Civil Trials and Common Law Juries in Medieval England

When the Constitution was written at Philadelphia in 1787, Americans were very familiar with the English concept of trial by jury. The fact that the right of jury trials was not guaranteed in the body of the Constitution led to demands for two amendments, which became part of the Bill of Rights. The Sixth Amendment provides for trial by jury in criminal prosecutions. Similarly, the Seventh Amendment secures the right of jury trial in “suits at common law.” Actually, jury participation in civil trials where one party sues another probably took place in medieval England even before juries were used to decide criminal cases.

The Common Law Jury

What we would today call criminal and civil trials were conducted far differently during the early Middle Ages in England. People believed that God would decide whether someone was telling the truth. A person who had been accused of a crime or who disputed the claims of another might participate in a “trial by oath.” Swearing an oath was not an easy thing to do. The defendant would have to recite certain words in an exact way. If he skipped a word or paused at the wrong place, this would be a sign from God that he was lying.

Another way to decide a criminal or civil matter was the “trial by ordeal.” The defendant would have to pass a physical test like carrying a red hot iron for three paces. If his hand healed well after three days, he would be declared innocent or the winner in a civil dispute.

A third trial method was reserved for knights and other noblemen — “trial by battle.” A defendant would “prove by his body” that he was innocent or telling the truth. The defendant would either fight or hire a champion to do combat with his accuser or opponent. The object of this battle was not a fight to the death, but rather to get one of the combatants to yield. If the defendant in a criminal matter lost the battle, he would probably be hanged and his body mutilated. In a civil conflict, he would have to give in to the claims of his opponent as well as pay a fine to the king.

Following the Norman invasion of England in 1066, William the Conqueror and his successors gradually imposed a system of law common to the entire kingdom. Based on customs, legal acts, and court decisions decided over the centuries, the
English common law provided the foundation for the law system of the United States. One part of this was the idea of trial by a common law jury.

During the reign of King Henry II (1154–1189), county sheriffs began to bring together juries of “freemen” (property holders, not serfs or outlaws) to meet with the king’s judges who traveled from place to place throughout the kingdom.

These early juries did not hear witnesses or base their judgments only on the evidence introduced at the trial. Instead, the jurors were expected to act upon their personal knowledge about local crimes and disputes between neighbors. If members of a particular jury knew nothing about a case, others were called who did. The process continued until 12 jurors could make a verdict, called a “declaration of truth.”

The English quickly saw that the new trial by jury was fairer than the old methods — oath, ordeal, and battle — for finding the truth of a matter. At first, jury trials were available only to those who gained the favor of the king. By the end of the 1100s, a defendant in a civil dispute (lawsuit) considered it his right to “put himself upon his country.” This meant calling upon a common law jury of 12 freemen to decide the true facts in a lawsuit. Later on, this right of a trial by jury was adopted in criminal cases. The idea that jurors should be impartial, know nothing about the case beforehand, and base their verdict entirely on the testimony of sworn witnesses and other evidence introduced at trial did not evolve for another 300 years.

The Court of Common Pleas

The English Court of Common Pleas was the main court handling civil lawsuits in England during the 1400s. The court was located in London at the Great Hall of Westminster.

About 100 persons carried on the work of the Court of Common Pleas. The court personnel included four to eight justices, several trained lawyers (called “sergeants at law”) who pleaded cases, three chief clerks who recorded court business, and various minor clerks and assistants. Nearly all of these individuals made most of their income by charging fees for all sorts of required legal services.

Bringing a lawsuit in 15th-century England was difficult and sometimes quite costly. Still, the Court of Common Pleas hummed with activity. The majority of lawsuits, like the one described below, based on a real case in 1458, concerned debt.

Smythe vs. Kent

In the year 1456, John Smythe (the plaintiff) agreed to marry Alice, the daughter of William Kent (the defendant). Kent, in turn, promised to pay Smythe 100
marks once the marriage was completed. Smythe fulfilled his side of the
agreement and married Alice. Her father, however, refused to pay Smythe the 100
marks. As a result, Smythe decided to sue his father-in-law for the 100 marks.

As the plaintiff in the case, John Smythe had to get a special paper (called a writ)
detailing his claims. For a fee, a clerk of the Court of Chancery (also located at
Westminster) drew up the writ and sealed it. A warrant was then prepared to
notify William Kent that he must answer the claims made by his son-in-law at the
next session of the Court of Common Pleas in London.

The local sheriff delivered the warrant to William Kent, who lived about 30 miles
from London in Essex County. At the same time, the sheriff seized some of Kent’s
property to assure his appearance in court.

William Kent did not personally go to London to answer the lawsuit brought
against him by his son-in-law. Instead, he hired an attorney named Richard Jenny
to represent him. Attorneys were not formally trained in the law, but they did
know the proper procedures to follow in a case like this one.

Attorney Jenny appeared at the Court of Common Pleas at Westminster on the
first day of the court session. Here, he met and talked with Thomas Catsby, the
attorney representing John Smythe. Both attorneys had to wait several days
before their case was called since the court did not have any set schedule.

In advance of the court session, Catsby, plaintiff Smythe’s attorney, paid for one
of the sergeants at law to prepare a “declaration.” This provided a basis for the
plaintiff’s pleading before the five justices of the Court of Common Pleas.
Defendant Kent’s attorney also, after paying a fee, secured a copy of this
declaration to help him prepare his side of the case.

Finally, the case of Smythe vs. Kent was announced. A sergeant at law named
Pygot presented the plaintiff’s declaration claiming that William Kent owed 100
marks to John Smythe. Although he had written the declaration in Latin, Pygot
presented it orally in a specialized court language known as Law French.

When Pygot finished, another sergeant at law pleaded on behalf of the defendant,
William Kent. Among other things, this pleading denied there ever was an
agreement to pay John Smythe 100 marks for marrying Alice Kent.

At this point, a “question of fact” had arisen over whether there really ever was
an agreement between Smythe and Kent. Richard Jenny, defendant Kent’s
attorney, asserted his client’s right “to put himself upon his country” (a trial by
jury). The court ordered the sheriff of Essex to assemble a jury to be present at
the next county court session (called the county assizes).

A few months later at the Essex County assizes, John Smythe, William Kent, and
their attorneys were all present. In addition, a group of Essex County freemen had
been called to form the juries of the assizes.
When the case of Smythe vs. Kent was called, 12 men were chosen as jurors. All of these men came from the same neighborhood where Smythe and Kent lived. The jurors knew both men as well as all the gossip about them. At this trial by jury, no witnesses were called to testify under oath. The record of the case was read in plain English, and the attorneys for each side presented their arguments. The jurors then deliberated and reached a unanimous verdict that there was, in fact, a promise made by William Kent to pay John Smythe 100 marks after he married Alice. The jurors based their verdict on their personal knowledge and what they had previously heard about the affair.

The case was not quite over. Back at the Court of Common Pleas in London, the justices reviewed the verdict reached by the Essex County jury. Before they could give their final decision in the case, the sergeant at law for defendant Kent made an additional pleading.

This time the sergeant claimed that plaintiff Smythe’s lawsuit was not good because there was no quid pro quo. By this, he meant that every legal contract must contain some kind of exchange of value. Something must be given for something else. In this case, pleaded the sergeant, John Smythe was supposed to get 100 marks. But, what was William Kent supposed to get in exchange? “If I sell my horse to Mr. Jones for 20 shillings,” the sergeant explained, “I get the 20 shillings, and he gets my horse. In the case before us today, William Kent gets nothing.” The sergeant concluded that something for nothing is not a legally binding agreement and therefore John Smythe’s lawsuit should be dismissed.

This last minute bombshell threw the court into confusion. Finally, the justices decided to adjourn so they could further study this “question of law” raised by the defendant’s new pleading.

For Discussion and Writing

1. Why was trial by jury an improvement over the ancient trials by oath, ordeal, and battle?
2. What is the difference between a “question of fact” and a “question of law?” In a trial by jury, who decides these two types of questions?
3. How do juries in civil trials today differ from the juries of medieval England? Which jury system do you prefer? Why?

For Further Reading


A C T I V I T Y
Question of Fact and Question of Law

Form small groups to discuss the following questions about the case of Smythe vs. Kent.

1. What was the question of fact in this case?
2. Who decided the question of fact?
3. What was the answer (verdict) to the question of fact?
4. How did the jurors reach their verdict?
5. What was the question of law in this case?
6. Who had the responsibility for deciding this question of law?
7. How would you have decided this question of law?
8. All things considered, do you think John Smythe should have collected the 100 marks from William Kent? Why?

After the groups have completed their discussions, review the answers to questions 1–6 based on the information provided in the article. Each group should report and explain its conclusion to question 7.

Finally, discuss and take a class vote on question 8.

In 1458, the Court of Common Pleas divided over the “question of law” in the case on which Smythe vs. Kent was developed. One justice even suggested that the case should be decided by the Church. No final decision was recorded. We do not know if the plaintiff in the case ever got the 100 marks.