



Max Planck Institute
LUXEMBOURG
for Procedural Law

Legal Systems, Legal Ordering and Legal Terminology

Stephanie Law

Stephanie.law@mpi.lu

Next Session: 14/12/2018

Readings: Chapter 6-7 (legal profession and the procedural aspects of litigation).

Final Session: 17/12/2018 between 16.00 and 20.00.

Reading: Chapter 8 (constitutional law) and a revision session.



Civil Cases

What are civil matters of law?

- Violations of the rights and duties of persons – breach of contract, tort, breach of trust, actions in restitution;
- Property law rights and violations.

Where are civil matters heard?

- Matrimonial and domestic issues – Magistrates' Courts;
- Majority of cases – county courts and High Court (depending on value and complexity).

How do they proceed through the English court system?

- Magistrates' Court and county courts – High Court



Civil Cases

Example:

Party A and Party B enter into a contract for A to buy 2000 kgs of wood from B at a certain price; B fails to deliver the goods (the wood) to A.

A then has to go elsewhere to buy the wood at a higher cost.



Criminal Cases

What are criminal matters of law?

- Violations of criminal law - Generally prohibition of behaviour, acts or omissions that are harmful, endangering to property, health moral welfare of people.

Where are criminal matters heard?

- Magistrates' Court or the Crown Court (depending on seriousness of the case).

How do they proceed through the English court system?

- Magistrates' Court to Crown Court or QBD;
- Crown Court to QBD or CoA; from QBD to UKSC.



The Key Differences – Civil and Criminal

Who brings the case?

Civil claim: claimant

Criminal claim: prosecution (state) – the Crown Prosecution Service, headed by the Director of Public Prosecutions

What is the nature of the action in law?

Civil claim: defendant is sued

Criminal claim: defendant is prosecuted



What is the outcome and aim of the action?

Civil claim: defendant is liable/not liable – compensation

Criminal claim: defendant is guilty/not guilty - punishment



The Nature of the English Legal System – An Adversarial System

- The conduct of litigation (going to court to resolve a dispute) by the parties – who “fight” – stemming from a historical concept of trial.
- A focus on the oral proceedings and hearing;
- The role of the parties – must ensure all relevant factual information and legal arguments are presented.



The Nature of the English Legal System – An Adversarial System

- The role of the judge – an independent judge, who remains passive, listens to what is presented to her, intervenes only to clarify and does not investigate;
- Civil, Criminal and Family Procedure Rules
(<https://www.justice.gov.uk/courts/procedure-rules>)



The Nature of the English Legal System – An Adversarial System

Via these procedural rules, the judge has a key and significant role to play in managing the case, to avoid delays and ensure cases are dealt with justly.

For example:

- Part 3, Civil Procedural Rules: The Court's case management powers.
- Rule 3.1(2)(g) of the Civil Procedural Rules 2018: “...the court may – consolidate proceedings”.



The Jury in the English Legal System

What is a jury?

- A group of 12 persons, randomly selected from the electoral register (ages 18-75) and chosen for jury service;
- Summoned to attend court by the Jury Central Summoning Bureau; listed on panels to be chosen;
- Responsibility to decide questions of fact.



The Jury in the English Legal System

- When summoned, with a jury summons form, you are obliged to serve, and can be fined up to 1000 GBP.
- No payment but you can claim expenses.

Who is disqualified or ineligible?

- Disqualified: people charged/convicted of crimes, sentenced to 5+ years – permanent disqualification;
- Ineligible: used to include individuals involved in administration of justice; now only persons with a lack of mental capacity under Mental Capacity Act 2005;
- Excusable: jury service in previous 2 years.
- Can ask to defer once: for holidays, surgery, work.



The Jury in the English Legal System

- Process of challenging the selection of jurors and vetting;
- Jurors are picked from a panel, of persons selected randomly from society.

Challenging a juror:

- The prosecution and defence can challenge a juror for cause; rare - there must be good reason;
- Prosecution can ask the juror to „stand for the Crown“ – goes to the back of the queue; will not have to serve if 12 other jurors can be picked but prosecution will have to show cause if less than 12 jurors can be appointed.



The Vetting of the Jury

Persons selected at random can be vetted as regards:

- Their criminal record;
- Secret investigations might be undertaken by police or security services;
- *These checks are only allowed in exceptional circumstances;*
- *The specific types of cases will usually be eg terrorist cases, cases concerning political beliefs (and may be heard in private);*
- *Vetting has to be authorised by the Attorney General (the chief legal advisor to the Government and Crown).*



The Jury in the English Legal System: Civil Cases

When can a jury be used in civil cases?

- Right to a trial in 1) actions for fraud, 2) defamation, 3) malicious prosecution; and 4) false imprisonment;
- The judge may still hear the case alone, if unsuitable for trial by jury, if complex (re facts and scientific evidence);
- Judge has a discretion to allow trial by jury in other cases;
- Only in exceptional circumstances – rarely are juries used;



The Jury in the English Legal System: Civil Cases

What do juries decide in civil cases?

- Jury decides on liability and amount of compensation to be paid by defendant to claimant.

Difficulties?

- Key criticism: compensation awarded by juries is usually very high.
- Judges usually deemed to provide more predictability as regards liability and amount of compensation.



The Jury in the English Legal System: Criminal Cases

When is a jury used in criminal cases?

- No jury in Magistrates' Court but in Crown Court (serious crimes - burglary, fraud, or murder).
- If the defendant pleads not-guilty – jury decides on the issue of guilt;
- If the defendant pleads guilty – no involvement of jury;
- The judge always decides the punishment (sentence);



The Jury in the English Legal System: Criminal Cases

Right to be tried by jury in criminal cases:

- A key principle of criminal justice – being tried by a jury of peers;
- Administration of justice requires juries understand facts and evidence submitted – Criminal Justice Act 2003 allows certain complex cases to be heard by judges alone.
- Otherwise, criminal trials can be conducted without a jury only if there is a real danger of jury interference (tampering) that cannot be overcome.



The Role of the Jury in the English Legal System

What is the aim of trial by jury?

- Aim to ensure that society is involved in the undertaking of trials, to enhance legitimacy of the legal system.

What does the jury do during the trial?

- The jury plays a passive role, sits and listens to evidence and questions of fact and law as they are presented;
- The judge then provides an overview of questions of fact and law presented, and informs them of the burden and standard of proof for the particular crime.



The Role of the Jury in the English Legal System

What does the jury do after the trial has ended? And how?

- The jury discusses (deliberates) in the jury room of the court; jury can ask questions to the judge;
- Once the jury has decided, the foreman (head) presents the verdict; usually, this should be unanimous, unless the judge has allowed a majority of 11:1 or 10:2.
- If no unanimity and the judge has not accepted a majority, the jury declares a mistrial, and a new trial may take place;



The Role of the Jury in the English Legal System

What does the jury do? And how?

- Juries are under a duty of secrecy re discussions in the jury room; jurors cannot discuss with people or on social media, or do their own research – to avoid influence and encourage jurors to speak openly.



Challenges of Trial by Jury

<https://www.bbc.com/news/uk-21529452>





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