

Practice questions for Chapter 2 – The administration of the law

Essay question

'The creation of a Supreme Court was an unnecessary and overly expensive reform. The Appellate Committee of the House of Lords was independent, effective, inexpensive, and was regarded as one of the finest courts in the world.'

Discuss the above statement.

- The Supreme Court came into operation on the 1st October 2009. Given it is such a topical reform, examiners are likely to set questions which, in some way, require you to discuss the advantages and disadvantages of replacing the Appellate Committee of the House of Lords with the Supreme Court.

Advantages of the reform

- You should discuss the advantages of abolishing the Appellate Committee of the House of Lords and replacing it with a Supreme Court.
- The first advantage relates to the doctrine of the separation of powers. Under this doctrine, the State is split into three branches, namely:
 1. The legislature, which consists of Parliament
 2. The executive, which consists of the government, and
 3. The judiciary, which consists of the judges.
- In order to avoid possible abuses deriving from a concentration of power, no person or body should occupy a role in more than one branch of the State. The problem was that the Lords of Appeal in Ordinary were members of the judiciary and, by virtue of their membership of the Upper Chamber of Parliament (the House of Lords), were also members of the legislature.
- Article 6 of the European Convention on Human Rights provides for the right to fair trial. It could be argued that having members of the judiciary who are also part of the legislature could jeopardize the right contained in Art 6, especially if a Lord of Appeal in Ordinary were to comment on a proposed piece of legislation that he might be subsequently required to adjudicate on once passed.
- Having an independent Supreme Court with Justices who are not part of any other branch of the State would secure adherence to the doctrine of separation of powers.
- The second advantage concerns facilities. The Lords of Appeal in Ordinary were housed in the Palace of Westminster – in other words, they share offices with MPs and did not have their own dedicated building (one Lord of Appeal in Ordinary did not even have his own room). The Supreme Court is housed within its own building (Middlesex Guildhall) which provides the Justices with the facilities that they need.
- The third advantage relates to the first. Over the years, the Lords of Appeal in Ordinary played an ever-decreasing role in legislative debates, but they did still occasionally participate. This can create the appearance of a lack of independence. For example, in 2001, only one Lord of Appeal in Ordinary spoke in a legislative debate. It was Lord Scott and the debate was on the issue of hunting. However, he is a master of foxhounds. Clearly, even if no actual conflict of interest exists, the appearance of a conflict exists.

- The fourth advantage relates to the increased jurisdiction of the Supreme Court. Prior to the 1st October 2009, the Appellate Committee of the House of Lords was the final appeal court in all cases, except cases relating to devolution – for such cases, the final court was the Judicial Committee of the Privy Council. This created the appearance of having two top courts. Now that the Supreme Court has assumed the devolution function of the Privy Council, it is clear which is the top court in the land in relation to domestic cases.

Disadvantages of the reform

- There are several reasons why it could be argued that the Appellate Committee of the House of Lords should have been retained, and that the creation of the Supreme Court has resulted in several disadvantages.
- The first disadvantage relates to the similarities between the Appellate Committee and the Supreme Court. When the structure and operation of the Supreme Court were being discussed, numerous innovative suggestions were proposed, virtually all of which were rejected. The result is that the Supreme Court will be virtually identical to the Appellate Committee.
- Ten of the twelve Lords of Appeal in Ordinary became 'Justices of the Supreme Court.' Although, as noted above, devolution will fall within the jurisdiction of the Supreme Court, in all other respects the jurisdiction and operation of the Supreme Court is exactly the same as the Appellate Committee.
- Given this, the majority of the Lords of Appeal in Ordinary argued that "the cost of the change would be wholly out of proportion to any benefit."¹ Lord Falconer has estimated the cost of the new system at £10.8 millions per year (he previously estimated it at £7 millions). Excluding salaries, running the Appellate Committee cost just £600,000 per year. The initial cost of setting up the new system has been estimated by the Secretary of State at £32 millions, although the Lord Chief Justice has indicated it may rise as high as £50 millions.
- The second reason concerns the independence of the Lords of Appeal in Ordinary. Proponents of the Supreme Court argue that the Appellate Committee was not independent as the Lords of Appeal in Ordinary were members of the legislature and the judiciary.
- However, the Lords of Appeal in Ordinary were fully aware of this criticism and had put in place mechanisms to ensure their independence, namely:
 1. The Lords of Appeal in Ordinary indicated that they would not interfere in areas of strong party political controversy.
 2. If a Lord of Appeal in Ordinary contributed to a legislative debate, he would not be able to sit on any cases concerning that legislation once it was passed (e.g. Lord Scott who, as noted above contributed to the debates leading to the Hunting Act 2004, was barred from sitting on any cases involving the Act). If the judge contributes to a debate, which is of no partisan significance, it could be argued that this does not create any greater lack of independence than if a judge contributed to a law reform commission.
- The third disadvantage concerns the speed with which the decision to abolish the Appellate Committee was made. Some argue that a course of action of this significance should have received much more due consideration.
- The consultation document that led to the Constitutional Reform Act 2005 indicated that the government had long-believed that the Appellate Committee should be replaced with a Supreme Court, but as recent as 2001, in a White Paper on House of Lords reform, the government stated that

¹ Views of Lords Nicholls, Hoffmann, Hope, Hutton, Millett and Rodger quoted in R Stevens, *Reform in Haste and Repent at Leisure: Lolanthe, the Lord High Executioner and Brave New World* (2004) *Legal Studies* 1, 30-1.

it was committed to maintaining judicial membership within the House of Lords, and that the expertise of the Lords of Appeal in Ordinary can be used outside their judicial functions.

- A change of mind in so short a space of time indicates that the issue may not have received the debate and discussion that it deserved. Certainly the manner of the announcement of the Appellate Committee's abolition was evidence of this. The decision to abolish the Appellate Committee was made without any consultation with the Lords of Appeal in Ordinary. Indeed, a consultation document was only published after the decision to abolish the Appellate Committee was made.

Essay question

'The historic decline of trial by jury is to be welcomed. Trial by jury serves no useful function and should therefore be abolished.'

Discuss.

Introduction

- The introduction should state that the objective of the essay is to subject the jury system to critical analysis by considering its strengths and weaknesses. You should continue by stating that the essay will also discuss suggested reforms of the jury system to determine whether any such reforms would improve the system as it currently operates. The essay will conclude with a recommendation as to whether the current system should be retained, reformed or abolished. End the introduction with a statement that the essay will first provide a brief account of the development of the jury system and how the system currently operates.

Development of the jury and its current operation

- Explain that the origin of the jury system lies in the concept of a right to be tried by one's peers. *Bushell's Case*² should be referred to as this established the modern role of the jury as the sole judges of fact.
- Outline the main provisions of the Juries Act 1974 (as amended by the Criminal Justice Act 2003) to explain who is eligible to sit on a jury and how jury selection should be random – the case of *R v Ford*³ should also be mentioned.
- The answer may make brief reference to jury vetting and the challenging of jurors but would not go into detail on these issues as the focal point of the essay must be the advantages and disadvantages of the current system.

Advantages

- Advantages of a system of trial by jury includes:
 1. The value of public participation, public confidence and the jury acting as an indicator of public feeling. Case law examples should be provided (*e.g. R v Ponting*).⁴ Both Lords Denning and Devlin have spoken extra-judicially about the value of the jury system.

² (1670) Vaugh 135.

³ [1989] QB 868 (CA).

⁴ [1985] Crim LR 318.

2. Juries provide certainty, inasmuch as they either convict or acquit – they do not reveal the reasoning behind their decision.
3. Juries have a higher acquittal rate (depending on your viewpoint, this may be regarded as a disadvantage).
4. Juries can act on their conscience (again, depending on your viewpoint, this may also be regarded as a disadvantage – see later).
5. Juries can be used as a counterbalance to improper or politically motivated prosecutions. Again, the case of *R v Ponting* would be a good example.

Disadvantages

- In discussing possible disadvantages, students may mention:
 1. It is arguable that juries lack the competence to fulfil the role. Students should cite the work of the Roskill Committee.
 2. Juries often make decisions that are clearly counter to the law (this is known as the 'perverse verdicts' problem). This should be backed up with several case law examples (*e.g. R v Owen*,⁵ *R v Kronlid*).
 3. Juries may display bias. Students may refer to appropriate case law (*e.g. Sutcliffe v Pressdram Ltd*).⁶
 4. Cost – the jury system (£7,400 per day) is significantly more expensive than decision by judge alone (£1,000 per day).
 5. Ethnic groups tend to be underrepresented on juries. The case of *R v Bansa*⁷ is worth mentioning.
 6. The jury system can be manipulated by defendants.
 7. Jury tampering.
 8. That juries are not required to state the reasoning behind their decisions could be a cause for concern.
 9. Jury service can have a negative effect on jury members (*e.g.* certain types of case, notably cases involving violence or abuse, may be distressing for juries to decide).

Reform

- Possible discussions relating to reform may include:
 1. Should pre-emptory challenges be introduced to make juries more representative?
 2. Should jury trial be abolished for complex fraud cases?
 3. Should the jury be abolished completely? Given the question makes this contention, students should discuss this. The declining role of jury trial should be emphasised here – juries decide only 1% of criminal cases and a tiny minority of civil cases.
 4. Current Government proposals to further restrict jury trial should be discussed.
- The work of the Auld Report should be mentioned at some point.

⁵ *The Times*, 12th December 1991.

⁶ [1991] 1 QB 153 (CA).

⁷ [1999] Crim LR 484 (CA).

Conclusion

- The conclusion should reflect the essence of your discussion of advantages, disadvantages and possible reforms. There is no 'correct' conclusion as there are many and varied opinions on the value of the jury system.
- Students may conclude:
 1. Jury trial serves a useful public function and should be retained
 2. The jury trial is useful but is in need of significant reform
 3. The jury trial serves no useful function and should be abolished
 4. Jury trial should remain but its usage should be restricted.
- Thus what is important is not so much what conclusion the student reaches but that the conclusion is a logical reflection of what is stated and argued in the main body of the essay.

Problem question

Answer the following:

- Tom has been arrested and charged with the suspected murder of his wife Helen. In which court will Tom's case be heard and what type of judge is likely to hear the case? If Tom is convicted, to what court could he appeal the decision?
- Pablo has been convicted of theft in a magistrates' court, but he feels that the magistrates have made a mistake regarding the law. What options does Pablo have?
- Ross has been charged with theft. In what courts could his case be heard and who would determine his guilt or innocence?
- Patrick dies and leaves his entire estate (worth £25,000) to his wife, Jennifer. Jennifer is 35 years younger than Patrick and has only been married to him for three months at the time of his death. Patrick's daughter, Charlotte, is not left anything under the will. Charlotte contests the will. In what court will this case be heard?
- MediTech Ltd has alleged that BioCom Ltd has breached a term of a contract between them. MediTech is seeking £11,000 damages. The case is extremely complex and any trial is expected to last three days. To what track will this case likely be allocated and in what court will it likely be heard?
- *The News of the Day* has published a story about Mike, a prominent MP, in which it alleges that he took a bribe in order to ask a question during Prime Minister's question time. Mike denies this allegation and is determined to take legal action. In what area of the law will Mike's action be based, in what court will his case be heard and who is likely to determine whether or not his case will succeed? If Mike's claim failed, to what court(s) could he appeal?

Tom has been arrested and charged with the suspected murder of his wife Helen. In which court will Tom's case be heard, what type of judge is likely to hear the case and who will determine Tom's guilt or innocence? If Tom is convicted, to what court could he appeal the decision?

- Murder is an offence that is triable on indictment only, so Tom's trial will take place in the Crown Court in front of a judge and jury (unless Tom pleads guilty in which case, no jury will be convened and all that will be required is for the judge to pass sentence). As murder is a Class 1 offence, it will almost certainly be heard by a High Court judge, but it could instead be heard by a circuit judge who has been authorized to hear Class 1 cases.

- If Tom is convicted and he wishes to appeal the Crown Court's conviction, he can appeal to the Criminal Division of the Court of Appeal. Tom will require permission to appeal, either from the trial judge, or from the Court of Appeal itself. However, the Court of Appeal has stated that permission to appeal should only be granted by the trial judge in exceptional circumstances.

Pablo has been convicted of theft in a magistrates' court, but he feels that the magistrates have made a mistake regarding the law. What options does Pablo have?

- Normally, a person convicted in a magistrates' court would appeal his conviction to the Crown Court. Indeed, Pablo has this option should he choose to exercise it (although if his appeal is dismissed, he could actually receive a harsher sentence than that originally imposed by the magistrates). However, in cases where either the prosecution or the defendant feels that the magistrates have exceeded their jurisdiction or erred in law, then another avenue of appeal is open to them, namely an 'appeal by way of case stated' to the Divisional Court of the Queen's Bench Division of the High Court.

Ross has been charged with theft. In what courts could his case be heard and who would determine his guilt or innocence, and, if found guilty, who would determine his punishment?

- The basic crime of theft is an either way offence, meaning that, depending on the seriousness of the alleged theft, the case could be tried summarily in a magistrates' court, or on indictment in the Crown Court.
- In a magistrates' court, Ross' guilt or innocence would be determined by the magistrates, as would his sentence if he were to be found guilty. In the Crown Court, Ross' guilt would be determined by the jury, and his sentence would be determined by the judge. However, if Ross pleads guilty, no jury would be required and all that would be required is for the judge to impose a sentence.

Patrick dies and, under his will, he leaves his entire estate (worth £25,000) to his wife, Jennifer. Jennifer is 35 years younger than Patrick and has only been married to him for three months at the time of his death. Patrick's daughter, Charlotte, is not left anything under the will. Charlotte contests the will. In what court will this case be heard?

- This is a civil case, and the two main first-instance civil courts are the county courts and the High Court (although magistrates' courts do have a small first-instance jurisdiction). Cases involving wills (known as the law of probate) can be heard in either a county court or the High Court, depending on the amount involved. Where a person is contesting the content of a will (known as contentious probate) and the value of the estate involved is less than £30,000, then the case will be heard in a county court.

MediTech Ltd has alleged that BioCom Ltd has breached a term of a contract between them. MediTech is seeking £11,000 damages. The case is extremely complex and any trial is expected to last three days. To what track will this case likely be allocated and in what court will it likely be heard?

- Breach of contract is a civil wrong, so the case is likely to be heard at first instance in either a county court or the High Court. Normally, a claim for over £5,000, but less than £25,000 would be allocated to the fast track and would normally be heard in a county court. However, where the trial is expected to last longer than a day, or where substantial amounts of oral evidence is likely to be presented, then the case is more likely to be allocated to the multi-track and would normally be heard in the High Court.

***The News of the Day* has published a story about Mike, a prominent MP, in which it alleges that he took a bribe in return for asking a question during Prime Minister's question time. Mike denies this allegation and is determined to take legal action. In what area of the law will Mike's action be based, in what court will his case be heard and who is likely to determine whether or not his case will succeed? If Mike's claim failed, to what court(s) could he appeal?**

- Mike will bring an action under the tort of defamation, specifically libel (as the allegedly defamatory statement was published in a permanent form). Actions for libel (and slander) must be heard in the High Court – country courts do not have jurisdiction to hear defamation cases.
- Accordingly, a judge will normally determine whether or not Mike's case will succeed, but a qualified right to jury trial exists in relation to defamation proceedings, providing that the case will not involve a prolonged examination of documents.
- Should Mike's action fail, then he could appeal the decision of the High Court to the Civil Division of the Court of Appeal. There is a procedure known as the 'leapfrog' procedure, which could allow Mike to appeal directly to the Supreme Court, providing that certain conditions are met.