Abstract

The thesis introduces and criticizes the Hong Kong’s jury system. The structure of this thesis is as follows: Chapter 1 provides background information of the jury system.

Chapter two explores the question from a statutory prospective i.e. the legislative lacuna in the Jury Ordinance. From the case of HKSAR v. Fu Chu Kan [2005] 4 HKC 1, it is apparent that the jury law is filled with uncertainties and that there is a danger to discharging the jury. In respect of the uncertainties in jury law, I recommend that it be codified. I have conducted an in-depth study on the jury system. As a result, I have come upon alternative systems such as the UK practice, whereby judges sit complex cases alone; trial by judge with two commercial adjudicators; the use of special jury in criminal cases heard in the District Court; the combination of the general and special jury; the use of reserve or additional jurors; and the increase of jury size. The jury size varies from jurisdiction to jurisdiction.
This thesis will also examine the relationship between the jury size and the quality of a jury verdict. In order to ensure that the jury is better informed and better equipped to perform its function in a criminal trial, I have identified a number of areas for improvement. This proves to be a better alternative as opposed the proposal of abolishing the jury system.

Chapter three provides a critical analysis on the topic of the right to a jury trial. This right can be traced back to common law. Statutes in other jurisdictions including the United States, United Kingdom, Australia, New Zealand and Canada will be compared as well.

In Chapter four, I will explore in more detail as to how a judge could make the jury’s task easier. In general, judges should constantly provide direction to enhance the jury’s performance.

The next chapter deals particularly with the peremptory challenge and the abuse associated. I will further argue in favour of the right to select a racially balanced jury. The goal is to reduce the incidence and possibility of bias and prejudice in criminal trials.
I will also discuss the duty of a juror and the criteria for an ideal juror in chapters six and seven. Chapter six examines how one can ensure that the jurors understand their duties. In particular, the first leading case regarding a juror being sent to jail will be fully discussed. It is without a doubt that one may question the jury system’s effectiveness, and whether increasing juror’s allowance prove to be an alternative. It is important to provide incentive to jurors when they shoulder civic responsibility and it is argued that civic education will be better than punishment or imprisonment.

Chapter seven studies how juries can be more representative of the general community and how to ensure that the jury body can embrace the broadest possible range of views, opinions and experience. It compares the jury exemption and disqualification in Hong Kong to that of the United Kingdom. It is suggested that, on the one hand, the jury exemption should be narrowed down; but on the other hand, a new category of jury exemption should be introduced. In other words, the underlying principle would be the distribution of jury duty across the widest range of the community so as to lessen the extent of jury duty on each individual citizen.
The purpose of chapter eight is to discuss the modernization of the jury system and how to protect the jurors. Chapter nine looks at the future of the jury system in Hong Kong. It tells us that the future criminal justice reform should be conducted in the ways the jury reform did.

Finally, in Chapter 10, I try to draw a few conclusions. It is concluded that the existing jury system needs to be improved with suggested methods. While more research is called for on this subject, the potential of jury reform is discussed with cautious optimism.
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(III) Modern definition of “jury” and “juror”
(IV) The origin of jury system in Hong Kong
(V) The World Jury Models
(VI) Differences between trial by judge and trial by jury
(VII) The advantages of the jury system
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Chapter 9  The Future of the jury system in Hong Kong  

Chapter 10 Recommendations  

Appendix A  Summary of Interview with Jonathan Caplan Q.C.s  

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Appendix C Table shows the change in different amendment of Jury Ordinance  

Bibliography