

Question 3

Describe the routes of appeal for the defence from both the Magistrates Court and from the Crown Court.

From the crown court there are two different appeal routes either case stated appeal to the Queens Bench Divisional Court or to the Crown Court. If it is by way of case stated is it only when the appeal is on a point of law. The magistrates state the case (tell the facts) then the Queen Bench Divisional Court can either quash the decision, confirm it or remit the case to the magistrates' Court for re-hearing. The magistrates are asking for advice about a point of law. A further appeal is possible to the House of Lords but only on a point of law of general public importance and the House of Lords (or QBD) must give permission to appeal. This only happens very rarely. If the appeal goes to the Crown Court Defendants may appeal on a point of law or fact. If they pleaded not guilty, they can appeal against conviction or sentence; if they pleaded guilty, against sentence only. Appeals are heard by a Crown Court Judge and not less than two and not more than four magistrates. An appeal against conviction is a complete rehearing of the whole case, therefore evidence not put before the magistrates may be adduced at the appeal. An appeal against sentence is a rehearing of the sentencing process only. There is no further appeal unless a point of law is involved.

If the defendant decides to appeal from the Crown Court against conviction and/or sentence it will go to the Court of Appeal. In all cases the defendant needs leave to appeal from the Court of Appeal, or the trial judge must grant a certificate that the case is fit for appeal. The defendant can only appeal against conviction if it thought to be unsafe (s2(1) Criminal Appeal Act 1968 as amended by the Criminal Appeal Act 1995). If the Court of Appeal allows the defendant to appeal it may order a retrial (s7 Criminal Appeal Act as amended by the Criminal Justice Act 1988) or it may quash the conviction. When hearing an appeal, the Court of Appeal has power to admit fresh evidence if it is necessary or expedient in the interest of justice (s23(1) Criminal Appeal Act 1968)

There is another route of appeal but this is only if there has been a miscarriage of justice. The Criminal Case Review Commission (CCRC) deals with them if there has been a miscarriage of justice. It used to be dealt with by the Home Secretary but this was said to be too involved with the executive. The CCRC can investigate cases, which were tried in the Crown Court or Magistrates. Where the case was tried in the Crown Court it may be referred to the Court of Appeal and the Magistrates Court is referred to the Crown Court. The CCRC can only refer a case if: an appeal has been decided or leave to appeal has been refused and it considers there is a real possibility that the conviction (or sentence) would not be upheld (s13 Criminal Appeal Act 1995).

The cases described below were heard by the Court of Appeal following referral by the Criminal Cases Review Commission, on the grounds that there is a real possibility that the conviction, finding, verdict or sentence may not be upheld.

A man named Mahmood Mattan conviction was referred to the Court of Appeal on 23 September 1997, and quashed on 24 February 1998. Mr Mattan was convicted on 24 July 1952 at Glamorganshire Summer Assizes, Swansea of the murder of Miss Lily Volpert in her shop in Bute Street, Cardiff on 6 March 1952. Leave to appeal was refused on 19 August 1952. Mr Mattan was hanged at Cardiff Prison on 3 September 1952.

The Commission referred the case to the Court of Appeal on 23 September 1997, and the conviction was quashed on 24 February 1998 when Lord Justice Rose, Mr Justice Holland and Mr Justice Penry-Davey ruled that the conviction was unsafe because the evidence of the main prosecution witness was unreliable.