,’” by which he alludes to the registration of trademarks with the express aim of selling them back to the rightful owners. The term stems from the difficulty once inherent in trying to retrieve trademarks from a Brazilian registration. This is something that the IP team at Linklaters & Alliance has come up against. The head of the Linklaters brands group, Anna Carboni, notes that often this old problem is one that’s being confronted by a very new genre of clients: high-profile Internet start-ups. The firm represents Lastminute.com, a company which recently stole much of the limelight of the business press for its extremely successful stock market flotation. The company found that Lastminute.com

plc—indicating the outfit’s status as a public company—had been registered. While a mandatory injunction was sought, and the name retrieved, it was an expensive process, “and the other side has yet to pay their costs,” Carboni adds .

The European judicial system is not known for its rapidity, and any issues that find themselves up against the ECJ will take a long time before they’re decided. The Internet, by contrast, is raising challenges for IP lawyers thick and fast. “Things are happening almost faster than we can keep up with,” says one lawyer, “...almost, but not quite.” But the other change is within the corporate world generally. “Fifteen years ago,” said one lawyer, “a lot of our clients didn’t know the value of their brands. But they do now.” ■

Leading individuals

Larry Cohen	Hammond Suddards	★★★★★	Anna Carboni	Linklaters & Alliance	★★★★
Isabel Davies	Eversheds	★★★★★	Sally Field	Bristows	★★★★
Michael Golding	Lovells	★★★★★	David Harriss	Bird & Bird	★★★★
Morag Macdonald	Bird & Bird	★★★★★	Richard Kempner	Addleshaw Booth & Co	★★★★
Gary Moss	Taylor Joynson Garrett	★★★★★	William King	Macfarlanes	★★★★
Helen Newman	Simmons & Simmons	★★★★★	David Llewelyn	White & Case	★★★★
Robert Swift	Linklaters & Alliance	★★★★★	Charles Lloyd	Taylor Joynson Garrett	★★★★
Paul Walsh	Bristows	★★★★★	Ludi Lochner	Lochners	★★★★
Tony Willoughby	Willoughby & Partners	★★★★★	Bill Moodie	Herbert Smith	★★★★
Ray Black	SJ Berwin & Co	★★★★	David Perkins	Clifford Chance	★★★★
Jeremy Brown	Linklaters & Alliance	★★★★	Richard Price	Taylor Joynson Garrett	★★★★
Peter Brownlow	Bird & Bird	★★★★	Paul Rawlinson	Baker & McKenzie	★★★★

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Out of the office and after hours,
Eat, Drink, Be Merry
here's where to track down the British attorney.

London is a very lawyerly city—and the profession takes full advantage of its traditional institutions. The gentleman's clubs (such as St. James's, Pall Mall, the Travellers, and the Oxford & Cambridge) still provide the oak-paneled comfort of bygone days that the world seems to have left behind. Some of them aren't even on the Internet. On the recreational front, the Royal Opera House, the National Ballet, and the theaters of Drury Lane provide a comforting antidote to the rigors of City life. In season, cricket at Lord's or racing at Ascot brings out the sportsman in no small number of lawyers. London and its surroundings offer plenty of opportunities if you can find an hour in the day to pursue them.



It is often said that the English haven't had a revolution since 1688. But anyone witness to the transformation of our cooking from truly dismal to world-class would beg to differ. And lawyers make natural gourmands. For traditional fare—pork chops, well-cooked steaks and roasts, partridge with bread sauce, or a saddle of lamb—bastions of (excellent) but otherwise orthodox cooking aren't hard to find. There's Simpsons-on-the-Strand or Rules. And Langan's does an excellent steak-and-kidney pie. For the fun factor, Coast is good. The OXO has perhaps the best views in London (located on the top floor of the factory building that once made the eponymous cubes). Even mentioning lunch at The Ivy ensures that a lawyer has even the most hard-bitten hack in his or her hand. But others hit the spot too: L'Odeon, on Regent Street; Bleeding Heart, off High Holborn; and a truly romantic place for a rendezvous, Odette's, in Primrose Hill.

Not all the capital's lawyers live within the city walls. The county of Surrey is the traditional stomping ground of the London

lawyer desiring substantial accommodation and greenery, (relatively far) from the madding crowd. Surrey is still redolent of the ducks-on-the-village-green, weekend cricket, real ale, and roast beef-on-Sundays that "make England England" for some. It enables the family-oriented lawyer to provide ponies for his daughters,

room for the Labradors, and parking for the Mercedes and the Land Rover. Best of all, two of the country's most prestigious golf courses, Wentworth and Sunningdale, are in Surrey.

The drawback of living in the sticks is that nights on the town are made a little difficult. Not being short of a bob or two, the more urbane City lawyer can stretch to any one of London's more salubrious

quarters. The fine white stucco terraces of Notting Hill have been a favorite for at least the last two decades. Hampstead, with its almost-rugged Heath, still retains the villagey feel it had centuries ago, when, because of its altitude and restive environment, it was believed to provide protection from the ravages of the plague. But Hampstead's cutesy exclusivity comes at a price; in the inflated property prices of the moment, a fairly modest family house could easily be knocking on \$5 million.

Little wonder, then, that lawyers who haven't yet hit the top rung of the profession are likely to be found in leafy Islington, where property prices are comparatively affordable. On Upper Street, its main artery, are a healthy variety of excellent restaurants. There is a repertory cinema, a theater, an antiques mall, and even a jazz bar. It's not surprising that the legal duo of the decade, Mr. Blair and Mrs. Booth, were two of the area's most famous residents until their transport, on the rapturous wings of public opinion, to Downing Street. ■

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