

A Comparison of the US and UK Legal Systems

A Q&A Document

In the UK, what standard of proof is required before a formal charge is issued to a citizen?

The standard is "reasonable suspicion" that a crime or criminal offense has been committed by the citizen

How is a formal charging document issued?

In a procedure very similar to the United States, the police and/or the Crown's Prosecution Service are the ones who draw up and issue a formal charging document.

Does a defendant have the right to an attorney? In both countries, yes.**In the UK, when is a defendant advised of their right to an attorney, and at what stage of the proceedings is an attorney available to them?**

An English citizen is advised upon their arrest and prior to being questioned by police that they have the right to an attorney. (This is virtually identical to the US Miranda warning procedure.)

Does a defendant in England have the right to examine the prosecution's case file (reports, witness statements, forensic examination results, etc.)?

Yes, and well in advance of trial. After service of the prosecution evidence on the defense and initial disclosure the defendant is obliged to serve a Defence Case Statement (DCS). This contains a description of the defence and sets out the matters in the prosecution evidence which are the subject of dispute. The sanction for failing to serve a DCS is that it allows the prosecution and the judge to comment on that failure in court.

Does a defendant in England have the right to a jury trial?

Yes, but not in all cases. Most misdemeanor and 30-day type offenses are handled as bench trials before the judge.

Is a defendant in England presumed innocent during the course of the proceedings? Yes.**What is the general makeup and conduct of an English jury trial?**

Usually, the jury is made up of 12 members; however, during the course of the trial, the number of active jurors can actually go down to 9 and the case will continue until a verdict is rendered. English law allows a 10-2 or otherwise "majority" verdict; a unanimous verdict is not required. In contrast, most criminal courts in the US require a unanimous verdict.

Does the defendant have the right to an appeal? Yes.**What is the standard of proof required for a conviction in criminal court?**

"Satisfied so sure" is the current standard in England; formerly it was "beyond a reasonable doubt" (as is the standard in America).

Are prior bad acts/prior convictions admissible as proof to the current offense charged?

Yes, but only in certain circumstances. See [Criminal Justice Act 2003 Section 100](#).

What if there are multiple defendants?

Those charged with the same offense or series of offenses will generally be tried together. If convicted the sentence will reflect the role that each is said to have played. There are Sentencing Guidelines applicable to many crimes which set out criteria to be applied and an appropriate sentencing range.

What does the trial judge charge the jury on?

The jury is charged with upholding the law and receives the facts prior to deliberation. Clearly, this is a major departure and difference with American courts. English judges provide to the jury what is supposed to be a well balanced and general summary as to both sides and a review of key testimony in a long trial.

What is different about English juries?

They are selected at random and are not questioned by attorneys. There is a very limited right of challenge. Jurors are individually provided a notebook of exhibits for the trial.

What is different about seating in court?

English defendants generally sit together in the dock and not with their attorneys at the table during trial.

Do people still wear wigs? Why?

All attorneys and judges wear a wig ("peruke") and robe during criminal proceedings in England. The idea behind wigs is to bring a sense of formality and solemnity to proceedings. In addition, wigs offer a sense of anonymity, an attempt to distance the wearer from personal involvement and a way to represent supremacy of the law. Wigs are not worn in international criminal tribunals.

When do trial judges rule on objections?

When asked so to do by the attorneys. There are fewer evidential rules in the UK than the US. Objections to questioning are rare and are phrased differently than would appear to be the case in the US.

What does "putting your case to a witness" mean?

In the UK there is a requirement that if you intend to argue in your closing speech that a witness is lying or mistaken then the advocate must put that to the witness. The reason for this requirement is that it is thought to be fairer to the witness and it may impact the need to call evidence. There is no such requirement in the US.

What's the difference between a solicitor and a barrister?

A *solicitor* generally has most of the contact with the client and will interview witnesses for the defense. They are the first point of contact for court officials. A *barrister* is the attorney who actually appears as counsel in court for the client. However, a solicitor will probably represent the client at Magistrates Court hearings and may - if they possess "higher rights of audience" - represent the client at a higher level trial. These distinctions are gradually being eroded. The barrister is hired or retained by the solicitor, and the solicitor must pay the barrister for their services regardless of whether or not the client pays the solicitor.

How do attorneys choose between prosecution and defense?

In England it is very common for private attorneys to continually switch roles within the system. This is a major departure from American practice. Private solicitors and barristers can also be hired on a case-by-case basis by the government to serve as a prosecutor.