Introduction

A jury trial is a trial where a judge or judges are supplemented by a jury, made up of citizens who are usually randomly selected and are generally not justice professionals. Juries are most commonly associated with common law jurisdictions. However some civil law jurisdictions also involve juries or lay assessors.

History of Jury Trials

One of the most influential clauses of Magna Carta, signed by King John in 1215, was Article 39, according to which:

*No free man shall be arrested, or imprisoned, or deprived of his property, or outlawed, or exiled, or in any way destroyed, nor shall we go against him or send against him, unless by legal judgement of his peers, or by the law of the land.*

The Role of Jury Trials

In most common law jurisdictions, the jury is responsible for finding the facts of the case, while the judge determines the law. These "peers of the accused" are responsible for listening to a dispute, evaluating the evidence presented, deciding on the facts, and making a decision in accordance with the rules of law and their jury instructions. Typically, the jury only judges guilt or innocence, but the actual penalty is set by the judge.

In France and countries organized in the same fashion, the jury and several professional judges sit together to determine guilt first. Then, if guilt was determined, they decide the appropriate penalty.
Some jurisdictions with jury trials allow the defendant to waive their right to a jury trial, this leading to a \textit{bench trial}. Jury trials tend to occur only when a crime is considered serious. In some jurisdictions, such as France and \textit{Brazil}, jury trials are reserved, and compulsory, for the most severe crimes and are not available for civil cases. In \textit{Brazil}, for example, trials by jury are applied in cases of First and Second-degree murders, even if only attempted. In others, such as the \textit{United Kingdom}, jury trials are only available for criminal cases and very specific civil cases. In the \textit{United States}, jury trials are available in both civil and criminal cases.

\textbf{Pros and Cons}

In countries where jury trials are common, they are often seen as an important check against state power. Many also believe that a jury is likely a more sympathetic hearing, or a fairer one, to the defendant than representatives of the state would.

This last point may be disputed. For example, in highly emotional cases, such as child rape, the jury may be tempted to convict based on personal feelings rather than on conviction behind reasonable doubt. Former attorney, then later \textit{minister of Justice Robert Badinter} remarked about jury trials in France that they were like riding a ship into a storm, because they are much less predictable than bench trials.

Another issue with jury trials is the potential for jurors to be swayed by prejudice, including racial considerations. An infamous case was the 1992 trial in the \textit{Rodney King} case in \textit{California}, in which white police officers were acquitted of violently beating a black man by a jury consisting mostly of whites without any black jurors, despite an incriminating videotape of the action, which showed Mr. King's attacks against the police officers omitted from the media's public broadcasts of said videotape. This led to widespread questioning about the case and \textit{riots ensued}.

The positive belief about jury trials in the UK and the US contrasts with popular belief in many other nations, in which it is considered bizarre and risky for a person's fate to be put into the hands of untrained laymen.
Consider *Japan*, for instance, which used to have optional jury trials for capital or other serious crimes between 1928 and 1943. The defendant could freely choose whether to have a jury or trial by judges, and the decisions of the jury were non-binding. During the Tōjō-regime this was suspended, arguably due to the popular belief that any defendant who risks his fate on the opinions of untrained laymen is almost certainly guilty.

**The Jury System in the United States**

In the United States every person accused of a felony has a constitutional right to a trial by jury, which arises from the 6th amendment that states in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed..." Most states' constitutions also grant the right of trial by jury in lesser criminal matters, though most have abrogated that right in offenses punishable by fine only.

A jury trial starts with the arrest or formal accusation of the *defendant* when the *prosecutor* (who represents the government) files an *indictment* or an information. The *defendant* is brought before the *judge* and informed of the charges against him, and usually informed of other rights including the right to counsel from an attorney. After that there is usually a period of preparation for both parties, during which there may be negotiations for a *plea bargain*, *pleadings* may be filed or motions made, and any other actions considered preparatory.

On the day of trial the court (or clerk of the court) convenes a panel of members of the public from whom a *jury* will be selected. Both sides are asked if they are "ready," (a technical term), and if answered in the affirmative the court proceeds to *voir dire*. During *voir dire* the judge and/or attorneys involved may question the potential *jurors* to varying degrees depending on the jurisdiction. At the conclusion of the questioning (or sometimes during in certain jurisdictions) the attorneys may request that certain members of the panel not sit on the jury through a *peremptory strike* or a "*strike for cause."

After the strikes the court impanels the jury
by administering an oath. In most jurisdictions the jury consists of 12 jurors (and perhaps one or more alternates) for a felony trial, and six jurors for a misdemeanor trial. The judge will then permit the prosecution and defense to make opening statements.

The prosecutor (except in very rare circumstances) then begins to present their case. Prosecutors go first because they have the burden of proving beyond a reasonable doubt that the defendant committed the crime of which they have been accused. The prosecutor may present evidence as simple as one person's testimony, up to and as complicated as months of scientific evidence and expert testimony. Any evidence must be in accordance with the rules of evidence, and all disputes are handled through objections by the opposing party and rulings by the judge. At the completion of the presentation of this evidence, the prosecutor "rests".

The defendant is then permitted to present evidence in the same manner and form as the prosecutor, but is not required to do anything as the burden of proof rests solely on the prosecutor. The defense will then rest. There may then be a rebuttal by the prosecution (if reserved), and sometimes a rebuttal by the defense.

When both parties have rested, the court will direct them to begin closing statements (also called "summation" in some jurisdictions). The prosecutor goes first, followed by the defense, and then the prosecutor is permitted to speak again. Once again, this is because the prosecution bears the sole burden of proving that the defendant committed the crime, and because of that is allowed to speak first and last.

The jury will then be instructed on the law by the judge in the form of a jury instruction and/or charge. The jury will then be directed to a private room where they will select a foreperson and decide whether the defendant committed the acts of which he was accused. Upon making a determination they will inform the bailiff, who will inform the judge.

All parties will be recalled to the courtroom, where the judge will ask the jurors if they have reached a verdict. If they answer in the affirmative the verdict will be read by the judge or clerk or foreperson (depending on jurisdiction). If the verdict is not guilty the defendant will be released (for
that charge). If the verdict is guilty the defendant will be sentenced.

In capital cases and other criminal cases (depending on jurisdiction) the jury may be held to determine the sentence for a crime. What follows is a mini-trial or hearing in which the prosecution and defense may present evidence of mitigation and aggravation of the crime, and then have a sentence imposed.

### The Jury System in Japan

On May 28, 2004, the Diet of Japan passed a law requiring selected citizens to participate as jurors in trials for certain severe crimes. Citizens chosen for such service, called “saiban-in” (裁判員; "lay judge"), are randomly selected out of the electoral register and, together with professional judges, decide issues regarding both guilt and sentencing. In most cases, the judicial panel is composed of six saiban-in and three professional judges. In cases where there is no substantial dispute over guilt, the panel is composed of four saiban-in and one professional judge. Unlike under the older jury system, the defendants are not allowed to waive trial by saiban-in. The saiban-in system was implemented in May 2009.

In many respects, the new system is very different from a common law jury system. It is not a (lay) jury of an adversarial system of common law, but one that involves a (lay) "judge" found in inquisitorial systems of civil law countries, such as those in continental Europe and Latin America. In a common law adversarial system, the judge acts as a referee over the contest between the defense attorney and the prosecutor, in which the two sides present the facts of their case to the panel of jurors; the judge in this system is mainly the referee of court procedure and decides only the applicable law. In the civil law inquisitorial system, the entire panel of judges conduct a public investigation of the crime at the trial, and pass the verdict and sentence those found guilty. For this reason, each member of the panel can initiate the examination of evidence and witnesses, and by a majority
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(including at least one professional judge, as explained below) can pass a guilty verdict and impose a penalty. Lay judges roles are nevertheless constrained; notably, legal interpretations and determinations remain with the professional judges. Unlike the Anglo-American rule for criminal jury trials, both convictions and acquittals remain subject to appeal by the prosecution.

The Japanese system is apparently unique in that the panel consists of six lay judges, chosen randomly from the public, together with three professional judges, who come together for a single trial (like a Anglo-American jury) but serve as lay judges. As with any jury or lay judge system, it places a large amount of judicial power on randomly chosen members of the public with the aim of democratizing the judicial process. In this, Japan's law states its purpose explicitly as seeking “the promotion of the public’s understanding of the judicial system and . . . their confidence in it.”

A guilty verdict requires a numerical majority of nine judges that includes at least one professional judge. Accordingly, the three professional judges as a collective have a de facto veto on any conviction that would be delivered by the lay judges. The Ministry of Justice specifically avoided using the term "jury" (Baishin-in) and use the term "lay judge" (Saiban-in) instead. Therefore, the current system is categorically not a jury system though this misunderstanding persists in common law countries due to lack of understanding of civil law criminal procedure.