## Index

Abel, R. 11, 63, 71, 84–5, 142  
Administration of Justice Act 71, 96, 118, 120–21  
adverse selection problem and minimum quality standards 13  
advertising restrictions 7, 26–8, 70, 95–6, 98–100  
see also advertising restrictions  
advocates  
Finland (*asianjaja*) 78–9, 137–8, 141  
Scotland vi, 14–15, 20, 34, 42–3, 68–9, 72, 83–4, 102–5, 107–8, 146, 148  
Spain (*abogados*) 78  
agency costs 14–15, 17, 19, 36–7, 54, 117–18  
Alpa, G. 77, 85  
alternative business structures (ABSs) 13–15  
and cherry-picking 132–3  
emergence of since 2007 (UK) 138–41  
Legal Services Act (LSA) 111, 113, 115, 120–23  
non-legal professional services and partnerships with other professions 39–40  
owned by non-lawyers, UK 72  
Anglo-American law firms 128–31  
Arnauld, R. 30  
Arruñada, B. 21–2  
asymmetric information 13–16, 18–20, 54–5  
Atanasiu, I. 85  
Australia 34, 135–7  
Austria 26–7, 80  
Bahl, K. 56  
Bailey, S. 42, 70  
barristers  
Bar Council 9–10, 26, 58, 69, 107, 115, 119, 121–3  
Bar Standards Board (BSB) 121–4, 148  
courtroom pleaders, UK 14–15, 68, 72–3  
Legal Services Act (LSA) and promotion of regulatory competition 121–4  
rights of audience 68, 71  
solo practice 34–5, 102  
Baumol, W. 41, 84  
Belgium 24, 26, 80  
Benham, L. and A. 27–8, 41  
Bevan, G. 21  
Blacklaws, C. 139  
Boigee, A. 75–6  
Bond, R. 107  
Boon, A. 120  
Bowles, R. 41  
Bradley, A. 126  
branding 117, 133–5  
see also advertising restrictions  
Brazier, M. 71  
Buchman, L. 75–6  
Burns, C. 41–2  
Canada 59  
Cape, E. 21  
Caron, A. 85  
Carr, J. 36–8, 43  
case complexity and fee levels 38  
certification and licensing 118, 120–22, 139  
Christie, D. 62  
Church, J. 41, 84  
Clarke, R. 83
Lawyers, markets and regulation

Clementi, D. 15, 54–8, 82, 111–15, 131–2
Clermont, K. 42
client care and fixed price effect 50
complaints 54–8, 112–13, 115
funds, holding of 123
profession size and consumers’ quality perception 19
wealth, and price discrimination 29–30
Co-operative Legal Services 132, 139
c o-regulation 18–19
Coase, R. 134
Cohen, H. 55–6
Cohen, K. 107
Collins, P. 118–19
competition see regulatory competition complaints, client 54–8, 112–13, 115
conditional fee arrangement (CFAs) 33
conduct rules and restrictions 24
Consumer Complaints Directorate (CCD) 56–7
contingent fee contracts 31–4
conveyancing 30–31, 71
fees and advertising restrictions 99–100
licensed conveyancers and competitive self-regulation 120–21
monopoly studies (UK) 94–7
see also specialization
Council of the Law Society 8–9, 11, 55
Council of the Law Society of Scotland 8–10
Council for Licensed Conveyancers (CLC) 118, 121–2, 139
courtroom pleaders 14–15, 68, 72–3
Courts and Legal Services Act (CLSA 1990) 114–15, 117–19
and deregulation see deregulation judiciary role, diminishing 68–9
rights of audience in higher courts 68, 71–2, 102–3
Cox, S. 21, 40–41, 107
cracked trials and fixed price effect 46
credence goods 13, 133
Cumming, R. 34, 62
Curran, C. 22, 40–41
Currell, D. 131, 142
Currivan, J. 42
Cyert, R. 107
Dana, J. 33, 42
Danzon, P. 42
Darby, M. 13
de Soto, H. 16
Denys, N. 15
deregulation
and removal of mandatory scale fees 30
technological revolution in lawyering 130
see also liberalization of legal markets; specialization
deregulation effects, empirical methods 86–91
‘controlled experiment’ method 89–90
counterfactual, importance of well-specified 88, 90
criteria (dependent) variables 90–91
cross-sectional studies 89
matched pairs comparison 88
performance variable and policy variable comparison problems 86–7
regime shift identification 89
regulation intensity comparison 88–9
regulation study types 87–91
structural/simulation models 90
time-series approach 89
deregulation effects, empirical methods, statistical studies 91–105
advertising restrictions 98–100
advertising restrictions and conveyancing fees 99–100
advertising restrictions, market-wide effect 98
conveyancing monopoly rights (UK) and price discrimination measurement 96–7
conveyancing monopoly studies (UK) 94–7
Index

cross-sectional studies of multiple professions across jurisdictions 93, 98
entry restriction studies 93–7
entry restriction studies, geographical restriction 94
entry restriction studies, monopoly rights 94–6
fee competition studies 100–101
fee competition studies, discounting, effect of 101
price discrimination 29–31, 96–7, 100, 106
single deregulated jurisdiction with sub-jurisdiction variety 92
single jurisdiction studies (event studies) 91–2
deregulation effects, statistical studies, organizational form restriction (entity restriction) studies 101–5
Faculty of Advocates (Scotland) fee income 104
Faculty Services Limited (FSL) (support services) 103–5
institutional structure 102–3
risk-sharing mechanisms and economies of scale 103–4
sole practitioners 102
Dingwall, R. 16–17, 20–22
Domberger, S. 30–31, 40–41, 94–5, 107
duty to the court 9–10, 12
economic rents 24–6
economies of scale and scope 35–6, 39–40, 103–4, 132–3
education levels 11, 25, 79, 129
see also knowledge
Ehlermann, C. 85
Emons, W. 32, 42
empirical methods
deregulation effects see deregulation effects, empirical methods
incentives, legal aid contracts, responses to changes in 45–53
regulation methods 28, 34, 38
entity regulation see law firms
entry restrictions 23–6, 93–7
EU

advertising restrictions 26–7
contingent fee contracts 32
Council of Bars and Law Societies of Europe (CCBE) 10, 130
deregulation and removal of mandatory scale fees 30
single market 151–2
Treaty of Lisbon 30, 79, 130
see also individual countries
European Court of Justice, Klopp 74
Evans, R. 21–2, 40–41
event studies 91–2
external providers of legal services see alternative business structures (ABSs)
externalities 15–16, 26–30
see also under regulation methods

Faculty of Advocates 69, 72–3, 103–5
Faculty Services Limited (FSL) 103–5
Fama, E. 19, 36–7
Faure, M. 10, 21–2, 40–42
Fazio, G. 45, 47–51
fees
client care and fixed price effect 50
commoditization issue and reduced fees 120
competition studies, deregulation effects 100–101
conditional fee arrangement (CFAs) 33
contingent fee contracts 31–4
conveyancing, and advertising restrictions 98–100
cracked trials and fixed price effect 46
deregulation and removal of mandatory scale fees 30
financial advantage concerns, self-regulation 17
fixed price effect, legal aid contracts 46–51
hourly, contingent and conditional fees, comparison of 32–3
hourly fee plus outlays versus standard fee at three levels 46
price advertising and quality levels 28
price discrimination 29–31, 96–7, 100, 106
restrictions, and regulation methods
29–31
see also transaction costs
Fenn, P. 16–17, 20–21, 33–4, 45–6, 48, 51
Fink, M. 22, 26–7, 34, 41, 74, 76, 78–81, 106
Finland 25–6, 78–80, 137–8, 141
Finsinger, J. 22, 40–41
Fisher, J. 42
Forrester, I. 7
France 24, 75–7, 80
Galanter, M. 131, 142
Garicano, L. 36, 39, 43
Garoupa, N. 32, 42
Germany
accounting and consulting firms in legal service market 128–9
Act Against Restraints on Competition (GWB) 75
advertising restrictions 74
Anglo-American and German law firm mergers 128–31
Anwälte independent practice 74
competition law effects 74
Federal Regulation on Fees (BRAGO) 73
Federal Regulations for Lawyers (BROA) 73
joint practices 34
liberalization of legal markets 73–5, 80
multidisciplinary practices (MDPs) 40
organizational changes 74
partnerships and mergers 74
Professional Regulation for Lawyers 73–4
Restrains of Competition (GWB) Act 73
rights of audience restrictions 24
self-regulation 73–4
Gillanders, D. 37
Gilson, R. 36, 38–9, 43
Glanville Davies Affair 55–6
government involvement see
deregulation; lawyer regulation, reasons for; regulatory competition; regulatory methods
Gravelle, H. 32–3, 42, 44
Gray, A. 21, 45–6, 48, 51
Greece 26–7, 82
Griffiths, A. 134
Grout, P. 21
Gunn, M. 42, 70
Hadfield, G. 26, 129, 131
Halpern, P. 42
Hay, B. 42
Hay, D. 84, 141
Helland, E. 62
Helligman, K. 21–2, 41–2
Henderson, M. 131, 142
Henssler, M. 74, 85
Herrmann, H. 21–2, 41–2, 74, 85
Hockman, S. 122
Holen, A. 41
housing law 132–3
Hubbard, T. 36, 39, 43
Hudec, A. 21
Hungary 80
inadequate professional service (IPS) complaints 57
incentive contract restrictions 31–4
incentives, legal aid contracts, responses to changes in 45–53
agency costs 36–7, 54
client care and fixed price effect 50
cracked trials and fixed price effect 46
empirical methods 45–53
fixed price effect 46–51
guilty pleas and pleading practices 48–50
hourly fee plus outlays versus
standard fee at three levels 46
precognition reduction and fixed price effect 51–3
specialist and non-specialist firms comparison 49
switching effect 46, 48–9, 51–3
threshold effect 46, 48
volume effect 47–9
incentives, self-regulation 53–62
Consumer Complaints Directorate (CCD) 56–7
Glanville Davies Affair 55–6
inadequate professional service (IPS) complaints 57
information asymmetry 54–5
Law Society handling of client complaints against solicitors 54–8, 112–13, 115
Law Society of Scotland’s Master Policy and Guarantee Fund 35, 58–61
Legal Services Ombudsman (LSO) 57
Office of Legal Complaints (OLC) 57–8
Office for the Supervision of Solicitors (OSS) 56–7
professional negligence cases 57
information asymmetry 13–16, 18–20, 54–5
innovation in legal services, technological revolution 128–31
institutional structure, deregulation effects 102–3
insurance subsidiaries 140
Ireland
advertising restrictions 27
cartel behaviour and scale fees 31
conveyancing and fee competition 101
deregulation 91
legal advice for gain 26
Legal Services Regulation Bill 82
solo practice 34
Italy 26–7, 77, 80, 83
Jackson, Lord Justice 33–4
Jensen, M. 19, 36–7
Johnson, E. 42
joint partnerships 69–70
Joskow, P. 87–91
judiciary role, diminishing 68–9
see also courts
Karni, E. 13
Kay, J. 116
Kentridge report 121–2
Kilian, M. 75
Klein, B. 19–20
Kleiner, M. 41
knowledge
limited, and generalist solicitors 15
transfer and opportunistic behaviour 129–30
see also education levels
Kobayashi, B. 130–31
Kritzer, H. 21, 33, 42
Kwoka, J. 98
law firms see alternative business structures (ABSs); lawyer regulation, reasons for; liberalization of legal markets; markets; organizational form restrictions; regulation methods
Law Reform (Miscellaneous Provisions) (Scotland) Act 71–2, 103
Law Society 8–11, 54–8, 112–13, 115
Law Society complaints system 54–8, 112–13, 115
Law Society of Scotland 35, 58–61, 70
lawyer regulation, reasons for 7–22
adverse selection problem and minimum quality standards 13
agency and service functions 14–15, 17, 19
courtroom pleader choice and information asymmetry 14–15
dignity of the profession, requirement to uphold 10
duty to the court 9–10, 12
economic case 12
external providers of legal services 13–15, 75
externalities and market failure 15–16
fee scale publication 9
generalist solicitors and limited knowledge problems 15
information asymmetry problems 13–16, 18–20
legal certainty 15–16

Frank H. Stephen - 9781781002681
Downloaded from Elgar Online at 05/13/2019 10:11:58PM
via free access
legal services as credence goods 13, 133
“lemons” problem 13
market failure in legal service markets 12–16
moral hazard problem 13–14
private interest/capture theory of regulation 12
profession size and consumers’ quality perception 19
public goods’ regulation 13, 15
public interest theory of regulation 12–13
quality competition, history of 11
quality control and training of new entrants 11
quality of lawyers and maintaining rule of law 7–12
repeat purchase gains 13–14
reputation sources 11
solicitor-advocates, impact of 14–15
specialization 14–15, 36, 38–9, 49, 52, 104, 122, 132
supplier-induced demand and moral hazard 14
traditional case 7–12
welfare issues 15–16, 19, 28, 94, 96, 132–3
see also Legal Services Act (LSA); regulation methods
lawyer regulation, reasons for, self-regulation 16–20
co-regulation 18–19
financial advantage concerns 17
information and expertise advantage 17
para-professions 19, 71, 94, 106
regulatory competition 18
Lees, D. 22
Leffler, K. 19–20
legal advice, restrictions on supplying 26
legal aid and cherry picking 132–3
contract changes see incentives, legal aid contracts, responses to changes in
see also specialization

legal certainty 15–16
legal disciplinary practices (LDPs) 122, 139–40
legal professions 68
Legal Service Market in Scotland report 102
Legal Services Act (LSA) 40, 54–5, 58, 70, 72, 130
emergence of ABS firms since 2007 (UK) 138–41
technological revolution in lawyering 131–4
Legal Services Act (LSA) and promotion of regulatory competition 111–26
‘alternative business structures’ (ABSs) 111, 113, 115, 120–23
Bar Council 9–10, 26, 58, 69, 107, 115, 119, 121–3, 139
Bar Standards Board (BSB) 121–4, 148
and branding 117
business structure, earlier 112
independent agency-assisted competition (second-tier) 117–18
market competition as self-regulation 117
oversight and front-line regulators, tension between 115
prelude to 111–16
and quality standards 117–21
as regulatory monopoly solution 116–17
self-regulation and self-interest 116
Legal Services Act (LSA) and promotion of regulatory competition, regulatory framework
competition development 111–15
earlier 112–13
entity regulation 113, 123
front-line regulators, retention of 114
oversight regulator proposal (Legal Services Board) 113, 115, 118–19
single regulator proposal (Legal Services Authority) 113–15
Legal Services Act (LSA) and promotion of regulatory competition, service characteristics and competitive self-regulation 119–24
client funds, holding of 123 commoditization issue and reduced fees 120 conveyancing by licensed conveyancers 120–21 Kentridge report 121–2 Legal Disciplinary Practices (LDPs) 122 race to the bottom fears 121 service differentiation 120 solicitor-advocates and barristers 121–4 Legal Services Ombudsman (LSO) 57 legal title restrictions 26 “lemons” problem 13 Levmore, S. 21 liability, limited and unlimited 34, 37–9 liberalization of legal markets 67–85, 130 European Commission role 79–82 European Commission role, and cross-jurisdictional comparisons 79–81 European Commission role, and cross-jurisdictional comparisons, Report on Competition in Professional Services 81–2 European Commission role, IMF, EU and ECB memoranda of agreement 82, 83 Finland 25–6, 78–80, 137–8 France 24, 75–7, 80 Germany see Germany Italy 26–7, 77, 80, 83 Spain 26–7, 78, 80 UK see UK
see also deregulation; markets licensing and certification 118, 120–22, 139
multi-lawyer practices 35–6, 39, 125, 148
Netherlands 26, 80
Neumann, M. 41, 83
Noll, R. 21
non-legal professional services and partnerships with other professions 39–40
see also alternative business structures (ABSs)
Office of Fair Trading (OFT) 58, 72, 102–3, 105
Office of Legal Complaints (OLC) 57–8
Office for the Supervision of Solicitors (OSS) 56–7
Ogus, A. 18, 22, 26–7, 34, 41, 74, 76, 78–81, 106, 116–18, 125–6, 133
opportunism, and knowledge transfer 129–30
organizational form restrictions
deregulation effects see deregulation effects, statistical studies, organizational form restriction
(entity restriction) studies
innovation restrictions and technological revolution 129–31
regulation methods 34–40
oversight regulator proposal 113, 115, 118–19
Pagliero, M. 25, 90
para-professions 19, 71, 94, 106
see also licensing and certification
Parker, C. 136–7, 142
Pashigian, B. 22
Paterson, A. 19–22, 26–8, 34, 41, 74, 76, 78–81, 95–7, 99, 106–7, 126
Penrose, E. 134
pleading practices, legal aid contracts 48–50
Portugal 26–7, 82
precognition reduction and fixed price effect 51–3
prices see fees
principal–agent problem 37
private interest/capture theory of regulation 12
professional negligence cases 57
property rights, absence of, and legal information 130
public goods and regulation 13, 15
public interest theory of regulation 12–13
quality
adverse selection problem and minimum quality standards 13
competition, history of 11
control and training of new entrants 11
of lawyers and maintaining rule of law 7–12
price advertising and quality levels 28
profession size and consumers’ quality perception 19
standards and Legal Services Act (LSA) 117–21
Quinn, J. 14
race to the bottom fears 121
regime shift identification 89
regulation intensity comparison 88–9
regulation methods 23–43
advertising restrictions 26–8
advertising restrictions, and economics of information 27–8
cartel behaviour and scale fees 31
case complexity and fee levels 38
conditional fee arrangement (CFAs) 33
conduct rules and restrictions 24
contingent fee contracts 31–4
contingent fee contracts, and litigation volume 33
deregulation and removal of mandatory scale fees 30
economic rents, effects on 24–6
economies of scope 35–6, 39–40, 133
empirical methods 28, 34, 38–9
entry restrictions 23–6
fee restrictions 29–31
fee restrictions, regulatory and mandatory differentiation 30–31
geographical restrictions 24–5
hourly, contingent and conditional fees, comparison of 32–3
incentive contract restrictions 31–4
legal advice, restrictions on supplying 26
limited liability partnerships 38
mobility restrictions and lack of reciprocity 24–5
monopoly rights 25–6
multi-lawyer entities, specialization opportunities 36
multi-lawyer and multi-disciplinary practices (MDPs) 35–6, 39–40, 78, 103–4, 123
non-legal professional services and partnerships with other professions 39–40
organizational form restrictions (entity restriction) 34–40
organizational form restrictions (entity restriction), ownership and control factors 37
partnership with unlimited liability 34, 37
price advertising and quality levels 28
price discrimination and wealth of client 29–30
principal–agent problem 37
rights of audience restrictions 24–5, 68, 71–2, 102–3
self-regulation instruments 23–40
sharing and marginal productivity remuneration models 38–9
solo practices 34–8
specialization 14–15, 36, 38–9, 49, 52, 104, 122, 132
Structure–Conduct–Performance (SCP) paradigm 37
support services, sharing 39–40
title restrictions 26
unlimited liability 34, 37–9
see also lawyer regulation, reasons for; Legal Services Act (LSA)
regulatory competition
conveyancing see conveyancing

information asymmetry 13–16, 18–20, 54–5
and Legal Services Act (LSA) see Legal Services Act (LSA) and promotion of regulatory competition
self-regulation see self-regulation
technological revolution 132–5
welfare benefits 94, 96
see also deregulation; liberalization of legal markets
regulatory instruments see lawyer regulation, reasons for; Legal Services Act (LSA); regulatory methods
rents, economic 24–6
repeat purchase gains 13–14
Ribstein, L. 130–31
Rickman, N. 14, 21, 33–4, 42, 45–6, 48, 51
rights of audience restrictions 24–5, 68, 71–2, 102–3
risk, spreading, and multi-lawyer entities 35–6, 39, 103–4
Rizzo, J. 28, 107
Roberts, S. 131, 142
Rogerson, W. 28
Rose, N. 87–91
Rosti, H. 138
Royal Commissions on Legal Services 70
Rubinfeld, D. 42
scale fees see fees
Schroeter, J. 98
Schultz, U. 73–4
Schwartz, M. 42
Scotchmer, S. 42
Scottish Law of Delict 59
Scott, A. 83–4
Scottish Legal Aid Board (SLAB) 46–9, 51–3
search costs see advertising restrictions; branding; fees
Segerson, K. 42
self-regulation 69–73
competitive see Legal Services Act (LSA) and promotion of...
regulatory competition, service characteristics and competitive self-regulation incentives see incentives, self-regulation reasons for see lawyer regulation, reasons for, self-regulation
Shaked, A. 19
Sherr, A. 15, 21–2, 30–31, 40–41, 56, 63, 94–5, 107, 133
Shinnick, E. 31, 41, 100–101
single jurisdiction studies 91–2
single regulator proposal 113–15
size, profession size and consumers’ quality perception 19
Smedley, N. 126
Smith, B. 42
Smith, J. 21
social welfare issues 15–16, 19, 28, 94, 96, 132–3
sole practitioners 34–5, 36–8, 102–4
solicitor-advocates 14–15, 26
England and Wales 68, 84, 119–22, 124–5, 146
Legal Services Act (LSA) and promotion of regulatory competition 121–4
rights of audience 68, 72, 102–3
Scotland 15, 68, 72, 84, 103, 146
sole-trading advocate risks 105
see also advocates
Solicitors’ Practice Rules 27
Solicitors Regulation Authority (SRA) 122, 124, 139–40
Solicitors (Scotland) Act 58
Solicitors (Scotland) Professional Indemnity Insurance Rules 58
Spain 26–7, 78, 80
specialization 14–15, 36, 38–9, 49, 52, 104, 122, 132
see also conveyancing; deregulation; legal aid
Spier, K. 33, 42
statistical studies see deregulation effects, empirical methods, statistical studies
Stigler, G. 27, 98–9
Stone, M. 27–8
Structure–Conduct–Performance (SCP) paradigm 37
supplier-induced demand and moral hazard 14
Sutton, J. 19
Swanson, T. 33, 42
Sweden 26
switching effect, incentives, legal aid contracts 46, 48–9, 51–3
Switzerland 24, 34
Sykes, A. 21
Tabarrok, A. 62
Tata, C. 45–52, 62
technological revolution in lawyering 127–43
Australia 135–7
experiences in other jurisdictions 135–8
Finland 137–8
and legal service provision by non-lawyers 127, 131, 133–8
Legal Services Act (LSA) 2007 effect 131–4
Legal Services Act (LSA), emergence of ABS firms since 2007 (UK) 138–41
mergers 136
technological revolution in lawyering, technology of lawyering 128–35
accounting and consulting firms in German legal service market 128–9
‘alternative business structures’ (ABSs), and cherry-picking 132–3
Anglo-American and German law firm mergers 128–31
brand-name capital in legal services 133–5
innovation in legal services 128–31
knowledge transfer and opportunistic behaviour 129–30
legal information and absence of property rights 130
liberalization of legal service 130
organizational form limitations and innovation restrictions 129–31
Index

regulatory competition issues 132–5
social welfare law provision 132–3
territorial restrictions 74
Terry, L. 74, 85
Tesco Law 139
Thatcher government, effects of 71
see also deregulation
Thomason, T. 42
Thornton, M. 42
threshold effect, incentives, legal aid contracts 46, 48
time-series approach, deregulation effects 89
title restrictions, regulation methods 26
Torrance, M. 70
training and education levels 11, 25, 79, 129
see also knowledge
transaction costs 15–17, 29–30, 40, 134
see also fees
Trebilcock, M. 21–2, 40–41
Turnbull, S. 42

US
advertising restrictions 27, 98
Anglo-American and German law firm mergers 128–31
attorney education 25, 129
bar exam pass rates and attorney fees 25
Bates v. State Bar of Arizona 27
Central Hudson Gas & Electric Corp. v. Public Service Commission of New York 27
contingent fee contracts 31, 33
mobility restrictions and lack of reciprocity 24–5
organizational form limitations and innovation restrictions 129
rights of audience restrictions 24
Van den Bergh, R. 10, 15–16, 18–19, 21–2, 41, 73, 77, 85
Viscusi, W. 21
volume effect, incentives, legal aid contracts 47–9
Wallman, R. 15
Ware, R. 41, 84
Waterson, M. 32–3, 42, 44
Watts, A. 42
Webley, L. 63
welfare issues 15–16, 19, 28, 94, 96, 132–3
Willemez, L. 75–6
Williamson, O. 134
Winston, C. 90
Wolfram, C. 21
Zeckhauser, R. 28, 107