

## **FUN WITH JURY TRIALS**

### **True or False**

- 1) States do not require unanimous verdicts in certain cases.
- 2) In most cases, judges and juries disagree on the verdict.
- 3) Juries never impose sentences after reaching verdicts.
- 4) You can be kept from serving on the jury if your hair is red.
- 5) Judges can be called for jury duty.
- 6) The Constitution guarantees you the right to a jury trial only in criminal cases.
- 7) Television cameras can be present during a trial, even if the defendant objects.
- 8) All federal juries require unanimous votes.
- 9) Over 90 percent of all cases never come before a jury.
- 10) Women may be excluded from jury duty solely because of their gender.

### **Answer Key**

- 1) True - Twenty-nine states allow less than unanimous verdicts in certain civil cases and five states in certain criminal cases.
- 2) False - Studies have shown that they agree at least 80% of the time.
- 3) False - Thirteen states require jurors to pass sentence on those they have convicted of crimes punishable by death.
- 4) True - Peremptory challenges usually do not require that a reason be given.
- 5) True - In some states, especially those using "one day/one trial" juries.
- 6) False - The Seventh Amendment provides for jury trials in civil cases.
- 7) True - If state rules explicitly permit it. See Chandler v. Florida (1981).
- 8) True.
- 9) True - Most cases are plea bargained, settled, or tried before a judge.
- 10) False - In Duren v. Missouri, 439 U.S. 357 (1979), the U.S. Supreme Court held that a Missouri law allowing women automatic exemption from jury service, if women so requested, had deprived a murder defendant of his constitutional right to be tried by a jury composed of a cross section of the community.

## Interesting Facts About Jury Trials

- The Fourteenth Amendment, ratified by the states to become part of the Constitution in 1868, was supposed to guarantee in theory the right to trial by jury of one's peers. Unfortunately, it was not until the Supreme Court case of Strauder v. West Virginia (1879), that blacks were allowed to serve on juries. In that case, the Court struck down a West Virginia law which limited jury service to "all white male persons," as a violation of the equal protection guarantee of the Fourteenth Amendment.
- Much later, in the case of Taylor v. Louisiana (1975), the Supreme Court found that it was a violation of the Sixth Amendment that women were not automatically included on jury lists unless they registered. The Court found this to be a violation of the Sixth Amendment guarantee of a jury drawn from a cross section of the community.
- A jury trial is constitutionally available (by the federal constitution) in any nonjuvenile criminal prosecution where the potential penalty is in excess of six months (Baldwin v. New York (1970)) and in a federal civil case where more than twenty dollars (\$20) are in controversy (Seventh Amendment).
- During jury selection, attorneys for both sides in a case are allowed to dismiss a certain set number of potential jurors without providing a reason for doing so. This concept is known as "peremptory challenges." Until recently, these challenges went virtually unchecked by any constitutional protections. Then, in 1986, in the case of Batson v. Kentucky, the Supreme Court ruled that peremptory challenges based solely on race were unconstitutional. The Court's finding was based on two reasons: 1) it was a violation of the Sixth Amendment right to jury drawn from a cross section of the community; and 2) it was a violation of the Fourteenth Amendment equal protection guarantee.
- The Batson decision was initially limited in three ways. It applied only to the prosecution, only to criminal trials, and only to challenges in which the excluded juror was of the same race as the defendant. However, in subsequent cases, the principle was extended to criminal defendants (Georgia v. McCollum (1992)), civil litigants (Edmonson v. Leesville Concrete (1991)), and cross-racial challenges (Powers v. Ohio (1991)). Finally, the principle was also extended to gender-based challenges, regardless of whether they were male or female, in the case of J.E.B. v. Alabama (1994).

## **Interesting Facts About Jury Trials in Delaware**

- In a civil case, either party may demand a trial by jury as long as such demand is made in writing within a set time period. Sup. Ct. Civ. R. 38(b). If a party fails to make such a demand within the required time period, such lack of a demand constitutes a waiver by that party of trial by jury. Sup. Ct. Civ. R. 38(e). If the party making such a demand fails to specify that it is a trial by jury of 12 persons, then that party is deemed to have consented to a trial by jury of 6 persons. Sup. Ct. Civ. R. 38(d). Once a demand for trial by jury is made, it may not be withdrawn without the consent of both parties. Sup. Ct. Civ. R. 38(e).
- The Court can upon its own initiative find that a right to trial by jury does not exist and order that a matter be heard by the Court sitting without a jury. Sup. Ct. Civ. R. 39(a). Conversely, the Court may also upon its own initiative order that the right to trial by jury does exist or that a right to trial by a jury of 12 persons exists even if the parties have agreed or consented to a trial by the Court sitting without a jury or a trial by a jury of 6 persons. Sup. Ct. Civ. R. 39(aa).
- In civil cases, examination (or voir dire) of prospective jurors is conducted by the Court, not by the attorneys, unless otherwise directed by the Court. Sup. Ct. Civ. R. 47(a). However, either attorney for each party may request the Court to examine the jurors as to certain matters, and the Court may do so if in its opinion such matters are the proper subject of inquiry. Sup. Ct. Civ. R. 47(a).
- Each party is allowed three (3) peremptory challenges. Sup. Ct. Civ. Rule 47(c). Where there are multiple or several plaintiffs or defendants, they are considered as a single party for the purposes of making challenges unless the Court allows them additional peremptory challenges which can then be used jointly or separately. Sup. Ct. Civ. R. 47(c).
- Normally, a demand for trial by jury includes a demand for trial by a jury of 12 persons. However, nothing prevents the parties in a civil case from agreeing or stipulating to a jury consisting of any number less than 12 or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury. Sup. Ct. Civ. R. 48.
- The policy of the State of Delaware is to have jurors serving in each county selected at random from a fair cross section of the population of that county and to allow all qualified persons to have an opportunity to be considered for jury service and for such qualified persons to be obligated to serve as jurors when summoned for that purpose. 10 Del. C. §4501. This section is functionally equivalent to the Sixth Amendment fair cross section requirement. Riley v. State, Del. Supr., 496 A.2d 997 (1985). However, this chapter is not a guarantee of a perfectly representative jury. *Id.*
- There is an express prohibition against persons being excluded from jury service on the account of race, color, religion, sex, national origin or economic status. 10 Del. C. §4502. However, no defendant has an absolute right to a jury which includes members of his or her own racial group. Riley v. State, Del. Supr., 496 A.2d 997 (1985).
- The Court has full discretion to determine whether a prospective juror is disqualified from jury service. 10 Del. C. §4508(a). There are six (6) categories of persons who are not qualified for jury service: 1) Not citizens of the United States; 2) Less than 18 years of age; 3) Not residents of the county of prospective jury service; 4) Unable to read, speak and understand the English language; 5) Incapable, by reason of physical or mental disability, of rendering satisfactory jury service; or 6) Convicted felons who have not had their civil rights restored. 10 Del. C. §4509(b). Of significant note, both judges and attorneys are not automatically disqualified from jury service.

- The Court also has full discretion to determine whether a prospective juror should be excused from jury service. 10 Del. C. §4511(a). Any person who is not disqualified pursuant to 10 Del. C. §4508(b) can be excused from jury service by the Court only upon a showing of undue hardship, extreme inconvenience or public necessity or if the Court finds that such a person would be unable to render impartial jury service or would be likely to disrupt or otherwise adversely affect the proceedings. 10 Del. C. §4511(b) and (c).
- Jurors who are not disqualified or excused and are lucky enough to be selected are compensated at a per diem rate of \$20. 10 Del. C. §4514(b). Further, those jurors whose term of service is 1 day or 1 trial do not receive compensation for the first day of service. 10 Del. C. §4514(b). If, however, a juror is lucky enough to be selected for a trial whereby the jury is sequestered, the State picks up their tab for food, lodging and other necessary expenses during the time that they are sequestered. 10 Del. C. §4514(b).
- An employer is precluded from depriving an employee of his job or threaten or otherwise coerce the employee with respect thereto if said employee receives a summons to appear for jury service, attends Court to appear for prospective jury service, or serves as a juror. 10 Del. C. §4515(a). If an employer violates subsection (a), they are guilty of criminal contempt and upon conviction of said charge, may be fined not more than \$500 or imprisoned not more than 6 months, or both. 10 Del. C. §4515(b). If the employer goes so far as to fire an employee, that employee may file a civil action in Superior Court in order to recover for lost wages and for an order requiring reinstatement of the employee and a reasonable attorney's fee if he or she prevails. 10 Del. C. §4515(c)

## Interesting Quotes About Juries

- In the trial of John Peter Zenger, a newspaper printer who was accused of sedition, the jury was instructed to decide only whether Zenger had in fact printed a newspaper which was critical of the King. However, Zenger's lawyer argued that the jury should have a more expanded role. He described jurors as follows: "Jurymen are to see with their own eyes, to hear with their own ears, and to make use of their own consciences and understandings, in judging the lives, liberties, or estates of their fellow subjects." Zenger's lawyer must have been persuasive -- the jury went against the judge's orders and found Zenger not guilty.
- It was once commented that the American jury system served to "communicate the spirit of the judges to the minds of all citizens," and had the unique effect of educating the citizenry about the law. (Tocqueville, while visiting the United States in 1831). Jury service, often frowned upon by many citizens, is actually a way for citizens to maintain an active role in their government while also providing them with first-hand experience of the legal system which hopefully provides support for it.
- "The strength of a jury lies in the fact that it is not totally circumscribed by legal rules; and that it has the practical power to do what is right, and not just what is technically required by the law. While this power may on occasion have been abused, its proper exercise presents the jury in its finest light." (James J. Gobert, *The Jury on Trial: A Political, Philosophical, and Psychological Examination of the Jury* (1993); Harry Kalven and Hans Zeisel, *The American Jury* (1966)).
- "A jury in a criminal case does far more than decide issues of fact. It has the power to extend mercy where mercy is called for, and to mete out individualized justice. It has the power, although not necessarily the right, to nullify -- that is, to return a verdict of not guilty even though a strict application of controlling legal principles to the facts would seem to require a verdict of guilty." (James J. Gobert, *The Jury on Trial: A Political, Philosophical, and Psychological Examination of the Jury* (1993); Harry Kalven and Hans Zeisel, *The American Jury* (1966)).