

Law essays - modes of trial



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Modes Of Trial

If you were being prosecuted for a criminal offence, which of the following modes of trial would you prefer:

- Trial by lay magistrates;
- Trial by professional judge alone; or
- Trial by judge and jury.

When being prosecuted for a criminal offence, a large portion of the final outcome rests on what court tries the case due to the varying procedural and sentencing allowances attributed to each court. The Magistrates' Court is classically more informal, probably a reflection of the fact that it deals with 95% of all criminal cases, while the Crown Court, having greater sentencing power, trying by Judge and/or jury, suffers a far more formal procedural policy. In order to adequately determine which mode of trial a defendant would be best to choose, an examination of criminal procedure in the courts of the UK should follow. It should also be noted that the choice is not always available or always clear-cut. A lot of factors, especially the nature of the crime effect, the choice to be made. It is often a question of weighing up 'what-ifs'.

All criminal cases concerning persons over the age of 18, therefore legal adults, start in the Magistrates' Court, reached by either having a summons or complaint by laying of an information made against you, or following a charge at the police station. The Magistrates' Court is made up of either 3 lay magistrates known as justices, or a full-time District Judge (only in criminal matters) who sits alone. The court, when in session by the

magistrates, is assisted by a magistrates' clerk, one function of which is to assist the lay magistrates by advising on areas of law, as a lay magistrate is only able to judge on fact, knowing no law. A District Judge is a properly qualified solicitor or barrister who sits either as a full time or part time District Judge at the magistrates' court and is the tribunal of fact and law unlike the magistrates being ordinary members of the public (Murphy et al, 2005).

The nature of the offence determines the court in which the case is heard and thereby the mode of trial and other aspects of criminal proceedings such as sentencing and remand (i. e. bail). There are three possible classifications of offences, summary offence, indictable offence and either-way offences, the last being capable of either a summary conviction or an indictable conviction. When a case is heard in the Magistrates' Court, it is tried summarily and once a conviction is made, the conviction is a summary conviction, irrespective of whether or not the offence was an either-way offence. On the same note, when a case is heard in the Crown Court, the defendant is tried on indictment and convicted on indictment.

With an indictable offence, the defendant initially appears in the magistrates' court where the magistrates' determine if based on the facts, they are justified in sending the defendant to the Crown Court under s. 51 Crime and Disorder Act 1997. This decision is taken at the first hearing where the magistrates will also deal with the defendants remand status and whether funding needs to be arranged for the case (Sanders and Young, 2000).

If the offence is a summary only offence, and the defendant pleads guilty, then the magistrates go on to sentence on the same day or a on later date. This renders the process very expedient. If the defendant pleads not guilty then the matter is adjourned to a later date and a pre-trial review occurs to determine the date at which the summary trial will occur. Pleading guilty may go against common intuition in such instances, yet it may stand in the defendants benefit. A repeat offender may realize that he will not have a possibility of getting an acquittal and to quickly obtain judgment by lay magistrates who can only impose limited sentences would hold benefits over a judge who effectively has no limits on sentencing bar the statutory maximum for the crime. Further, lay magistrates are more personable and may consider aspects of the case that under law would not be an issue, such as the socio-economic background of the defendant, the familial situation and further factors which would cause a person to potential veer off track.

With a straight cut either-way offence, the Magistrates' Court or the Crown Court could deal with the defendant. The decision as to which court to elect is often made by considering the plea before venue (s. 17A Magistrates Court Act 1980) and following, the mode of trial (Murphy et al, 2005).

This all occurs at a rather early stage in the game, and often adjournment may be necessary to determine what kind of plea should be indicated. The defence will be awaiting Advance Information from the prosecution (Magistrates' Court Advance Information Rules 1985), usually consisting of a summary of the case, charge sheet or summons, copies of witness statements, previous convictions and/or transcripts of the defendants interview under caution. Advance Information is supplied in the case of all

either-way offences. It allows the defendant to know the case against them when considering their plea, as the plea will also dictate which court they are tried in and in effect what the maximum sentencing they receive will be.

There is no obligation on the prosecution to serve Advance Information with a summary only offence yet, common practice dictates that they do so in order to prevent any possible impact that Article 6 of the Human Rights Act 1999 may have on the case (Sanders and Young, 2000).

A mode of trial hearing is usually the most important part of the criminal proceeding for the defendant, bar of course the actual trial, as it has the greatest effect on which court the defendant will be tried in. The procedure for a mode of trial hearing is set out in s. 19 of the Magistrates Court Act 1980. The court shall listen to both arguments from the prosecution and defence as to which court would be more suitable and would show particular regard to four qualifying factors. The nature of the case and whether the circumstances make the offence one of a serious character. Whether the punishment that the Magistrates' Court could impose would be adequate for the offence committed and if there are any other circumstances which appear to the court to make it more suitable for the offence to be tried in one way as opposed to the other. This last factor remains rather vague and all encompassing and is supplemented by the National Mode of Trial Guidelines setting out to a more specific point what the court should consider. The guidelines consist of general observations and guidance specific to individual offences (Murphy et al, 2005). Overall, the guidelines recommend that a case should be tried summarily unless specific factors apply and the sentencing power of the Magistrates' Court is insufficient.

If the court opts at this point that a summary trial is more suitable, the defendant can elect to be tried summarily or by a jury yet is warned that if he is tried summarily and convicted, the defendant may be committed to the Crown Court if the magistrates' believe he requires a sentence which is larger than the punishment they are permitted to inflict. If the defendant elects a trial by jury at the Crown Court a committal proceeding follows.

An election for the Magistrates' Court may be a wise choice dependent on the nature of the offence. The magistrates have lower sentencing powers than a jury who is only limited by statute as to the sentence imposed for a particular offence. Magistrates' sentencing powers are reflected by the number and type of offences being tried for. One or more summary offences will result in a maximum of 6 months imprisonment. One either-way offence will generate a maximum of 6 months imprisonment as will one either-way offence plus one or more summary only offences. However, two or more either-way offences can result in a maximum of 12-months imprisonment (Hungerford-Welch, 2004).

The limits on the power of a Magistrates' Court are currently changing under s. 154 of the Criminal Justice Act 2003 (proposed implementation 2005/2006). Under s. 154 the Magistrates' Court will have the power to impose sentences of no more than 51 weeks for any one either-way offence and no more than 65 for more than one either-way offence. The Home Secretary can amend these limits to a maximum of 18 months and 24 respectively (Murphy et al, 2005).

If, at the mode of trial hearing in the Magistrates' Court, the court decides the trial should be done on indictment, the defendant is sent to the Crown Court for trial, and there is no choice to be made over the mode of trial (Sanders and Young, 2000).

If the defendant elects trial (at the mode of trial hearing) in the Crown Court, he will have to go through a committal proceeding as set out in s. 6 of the Magistrates Court Act 1980. This can occur in one of two ways, committal with consideration of evidence (s. 6(1) Magistrates Court Act 1980) where evidence against the defendant (written only) is considered and if insufficient the defendant is discharged. This however, does not equate to an acquittal and if new evidence comes to light, the defendant can be charged again. A committal without consideration of the evidence (s. 6(2) Magistrates Court Act 1980) is the second option and most commonly used, where all written and oral evidence is considered. The first version is only really used when the defence is convinced there is no case to answer (Murphy et al, 2005). This is another consideration the defendant will keep in mind when deciding by whom to be tried as being let off via a committal proceeding would be beneficial but the potential of a charge being brought again in light of new evidence is not.

Finally, the court has one last method to send the defendant to the Crown Court even if charged with summary offences. Under s. 41 of the Criminal Justice Act 1988, the magistrates have the limited power to commit the defendant to the Crown Court in respect of summary offences when the court is committing the defendant for trial for one or more offences triable either-way and he is also charged with a summary offence punishable with

imprisonment and/or disqualification from driving and the summary offences arise out of circumstances which appear to the court to be the same as or connected with the circumstances of the (or one of the) offences triable either-way (Murphy et al, 2005).

Examining the legal procedural system, it seems the case is not clear-cut as to which decision-maker should be chosen. Further examination of the nature of each body would often also be considered by the perpetrator.

Conceptually trial by jury may be favourable. The theory stands that a jury will consist of people similar to the defendant, the peers of the defendant and therefore will be able to apply the norms expected of that social group to the judgment. Further, a judge is often seen as a parental figure imposing the law so stringently that he often loses sight of the human element. With 12 voices coming together and debating on common grounds, the defendant may stand a fairer chance of coming away from the situation free. However, it is not often the case that a jury will be 12 individual voices. Richard Dawkins elucidated this point rather elegantly with a comparison to herring gulls. In his field of animal behaviour, a study was conducted by Niko Tinbergen concerning the colour preference of a herring gull. At birth, herring gull chicks peck at a red point on the yellow beak of their parents, which causes the parent to regurgitate any foods consumed that day. Tinbergen was curious to determine if the gulls were born with a pre-disposed colour preference to cause them to react to their environment as they did or if the behaviour was a learned one. Regardless of the results of this particular study, Dawkins points out that the interesting facet, with consideration to the jury structure in the UK, was the observation that when <https://assignbuster.com/law-essays-modes-of-trial/>

all the chicks were placed together in a pen and left to make a selection, the group would all choose the same colour. The statistical possibility of 12 individuals making the same selection out of a choice of two is one out of 1024 (Dawkins, 1997). In the same respect, a jury of 12, when left to deliberate together, can all be swayed to 'follow' the group decision which could effectively be made by one person. Someone who is strong enough to make a decision in a group with such vocality that it leads, will often be severely opinionated on an aspect of the case. This may cause the defendant to be fruitlessly swimming through a trial with little chance of 'fairness' being applied. The best scenario of course would be to segregate all 12 jurors into separate decision-making chambers and collate the choices made by all 12 but perhaps unintelligent jurors or those who merely do not care will be granted too much power.

A judge on the other hand has been educated in the law and is more or less free by holding virtual total discretion. The judge can pass any judgment he sees fit to pass limited only by statutory constraints imposed by the offence (and of course the desire to keep his job, much like the political restraints felt by parliament and their apparent sovereignty). The judge will have a standard against which to measure the case at hand built up through years of experience on the bench. The judge will be able to 'read' a trial and to be aware of small details which would illuminate innocence or guilt which a jury would potentially miss in their naïveté. If a defendant were innocent then a trial by judge would be the most desirable mode of trial. Especially with a case in which the offence was rather serious. The law is so formulated that a man is innocent until he is proven guilty beyond reasonable doubt. A judge

knows this and may stick more rigorously to the letter of the law than a jury would who could easily be swayed by prosecution gimmicks such as photos of the crime or statistics of the crime in their neighbourhood. If a defendant, however, were to be guilty of a crime then the choice of a trial by judge and jury may stand in favour of the defendant as the emotional ability of the jury could work in his favour.

Ultimately, the defendant's personal preference will be a consequence largely on the crime and whether or not it was committed by him, i. e. innocence versus guilt. A judge alone would be a desirable choice for the innocent offenders while a jury would be best for a guilty offender. If the option were available for a trial by lay magistrates, this would be ideal due to their restricted sentencing ability and the assurance that at worst a fine and a maximum 12-month retention would be the result (subject to the new legislation being not yet being implemented).

References:

Broadbridge, S. (2002). *The Criminal Justice Bill: Juries and Mode of Trial, Bill 8 of 2002-03*. House of Commons Library, London.

Dawkins, Richard (1997). *Three herring gull chicks the reason juries don't work*. The Observer 1997, London.

Hoyle, C. and Young, R. (2003) *Restorative Justice and Punishment* in S. McConville (ed.) *The Use of Punishment*, Willan Publishing, Devon.

Hungerford-Welch, P. (2004) *Criminal Litigation and Sentencing* (6th Edition). Cavendish Publishing, London.

Murphy, P., Murphy, E. and Stockdale, E. (2005) *Blackstone's Criminal Practice*. Oxford University Press, Oxford.

Sanders, A. and Young, R. (2000) *Criminal Justice (Second edition)*. London: Butterworths

Young, R. and Sanders, A. (2002) *From Suspect to Trial* in *The Oxford Handbook of Criminology 3rd ed.* (eds M Maguire, R Morgan and R Reiner), Oxford: OUP, pp. 1034-1075