



THE ENGLISH LEGAL SYSTEM

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THE ADVERSARIAL SYSTEM

- “Litigation” defined
- Passive judge
- Preparation/submission of the case in the hands of the parties (through their lawyers)
- Emphasis on oral testimony (quality of evidence presented)
- Emphasis on the skill of the lawyers
- Contrast: inquisitorial system

ORIGINS OF THE JURY SYSTEM - HISTORY

- Recall, under the Norman invaders, trials were inquisitorial
- During the Medieval Period, a common method of fact-finding in civil cases (debts) was ***Wager of Law*** (precursor to the modern jury system)

WAGER OF LAW - CIVIL

- The plaintiff would make a claim against the defendant (“He owes me money!”); the defendant would deny **liability** (“I don’t owe any money!”)
- Defendant would then return to court, take an oath that the debt was not due, and be accompanied by 11 “oath-helpers”
- The “oath helpers” were not witnesses, and didn’t know anything about the transaction in question
- Instead, they swore on the Bible that the defendant was a “teller of truth” and that his oath was believable
- If all of the oath helpers swore, **the defendant won immediately**
- If the oath helpers had committed **perjury**, this could lead to their excommunication
- This practice came to be known as “character testimony”

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- Wager of Law **was also used in criminal cases**, where proof was not possible, and defendants were considered “oath worthy”
- If a defendant was cleared by Wager of Law but was still considered to be of “bad reputation”, he/she would be banished from England

TRIAL BY BATTLE - CRIMINAL

- Trial by Battle was a Norman importation
- It was used for private accusations of felonies (“You killed my brother!”)
- Battles were judicially supervised and not available when the accused was either 1) a woman, 2) elderly, 3) ill, or 4) when the accusation was made out of **malice**
- Battles would continue until one party cried “craven” or until the stars appeared
- If the battle was a **draw**, the defendant was declared the victor

AN EXAMPLE OF TRIAL BY BATTLE



THE JURY

- There is a long tradition of jury trials, with earlier forms existing even before the Norman times
- Two types: “**grand jury**” and “**petit jury**”
- “Grand jury” consisted of 24 members whose function was to decide what offense a person should be charged with
- Grand juries were abolished in England in 1948
- “Petit juries” consisted of **12 members**, and began to replace the Trial by Battle by the 13th century

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- At first, members of the jury were actually “witnesses”, chosen because of their intimate knowledge of the locality and parties involved
- Initially, petit juries were considered “innovations”, **so most defendants selected Trial by Ordeal instead (boiling water, hot irons, etc.)**
- In 1275, the Statute of Westminster provided that if the accused refused to submit to trial by jury, he should be put in prison and loaded with successively heavier weights until he either submitted to a jury trial or died.

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- Why would the accused agree to be crushed?
- Most juries were composed of the very persons who had accused the defendant, and no witnesses were called—**thus, conviction was certain**
- If the defendant was crushed, however, **no guilty verdict would arise, and his family would be protected**

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- Gradually, however, by the 16th century, jurors were selected who were not personally connected to the case (“**impartial**”)

COMPOSITION OF THE JURY

- A modern jury consists of 12 members, randomly selected from the electoral register by the **Jury Central Summoning Bureau**
- Members of juries are known as “jurors”
- Generally, every person 18-70 is registered on the electoral register and may be eligible for jury duty
- Potential jurors must have been a resident of the UK for at least 5 years since the age of 13
- Certain persons are considered “disqualified” from jury duty: 1) persons sentenced to 5 years or more in prison (or who are on bail), 2) individuals involved in the administration of justice (e.g. barristers, solicitors, judges, police officers), 3) mentally disordered persons under The Mental Health Discrimination Act

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- Some potential jurors are excused “as of right”: 1) those who have served on juries within the past 2 years, and 2) members of the Armed Forces
- Other potential jurors are eligible for “discretionary” excusals: 1) illness, 2) care of elderly/children, and 3) financial reasons. Such excusals are permitted by the Jury Central Summoning Bureau
- Jurors receive compensation for loss of earnings and travel expenses—**but they are not paid for sitting on a jury**

CHALLENGING OF JURORS AND JURY VETTING

- Lawyers “vet” potential jurors (e.g., a criminal record, a risk to national security, terrorist activity). Normally, this is done privately
- Lawyers may request a “**challenge for cause**”, e.g., the juror is illiterate
- The prosecution may also ask a potential juror to “**stand by for the Crown**”. This means the juror cannot be challenged for cause; rather, the prosecution has reservations about that particular juror. Such jurors then move to the back of the jury panel queue, and will only be used if the other panelists are not chosen

USE OF THE JURY

Juries can be used in both *civil* and *criminal cases*

Civil Cases:

- The right to a jury is limited to *civil cases* involving fraud, defamation, malicious prosecution, or false imprisonment; in other cases, the judge has discretion to allow a jury or not
- In civil cases, the jury decides whether the defendant is *liable* or not, and what amount of damages, if any, he has to pay
- Generally, however, most civil cases are heard in front of a judge without a jury

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Criminal cases:

- With criminal trials, there are no juries in magistrates' court; however, juries are common in cases before the Crown Court
- Judges/jurors must determine if the defendant is ***guilty/not guilty***; the judge fixes the sentence
- If the defendant pleads guilty to the charges, the jury is not involved; the judge simply decides on the sentence

THE ROLE OF THE JURY

- The purpose of trial by jury is to involve society as a whole in the judicial process; this is believed to strengthen the legitimacy of the legal system by not placing all power in the hands of legal professionals
- Jurors remain **passive** during the trial; however, they must listen to/evaluate the facts and determine if the law was violated
- At the end of the trial, the judge informs the jury of the **standard of proof** and the **level of proof**; the judge also explains the **applicable law** to the jury
- Jurors then retire to the jury room to deliberate and discuss the case. **Secrecy is essential**
- Jurors select a jury foreman
- Jurors then decide on a verdict, which generally must be **unanimous** (exception: judge allows a 11:1 or 10:2 verdict)

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- If the jurors cannot reach a unanimous verdict (or one within the exceptions) a ***mistrial*** is declared
- Generally, the rule against ***Double Jeopardy*** is applied
- Exceptions? Where a defendant has been acquitted, but new and compelling evidence arises. This usually involves only cases of ***homicide*** or ***serious sexual offenses***

IMPORTANT TERMS

- Burden of proof/Standard of proof
- Jury tampering
- Mistrial
- Opening Statements
- Summing up
- Unanimous verdict

JURY EXERCISE

- Mary P., a 27-year old woman, is on trial for the murder of her four children, ages 1, 3, 4, and 6. Mary, a member of the Pentecostal Church, has a history of depressive illness dating back to age 15. She married Tom, an elder of the Church, when she was 18 and he was 53. Despite three psychiatric hospitalizations over the years (at ages 19, 22, and 26), Mary gave birth to the four children, and was considered a “loving mother” by her neighbors and other church members. In the months leading up to the deaths of the children, Mary had expressed to her husband her belief they (the children) were “possessed by the devil”. On the morning of 14 May, after Tom had left for work, she allegedly drowned each child separately in the bathtub. At trial, Mary claimed she had not drowned her children at all; rather, that she had left them in the care of a babysitter while she had gone shopping, and returned home to find them all dead. Mary was unable to produce the name of this babysitter, nor any other identifying facts. During the trial, she wept almost continuously, and at the end claimed she had no recollection as to how the children died. She also accused her husband of conducting an affair with a woman from his workplace.

QUESTIONS?

