Lesson Seven

The Criminal Courts and Lay People

Aims

The aims of this lesson are to enable you to

- distinguish between different courts exercising criminal jurisdiction
- describe the selection and appointment of lay magistrates
- describe the role and powers of lay magistrates
- describe the criteria for jury selection
- describe the role of the criminal jury

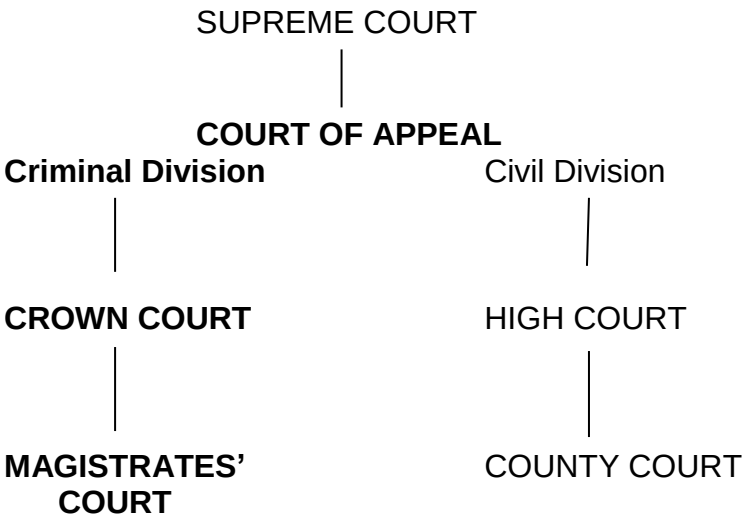
Context

This lesson examines the basic structure of the criminal courts and then proceeds to consider the role of lay people within the justice system.

AQA Law for AS: Chapters 8-10.

7.1 Hierarchy of the Criminal Courts

As you will remember from the previous lesson, there are two branches to the court system: civil and criminal. This lesson deals the criminal courts. Those courts which are primarily criminal courts are highlighted in bold.



7.2 Courts Exercising Criminal Jurisdiction

Before considering the criminal courts it is necessary to explain the difference between courts of 'first instance' and 'appellate' courts

Courts of first instance are those criminal courts in which a defendant is *tried* for the crime they are alleged to have committed. It is important to use the word 'alleged' here as all defendants are *presumed innocent*. It is up to the prosecution to prove that they are guilty 'beyond all reasonable doubt'. The two criminal courts of first instance are the Magistrates' Court and the Crown Court.

If an appeal is made from either of these courts, the court to which the appeal is taken can be referred to as an 'appellate' court. Although it is possible to appeal to the Crown Court from the Magistrates' Court, the main appellate criminal court is the Court of Appeal (Criminal Division).

7.3 Classification of Offences

All crimes are categorised into one of three categories. The categories reflect the seriousness of the crimes within them and a

major reason to have the categories is to be able to share out the workload between the two courts of first instance. The three categories of offence are:

Summary offences The less serious offences such as common law assault and battery, affray and numerous traffic offences.

Indictable offences The most serious offences such as murder, wounding with intent and arson.

Triable either way offences These offences are technically indictable offences. Offences put into this category are those which may end up with either a Magistrates' Court trial or a Crown Court trial depending on the result of a Mode of Trial hearing. Offences in this category include theft and burglary.

Summary offences can only be tried in the Magistrates' Court and this is known as a summary trial. Indictable offences can only be tried in the Crown Court and this is known as trial on indictment.

7.4 Inferior Courts - the Magistrates' Courts

These courts are generally staffed by lay people who are appointed by a document called a Commission of the Peace. Although they do not receive any remuneration, magistrates do receive expenses.

Each bench of lay magistrates has a salaried clerk, who is usually employed full time. He assists the magistrates on questions of procedure and law and is responsible for the administration of the court. Most clerks are, and in due course all will be, professionally qualified.

The general procedures of magistrates are governed by the Magistrates' Courts Act 1980 and trial in Magistrates' Court is without a jury. The actual procedure involved will be examined in detail later.

With regard to crimes the magistrates have two functions:

(i) ***Preliminary Investigation into Indictable Offences:*** Essentially, indictable offences are the more serious types of crime, the classification indictable being based on the procedure requiring trial by jury. As regards these offences the magistrates may sometimes, when requested, conduct a preliminary investigation to see if the prosecution can establish a prima facie case against the accused; if not, then the charge

against the accused is dismissed. If the prosecution do make out a case against the accused, he is committed for trial in the Crown Court, where he will be tried on indictment. However, the usual procedure, by virtue of s.51 of the Crime and Disorder Act (1988), is for defendants charged with indictable offences to be "sent forthwith" to the Crown Court without a preliminary investigation.

(ii) ***Summary Trial of Petty Offences and other Offences Triable Summarily:*** A petty offence is one that may only be tried by the magistrates - there being no right to jury trial. In addition the magistrates may also try certain of the less serious types of indictable offence, that is, Triable Either Way offences.

In order that the magistrates may exercise their full powers in a summary trial, there must be two or more magistrates, with a maximum of seven, sitting in open court.

The maximum penalty which magistrates may impose for any one offence is in most cases six months' imprisonment, unless the accused is convicted of two or more indictable offences which have been dealt with summarily, in which event, the aggregate of the terms so imposed must not exceed twelve months. The maximum fine for any one offence is £5,000 in the majority of cases (although the court has the power to fine up to £20,000).

A person convicted and sentenced by the magistrates for a summary offence may appeal to the Crown Court. Appeal from the magistrates lies at the instance of the accused only. Appeal may be against conviction or sentence on questions of law or fact and no permission is required. The appeal takes the form of a re-hearing. The powers of the Crown Court in respect of such an appeal are set out in s.48 of the Supreme Court Act 1981.

A further right of appeal lies from the Crown Court to the Divisional Court of the Queen's Bench Division. This appeal, which may only be based on a question of law, lies by way of case stated and may be made at the instance of either side. Alternatively either side may appeal direct from the magistrates to a Divisional Court by way of case stated on a point of law. If the accused pleads guilty before the magistrates he cannot appeal to the Crown Court against conviction but can appeal to a Divisional Court on a point of law.

Finally, by the Administration of Justice Act 1960, appeal lies to the Supreme Court if the Divisional Court or the Supreme Court gives leave, so long as the Divisional Court certifies that the case involves a question of law of general public importance which ought to be considered by the Supreme Court.

7.5 Superior Courts

These are:

(a) Crown Courts

Established by the Courts Act 1971, the Crown Court handles all major criminal trials as well as appeals from the magistrates court and convictions in the magistrates court that are referred to the Crown Court for sentencing.

The Crown Court is based at 78 centres across England and Wales. Trials are heard by a judge and a jury. High Court judges sit in the Crown Court to hear more serious offences and Circuit judges hear less serious offences, as do part-time Recorders.

Appeal lies from the Crown Court to the Court of Appeal (Criminal Division).

You should familiarise yourself with the organisation, composition and jurisdiction of the Crown Court.

(b) Court of Appeal (Criminal Division)

The work of the Criminal Division is done by the Lord Chief Justice, the Lords Justices of Appeal, and any judge of the High Court asked to sit by the Lord Chief Justice.

Appeal lies from the Crown Court:

(i) without leave on any grounds involving a question of law;

(ii) by leave of the Court of Appeal or, more rarely, on the certificate of the judge of the lower court, on any ground;

(iii) by leave of the Court of Appeal against sentence, unless such sentence is fixed by law.

By s.36 of the Criminal Justice Act 1988, if it appears to the Attorney-General:

(i) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient; and

(ii) that the case is one for an offence triable on indictment or for an offence of a description specified in an order (s.35 of the Act).

He may, with the leave of the Court of Appeal, refer the case to them to review the sentencing of that person; and on such a reference the Court of Appeal may:

(i) quash any sentence passed on him in the proceeding; or

(ii) in place of, pass such sentences as they think appropriate for the case and as the court below had power to pass when dealing with him.

The general powers of the Court of Appeal (Criminal Division) are now largely set out in the Criminal Appeal Act 1968 and the Supreme Court Act 1981.

It should be noted that by virtue of the Criminal Justice Act 1972, the Attorney-General may refer cases where the jury has acquitted an accused person to the Court of Appeal for its opinion on the point of law involved. However, this is not in the nature of an appeal by the prosecution and the jury's verdict of *not guilty* is final.

The Criminal Cases Review Commission (CCRC)

The CCRC was established on 1st January 1997 under the Criminal Appeals Act 1995 as the result of the recommendations of the Royal Commission on Criminal Justice which reported in 1993. The CCRC was established to counter the worry about possible miscarriages of justice following intense media coverage of such cases as the Birmingham Six and the Carl Bridgewater case.

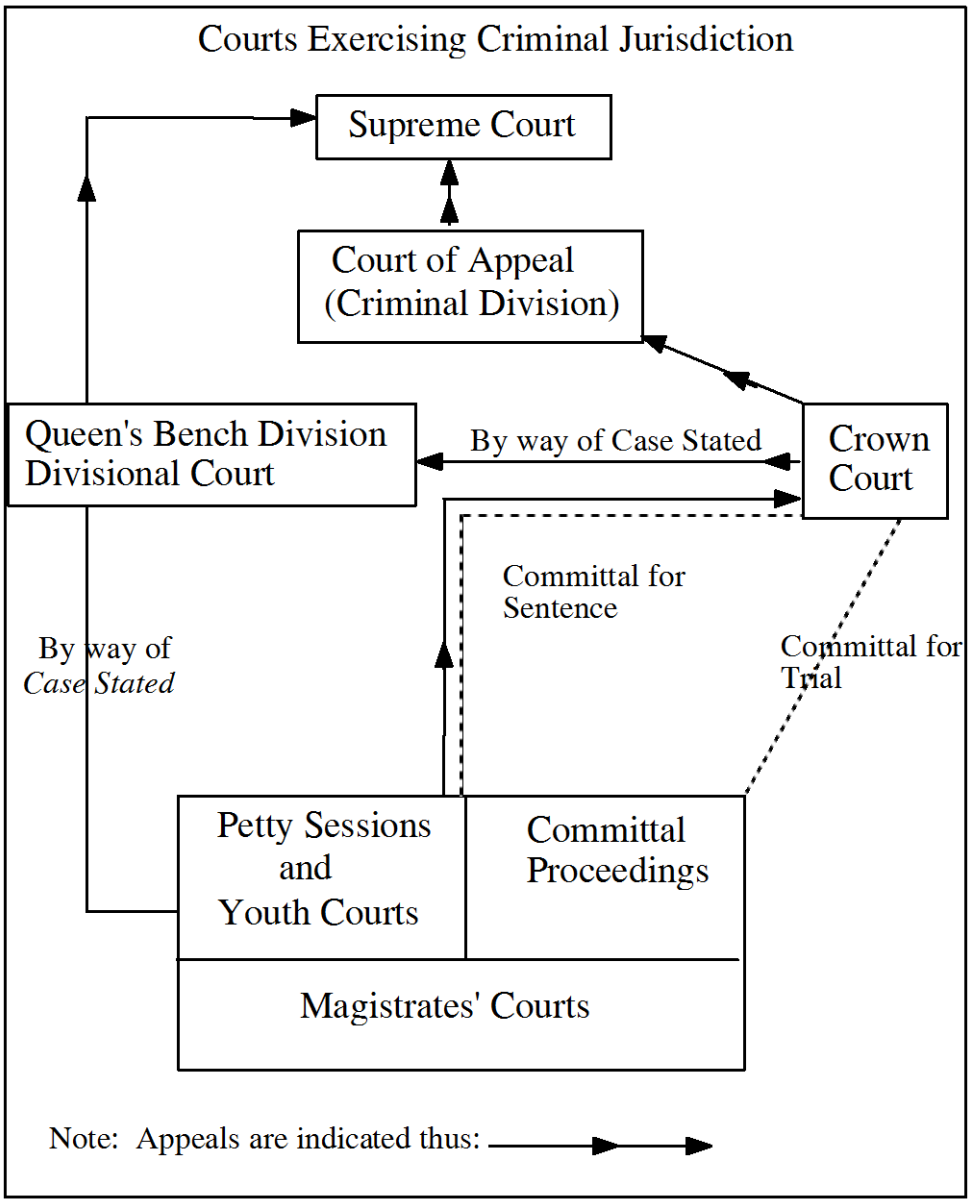
A case which has either been refused leave to appeal to the Court of Appeal or went to appeal but failed, may be referred to the CCRC and if it is felt that there is a 'real possibility' that the conviction, finding or sentence would not be upheld if referred back to the Court of Appeal, the CCRC may refer the case back to the Court of Appeal.

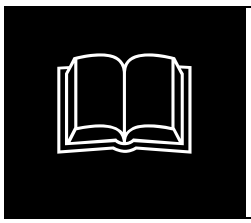
(c) The Supreme Court

Appeal from the Court of Appeal lies to the Supreme Court in its judicial capacity under the provisions of the Constitutional Reform Act 2005 (revising the Criminal Appeal Act 1968). However, the Court of Appeal must certify that a point of law of general public importance is involved and either the Court of Appeal or the Supreme Court itself must grant leave to appeal.

As stated earlier, the Supreme Court exercises appellate jurisdiction from the Divisional Court under the provisions of the Constitutional Reform Act 2005 (revising the Administration of Justice Act 1960), and the same conditions as regulate appeals from the Court of Appeal (Criminal Division) apply.

Below you will find a diagrammatic representation of the above information.





Essential further reading can be found in *AQA Law for AS*: Chapter 8.

7.6 Magistrates

(i) Unpaid part-time Justices of the Peace try the bulk of minor criminal offences in this country. Lord Merthyr in his Minority Report of the Royal Commission on Justices of the Peace (1948) thought that the day of the amateur was past and they should all be replaced gradually by professional stipendiary magistrates. No one took him very seriously; for one thing the cost of so doing would be enormous, and secondly it is very doubtful if the trained personnel could be found for such a gigantic task. Thirdly, the office of Justice of the Peace is a very ancient one, dating from the twelfth century and made statutory by the Act of 1361, which is still on the statute book:

> to restrain the offenders rioters ... to pursue, arrest, take and chastise them according to their trespass or offence; and to cause them to be imprisoned and duly punished according to the law and customs of the realm ...

(ii) Magistrates have both criminal and civil jurisdiction. In the criminal sphere, they issue warrants (of arrest & search), and grant Bail etc [see Lesson 8]; specially trained Magistrates hear cases in the Youth Court. Their civil jurisdiction includes Family matters, such as granting Contact Orders and granting gaming licences, as well as dealing with unpaid Council Tax.

Three justices also serve as members of the Police Authorities which are responsible for the raising and maintenance of local police forces.

(iii) Nowadays the judicial functions of magistrates are outlined in the Magistrates' Courts Act 1980. At least two, and not more than seven, magistrates must sit to try offenders for the summary offences which form the bulk of the criminal work.

(v) There have been many criticisms of the system of lay justices, but the Royal Commission of 1948 thought that improvement rather than radical change was called for. Much criticism stems from the method of appointment of magistrates, and in particular its political overtones. In the nineteenth century the justices were seen as agents of the ruling classes, intent on maintaining their own social prestige and power of control. At the beginning of the 20th century the chief complaint was that there were too many Tories and too few Liberals on the bench. This was caused by the fact that the Lords Lieutenant of the counties were largely Conservative in politics and only allowed the names of candidates of the *right* political complexion to go forward to the Lord Chancellor.

(vi) The position was somewhat alleviated by the adoption of a recommendation of the Royal Commission of 1910 that advisory committees should be set up in counties and boroughs with a separate commission of the peace. Gradually the political complexion changed as more Liberal, and later Labour, justices began to be appointed. The Royal Commission of 1948 was also concerned with the relevance of a justice's political views, but it took the view that this was becoming much less of a problem than that of finding sufficient men and women of goodwill of varied background who saw the office as fulfilling one's responsibilities as a citizen rather than as a reward for political service.

(vii) Perhaps the best solution to the problem of selection would be that justices should be drawn from all sections of the community and represent all shades of political opinion.

In 2003 the government launched a three year, £4m, recruitment campaign with the aim of increasing the numbers of younger applicants and applicants from ethnic minorities.

7.6.1 Role and Powers

In the case of all 'summary' offences and some 'triable either way' offences, the magistrates will:

- set the timetable for the proceedings
- decide bail
- hear the evidence
- decide whether the defendant is guilty or innocent
- if guilty, decide on the most appropriate sentence, bearing in mind any aggravating or mitigating factors

In the case of the most serious crimes, which will be heard in the Crown Court but start in the Magistrates' Court, the magistrates will:

- send the case to be heard in the Crown Court
- decide whether or not the defendant should be kept in prison until the next hearing or released on bail and, if released on bail, what bail conditions, if any, to impose

7.6.2 Qualifications

The minimum age for a magistrate used to be 27. In 2004 this was lowered to 18. In 2006, a Law student, Lucy Tate, became a magistrate at the age of just 19. The appointment did, however, cause controversy as there were some who felt that her age meant that she could not have enough experience to do the job properly.

Much deserved criticism in the past related to the age and infirmity of magistrates. As the office is one of honour, magistrates went on

serving until they were past their best. Often the worst offenders were the Chairmen of benches who did not wish to relinquish the power they enjoyed. The spectacle of a deaf and doddering and senile Justice simply doing his incompetent best brought the law into disrepute and did nothing to close the generation gap between governors and governed. Happily now the Justices of the Peace Act 1968 makes retirement compulsory at the age of 70. Magistrates are expected to serve a 5 year term, so applicants over the age of 65 would not usually be appointed.

Applicants have to take an Oath of Allegiance to the Queen but no formal or academic qualifications are required. Instead, the Department for Constitutional Affairs lists six essential 'qualities'. These are:

- good character
- understanding and communication
- social awareness
- maturity and sound temperament
- sound judgement
- commitment and reliability

Certain groups of people are barred from applying to become magistrates, mainly because of concerns about the potential for bias. These include:

- members of the Police Service
- members of the regular Armed Forces
- anyone who is a member of (or has been a prospective candidate for) the House of Lords or any other Parliament or Assembly.

7.6.3 Selection and appointment

The application process is straightforward and accessible. It is now possible to apply via e-mail as well as via the conventional postal system.

When an application form is submitted, it is checked to make sure that the applicant meets the eligibility requirements. After this applicants are invited for a first interview. If this is successful, applicants are invited to a second interview, where the type of cases that magistrates deal with will be discussed. Checks are made to make sure that there are no conflicts of interest and then a local Advisory Committee makes a recommendation to the Lord Chancellor. In the past, the composition of this committee was kept secret to avoid the embarrassment of canvassing by citizens who wanted the honour of becoming justices without necessarily having the qualities required, but this is no longer the case. It is the Lord Chancellor who makes the appointment.

7.6.4 Training

(a) Training schemes for magistrates have been required since 1966 under the general direction of the Lord Chancellor. The newly created justice is not required to embark on a serious study of the substantive law; the amount he requires to know about that is limited because the justices always have the advice of their clerk, who is professionally trained. The Royal Commission itself stressed this point:

> The law that justices have to administer is extensive and complex and any attempt to give lay justices an adequate knowledge of it would not usually succeed. What we think is possible and what should be done is to train justices to understand the nature of their duties rather than the substantive law that they administer.

(b) The training of justices, like that of the professional judiciary, is now under the direct control of the Judicial Studies Board and, since 1988, has taken on a more practical emphasis, rather than simply attending courses.

(c) Initial training includes reading and distance learning exercises (which cover the role and responsibilities of magistrates), as well as an induction and core training course. In addition there must be a minimum of three court observations, together with a visit to a prison establishment, a young offender institution and a probation service facility. All new magistrates have access to an experienced magistrate, who acts as a mentor, giving them advice, support and guidance. After about a year, magistrates take part in a consolidation training programme.

In addition to initial training, there is also update training (to keep magistrates updated with any changes in the laws and procedures affecting the magistrates' courts) and continuation training (which takes place every three years, prior to an appraisal of the magistrate's performance in court. The Magistrates' Association also plays its part by arranging conferences of justices and circulating information.

7.6.5 Regulation

As already mentioned, the Constitutional Reform Act 2005 led to the setting up of the Office for Judicial Complaints, which considers and determines complaints about the personal conduct of all judicial office holders in England and Wales. This includes lay justices. You can find out more about the work of the OJC on their website: www.judicialcomplaints.gov.uk.

7.6.6 Relationship between the Justices and their Clerks

Much criticism in the past centred on the powerful personalities of some justices' clerks. Many of them used to retire with the justices and suspicions arose that they took part in the decisions. The function of the clerk is to advise the magistrates on procedure and points of law; he or she is not entitled to take part in their deliberations as to guilt or sentence. The clerk should not retire with the justices as a matter of course, but only when asked to do so. He should return to his place in court, leaving the justices to complete their deliberations.

The justices in turn were not to consult their clerk about points of guilt or innocence or sentence, but they could properly ask about the penalties the law allows them to impose or whether the facts found by them constitute the offence charged as a matter of law. The present arrangements for the conduct of justices' clerks are laid down in the Justice of the Peace Act 1978 s.28(3). See also the Magistrates' Courts Act 1980.

The administrative side of magistrates' courts is looked after by local courts boards. All justices' clerks are now appointed by the Lord Chancellor. The salaries and conditions of service of justices' clerks are now decided on a national basis.

You will find further information relating to Magistrates on the Magistrates' Association website: www.magistrates-association.org.uk and the following Ministry of Justice webpage: www.magistrates.gov.uk.

7.7 Advantages and Disadvantages of using magistrates in the criminal courts

Advantages include:

- Magistrates live in, or near, the area they serve and so have a good local knowledge.
- Almost half of all magistrates are women, so magistrates can be said to be more representative of society than the judiciary.

Activity 1	Using material from this lesson, your textbook and other resources (e.g. the internet or other textbooks), think of at least two more points that you consider to be **advantages** of using magistrates in the criminal courts.
	i) ii)

Disadvantages include:

- Magistrates tend to come from a middle class background and may have little in common with the majority of the defendants who appear before them.
- Sentencing by magistrates can be inconsistent, with differing sentencing practices in different parts of the country.

	Further reading can be found in *AQA Law for AS*: Chapter 9.

Activity 2	Using material from this lesson, your textbook and other resources (e.g. the internet or other textbooks), think of at least two more points that you consider to be **disadvantages** of using magistrates in the criminal courts.
	i) ii)

7.8 The Jury

The jury as we know it today is the culmination of a long evolutionary process which started, as far as England is concerned, with the use of the jury as an essentially administrative agency. The Normans used the jury as a local fact-finding device where the jurors spoke of their own knowledge rather in the manner of witnesses. By the Assizes of Clarendon and Northampton the use of the jury was put on a statutory basis and from the jury of presentment established thereby evolved the Grand and Petty Juries.

The Grand Jury was only abolished in 1948 (though it had long been obsolete), its function being superseded by the justices of the peace acting as examining magistrates in committal proceedings. The Petty Jury, which took the place of trial by ordeal following the Lateran Council of 1215, had evolved by the fifteenth century as the modern trial jury of fact.

7.8.1 The Role of Jurors

The role of the jury in a criminal case is to listen to the evidence presented by the advocates, to be guided by the judge, and to come to a verdict of Guilty or Not Guilty at the conclusion of the case. (In civil cases, the jury decide whether a party is liable or not, but, in addition, also award a sum of money (damages) to the successful party.)

The criminal jury comprises twelve persons of either sex and is the method of trial on indictment in the Crown Court. It is the duty of the jury *to well and truly try the case and give a true verdict according to the evidence.*

Prior to the Criminal Justice Act 1967 the verdict of the jury had to be a unanimous one, but because of the suspicion that some jurors were being *got at* by gangs of organised professional criminals and bribed, which highlighted dissatisfaction with the requirement of unanimity, the concept of the majority verdict was introduced for criminal trials by the Criminal Justice Act 1967 and extended to civil trials by the Courts Act 1971. The relevant provision is now s.17 of the Juries Act 1974.

A verdict need not be unanimous if where there are not less than eleven jurors, ten agree on the verdict, and where there are ten, if nine agree. The court cannot accept any majority verdict unless the jury have had not less than two hours for deliberation, or such longer period as the court thinks reasonable having regard to the nature and complexity of the case, nor can the court accept a majority verdict of guilty unless the foreman of the jury states in

open court the number of jurors who agreed on, and dissented from, the verdict.

7.8.2 Qualification and Selection of Jurors

Under s.1 of the Juries Act 1974 jury service is in general equated with the parliamentary or local government franchise. All citizens aged over eighteen and under seventy who have been resident in the United Kingdom for at least five years since attaining the age of thirteen are eligible.

Prior to the implementation of the Criminal Justice Act 2003, there used to be people who were *ineligible* (such as serving police officers), *disqualified* (such as those who have served a certain length of prison sentence), and *excused* (such as pregnant women) from serving. It was said that juries were not, therefore, truly representative of society. The Criminal Justice Act sought to rectify this and now not only do a number of professionals previously excluded – such as judges, lawyers, the police and others connected with the justice system – have to serve, but it is much harder to avoid duty by claiming professional commitments.

Jury service is obligatory and if the juror summoned does not attend without good reason he can be fined. Jurors who are summoned, and attend, are entitled to travelling and subsistence allowances and compensation for loss of earnings at prescribed rates.

Jurors must attend on the day and at the time stated on the summons. They will first of all be taken to a Jury Assembly Area, where they are shown a video explaining their role. More than twelve people will be called into the courtroom initially and the court clerk will then choose, at random, the twelve who will serve as jurors for that particular trial.

7.9 The Pros and Cons of the Jury System

In recent years the jury system has been the subject of much criticism, though insofar as this related to the formerly required property qualification of jurors, this has been met by the Criminal Justice Act 1972 (see now the Juries Act 1974). Other criticisms have been concerned with the fact:

(a) that there is no physical or educational test for jury service;

(b) that jurors may be too easily impressed and swayed by advocacy of experienced counsel;

(c) that juries are too prone to leniency to an accused or defendant in criminal trials;

(d) that local prejudice may exist in certain trials, and this may be reflected in local jurors;

(e) that jurors are susceptible to corrupt influences, threats and intimidation from outside parties;

(f) and that the physical, mental and financial burden inflicted on jurors by long trials is too great.

Against these factors, however, must be weighed the advantages of jury trial. These may be listed as follows:

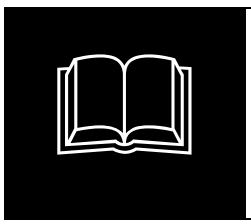
(a) Jurors are independent of the parties to a trial.

(b) Juries represent the verdict of ordinary people of common sense, and this fact can act as a corrective to the harshness of the law.

(c) There is public confidence in jury trials.

(d) In jury trials the judge explains the facts to be proved and the law to be applied, which tends to clarify the issues verbally. The public thus see that justice is done.

You will find further information relating to Juries in the Juror section of the Criminal Justice System website, www.cjsonline.gov.uk.



Further reading can be found in *AQA Law for AS*: Chapter 10.

Revision Points	1. What are the two criminal courts of first instance? (7.2) 2. What is the difference between a summary offence and an indictable offence? (7.3) 3. What is the main appellate criminal court? (7.5) 4. Why was the CCRC established? (7.5) 5. What are the age restrictions on applying to become a magistrate? (7.6.2) 5. What are age restrictions on being a juror? (7.8.2)
	1. 2. 3. 4. 5.

AQA Subject Content	Each of the lessons in this pack of course materials is linked to a particular section of the AQA syllabus (specification). This lesson relates to the subject content in Unit 1, Section B: the Criminal Courts and lay people. Before going any further, ensure that you fully understand the following concepts:

	• Outline of criminal courts and appeal system, including classification of offences. • Lay magistrates: qualification, selection and appointment; training; role and powers. • Jurors: qualification and selection; role • The advantages and disadvantages of using lay people in the criminal courts.