



# The Double Jeopardy Law

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- <sup>1)</sup> - Forensic Science Service Annual Report 1998-9, p.15, 21
- <sup>2)</sup> - Carr bid to scrap law on double Jeopardy, By Eamonn Duff, February 9 2003, The Sun-Herald
- <sup>3)</sup> - <http://webjcli.ncl.ac.uk/2000/issue5/james5.html#Heading39>
- <sup>4)</sup> - Law Society, at: [http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.org.uk/dcs/fourth_tier.asp), 8 February 2000
- <sup>5)</sup> - *The Times* (1997) 22 January
- <sup>6)</sup> - Law Society, at: [http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.org.uk/dcs/fourth_tier.asp), 8 February 2000
- <sup>7)</sup> - Forensic Science Service Annual Report 1998-9, p.15, 21
- <sup>8)</sup> - ABC Radio 2000-06-11 13:14:47
- <sup>9)</sup> - *The Times* (1997) 22 January
- <sup>10)</sup> - *The Times*, 1999b
- <sup>11)</sup> - *The Times*, 1997
- <sup>12)</sup> - *The Times*, 1998
- <sup>13)</sup> - *The Times*, 1999b
- <sup>14)</sup> - LATELINE- Broadcast: 10/2/2003
- <sup>15)</sup> - Law Society, at: [http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.org.uk/dcs/fourth_tier.asp), 8 February 2000
- <sup>16)</sup> - Law Society, at: [http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.org.uk/dcs/fourth_tier.asp), 8 February 2000
- <sup>17)</sup> - Thomas, G.C., (1998) *Double Jeopardy: The History, the Law* (New York University Press, New York)
- <sup>18)</sup> - Thomas, G.C., (1998) *Double Jeopardy: The History, the Law* (New York University Press, New York)



The double Jeopardy Law is an 800 year old piece of legislation which states that once someone has been tried once, and have been acquitted, they cannot be tried again <sup>(1)</sup>. This Law was put in place to provide rules to protect those who have been accused. However there have been many speculations made as to whether it is still only protecting the accused, or hindering the victims. This essay will attempt to answer that question. It will state what the Double Jeopardy Law is, what the general layout of it is, what the advantages and disadvantages of it are, why it shouldn't be used in Australia, how it could be reformed and what effect the relaxation of it would have on the relevant stakeholders

### **General layout of the Double Jeopardy Law**

The Double Jeopardy Law is a piece of legislation which protects against three abuses; a second prosecution for the same offence after acquittal, a second prosecution for the same offence after conviction and multiple punishments for the same offence. The underlying idea is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent s/he may be found guilty. <sup>(2)</sup>

### **Advantages of the Double Jeopardy Law.**

There are many advantages for the double Jeopardy Law which argue that it should remain. Firstly, the Law has worked for over 800 years which suggests that it must be a valid law. Secondly, the law stops the accused from being judged on their criminal past if they are prosecuted for something else later on in life. <sup>(3)</sup> Thirdly, because the Law prevents the accused from being tried twice, the Law encourages police to be more thorough with their investigations. <sup>(4)</sup> Also, if the Double Jeopardy Law was removed a presumption of guilt may follow on anyone and everyone that police feel the need to take to court. <sup>(5)</sup> There is also a doctrine incorporated into the Law, called the Collateral estoppel doctrine, which states that the prosecution has only "One fair shot" at finding a defendant guilty. <sup>(6)</sup> This pretty much sums up the Double Jeopardy Law in that the defendant can only be brought before the court once for an offence and that it must be fair on everyone, the victim and the accused.

### **Disadvantages of the Double Jeopardy Law**

There are also many disadvantages of the Double Jeopardy Law which are to be assessed. Firstly, with all of the new developments in DNA profiling, it is now possible to find new information after the case was dismissed or the defendant was acquitted. The new advancements make it increasingly easier to analyse smaller samplers and wider types of bodily material. <sup>(7)</sup> Another disadvantage is that witnesses, who did not previously realise the relevance of their testimony or who were

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<sup>15)</sup> - Law Society, at; [http://www.lawsociety.org.uk/dcs/fourth\\_tier.asp](http://www.lawsociety.org.uk/dcs/fourth_tier.asp), 8 February 2000

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previously intimidated into silence, might under later circumstances give an account and would be unable to do so due to the law.<sup>(8)</sup> Federal Justice Minister Chris Ellison said that she is “Sick and tired of seeing criminals escape on legal technicalities”.<sup>(9)</sup> There have been many cases in the course of justice that have been affected directly by the Law. There is the case of John Taft and Cynthia Bolshaw of 1983, where John’s ex-wife latterly (after the court proceedings) decided to inform the police of his confessions to her that he had visited the victim on the night of the murder. The police re-examined the clothing of the victim and matched a DNA sample from Taft with semen on a negligee.<sup>(10)</sup> There was also the case of Anthony Diedrick which arose from the murder of Dr Joan Francisco in 1994. At first, the spotlight of suspicion seemed to fall upon a colleague of the victim who had been recently convicted of the forgery of her signature<sup>(11)</sup>. However, the family of the victim successfully brought civil proceedings against Anthony Diedrick in 1998<sup>(12)</sup>. This extraordinary result prompted the police to review their investigation, which led to the discovery of tiny blood spots on the T-shirt of the victim, spots which matched the blood of Diedrick according to analytical techniques which were far less effective in 1994<sup>(13)</sup>. It also appears from the news report that the blood spots were not in any event detected in 1994. This fully backs up the idea that the Double Jeopardy Law needs to be reformed, an argument that even the premier backed up by saying “When compelling new evidence arises in a serious crime, it should be able to be tabled in a court of law.”<sup>(14)</sup>

### **Why shouldn't the Law be in use in Australia**

Australia is one of the most scientifically advanced countries in the world. Any new additions to forensic police work are always incorporated into the Australian Police Force. With all of the new scientific advancements being put in place, there needs to be some changes made to some of the old laws that were made when DNA evidence was not around. The Double Jeopardy Law was originally formed 800 years ago where it was common law. There was no DNA evidence around then and there have been no amendments to the Law to incorporate the new developments. The Premier and Federal Justice Minister Chris Ellison both back up the idea that the law needs to be reformed for the Australian law system to work well in the age.

### **Reform of the Double Jeopardy Law**

There have been many ideas brought forward worldwide for the reform of the Double Jeopardy Law. The Law Commission, the official law reform body for England and Wales, has recommended that the rule against double jeopardy be changed with regard to murder. It says that a fresh trial should be possible if “compelling” new evidence emerges after the defendant is found not guilty.<sup>(15)</sup> A side benefit of this amendment was that a retrial should not be ordered on the basis of evidence that was available at the time of the original trial, but was ruled inadmissible.<sup>(16)</sup> In America there was a proposed reform that the Law be removed in cases of murder, rape, manslaughter and armed robbery. The change would have been retrospective, so that suspects who had already been

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<sup>20</sup> - The Times, 1999b

<sup>21</sup> - The Times, 1997

<sup>22</sup> - The Times, 1998

<sup>23</sup> - The Times, 1999b

<sup>24</sup> - LATELINE- Broadcast: 10/2/2003

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acquitted could find themselves back in the court if there is "compelling new evidence".<sup>(17)</sup> Other add-ons to this reform were that dangerous or violent offenders would be kept in prison indefinitely, even if they have not been sentenced to life. Also, legislation was tabled in Britain's House of Commons last year that removed the double jeopardy rule for 30 offences (i.e. relax the rule) Exceptions that involve crimes of murder, manslaughter, gang rape, some very severe drug trafficking offences and any cases that involved the punishment of life imprisonment.<sup>(18)</sup> As the other major countries of the world have shown, there needs to be reform made to the Law. The commonly accepted reform is that the Law be relaxed for cases such as Murder, manslaughter, gang rape, some very severe drug trafficking offences and any cases that involved the punishment of life imprisonment. This reform should be made to the Australian version of the Law so that it can keep up with the new developments in forensic investigation. The law should be relaxed for cases such as Murder and any case involving life imprisonment. Also relevance and how compelling evidence is should be decided by a Supreme Court judge.

### **Effect on Stakeholders**

If the reform is made into an amendment to the Law there would be some benefits and some hindrances to the general public, the victims and the accused. The relaxing of the Law could lead to the police being lazy when conducting investigations as they do not have to worry about there being only one shot at arresting the suspects. Also the relaxing of the law would affect the accused as they may be judged on their criminal past. However the benefits of relaxing the law outweigh the hindrances of relaxing it. If a suspect is tried for murder or some other case that would lead to life imprisonment, and they were acquitted, then further down the track a new DNA analysing device or method was released which found new evidence to convict the suspect indefinitely, police could take the suspect to court to put them away for good. This would affect the public and the victim in a highly beneficial way in that neither has to worry about a guilty person walking free due to a legal technicality. Also if for some reason a witness who was previously intimidated into silence or who did not previously realise the relevance of their testimony suddenly wanted to give an account for a trial of murder or some other case that would lead to life imprisonment, they would be able to, so that the course of justice could run effectively.

The Double Jeopardy Law was created 800 years ago as common law. When it was created it was not intended to be used to hinder the investigations and trial proceedings of police officers due to its obsolescence, it was made to protect the accused. However, unfortunately it is now creating a problem in the current society. To put a stop to this inadequacy in the text of the legislation, there needs to be reform so that it can once again fulfil its purpose to protect the innocent. Without reform the Law will continue to hinder investigations and trial proceedings until it is fixed.

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