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THE JURY TRIAL: AN ABSOLUTE RIGHT OR A CONDITIONAL PRIVILEGE?

ԱՐԴՅՈՔ ԵՐԴՎՅԱԼ ԱՏԵՆԱԿԱԼՆԵՐԻ ՄԱՍՆԱԿՑՈՒԹՅԱՄԲ ԴԱՏԱՎԱՐՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔԸ ԲԱՑԱՐՁԱ՞Կ Է, ԹԵ՞ ՊԱՅՄԱՆԱԿԱՆ

СУД ПРИСЯЖНЫХ: АБСОЛЮТНОЕ ПРАВО ИЛИ УСЛОВНАЯ ПРИВИЛЕГИЯ?

Introduction

A jury trial is a legal proceeding in which a group of people/citizens (the jury) is empaneled to hear evidence and determine the facts of a case under the guidance of a judge. In other words, a Jury bears, most of the functions that Judges had in Civil law (Romano-Germanic) countries. In the United States, the jury trial is often recognized as a cornerstone of the legal system and a safeguard of individual liberties. The Founding Fathers[1] regarded trial by jury as fundamental: for example, John Adams wrote that "representative government and trial by jury are the heart and lungs of

[1] The Founding Fathers were a group of influential leaders in 18th-century America, including figures like George Washington, Thomas Jefferson, Benjamin Franklin, and John Adams, who played key roles in the creation of the United States and its democratic principles.

liberty" – without them, citizens would be vulnerable to oppression[2].

In many legal systems, especially those with common law roots, the jury trial has long been regarded as a fundamental component of justice. It is often viewed as a safeguard against arbitrary judicial power, ensuring that "man gets *People's justice*", where legal decisions reflect the community's conscience and logic. In other words, it ensures that a person is judged by fellow citizens who can relate to their experiences and understand their perspective, people who share similar experiences and viewpoints.

The jury trial is a fundamental right that is not merely a procedural tool in Anglo-Saxon legal systems such as those in nations like the United States and the United Kingdom.

Nonetheless, there is ongoing discussion in the fields of philosophy and law on how absolute this right actually is. Many legal systems impose a number of restrictions and exceptions, even when they guarantee the availability of jury trials in specific situations.

This article explores the historical development of the jury trial, its legal and Constitutional foundations, the substantive and procedural limits on the right to a jury, and finally whether it should be regarded as an absolute right or a conditional privilege within the United States modern judicial systems.

Historical Background.

The concept of a jury trial can be traced back to early medieval England, where juries of ordinary citizens were used to decide facts in certain cases. The signing of the Magna Carta in 1215 was one of the most important turning points in the history of jury trials[3]. Magna Carta established the principle that no individual should be punished except by the "lawful judgment of his peers" or the "law of the land." This early notion of trial by jury laid the groundwork for the development of a more structured judicial system in England.

Over time, the jury system became a key feature of English common law. By the 17th and 18th centuries, it had evolved into a well-established institution, particularly as a safeguard against governmental overreach. By the 18th century, trial by jury was firmly entrenched in English jurisprudence and was respected by the American colonists as well. English colonists who came to "New Land" brought the tradition of jury trials to America, where it became a fundamental part of the legal system. The U.S. Constitution initially did not guarantee the right to be tried by jury. However, later the right to a jury trial was adopted in both criminal and civil cases through the Sixth and Seventh Amendments[4] of the U.S. Constitution, reinforcing its role as a fundamental pillar of justice.

While jury trials have flourished in common law jurisdictions, they have not been universally adopted. Many civil law countries, including Armenia, rely on professional judges rather than lay juries to determine verdicts. This divergence raises important questions about the role of jury trials in modern legal systems and whether their presence (or absence) impacts the fairness and legitimacy of judicial outcomes.

Limits on the Right to a Jury Trial.

While the right to trial by jury is fundamental, it is not available in every legal proceeding.

[2] *Jack Zouhary,* Jury Duty: A Founding Principle of American Democracy, Civil Jury Project at NYU School of Law (July 11, 2017).
[3] The Jury Trial: History, Jury Selection, and the Use of Demonstrative Evidence, 1 J. Legal Advoc. & Prac. 172, 175, 1999.
[4] U.S. Constitution.

Various categories of cases and claims fall outside the scope of the jury trial guarantee, and jury trial is not available in those cases. Below we will discuss the key areas where parties do not have a right to a jury trial.

- Equitable Claims: Includes the actions where a party is seeking equitable relief (such as injunctions, specific performance, rescission, or trust) that traditionally do not involve juries. Historically in the English system, courts of equity (e.g., the Court of Chancery) decided cases without juries, and the Founders carried forward that distinction.[5]

The Seventh Amendment preserves the jury right only for "suits at common law," which *excludes* suits in equity.[6] The Seventh Amendment of the United States Constitution provides, "In suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, then according to the rules of common law."[7]

Even after law and equity were merged, U.S. courts maintained the substantive distinction for Seventh Amendment purposes: if the issue or remedy is equitable in nature, there is no constitutional right to have a jury decide it.[8]

In other words, a jury trial is not guaranteed when a party seeks injunctive relief; hence, a claim solely for an injunction or for equitable restitution will be heard by a judge. However, when a lawsuit mixes legal and equitable issues, courts must be careful to preserve jury rights on the legal issues. The Supreme Court has ruled that legal claims should be tried to a jury before equitable claims are resolved, to ensure the jury's factual findings are not precluded by a judge's prior decision on an equitable matter.[9]

- Administrative and "Public Rights" Proceedings: Another significant limitation on jury trials arises in the context of administrative agencies (e.g., Immigration proceedings) and other non-Article III adjudications. The Constitution's jury trial provisions historically apply to court proceedings, not administrative hearings. The Supreme Court has held that the Seventh Amendment is generally inapplicable in administrative proceedings, because such proceedings involve "public rights" created by Congress and the government can set conditions (including bench trial) on their adjudication.[10]
- Statutory Waivers and Exceptions: Congress and state legislatures have the authority to shape the right to a jury trial through legislation, especially when waiving sovereign immunity or creating new causes of action. One clear example is the Federal Tort Claims Act (FTCA), which waives the federal government's immunity for certain torts but explicitly prohibits jury trials in those suits. The FTCA statute provides that any action brought under the Act "shall be tried by the court without a jury".[11]

In summary, the right to a jury trial in the U.S. is broad but not absolute. It is especially true

[5] Tu I v. United States, 481 U.S. 412 (1987).
[6] U.S. CONST., amend. VII
[7] Id.
[8] Parsons v. Bedford, Breedlove & Robeson, 28 U.S. 433 (1830)
[9] Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959).
[10] Non-Article III adjudications refer to legal proceedings where cases are decided by tribunals, agencies, or courts not established under Article III of the U.S. Constitution. These adjudications often occur in administrative agencies (e.g., immigration courts, Social Security hearings) or specialized courts (e.g., bankruptcy courts, military tribunals) where judges do not have life tenure or salary protection like Article III federal judges. Instead, they operate under Congress's authority to create alternative dispute resolution mechanisms outside the traditional judiciary.
[11] 28 U.S.C. § 2402.

for traditional legal claims in courts of law. If a case lies in a domain historically or legislatively designated for non-jury determination – be it equity, administrative adjudication, or a special statutory proceeding – then no jury right exists. Even where the right does exist, it can be waived or lost by failing to assert it timely (Federal Rule of Civil Procedure 38[12], for instance, requires a written demand for a jury trial, or else the right is deemed waived). These substantive limits show that the Constitution and Congress have delineated boundaries around the jury right, making it conditional on the type of case and forum.

Procedural Restrictions on Jury Access.

Beyond direct constitutional and statutory limitations on the right to a jury trial, the right to be tried by a jury may also be limited indirectly through procedural mechanisms that, for example, the party may use to prevent the trial at all, hence the right to a jury trial, even when the right to be tried by a jury theoretically would apply. The modern U.S. civil litigation process contains several judge-driven procedures that can dispose of claims before or after a jury trial, effectively narrowing the situations in which a jury actually renders a verdict. Important examples include:

- **Motions to Dismiss**: Under Federal Rule of Civil Procedure, a defendant may move to dismiss a lawsuit for "failure to state a claim upon which relief can be granted."[13] If the court grants a 12(b)(6) motion, the case is ended at the pleadings stage – no jury is involved because the judge has determined that even taking the allegations as true, the law provides no relief. This procedure has existed in various forms for a long time. In recent years, the Supreme Court tightened the pleading standards in cases like *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009), making it easier for courts to dismiss claims that are not backed by "plausible" factual allegations. Some commentators view these developments as gatekeeping measures that weed out cases before trial, thereby curtailing the opportunity for a jury to hear them. By requiring more factual detail upfront, courts can dismiss implausible claims early, which serves efficiency but also means fewer juries convened for borderline cases. If a claim is dismissed at this preliminary stage, the plaintiff's constitutional jury right (had the case proceeded on a valid claim) never gets exercised due to the legal insufficiency of the complaint.
- **Summary Judgment**: Federal Rule of Civil Procedure 56 allows a court to grant summary judgment when there is "no genuine dispute as to any material fact" and the moving party is entitled to judgment as a matter of law. In essence, if after discovery one side cannot point to sufficient evidence on an essential fact, the judge may decide the case without a trial. Summary judgment, especially after the trilogy of Supreme Court cases in 1986 (*Celotex Corp. v. Catrett*, *Anderson v. Liberty Lobby*, and *Matsushita Electric v. Zenith Radio*), has become a widely used tool to resolve cases (particularly complex or costly ones) before trial. This procedure can significantly limit access to jury trials: if the judge concludes that no reasonable jury could find for the non-moving party on the evidence presented, then the case is concluded by judicial order rather than by jury deliberation. While some scholars have argued that aggressive use of summary judgment undermines the Seventh Amendment by usurping the jury's role in weighing evidence[14] the Supreme Court has maintained that summary judgment is constitutional. The rationale is that summary judgment does not violate the Seventh Amendment so long as it is granted only in cases where there

[12] Federal Rule of Civil Procedure 38.
[13] Federal Rule of Civil Procedure 12(b)(6)
[14] Against Summary Judgment» by John Bronsteen - LAW eCommons.

is no true factual issue for a jury to decide. In other words, the Seventh Amendment guarantees the right to a jury *trial* only when there are disputed facts; it does not guarantee a jury trial for claims that are legally insufficient or factually unsupported. A directed verdict (now called **Judgment as a Matter of Law** under Rule 50) at trial serves a similar function to summary judgment before trial – it terminates the case without a jury decision if the proof is one-sided. These mechanisms are justified as means to avoid frivolous or baseless claims absorbing judicial resources and to ensure that juries are not asked to decide cases that lack any evidentiary foundation. However, the expansion of these practices means that many litigants who file jury-triable claims never actually see a jury; their cases are resolved by judges' rulings instead.

- **Other Judicial Controls**: Even when a case does proceed toward a jury, judges possess various methods to manage or restrict the jury's involvement. For example, judges can decide certain preliminary factual questions (like the admissibility of evidence or qualified immunity in civil rights cases) that may effectively end a case before the jury sees it. After a jury verdict, a judge can grant a new trial or even enter a judgment notwithstanding the verdict (JNOV) (under Rule 50, in federal practice this is a Renewed JMOL) if the jury's verdict has no legally sufficient evidentiary basis. Appellate courts also can reverse jury verdicts that are not supported by sufficient evidence (though under a deferential standard). These practices are constrained by the Seventh Amendment's Re-examination Clause, which prohibits re-examining facts found by a jury except according to common-law rules. For example, a trial judge may not simply overturn a jury's factual finding at will but can set aside a verdict through the traditional device of a new trial motion (a procedure accepted at common law). In short, while a litigant may have a nominal right to a jury trial, judicial procedures at the pleading stage, summary judgment stage, and even after a jury verdict can channel, limit, or nullify the jury's involvement. These procedural safeguards serve important functions (promoting efficiency, consistency, and correctness of outcomes) but they reinforce that the path to an actual jury determination is narrow and carefully controlled.

In summary, the above-described tools make the judge's role in a trial not just important but absolutely critical. A judge's authority to rule on summary judgment motions and motions to dismiss gives them broad power—not just to interpret the law but often to decide the case itself. This raise concerns that, in some areas of law (e.g., federal employment law), judges effectively act as fact-finders, much like judges in civil law systems, by dismissing cases before they ever reach a jury, raising questions about whether people truly enjoy the right to a jury trial.

Indeed, of every 100 discrimination plaintiffs who litigate their claims to conclusion (i.e., do not settle or voluntarily dismiss their claims), only 4 achieve any form (de minimis or not) of relief. Cases that do not settle rarely make it to a jury trial.[15] For example, in one recent year, juries heard about 2 percent of the employment discrimination cases filed in federal court. [16]

A similar pattern appears in other areas of law. These numbers suggest that, despite the jury trial's status as a fundamental right, it is becoming increasingly rare in practice—not because parties waive it, but because judges prevent cases from reaching that stage.

Impact of Settlements and Attorney Fees on Jury Trial Exercise: Corporate America.

Another barrier to truly enjoying and exercising the right to a Jury Trial is "Corporate America".

[15] Sandra F. Sperino & Suja A. Thomas, Unequal: How America's Courts Undermine Discrimination Law 16 (Oxford Univ. Press 2017).
[16] Id. at 17.

Even when the law entitles a party to a jury trial, practical realities of the litigation process often lead parties to surrender that right. The high **costs of litigation**, the incentives to settle disputes out of court, and the American rule on attorney's fees (each side pays its own lawyer) can make pursuing a jury trial economically daunting. These factors contribute to what has been called the **"vanishing trial"** phenomenon – the sharp decline of cases that actually go to trial in the U.S. [17]

Litigation Costs: Taking a case to a jury trial is expensive and time-consuming. There are substantial attorney's fees,[18] costs for depositions and discovery, expert witness fees, and trial preparation expenses. For plaintiffs with limited resources (or small claims), these costs can outweigh the potential recovery. For defendants, going to trial can mean racking up legal fees that might exceed the cost of an early settlement. The **American Rule** on fees – under which even the winning party generally cannot recover attorney's fees from the loser – means that a plaintiff who "wins" at trial might still bear a heavy financial burden for having pursued the case. For example, a plaintiff who wins $50,000 in damages but owes $50,000 in legal fees effectively gains nothing. On the other hand, a defendant who prevails must still cover their own legal fees, resulting in even a successful jury trial being a financial defeat overall. This contrasts with the "loser pays" models found in numerous other nations, potentially dissuading the use of the jury system except for the most crucial cases. Although contingency fee agreements (frequently used in personal injury cases) reduce this for certain plaintiffs, not every case receives contingency representation. Numerous civil rights, consumer, or employment cases depend on statutory fee-shifting provisions; without these, individuals may find it difficult to afford a jury trial battle. The outcome is that the right to a jury trial is recognized legally, but actually accessing it may hinge on an individual's financial resources or the chance of recovering attorney fees.

Settlement Pressures: The overwhelming majority of civil cases settle before reaching a jury – by some estimates, over 90–95% of civil cases are resolved through negotiated settlements rather than trials.[19] This prevalence of settlement is driven by rational calculations. Trials introduce uncertainty: a jury could side with either party, and the range of possible awards is unpredictable. To avoid the "gamble" of a jury decision, parties often prefer a sure outcome through settlement. Additionally, because trials are public and can damage reputations, corporations or professionals might settle to keep allegations out of the public eye (most settlement agreements are confidential). Courts and judges also encourage settlement; many jurisdictions require mediation or settlement conferences, highlighting the judicial system's interest in resolving cases without consuming scarce trial time. The result is that even where a jury trial right exists, parties voluntarily (or under soft coercion) opt to waive it in exchange for a mutually agreed resolution. **Disparities in resources** can exacerbate settlement pressure: a well-funded defendant can prolong pretrial litigation to wear down a less wealthy adversary, driving the weaker party to settle rather than incur mounting costs. In such scenarios, the "right" to have a jury of one's peers decide the case becomes a leverage point in negotiation rather than an eventual reality. The data bear out the impact of these dynamics: today, only about 1% of civil cases filed in U.S. federal courts are resolved by trial, with jury trials

[17] Sarah Staszak, Explanations for the Vanishing Trial in the United States, 18 Annu. Rev. L. & Soc. Sci. 43 (2022)
[18] Unlike civil law countries like Armenia, where the losing side, as a general rule, must pay the winning side's attorney fees, in the U.S., attorney fees are only available in certain areas of law (e.g., employment discrimination, patent law)
[19] *Jeffrey Q. Smith & Grant R. MacQueen, Going, Going,* But Not Quite Gone: Trials Continue to Decline in Federal and State Courts. Does It Matter?, 101 Judicature 29 (2017).

accounting for roughly 0.7%.[20] This is a dramatic shift from past decades and is often cited as evidence that trials (especially jury trials) are becoming a rarity – available in theory but seldom utilized.

"Trial Penalty" and Plea Bargains (Criminal Cases): A parallel phenomenon occurs in criminal justice. Defendants frequently face a stark choice: plead guilty (thereby waiving the jury) in exchange for a lighter sentence or go to trial and risk a much heavier sentence if convicted. This *trial penalty* means the cost of exercising the jury trial right is a substantially longer prison term. Prosecutors and judges have significant influence here – prosecutors control charging and plea offers, and judges often approve agreements or impose sentences. Studies have shown that only a tiny fraction (often <5%) of criminal cases are now resolved by jury trial.[21]

While the Sixth Amendment right to a criminal jury is fundamental, the incentive structure of the system effectively makes it a conditional privilege: a defendant can have a jury trial, but at the possible expense of a far harsher outcome. Many commentators view this as coercive and undermining the spirit of the Sixth Amendment. It demonstrates again that the existence of a formal right does not guarantee its practical availability.

In summary, financial considerations and strategic incentives exert a powerful influence on the use of jury trials. The high cost of going to trial, combined with the absence of routine fee-shifting, often discourages parties from insisting on a jury even when they have a right to one. The system instead channels cases toward settlement or plea agreements. The result is an environment in which the jury trial, while still revered, is often treated as a last resort – a backup option if negotiation fails – rather than the default mode of adjudication. This reality suggests that, in practice, the jury trial operates less as an absolute right readily exercised by all and more as a privilege that one must be prepared (and able) to pay for.

Conclusion.

The jury trial holds a dual role in the American legal system: it is constitutionally recognized as a fundamental right while also being moderated by various conditions in its implementation. On one side, the significance of the jury trial in both rhetorical and legal contexts is unquestionable. The authors of the Constitution embedded it in two amendments, viewing juries as essential protectors of freedom and democratic engagement in the legal system. Thus, jury trials are a fundamental right—woven into the essence of American governance and a hallmark of justice. Conversely, the operation of the jury trial in reality shows it to be a limited or contingent right in various ways. The right is applicable only in specific categories of cases (serious misdemeanors and criminal felonies, along with civil actions at law exceeding a certain threshold and of particular types) and not in others (minor offenses, equity cases, etc.). Even when the right is present, parties must traverse a series of procedural obstacles – such as pleading standards, pretrial motions, summary judgment, and others – before a jury is ever formed. Judges maintain the power to step in if the evidence does not meet legal standards, and involved parties may forgo or feel compelled to give up a jury in favor of a settlement or plea deal. Additionally, practical barriers such as expenses and the absence of fee-shifting imply that a "day in court" in front of a jury is frequently a privilege primarily accessible to those with the means (or significant claims) to warrant it. Statistics indicate that only a small percentage of disputes in the U.S. end in jury verdicts, implying that although the right to a jury

[20] Id. at 28.
[21] Id. at 30.

trial is present, it is often relinquished, limited, or procedurally waived.

In evaluating whether the jury trial is an absolute right or a conditional privilege, the evidence points to a synthesis: it is a core constitutional right in principle, but one that operates within a framework of constraints that make it conditional in practice. The Constitution guarantees the availability of a jury in broad terms, but the legal system simultaneously ensures that only appropriate cases actually invoke that machinery. Thus, the American jury trial can be seen as fundamental – a bedrock principle of justice – yet also managed through procedural and substantive limits. It is not "absolute" in the sense that one can demand a jury in any context whatsoever; rather, it is a right subject to definition and regulation.

In conclusion, the jury trial in the U.S. legal system is best characterized as a fundamental right deliberately hedged with conditions. However, as described in previous chapters, judges wield significant authority, including the power to decide facts without a jury. Despite this, the jury trial remains a defining feature of the justice system's identity, even as practical realities and policy choices continue to shape when and how this right is exercised."

Annotation. The article presents the role of the Jury system in the Anglo-Saxon (common law), particularly the American legal system. It examines the constitutional and historical foundations of jury trials in the United States, comparing them with the approaches of the Roman-Germanic legal systems. The article aims to explore the origin, role, significance, and essence of the Jury institution, and ultimately help the reader understand whether the right to a jury trial is an absolute right or not. It also discusses which decisions belong to the jury and which belong to the judge, among other issues. The article unveils the procedural tools that effectively limit the right to a jury trial in the legal process.

The article aims to investigate whether the right to a jury trial remains absolute or becomes a conditional right in the American legal system. The analysis is supported by recent statistical data and legal literature.

Ամփոփագի: Հոդվածը ներկայացնում է Երդվյալ ատենակալների ինստիտուտի դերն անգլոսաքսոնական (ընդհանուր իրավունք), մասնավորապես ամերիկյան իրավական համակարգում: Այն ուսումնասիրում է երդվյալ ատենակալների մասնակցությամբ դատավարության սահմանադրական և պատմական հիմքերը ԱՄՆ-ում՝ համեմատելով դրանք ռոմանոգերմանական իրավական համակարգերի մոտեցումների հետ: Այն միտված է բացահայտել Ատենակալների ինստիտուտի ծագումը, դերը, նշանակությունը, էությունը և վերջապես օգնել ընթերցողին հասկանալ, արդյոք Երդվյալ ատենակալների մասնակցությամբ դատավարության իրավունքը բացարձակ իրավունք է, թե՞ ոչ, որ հարցերի վերաբերյալ որոշում կայացնելու իրավունքը պատկանում Երդվյալ ատենակալներին և որ հարցերում՝ դատավորին և այլն: Հոդվածը բացահայտում է դատավարական գործիքակազմերը, որոնց միջոցով փաստացի սահմանափակվում է դատավարության կողմի երդվյալ ատենակալների մասնակցությամբ դատավարության իրավունքը:

Հոդվածը միտված է բացահայտելու՝ արդյո՞ք երդվյալ ատենակալների մասնակցությամբ դատավարության իրավունքը մնում է բացարձա՞կ, թե՞ դառնում է պայմանական իրավունք ամերիկյան իրավական համակարգում: Վերլուծությունն ամրապնդված է վերջին տարիների վիճակագրական տվյալներով և իրավաբանական գրականությամբ:

Аннотация. Статья представляет роль института присяжных в англосаксонской правовой системе (общего права), в частности, в американской правовой системе. В рамках данной статьи изучаются конституционные и исторические основы судебного разбирательства с участием присяжных в США, они сравниваются с подходами романо-германской правовой системы. Цель статьи – раскрыть происхождение, роль, значение и сущность института присяжных, а также помочь найти ответы на такие вопросы, как ~~читателю понять,~~ является ли право на суд с участием присяжных абсолютным правом или нет; какие решения принимаются присяжными, а какие – судьей, и другие ~~вопросы~~. Статья выявляет процессуальные инструменты, которые фактически ограничивают

право на судебное разбирательство с участием присяжных.

Статья направлена на исследование того, сохраняется ли право на судебное разбирательство с участием присяжных как абсолютное право, или оно становится условным правом в американской правовой системе. Анализ подкреплен последними статистическими данными и юридической литературой.

Keywords: *society, Anglo-Saxon, Romano-Germanic, civil procedure, trial, justice, jury, jury trial, constitution, judicial decisions, American legal system.*

Բանալի բառեր *- հասարակություն, անգլոսաքսոնական, ռոմանոգերմանական, քաղաքացիական դատավարություն, ատենակալներ, երդվյալ ատենակալներ, արդարադատություն, սահմանադրություն, դատական որոշումներ, ամերիկյան իրավունք:*

Ключевые слова*: общество, англосаксонский, романо-германский, гражданское судопроизводство, судебное разбирательство, правосудие, присяжные, судебное разбирательство с участием присяжных, конституция, судебные решения, американская правовая система..*

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