

Chapter 7

Juries

Extension exercise (p. 128)

- 1 The purpose of jury service is to provide juries that are representative. Society's confidence in jury trials would be undermined if that central principle could no longer be achieved. There is the additional problem that juries made up of 'housewives and the unemployed' could struggle to understand complex issues that arise in serious criminal trials. In turn, this would result in even more political pressure for such trials to be heard by judges alone.
- 2 Lawyers have specialist knowledge of trial procedures. For example, a lawyer sitting on a jury would understand why a defence lawyer did not seek to present evidence of the defendant's good character, because this would enable the prosecution to lead evidence of the defendant's previous convictions. Lawyers on juries would also understand why defence counsel applied for prosecution evidence to be struck out.

Similar claims were made by Romana Cannetti, an expert libel lawyer. Few libel cases each year are heard by a jury, and for her to be summoned to sit on such a jury would be unfair. Her experience of the system means that she is likely to know the defendant and the lawyers involved. This would inevitably result in her being able to have too much influence in jury deliberations at the trial.

- 3 This response should reflect the personal view of the student. However, it is worth bearing in mind the view of Lord Bingham, repeating the ancient saying that 'justice not only has to be done, it must be seen to be done'. Police officers and prosecution lawyers, by virtue of their respective jobs, cannot be seen as unbiased members of a jury in a criminal trial. That said, it is surely possible to provide for representative juries by preventing professional people being excused from jury service — the emphasis should be on deferral, not avoidance, of jury service.

Extension exercise (p. 133)

- 1 One juror complained 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.
- 2 The Court of Appeal refused permission for the appeal to be heard because under the Contempt of Court Act 1981, nobody, not even a judge, can enquire about what happened in the jury room.
- 3 In *Sander*, the ECHR overturned the Court of Appeal's decision because the original juror's note had raised the real fear of lack of impartiality, which was not dispelled by the judge's later direction to the jury. This therefore constituted a breach of s.6 of the European Convention on Human Rights — the right to a fair trial before an impartial court.

Questions (p. 140)

- 1 *Bushell's Case* established the rule that the jury verdict is final and must be accepted by the judge.
- 2 The Criminal Justice Act 1988 extended age eligibility to 70.
- 3 The Central Jury Summoning Bureau is responsible for summoning jurors in England and Wales.
- 4 A 'challenge to the array' is where either defence or prosecution counsel effectively seeks to have a new trial before a fresh jury, on the basis that a material irregularity has occurred in the jury selection process so that the jury has not been fairly chosen.
- 5 *R v Ford* (1989) confirmed that random selection cannot take into account the selection of ethnic minority jurors where the defendant is from an ethnic minority.
- 6 It is only possible for those summoned for jury service to be 'vetted' in cases involving national security, terrorism or serious organised crime.
- 7 The Attorney General's permission is needed for a jury list to be vetted by the security services.
- 8 The Criminal Justice Act 1967 introduced majority verdicts.
- 9 *R v Wang* reaffirmed the important rule that a judge cannot direct a jury to convict the defendant.
- 10 Case examples of 'layman's equity' include: *R v Ponting*, *R v Pottle and Randall*, *R v Owen* and *R v Kronlid*.

Sample exam questions (p. 140)

- 1 Ineligibility refers to the fact that some people, even if summoned, may not lawfully sit on a jury. Prior to the Criminal Justice Act 2003, there were many such categories of people — priests, lawyers, judges, police, magistrates and probation officers, and the mentally ill. Following the 2003 Act, only the mentally ill are ineligible for jury service.

Those persons disqualified from jury service comprise people on bail awaiting trial, as well as those who have been convicted of criminal offences for which a community or custodial sentence was imposed. Any offender sentenced to a custodial sentence over 5 years is permanently disqualified.

Excusal from jury service may be allowed for the following people: those with a poor command of the English language, nursing mothers and students sitting public examinations (e.g. A levels). However, increasingly jury service will be deferred rather than cancelled altogether.

- 2 The judge in a Crown Court trial deals with all legal issues, such as admissibility of certain evidence. When the case is completed and both prosecution and defence counsel have presented their closing arguments, the judge summarises for the jury all the evidence submitted in the trial. The judge then directs the jury on relevant legal rules and reminds the jurors that they can only return a guilty verdict if they are satisfied 'beyond reasonable doubt' as to the guilt of the defendant. In more complex and lengthy trials, judges often prepare a list of questions for the jury to consider, in order to assist its deliberations. If the jury convicts the defendant, it is the judge's responsibility to pronounce sentence.

The jury's role is to listen to the evidence given by both the prosecution and the defence. Jurors may make notes and ask witnesses questions through the judge. After all the evidence has been given and the judge has given legal directions, the jury retires to a private room where a foreperson is chosen to lead the deliberations. When the jury has reached its verdict, it returns to court where the foreperson will stand up and announce it, and whether it was a unanimous or a majority verdict.

- 3 The key argument in favour of juries is that they are representative. As jurors are randomly selected from the electoral register, juries allow the ordinary citizen to play a vital part in the administration of justice, which otherwise would be the exclusive preserve of lawyers and judges. It can also be argued that because most trials are 'fact-finding' exercises, juries are better at reaching decisions than a single judge would be. Finally, juries can exercise 'layman's' equity', reaching a decision on the basis of simple fairness rather than the law, as happened in both the *Owen* and *Ponting* cases.

Arguments against jury trial include the criticism that juries lack competence to understand legal issues, such as intention or 'reasonable doubt'. This criticism is particularly directed against the continued use of juries in complex fraud cases; Lord Roskill's Committee recommended that such cases should be tried by a judge, with expert assessors such as accountants or auditors. However, an enquiry into the collapse of the complex Jubilee Line case (*R v Rayment*) showed that the jury had a good grasp of the evidence.

Other criticisms are directed against the cost of jury trials, but this fails to recognise that most costs involve lawyers' fees and court costs. While 'jury nobbling' is another weakness, there is little evidence to suggest this is widespread. Overall, it can still be argued that our jury system is 'the lamp that shows freedom lives'.