

STAGE 2 LEGAL STUDIES
ASSESSMENT TYPE 2: INQUIRY
STUDENT RESPONSE
(C STANDARD)

Should the jury system be abolished due to problems encountered in cases?

Juries are an important aspect in the judiciary system as people feel the decision of a sanction is better left in the hands of the public. Although with this being a popular method of decision, Australian citizens have the right to have their trial by jury if it's for a Federal indictable offence, this is shown within Section 80 of the Constitution¹.

The juries originated from common law and then were transformed into statute law and then were finally included into the Australia constitution in section 80¹. The right to trial by jury is applied for state law in the Juries Act². A jury consists of 12 randomly selected Australian citizens that have been randomly selected from the electorate roll. The task that the jury is required to perform is to gather together a verdict of whether the accused is guilty or not³. To be qualified to be on a jury you must be under the age of 70 and not have served more than two years imprisonment among many other aspects which a juror could be disqualified for⁴. These disqualifications come from the *South Australian Juries Act 1927*, this act also spells out all that is needed to be known about juries and how they work³.

There are many arguments for the Jury system as it works well in today's society and has for a long time. The Australian public have the right to trial by jury as it states in the constitution section 80, "The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes."⁵ With this right Australian citizens are able to ask for a trial by jury for federal indictable offences. If the jury system was to be abolished they would be taking away a right of Australian citizens. The twelve jurors are selected at random and are likely to represent community views and values in a way that a single judge doesn't and the community participation in the administration of criminal justice, by way of jury service, promotes an understanding of the system and confidence in it in a way that no other system does⁶. These are two features that are benefits given by the jury system. With Queensland's proposal to remove juries from trials involving bribery, disclosure of official secrets or criminal defamation it has brought many arguments to the table⁷. As a result of

¹ http://www.law.qut.edu.au/ljj/editions/v6n1/pdf/5_Gray.pdf
Constitution of Australia Act 1901 (Commonwealth of Australia).

² <http://www.legislation.sa.gov.au/LZ/C/A/JURIES%20ACT%201927/CURRENT/1927.1805.UN.PDF>
Juries Act 1927 (South Australia)

³ <http://www.lawhandbook.sa.gov.au/ch11s03s06s01.php>
Role of the judge and jury Fri Oct 23rd 2009, Legal Services Commission of South Australia, accessed 9 August 2011,

⁴ <http://www.legislation.sa.gov.au/LZ/C/A/JURIES%20ACT%201927/CURRENT/1927.1805.UN.PDF>
Juries Act 1927 (South Australia)

⁵ <http://www.aph.gov.au/senate/general/constitution/chapter3.htm>
Gray, A n.d., *MOCKERY AND THE RIGHT TO TRIAL BY JURY*, accessed 9 August 2011,

⁶ <http://www.aph.gov.au/library/pubs/rp/1996-97/97rp11.htm#HISTORY>
Fricke, G 27 September 2001, *Trial by Jury*, Parliament of Australia, accessed 16 August 2011

⁷ <http://www.abc.net.au/news/2010-02-10/lawyers-defend-trial-by-jury-as-fundamental-right/326852>
Lawyers defend trial-by-jury as 'fundamental right' February 10, 2010 19:02:00, ABC News, accessed 16 August 2011,

this proposal the Queensland Law Society state that removing juries from these trials would be a loss of a fundamental right⁷. The president of the Queensland Law Society thinks that the decision for this draft bill is a wrong turn as he said "We would have thought a robust review of the Moynihan report ought to have occurred before the draft bill was put in place"⁷.

ARGUMENTS AGAINST THE JURY SYSTEM

Even though the Jury System has many positives it also has negative aspects to it. As both representing sides in a court case are able to get rid of certain jurors to make sure that the decision is not bias towards the decision of the defendant's guilt, this process is called Voir dire⁸. There have been many cases where a juror has been bias in their decision. This is shown in its best form when a case in America (Spencer v. Georgia) a juror was reported stating that he would have voted on death row for the defendant because he was African American⁹. This is just one of the many cases that jurors have based decision on racist thoughts, such as these cases (Williams v. Price, United States v. Rouse and United States v. Heller)⁹.

reference to Australia not clear.

The media also affects the jurors as they are still open to read newspapers and watch the news. In the case United States v. Chandhadara, the jury read an article that featured judge's comment that the theory of the defence was bogus. This obviously then affected the jurors as if the judge was to say comments such as this they would then swing towards that decision although in the end there was one bias juror removed in an attempt to remove the bias on the jurors death penalty views¹⁰. There are many other cases of this sort, (Mattox v. United States, Nevers v. Killinger, and United States v. Martinez)¹⁰. Melbourne criminal barrister Phillip Dunn feels that all the crime TV shows that are on these days are affecting the juror's thoughts as they think that they can solve it themselves when it's not up to them¹¹. Dun also believes that boredom plays a part in jurors doing puzzles instead of listening to court proceedings¹¹.

A lack of knowledge of the role that a jury plays in a case is another affect that can influence the jurors decision. An anonymous Australian citizen that has served on a jury for a criminal case reported that some of the jurors on her case didn't fully understand the role that they to fill¹¹. The anonymous citizen also said "Some people were more interested in grandstanding than just looking at the evidence."¹¹

In conclusion to the question of whether the jury system should be abolished I have the answer and how it should be approached. If the government was to abolish the jury system they would be removing one of the rights that every Australia citizen is entitled to. The correct procedure to abolishing the jury system would be to have a referendum which would change the constitution to remove section giving the right to trial by jury. This would be a lengthy process and would cost a lot of money and if it wasn't in the supply bill it wouldn't be able to be paid for. This shows that the jury system should not be abolished as it is would take an extensive amount of work to effectively remove it. As an ultimatum the jury system could crack down on jury selection then erasing the problem of incompetent jurors so then cases would get a straight verdict with no jury problems.

⁸ <http://askville.amazon.com/jurors-selected-jury-duty/AnswerViewer.do?requestId=6097104>

⁹ http://www.capdefnet.org/hat/contents/constitutional_issues/jury_misconduct/SLEEPING%20JURORS.pdf 'UNQUALIFIED/MISBEHAVING/BIASED JURORS' 2010, accessed 12 August 2011

¹⁰ <http://ca10.washburnlaw.edu/cases/2000/11/97-3229.htm>

Plaintiff-Appellate, v. BOUNTAEM CHANTHADARA

¹¹ <http://www.theaustralian.com.au/business/legal-affairs/jury-room-saboteurs/story-e6frg97x-1111117575135> Rout, M 2008, 'Jury room saboteurs', *The Australian*, September 2008, accessed August 12 2011,

Bibliography

Constitution of Australia Act 1901 (Commonwealth of Australia).

Fricke, G 27 September 2001, *Trial by Jury*, Parliament of Australia, accessed 16 August 2011, <<http://www.aph.gov.au/library/pubs/rp/1996-97/97rp11.htm#HISTORY>>.

Gray, *MOCKERY AND THE RIGHT TO TRIAL BY JURY*, , accessed 9 August 2011, http://www.law.qut.edu.au/ljj/editions/v6n1/pdf/5_Gray.pdf.

Juries Act 1927 (South Australia)

Lawyers defend trial-by-jury as 'fundamental right' February 10, 2010 19:02:00, ABC News, accessed 16 August 2011, <<http://www.abc.net.au/news/2010-02-10/lawyers-defend-trial-by-jury-as-fundamental-right/326852>>.

Role of the judge and jury Fri Oct 23rd 2009, Legal Services Commission of South Australia, accessed 9 August 2011, <<http://www.lawhandbook.sa.gov.au/ch11s03s06s01.php>>.

Spencer v. Georgia (1991)

United States v. Henley (2001)

United States v. Rouse (1996)

United States v. Chandhadara (1994)

Williams v. Price, (2001)

} Source ?

Rout, M 2008, 'Jury room saboteurs ', *The Australian*, September 2008, accessed August 12 2011, <<http://www.theaustralian.com.au/business/legal-affairs/jury-room-saboteurs/story-e6frg97x-1111117575135>>.

Additional Comments

Assessment Type 2: Inquiry (C)

Knowledge and Understanding:

- Appropriate understanding of sources of law regarding juries.
- Some good points showing knowledge and understanding of the legal principles.
- Some recognition for groups pushing for change but superficial.

Inquiry:

- Appropriate sources generally used, although focus on US cases is a limitation. A good range of sources: articles, specific cases, Acts and legal publications.
- Some attempt to critique the process and some comments and recommendations. Some aspects done well, others inadequate.

Evaluation:

- Some attempt to evaluate the issues shaping arguments: role of race, television, reports and cases discussed but superficial.
- Considered evaluation of principles in relation to rights and changes of the law.
- Some attempts to present both sides of the argument and development of conclusion.

Communication:

- Accurate and coherent communication of different opinions and informed observations.
- Use of legal terminology is appropriate showing a competent understanding.
- Sources acknowledge appropriate footnotes; bibliography is good in parts but some sources are not adequate.
- Overall a satisfactory C standard, particularly showing adequate inquiry and communication.
- Evaluation and some aspects of knowledge could have been stronger.

Performance Standards for Stage 2 Legal Studies

	Knowledge and Understanding	Inquiry	Analysis and Evaluation	Communication
A	<p>Comprehensive knowledge and perceptive understanding of relevant influences on the Australian legal system.</p> <p>Comprehensive knowledge and astute understanding of legal principles, processes, and structures.</p> <p>Perceptive recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Astute and critical location, selection, documentation, and application of relevant sources.</p> <p>Incisive critique of legal processes and structures, with well-informed and well-considered recommendations for change.</p>	<p>Comprehensive analysis of the Australian legal, constitutional, and justice systems.</p> <p>Perceptive analysis of principles, processes, and structures in legal systems.</p> <p>Perceptive evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach an informed conclusion.</p>	<p>Consistently accurate and coherent communication of highly informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and astute use of legal terminology, indicating in-depth understanding.</p> <p>Consistent and appropriate acknowledgment of a diverse range of sources.</p>
B	<p>Detailed knowledge and well-considered understanding of relevant influences on the Australian legal system.</p> <p>Detailed knowledge and well-considered understanding of legal principles, processes, and structures.</p> <p>Thoughtful recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Considered and critical location, selection, documentation, and application of relevant sources.</p> <p>Convincing critique of legal processes and structures, with informed and considered recommendations for change.</p>	<p>Detailed analysis of the Australian legal, constitutional, and justice systems.</p> <p>Well-considered analysis of principles, processes, and structures in legal systems.</p> <p>Thoughtful evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach an informed conclusion.</p>	<p>Mostly accurate and coherent communication of well-informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and well-considered use of legal terminology, indicating some depth in understanding.</p> <p>Mostly consistent and appropriate acknowledgment of a range of sources.</p>
C	<p>Appropriate knowledge and considered understanding of relevant influences on the Australian legal system.</p> <p>Appropriate knowledge and considered understanding of legal principles, processes, and structures.</p> <p>Considered recognition and understanding of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Considered location, selection, documentation, and application of relevant sources.</p> <p>Competent critique of legal processes and structures, with some informed and considered recommendations for change.</p>	<p>Informed analysis of the Australian legal, constitutional, and justice systems.</p> <p>Considered analysis of principles, processes, and structures in legal systems.</p> <p>Considered evaluation of legal issues or concepts through discussion and illustration of opposing arguments to reach a conclusion.</p>	<p>Generally accurate and coherent communication of informed observations and opinions on contemporary legal issues and debates, using different forms.</p> <p>Appropriate and considered use of legal terminology, indicating competent understanding.</p> <p>Mostly appropriate acknowledgment of sources.</p>
D	<p>Some recognition and awareness of one or more influences on the Australian legal system.</p> <p>Some awareness of legal principles, processes, or structures.</p> <p>Some recognition of ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Some thought given to the location, selection, documentation, and/or application of sources.</p> <p>Basic consideration of some legal processes and structures, with simple recommendations for change.</p>	<p>Some consideration of analysis of the Australian legal, constitutional, and justice systems.</p> <p>Superficial consideration of principles, processes, and structures in legal systems.</p> <p>Some consideration of legal issues or concepts through discussion and description of some arguments.</p>	<p>Some accuracy in communication of basic observations or opinions on contemporary legal issues or debates, in one or more forms.</p> <p>Some use of legal terminology, indicating awareness of the need for appropriate use.</p> <p>Some inconsistent acknowledgment of sources.</p>
E	<p>Limited awareness of influences on the Australian legal system.</p> <p>Limited awareness of any legal principles, processes, or structures.</p> <p>Emerging awareness of one or more ways in which the Australian legal system responds to diverse groups in the community.</p>	<p>Attempted location, selection, documentation, or application of sources that may be relevant.</p> <p>Limited awareness of legal processes or structures.</p>	<p>Brief description of an aspect of analysis of the Australian legal, constitutional, and justice systems.</p> <p>Brief description of one or more principles, structures, or processes in legal systems.</p> <p>Limited consideration of a legal issue or concept through observation of a discussion.</p>	<p>Limited accuracy in communication through a selected form, with few observations or opinions on contemporary legal issues.</p> <p>Restricted use of legal terminology, indicating limited awareness of the need for appropriate use.</p> <p>Limited acknowledgment of sources.</p>