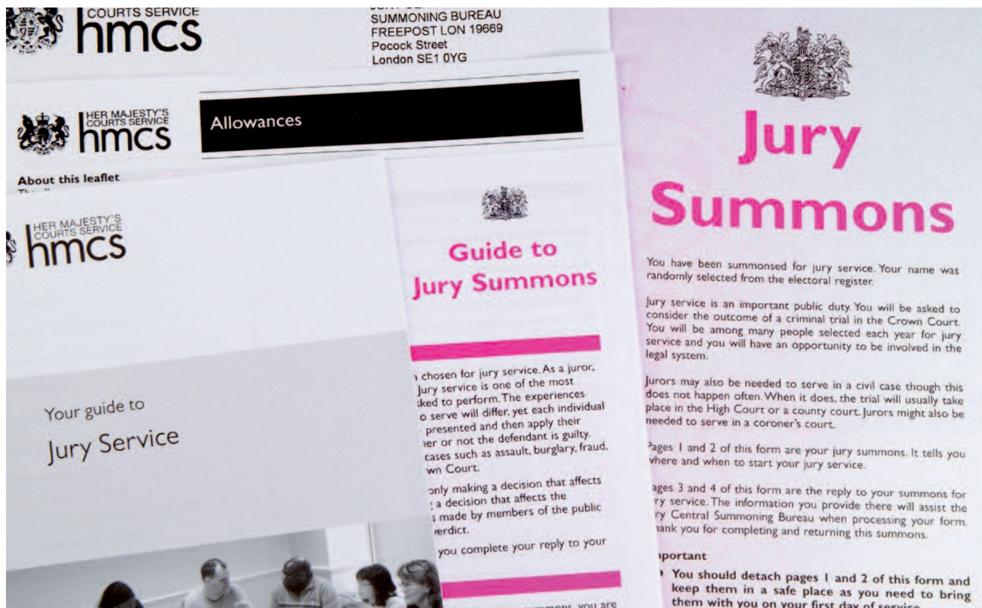
Chapter 7

Juries

This chapter discusses how juries are selected under various Acts of Parliament, including random selection. It also looks at who is disqualified from jury service, who is ineligible, who may have his or her jury service deferred until a later date, or who may be excused altogether. It outlines the function of juries in a serious criminal trial in the Crown Court. Finally, it examines what advantages and disadvantages juries bring to our legal system.

Although for most of you law is a new subject for study, juries are a topic that everyone knows something about. Your relatives may have served on a jury, and you may be familiar with the role and importance of juries from watching films and television programmes, such as *Kavanagh QC* or John Grisham's *The Runaway Jury*.



Peter Titmuss/Alamy

On receipt of summons papers, a citizen is required to attend court for jury service

The subject of juries is a highly topical and controversial one. Over recent years, both Conservative and Labour governments have tried (and failed) to reduce the number of trials involving juries. Juries have also been at the heart of major research into our criminal justice system — for example, the Runciman Royal Commission on Criminal Justice and the lengthy research into jury trials undertaken by Lord Justice Auld.

The jury system was imported into Britain after the Norman conquest, though its early functions were quite different from those it fulfils today — the first jurors acted as witnesses, providing information about local matters. Under Henry II, who believed that local people who knew both the accuser and the accused would be best qualified to decide the case, the jury began to take on an important judicial function, moving from reporting on events it knew about to deliberating on evidence produced by the parties involved in a dispute.

A major milestone in the history of the jury was *Bushell's Case,* where it was finally established that the jury was the sole judge of fact, with the right to give a verdict according to its conscience, and it could not be penalised for taking a view of the facts opposed to that of the judge. The importance of this power now is that juries may acquit a defendant, even when the law demands a guilty verdict.

Bushell's Case

This famous case occurred in 1670 when William Penn and William Mead were tried for preaching to an unlawful assembly. They were both Quakers who were peace-loving Christians. The trial was shamefully unfair — the evidence against the accused was worthless and the judge's summing-up to the jury was completely one-sided in favour of the prosecution. Nonetheless, the jury repeatedly refused to convict the accused, despite being threatened by the judge. After several 'not guilty' verdicts, the judge ordered the jury to be imprisoned without food and drink, and when the jury still insisted on returning a 'not guilty' verdict, the judge fined them. Four jurors, including Edward Bushell, refused to pay and spent months in prison. Eventually, the case reached Chief Justice Vaughan, who released the jurors and ruled that juries had the right to 'give their verdict according to their convictions' and that no jury could be punished for its verdict.

Note that, although important to our system of criminal justice, juries take part in less than 1% of all criminal trials. Over 96% of criminal trials are conducted in Magistrates' Courts, about 70% of defendants in Crown Courts plead guilty, and a further proportion of defendants are found not guilty by means of 'directed acquittals', where the trial judge instructs the jury as a matter of law to return a formal verdict of 'not guilty'. In civil cases, juries nowadays are involved in just a few cases each year. There are only about six libel cases each year involving juries.

How jurors are selected

Before 1972, only those who owned a home over a certain rateable value were eligible for jury service. The Morris Committee in 1965 estimated that 78% of names on the electoral register did not qualify for jury service, and 95% of women were ineligible. The current qualifications for jury service are detailed in the Juries Act 1974, which provides that potential jury members must be:

- aged 18 to 70 (the upper age limit was increased from 65 to 70 in the Criminal Justice Act 1988)
- on the electoral register
- resident in the UK, Channel Islands or Isle of Man for at least 5 years since the age of 13

Random selection

Random selection means that each person whose name is on the **electoral register** has an equal chance of being selected as a juror. The electoral register is compiled each year by a district or metropolitan council and contains the names and addresses of all people entitled to vote in local, general and European elections. The system employed to randomly select jurors has been approved by the Royal Statistical Society.

The jury summoning officer at each crown court arranges with the Central Jury Summoning Bureau for potential jurors' names to be picked at random from the electoral register for the jurisdictional area of the court. From those selected by the Summoning Bureau who are not excused or who have jury service deferred, 20 are chosen randomly by the jury usher for the particular trial. These potential jurors — the 'jury in waiting' — will then be told the name of the defendant and asked if they know him or her. If any juror indicates that the defendant is known to him or her, they will leave the court and return to the jury pool to be used for another trial. The names of the individual potential jurors are written on cards that are handed to the court clerk. The cards are shuffled and the court clerk calls out 12 names.

Who can be excluded or excused from jury service?

People with a criminal conviction who have served a custodial sentence within the last 10 years are disqualified from jury service for 10 years, as are those who have received a community sentence. Those who are permanently disqualified include people sentenced to life imprisonment or any term of imprisonment of 5 years or more. Offenders on bail are also disqualified.

Since April 2004, major changes have been introduced to the rules of jury selection under the Criminal Justice Act 2003. Everyone who meets the statutory requirements

under the **Juries Act 1974** is eligible for jury service, with the sole exceptions of serious offenders and those suffering from a mental illness. This means that the former category of ineligibility, which precluded lawyers, judges, police officers and clergy, has effectively been swept aside.

The reason for this change is that before 2004, over 480,000 people a year were summoned for jury service, but of these, more than half were ineligible or were excused, either as of right or at the court's discretion. This meant that juries were no longer broadly representative — in particular, it was too easy for the professional middle classes to be released from this important civic duty. The Courts Minister in the Lord Chancellor's Department stated that this reform was designed to widen the pool of jury selection and to ensure that juries better reflect their communities and thus 'boost confidence in the system.'

However, a 4-year study of jury trials ('Diversity and fairness in the jury system'), undertaken by Professor Cheryl Thomas, Director of the Jury Diversity Project at Birmingham University, and published by the Ministry of Justice in June 2007, has demolished a number of myths about jury trials. Jury pools closely reflect the local population, ethnic-minority groups are not under-represented, and most people do not avoid jury service. In fact, the highest rates of jury service were among middle- to high-income earners.

The category of excusal 'as of right' has also been removed, although it is accepted that those serving in the armed forces will continue to be excused jury service, providing their commanding officer writes to the court to confirm that operational efficiency requires the person concerned to be excused. Doctors and nurses are also unable to be excused automatically. It is still be possible for people with a poor command of English or those whose religious beliefs would be in conflict with jury service to seek to be excused, but in general it is felt that excusal will be far more rarely granted. Holiday arrangements or business commitments will result in jury service being deferred, not excused altogether. In the first few months after this new law had been in force, over 10,000 deferral requests were granted and only 41 refused.

To summarise, a person can be excused from jury service on the following grounds:

- **Disqualification** — applies only to offenders who have received a custodial or community sentence, or who are on bail awaiting trial.
- **Ineligibility** — under the **Criminal Justice Act 2003**, only mentally disordered persons are ineligible for jury service. Such a person is one who suffers or has suffered from mental illness, psychopathic disorder or mental handicap and who is resident in a hospital or regularly attends for treatment by a doctor.
- **Excusal as of right** — with the exception of those aged between 65 and 70 this category was abolished by the **Criminal Justice Act 2003**. This change has the effect of enabling clergymen, lawyers, police officers and even judges to become jurors.

- **Excusal at the court's discretion** — applies to those with limited understanding of English, students doing public examinations, those with childcare problems, or those with holidays booked. In such cases, it is more likely that jury service will be deferred.

Extension exercise

Is it wise to put a judge among the jurors?

The scandal of jury service was always that so many professionals could get out of it. Two-thirds of those summoned could find reasons to defer it or be excused altogether. The upshot was that, 'far from being representative, the jury was overloaded with housewives, the unemployed and those who could not think of an excuse'.

The changes have already been severely criticised by doctors and police officers — the police argue that defence lawyers are likely to complain that they are biased as jurors and will challenge their selection; doctors have warned that being called for jury service will disrupt an already overstretched National Health Service.

Soon after these changes were brought into force, a QC was summoned for jury service at the Old Bailey. However, having already been discharged from three other trials, he asked the presiding judge to excuse him from his last three days of jury service. The judge refused saying that knowing other lawyers in the trial was not a good enough reason for him to be discharged. However, on the fourth occasion he was chosen as a juror, he had finally to be excused, as the recorder said he knew him well. The trial judge — Judge George Bathurst-Norman — then stated: 'It deeply troubles me — I don't know how this legislation is going to work intelligently… It is not for me to undermine the will of Parliament but at the same time I have to ensure a fair trial.'

Anthony Scrivener QC argues: 'It's hardly fair to have people with specialist knowledge who know the rules of evidence…lawyers would know that the fact a defendant's character is not being put in evidence means it's likely he has previous convictions.'

Another lawyer, Romana Cannetti, who is a newspaper lawyer employed to check articles for potential libels, was summoned to sit on a civil libel jury: 'It's totally ludicrous', she said, 'I am bound to know the defendant — I advise ten different papers and broadcasters — as well as the lawyers because it is a small world and they come chiefly from two sets of chambers.' She continued, 'It would be totally inequitable for a lawyer to sit as a juror. I know too much about the workings of a trial, the techniques of cross-examination, why submissions are couched in a particular way…it makes a mockery of the idea of a panel of lay people coming along to judge a case on its facts.'

A final, humorous comment is provided by Anthony Scrivener, who said that there is only one sure way for a lawyer or judge to 'get off jury service', and that is to copy the example of one juror, whose experience of jury service was rapidly curtailed. As the usher brought the jury into court, this particular juror confided to her: 'I always find them "not guilty".'

Adapted from an article by Frances Gibb, *The Times*, 22 June 2004.

Questions

1 Why does the writer believe that a jury made up of housewives etc. would cause problems?

2 Summarise the arguments advanced by Scrivener and Cannetti as to why it is unfair for lawyers and judges to sit on juries.

3 On balance, do you think that these changes to jury eligibility will create injustice?

Lord Justice Dyson became the first serving judge to be summoned for jury service. This caused the (then) Lord Chief Justice — Lord Woolf — to issue a Practice Statement that points out that a judge serves on a jury as a private citizen, that excusal from jury service will only be granted in extreme circumstances and that judges must follow the legal directions given by the trial judge and must avoid the temptation to correct guidance which they believe to be inaccurate.

R v Abdroikov; Green and Williamson (2007)

This specific problem — that of lawyers, judges and police officers being eligible for jury service — formed the basis of an important appeal against conviction to the House of Lords. Three separate cases were heard together. In the first, there was a police officer on the jury where police evidence was not in issue. In the second, the crime victim was a police officer and the officer on the jury was from the same local police background (although he did not know the victim). In the third case, an experienced Crown Prosecution Service prosecutor was allowed by the judge to sit on the jury trying a serious rape case.

The House of Lord was anxious to emphasise that there was no evidence of any actual bias in any of these cases. However, as Lord Bingham explained, the principle was not only that justice must be done 'but should manifestly and undoubtedly be seen to be done'. Most adult human beings, he said, harbour certain prejudices and predilections because of their background, education and experience, but the court system does its best to neutralise the effect of these, not least by insisting that at least ten jurors should agree on a person's guilt. Nonetheless, Lord Bingham and a majority of the court held that in the police victim case and the Crown Prosecution Service prosecutor case, a reasonable onlooker would conclude that justice had not been seen to be done, because of the proximity of the jurors to the issues to be decided. These convictions were quashed — although in the serious rape case there may be a retrial.

As one of the dissenting judges, Lord Roger commented, this judgement drives a 'coach and horses' through Parliament's legislation as set out in the Criminal Justice Act 2003. But any attempt by Parliament to reassert its authority may well find itself challenged under Article 6 of the European Convention on Human Rights — the right of any accused person to a fair trial before an independent and impartial tribunal. 'Undoubtedly, guidance will now have to be issued for police officers, prosecutors and the like who will be routinely identified and vetted by the trial judge at the start of a case.'

Adapted from an article by Stephen Cragg, *The Times*, 23 October 2007.

Jury challenging

In the UK, challenging a juror is now a rare event, but there are three main ways that it can occur.

Stand by for the Crown

Prosecution can use 'Stand by for the Crown' without giving reason, although the Attorney General announced in 1988 that this right would only be used to remove 'a manifestly unsuitable' juror, or to remove a juror in a terrorist or security trial where jury vetting has been authorised.

Challenge for cause

Defence can challenge 'for cause', which in terms of a Practice Note issued by the Lord Chief Justice in 1973 may *not* include race, religion, political beliefs or occupation. A successful challenge is therefore only likely to occur where the juror is personally known. In *R* v *Gough* (1993), it was held that where a juror is challenged on the grounds of possible bias, the test is whether there is 'real danger' that he or she is biased. Note that the right of the defence to use a **peremptory challenge** (challenge without any reason being given) was abolished by the **Criminal Justice Act 1988**.

Challenge to the array

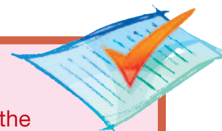
This is where both parties may challenge the whole jury panel on the grounds that the summoning officer is biased or has acted improperly. This happens very rarely. However, in 1993 the challenge was used in the *Romford Jury* case where, out of a panel of 12 jurors, nine came from Romford, with two of then living within 20 doors of each other in the same street. Another case where this challenge was successful was *R* v *Fraser* (1987) where, although the defendant was from a minority ethnic background, all the jurors were white. (Note, however, in *R* v *Ford* (1989) that it was held that if the jury was chosen in a random manner then it could not be challenged because it was not multiracial.)

Jury vetting

This process is usually conducted by the prosecution and involves checking the list of potential jurors to see if anyone appears 'unsuitable'. This matter first came to the attention of the public in 1978 in the *ABC* trial, a case brought under the **Official Secrets Act 1911,** when it emerged that vetting had been authorised by the Attorney General. Guidelines have since been published, which state that vetting is only justifiable in exceptional cases, such as those involving terrorism, the Official Secrets Acts and 'professional' criminals. Vetting in these cases requires the consent of the Attorney General. As Alisdair Gillespie notes:

> *A particular difficulty with this whole exercise is that although the guidlelines are published they are not particularly clear and are open to interpretation in a way that would allow the state to 'rig' a jury if they so wished. It has been noted that the guidelines do not place an obligation on the prosecution to 'stand by' a juror who would be biased against the defendant and yet the defendant would have no real way of knowing that they were.*

Vetting would involve checking Criminal Record Office records, Special Branch and Intelligence Services' records and the knowledge of local CID officers.



Exam hint

'How jurors are selected' is a common topic for examinations. You must know the relevant statutory authorities, especially the Juries Act 1974 and the Criminal Justice Act 2003, together with the rules on disqualification and ineligibility. Be careful not to confuse the latter two terms. You also need to learn how the process of random selection works. If the exam question is worth 15 or 20 marks, you should include at least a paragraph on challenging and vetting juries.

The function of the jury

The jury's function is to weigh up the evidence and decide what are the true facts of the case. The judge directs it as to what is the relevant law, and the jury must then apply that law to the facts that it has found and thereby reach a verdict. The trial judge will often refer to the jury as 'masters of the facts', while the judge is the 'master of the law'.

Criminal cases

Juries are used in all serious criminal cases (i.e. indictable offences tried at Crown Court). The jury has the sole responsibility for determining guilt. Since the **Criminal Justice Act 1967**, majority verdicts are possible (a minimum of 10 out of 12 must agree). During the trial — after the jury has been sworn in — jurors will be present to hear all the evidence put forward in the case by the prosecution and defence counsel. Notes may be taken and jurors will have the opportunity to question witnesses through the judge.

At the end of the case for the defence and the closing speeches of counsel, the judge will summarise the evidence in the case and direct the jury on relevant legal issues. In some more complicated cases, the judge will also provide a structured set of questions to assist the jury in its deliberations. On retirement to a private room, a foreperson is chosen to speak for the jury. After a minimum period of

2 hours and 10 minutes, if the jury has not returned with a unanimous verdict, the judge may recall the jury and advise that a majority verdict may be made under the **Criminal Justice Act 1967** (about 20% of convictions each year are given by such verdicts).

Rubber Ball/Alamy

The jury must weigh up the evidence and decide the true facts of the case

Directed acquittal

During the trial itself or at the end of it, the trial judge may rule as a matter of law that the prosecution simply has not provided enough evidence for the defendant to be convicted 'beyond reasonable doubt'. If that is the case, the judge will direct the jury to return a formal verdict of 'not guilty'. However, under no circumstances may a trial judge require a jury to bring in a verdict of 'guilty'.

This was confirmed in *R* v *Wang* (2005). A man found in possession of a martial arts sword and a ghurka-style knife was charged with having an article with a blade or point in a public place. He testified that he was a Buddhist and practised Shaolin (a traditional martial art), and that he had the articles with him for good reason. The judge decided that the defendant's explanation did not meet the requirements of the statutory defence and directed the jury to convict. This was upheld on appeal, but after reviewing the authorities and referring to cases such as *R* v *Ponting* (1985) (see page 135) the House of Lords quashed the conviction, noting that there are no circumstances in which a judge is entitled to direct a jury to return a verdict of guilty.

Are juries representative?

The basis of the use of juries in serious criminal cases is that the 12 people are selected randomly and should therefore comprise a representative sample of the population as a whole. This ideal has come closer with the abolition of the property qualification and the use of computers for random selection. It has been argued that random selection may make a jury less likely to be representative — if, for example, many women are excused through childcare commitments, summoning twice as many women as men might be a better way of achieving a representative section of the community.

Research carried out by Michael Zander in 1983 found that women were only slightly under-represented and that non-white jurors constituted 5% of juries, while they make up 5.9% of the national population. While this last point is encouraging, the Commission for Racial Equality has argued that consideration should be given to the racial balance in particular cases. The Commission suggested that where a case has a racial dimension and the defendant reasonably believes that he or she cannot receive a fair trial from an all-white jury, then the judge should have the power to order that three of the jurors come from the same minority ethnic group as the defendant or the victim. This was endorsed by the Runciman Royal Commission on Criminal Justice but it has never been implemented. The decision in *R* v *Ford* (1989) that there is no principle that a jury should be racially balanced, still holds. This recommendation, although endorsed by Lord Justice Auld in his criminal justice review, has not been accepted by the government.

The refusal by both Parliament and judges to consider the principle of racially balanced juries has given rise to some serious problems. In 1994, the Lord Chief Justice wrote: 'Race issues go to the heart of our system of justice which demands that all are treated as equals before the law. It is a matter of the gravest concern if members of the ethnic minorities feel they are discriminated against by the criminal justice system: more so if their fears were to be borne out in reality.' Although a survey by Professor J. Gobert in 1989 found that there was 'an under-representation of ethnic minorities' on jury selection, nonetheless judges and legislators alike have been reluctant to 'introduce measures which nibble away at the principle of random selection'.

Extension exercise

Jurors behaving badly

Imagine you are an Asian man on trial in the crown court facing the prospect of a long jail sentence if convicted. Your fate is in the hands of 12 men and women randomly selected. But what if some of these jurors are racist? Suppose they make disparaging remarks about your appearance, your clothing, your accent.

This is what happened during Sajid Qureshi's trial at Mold crown court in 2000, according to one of the jurors who convicted him and saw him sentenced to 4 years in prison. In a letter

to the court 6 days after his conviction, the juror claimed that some of her fellow jurors seemed to have already decided their verdict from the start, that one juror fell asleep during the trial and that some jurors tried to bully others.

However, this material was not enough for the Court of Appeal, who refused permission for an appeal to be brought because of the Contempt of Court Act 1981, which bans anyone, including judges, from enquiring into the secrets of the jury room.

British society is riddled with racism. A study of West Midlands courts by Oxford University in 1989 found that seven judges were sentencing black defendants much more harshly than white defendants. If so much of the criminal justice system is racist, why should the jury be any different?

John Spencer, Law Professor at Cambridge University, has argued: 'If juries are composed of 12 people chosen from the electoral roll at random, it is inevitable that they will sometimes be dominated by people who are racists, or are irresponsible and silly. Our legal system is gravely deficient if it fails to guard against this obvious danger.' In the same article in the *Cambridge Law Journal*, Professor Spencer argued that the decision of the Court of Appeal in Qureshi's case 'is to put it mildly, questionable' and 'almost certainly incompatible with Article 6 of the European Convention on Human Rights' (which guarantees defendants a fair trial before an independent tribunal).

In a later case — *Sander v United Kingdom* — brought before the European Court of Human Rights, this opinion was upheld. In the trial of Mr Sander, before the judge completed his summing up to the jury, a juror handed a court usher a written complaint that some jurors were not taking their duties seriously: 'At least two have been making openly racist remarks and jokes and I fear we are going to convict the defendants not on the evidence but because they are Asian.' The jury was told of this complaint, which was then refuted by a letter signed by all 12 jurors given to the judge. The judge rejected the defence request that the jury be discharged and the case retried before a different jury. The jury then convicted Mr Sander, who received a 5-year sentence. The Court of Appeal, dismissing the appeal, said the judge had been right to confront the jury with the problem, and had not erred in reaching the conclusion that there was no risk of bias. The European Court of Human Rights, however, concluded that the trial judge should have discharged the jury and ordered a retrial on the grounds that the original juror's note had raised the real fear of lack of impartiality, which was not dispelled by the judge's direction to the jury.

Adapted from C. Dyer: 'Jurors behaving badly', *Guardian*, 25 June 2002 and M. Zander: 'The complaining juror', *New Law Journal*, 19 May 2000.

Questions

1 What complaint was made by one juror about the jury in the trial of Sajid Qureshi?

2 Why did the Court of Appeal refuse permission for the appeal to be heard?

3 In *R* v *Sander*, why did the European Court of Human Rights overturn the Court of Appeal decision?

Advantages of juries

Public participation

Juries allow the ordinary citizen to take part in the administration of justice, so that verdicts are seen to be those of society rather than of the judicial system, satisfying the constitutional tradition of judgement by one's peers. Lord Denning described jury service as giving 'ordinary folk their finest lesson in citizenship'. A survey commissioned by the Bar Council and the Law Society found that over 80% of those questioned were more likely to have confidence in juries than other players in the justice system, and that juries were more likely to reflect their views and values. In addition, 85% trusted juries to reach the right decision and believed that juries improved the quality of the justice system.

It is also relevant that judges themselves retain considerable confidence in the jury system — in 1974, Lord Salmon estimated that no more than about 2% of defendants were wrongly acquitted by the jury. These findings have particular importance when one considers the background of magistrates, who are often white and middle class.

However, there is a growing body of evidence to suggest that this rosy picture of juries is questionable. In 1979, research by Baldwin and McConville suggested that about 5% of jury convictions were 'doubtful', and more recent research in 2001 by Gary Slapper shows that while acquittal rates remained static at about 32% from the mid-1970s to the end of the 1980s, they shot up during the 1990s. In 1999, 43% of all jury verdicts were 'not guilty', the highest percentage since the start of the survey. Slapper stated:

> *The public is so much more critical and socially and politically aware... And so juries are more likely to think for themselves. They are less prone to be reverential towards police officers, because it is more common knowledge in 2001 than it was in 1959 that police officers are capable of lying, that lawyers are capable of covering up evidence and that judges can be less than wholesome characters.*

Home Office data support this concern — acquittal rates for some crimes, such as criminal damage, are as high as 79%. In robbery cases, where the defendant pleads not guilty, 61% are acquitted, as are 69% of those on charges of violence against the person.

It should be borne in mind, however, that 70% of defendants plead guilty at the Crown Court and it can be inferred that those who plead not guilty are likely to have a strong case, which may go a long way to explaining (if not justifying) the high acquittal rates.

Layman's equity

'Layman's equity' is the idea that a jury can reach a decision on the basis of 'simple fairness' rather than on the law — effectively 'bending the law'. Neither judges nor

magistrates can ever do this. Because juries have the ultimate right to find defendants innocent or guilty, it is argued that they act as a check on officialdom and are a protector against unjust or oppressive prosecution by reflecting the community's sense of justice. Michael Mansfield QC argues that: 'It is the most democratic form of justice in the world, a protection against the use of overbearing and arbitrary power by governments.' Juries, unlike judges and magistrates, have the power to acquit a defendant where the law demands a guilty verdict by 'bending the law'. There are several well-known cases of juries using this right to find according to their consciences, often concerning issues of political and moral controversy. Such cases include *R* v *Owen, R* v *Kronlid* and *R* v *Ponting*.

R v *Owen* (1992)

Stephen Owen was acquitted of all six charges brought against him, including attempted murder, wounding and possessing a gun with intent to endanger life. His son had been killed in a road traffic accident involving Mr Taylor who had knocked him off his bicycle with a 30-tonne truck. Kevin Taylor's lorry was not insured and was unroadworthy. He had never passed a driving test and he was blind in one eye. He was convicted of reckless driving and received an 18-month prison sentence. On his release from prison, Stephen Owen traced him to his home address and confronted him there, shooting him in the back. On the facts of the case, Owen was undoubtedly guilty of the charges of wounding and possession of a gun with intent. However, despite the judge's clear instruction 'to approach the evidence, not stop to consider whether we have feelings of liking, disliking or even loathing for Kevin Taylor', the jury acquitted Owen on all counts.

R v *Ponting* (1985)

Clive Ponting was a senior civil servant in the Ministry of Defence who sent confidential documents on the sinking of the *Belgrano* in the Falklands War to Tam Dalyell, a senior and well-respected Labour backbencher. These sensitive documents were used in Parliament to criticise the actions of the prime minister Margaret Thatcher, and she was severely embarrassed by the leak. The leak was traced to Ponting and he was charged under the **Official Secrets Act 1911**. Like Stephen Owen, in strict law he was certainly guilty, and the trial judge directed the jury that his conduct did amount to the offence charged, but nevertheless, the jury acquitted him, arguably taking the view that his prosecution was politically inspired.

The importance of this aspect of the jury's involvement in criminal justice is difficult to assess. In high-profile cases such as *Ponting*, it can be a valuable statement of public feeling to those in authority, but even in this kind of case, it cannot always be relied upon. In *R* v *Tisdall* (1984), the defendant, Sarah Tisdall, exposed government wrongdoing, and it was admitted that the leak was no threat to national security, yet she was convicted, unlike Ponting.

TopFoto

Clive Ponting arriving at the Old Bailey in January 1985, at the start of his trial for leaking confidential documents

Better decision-making on guilt or innocence

It can be argued that even criminal cases that involve complex issues of law come down to a decision about essential facts — for instance, identification, witness credibility or about a finding of dishonesty in a theft case. Such matters are more likely to be decided correctly following a discussion between people. Individual jurors will have formed different impressions about the truthfulness of various witnesses and the legal arguments submitted by opposing counsel. However, recent research by psychologists has suggested that discussions are better organised within groups of seven, and that as a consequence the jury size should be reduced to no more than ten, or that a 'facilitator' be appointed to guide jury deliberation.

It is also suggested that because most jurors only sit in criminal trials on one occasion, they are not 'case-hardened', and take their responsibility very seriously.

Disadvantages of juries

Lack of competence

Sir Frederick Lawton once stated that jurors' 'level of understanding of cases, and perhaps their level of intelligence, are not always up to the task they have to perform'. Lord Denning also argued that the selection of jurors is too wide, resulting in people who are not competent to perform their task. He went on to suggest that jurors should be selected in much the same way as magistrates are, with interviews and references required. This throws up several obvious problems — it would be complicated and expensive, and of course a jury that is intelligent and educated can

still be biased. It would also destroy the essential argument in favour of juries — that they are selected randomly.

Research carried out by the New Zealand Law Commission showed that a number of jurors had real difficulties with legal terms and concepts such as 'reasonable doubt' and 'intent'. This was supported by Australian research, which revealed that 'over 50% of jurors surveyed understood legal terms and complex facts most of the time but fewer than 20% understood them thoroughly'.

Particular concern has been expressed about the average jury's understanding of complex fraud cases. In 1986, the Roskill Committee concluded that trial by random jury was not a satisfactory way of achieving justice in such cases, with many jurors out of their depth, and Terence Ingman points out that through 'inexperience and ignorance', jurors may rely too heavily on what they are told by lawyers at the expense of the real issues. However, the Roskill Committee couldn't find accurate evidence of a higher proportion of acquittals in complex fraud cases than in any other kind. Researchers Smith and Bailey found that juries are capable of coming to reasoned and fair verdicts even in complex cases, and police evidence before the Runciman Royal Commission stated that in serious fraud trials, the jury actually convicts a slightly higher percentage. The **Criminal Justice Act 2003** gave the government the power to end jury trials in such cases, but this has not been enacted because of the continuing hostility by both Houses of Parliament to this idea. At the end of 2006, the government introduced the Fraud (Trials without a Jury) Bill which, if passed, would have allowed the Lord Chief Justice to rule that a fraud case could be tried by a judge sitting alone. In the event, this bill was rejected, as so many of its predecessors had been, by the House of Lords.

However, an enquiry conducted by HM Chief Inspector of the Crown Prosecution Service, Stephen Wooler, into the most recent serious fraud trial (*R* v *Rayment and others,* which collapsed in 2005 after many months and a cost of over £60 million) concluded that 'a better monument to the endeavours of juries in this country or a better justification for the jury system would be hard to find'. Sally Lloyd-Bostock undertook a research study into this case and concluded that the jury 'did indeed have a good grasp of the evidence'. Jurors did not appear to have had problems understanding the evidence or essentials of the case, despite the length of trial — 21 months.

As a footnote to this report, in the *New Law Journal* (5 October 2007), Michael Zander wrote of the research conducted by Robert F. Julian in the *Criminal Law Review* where he interviewed most judges who had tried a serious fraud case in England and Wales. He concluded that 'permeating every interview was the strong belief expressed by each judge that trial by jury was entirely appropriate in serious fraud cases and that trial by judge should not replace trial by jury. The common rationale of the judges was that juries were usually able to understand a complex fraud case upon the completion of the trial'. Zander concluded that 'the report

powerfully supports the perhaps surprisingly unanimous view of all the trial judges that juries can cope even in long and complex cases'.

Who is to blame when the jury is out to lunch?

James Comyn QC once told the story of the Irish jury which acquitted the defendant against the clearest evidence pointing to his guilt. Out of curiosity, the judge asked them why. 'Insanity,' replied the foreman. 'What?' responded the judge, 'all 12 of you?' While this tale is probably apocryphal, there are a number of well-documented cases where juries have been less than thorough in arriving at their verdict. In a case at Newcastle-upon-Tyne, a juror had to be discharged by the judge after asking for the defendant's date of birth so that he could prepare an astrological chart to help decide the case. In Canada, a woman was convicted of obstructing justice by having a love affair with a man on trial for murder while she was serving on the jury that acquitted him.

In a case at Luton, the judge discharged the whole jury after a juror told the defendant from the jury box, 'Why don't you plead guilty? You are ****ing guilty'. At Northampton, another jury had to be discharged when a juror told the usher that the defence barrister was 'such a rude little man' that she wanted to hit him, and the same result was achieved at Exeter where two jurors complained to the judge that one of their colleagues had fleas!

Adapted from an article by D. Pannick, *The Times.*

Probably the oddest example of a jury using a forbidden method of determining the verdict arose in *R* v *Young* (1995), a murder trial, where, after a lengthy deliberation in court, the jury was sent to a hotel to continue its deliberation. While there, one of their number claimed to be a spiritualist who could communicate with the dead. She obtained a ouija board from room service and proceeded to hold a séance with the other jurors. During this séance, communication was allegedly made with the deceased victim who confirmed the guilt of the defendant. The jury then returned to court where a guilty verdict was delivered. Fortunately, rumours reached the defence counsel as to the manner in which the jury had arrived at its verdict and an appeal was duly lodged, which resulted in a retrial, at the end of which the new jury also convicted the defendant. Presumably, the judge ensured no ouija boards or any other spiritualist materials were allowed into the jury room. Who says there is no humour in the law?

Jury nobbling

Despite the introduction of majority verdicts in the Criminal Justice Act 1967, it is believed that nobbling remains a major weakness. Jury nobbling is an attempt made by means of threats or bribery to 'persuade' a juror to return a 'not guilty' verdict.

In 1982, several Old Bailey trials had to be stopped because of attempted nobbling. In 1984, jurors in the *Brinks-Mat* trial had to have police protection to and from the court, and their telephone calls were intercepted. Sir Ian Blair, the Metropolitan Police Commissioner, has stated that the cost to the police force of protecting juries runs to £4.5 million per year, which underlines the significance of the problem.

A new criminal offence was introduced in the **Criminal Procedure and Investigation Act 1996** to try to give additional protection to the jury, creating the offence of intimidating or threatening to harm a juror. More radically, in s.54 of that Act, it is provided that where a person has been acquitted and someone is later convicted of interfering with or intimidating jurors or witnesses in the case, then the High Court can quash the acquittal and the person can be retried.

Bias

Ingman suggests that jurors may be biased for or against certain groups — the police, for example. However, it could also be argued that such *individual* bias will be cancelled out in a group of 12 jurors.

Cost

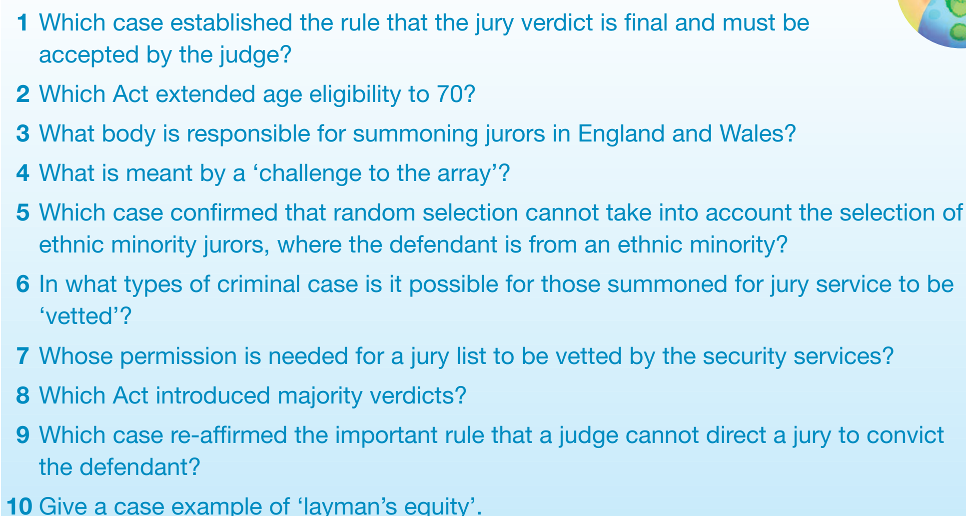
An argument against juries is that, compared to trials in Magistrates' Courts, jury trials in the Crown Court are much more expensive. However, by far the greatest cost elements in the Crown Court are the costs of lawyers, the judge and other court personnel. As most criminal trials last no more than 1 day, the maximum jury cost will be only £500. Nonetheless, there is some foundation for the cost argument in lengthy fraud trials, where much of the evidence will be in documentary form. If a judge was trying these cases alone, he or she could read these reports, but a jury has to hear such evidence from witnesses, which takes up a great deal of additional time.

Difficulties with appeals

When judges sit alone, their judgement consists of a detailed and explicit finding of fact. When there is a jury, it returns an unexplained verdict, as under s.8 of the **Contempt of Court Act 1981**, jury deliberations are secret. Sir Louis Blom-Cooper QC has argued that 'the universal, formulaic and therefore inscrutable verdict of the jury' must constitute 'an ever-present worry to the administrators of criminal justice'. Under the **Human Rights Act 1998**, people involved in trials have a right to know the grounds upon which a court decision is based. Where does this leave due process in trial by jury? Blom-Cooper concluded that 'the jury is the high point of amateurism, potentially a recipe for incompetence and bias'.

Evaluation

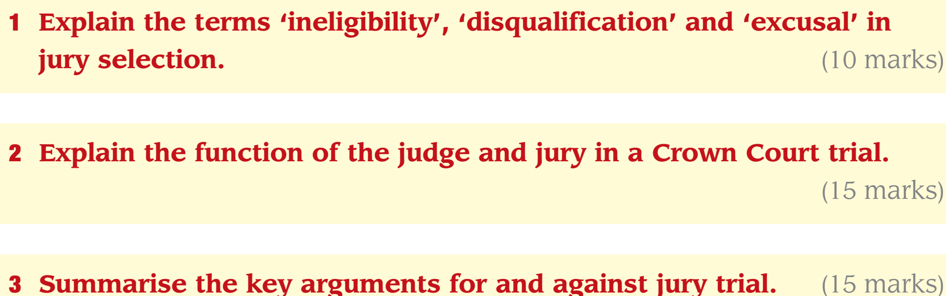
While recognising that there are disadvantages to juries, it has to be emphasised that these are generally *weaknesses* and *not arguments against* the use of juries. Another point which you should include in any evaluation of juries is that the only alternative to jury trial is a trial by judges alone. However unrepresentative juries may be, they are much more representative of society than judges ever can or will be. Equally, there should not be an assumption that because judges are legally qualified, they are far more likely to 'get it right'. Most criminal trials are exercises in 'fact-finding' rather than in 'law-finding', and all the evidence strongly suggests that juries are more effective at this than judges. As Lord Devlin once famously stated: 'The jury is more than an instrument of justice…it is the lamp that shows that freedom lives.'



Questions

1 Which case established the rule that the jury verdict is final and must be accepted by the judge?
2 Which Act extended age eligibility to 70?
3 What body is responsible for summoning jurors in England and Wales?
4 What is meant by a 'challenge to the array'?
5 Which case confirmed that random selection cannot take into account the selection of ethnic minority jurors, where the defendant is from an ethnic minority?
6 In what types of criminal case is it possible for those summoned for jury service to be 'vetted'?
7 Whose permission is needed for a jury list to be vetted by the security services?
8 Which Act introduced majority verdicts?
9 Which case re-affirmed the important rule that a judge cannot direct a jury to convict the defendant?
10 Give a case example of 'layman's equity'.

Sample exam questions



1 **Explain the terms 'ineligibility', 'disqualification' and 'excusal' in jury selection.** (10 marks)

2 **Explain the function of the judge and jury in a Crown Court trial.** (15 marks)

3 **Summarise the key arguments for and against jury trial.** (15 marks)

A common exam question requires candidates to explain the advantages and disadvantages of juries. Few answers in such questions receive top marks. The main weakness is that of simply listing these advantages or disadvantages with little explanatory material. Another is failing to cite relevant case and statutory authorities. Note that such questions are evaluative, rather then simply explanatory in content. This means they require a reasoned argument.

Suggested reading

Berlins, M. and Dyer, C. (2000) *The Law Machine* (5th edn) Penguin.
Dugdale, T. et al. (2002) '*A' Level Law*, Butterworth.
Gillespie, A. (2007) *The English Legal System*, Oxford University Press.
Ingman, T. (2006) *The English Legal Process*, Oxford University Press.
Mitchell, A. (2007) 'A light that never goes out', *A-Level Law Review*, Vol. 2, No. 3, pp. 2–5.