#### (b) Natural Justice

Rules of natural justice are meant to ensure that trials are fair. Both parties must have the opportunity to put their case and to test the other side's evidence.

• R v Thames Magistrates' Court ex parte Polemis (1974) where D, a Greek sea-captain, had his conviction quashed because he had been summoned at 10.30 to appear before the magistrates at 2.30 on the same day.

The rules also require that judges, magistrates and juries must not be biased or even appear to be biased.

- R v Bingham ex parte Jowitt (1974) where D was convicted after the chair of magistrates said that he always believed a police officer in cases where evidence consisted of a policeman's word against a defendant's.
- Re Pinochet (1998) where one of the judges, Lord Hoffmann, was a non-executive director of Amnesty International. A man must not be a judge in his own cause, said Lord Browne-Wilkinson

#### (a) Equal Access to the Law

Everyone is entitled to put their case in court, whether through counsel or a McKenzie friend.

- In *Bland* even a person in PVS and incapable of communicating with the outside world had his interests represented by the Official Solicitor.
- But consider the shortcomings to the Legal Aid, conditional fee and tribunal systems. Is it the case that at least when it comes to civil law. the more money you have the more justice you will get?

#### (a) Rectifying Mistakes

It is important that errors and miscarriages of justice can be put right. Hence the appeals system, which has broadened substantially in recent decades.

- Once, only the defence could appeal against either verdict or sentence. But the Criminal Justice Act 1972 allowed the Attorney-General to appeal on behalf of the prosecution on a point of law. This does not alter the earlier decision but may prevent a legal error from being repeated in the future.
- The Criminal Justice Act 1988 further empowered the Attorney-General to appeal against sentence where he felt that D had received an 'unduly lenient' sentence (Gwent rape case an example of the new power being used.)
- Criminal Cases Review Commission set up in 1995 when miscarriages like the Birmingham Six and Guildford Four had raised doubts about the trustworthiness of the appeal system.

decide the case.

• In R v Kronlid, D was

# 1. Procedural Justice

- concerned with the proper application of rules

**Rules Achieve** Justice

Law and Justice 2

The Extent to which

**Substantive Legal** 

## (f) Balancing Interests

Perfect justice is impossible and the law has constantly to struggle to balance competing interests, arriving at the fairest solution that it can find.

• Think of Re: A (Conjoined Twins) (2000). Remember also Hunter and others v Canary Wharf Ltd and London Docklands **Development Corporation** (1995).

#### (e) Proportionality in Sentencing

outcomes

Proceeding from the principle that no two crimes are exactly alike, judges exercise discretionary sentencing power and find a punishment to fit the crime, taking mitigating and aggravating circumstances into account. But has this important principle been eroded by the Crime Sentences Act 1997?

2. Substantive Justice

- concerned with just

• In R v Turner (2000) the judge sentenced D to a mandatory life sentence for committing a second serious offence in over 30 years. In imposing the sentence, the judge said that he considered what he was doing to be unjust.

## (b) Avoiding an Awkward Precedent

Rigid application of precedent may lead to an unjust result. Avoiding an awkward precedent is a device that judges use to ensure a just outcome.

• Merritt v Merritt (1971) where the court avoided the precedent in Balfour v Balfour (1919).

## (c) 'Conscience' decisions by **Juries**

Juries will sometimes arrive at a verdict that they consider to be just even though it flies in the face of the evidence by which they have sworn to

- In R v Owen. D was acquitted even though he had chased after V and shot him at close range.
- acquitted of criminal damage even though she did not deny causing over £1 million of damage to a military aircraft.

## (d) Equity

Permits the development of new remedies where existing common law cannot provide a iust result, as in

- Eves v Eves (1975) where the concept of a 'constructive trust' was invented, and
- High Trees (1956) where Lord Denning created the equitable remedy of promissory estoppel.

## (c) Rules of Evidence

Only relevant evidence that has been fairly obtained may be given in court.

- R v Watts (1983), where D was convicted of indecent assault after trial judge allowed evidence of two previous convictions to be given. Court of Appeal allowed an appeal by the defence.
- R v Miller (1992), where D's conviction for murder was quashed by the Court of Appeal after it heard that D had denied murdering V on over 300 occasions and 'confessed' only after verbal intimidation. He had a mental age of 11. Appeal judges ruled that the evidence had been obtained by oppressive methods and was therefore inadmissible.
- R v Reeves (1964) an example of a case where procedural justice was followed but substantive justice was not achieved because D1 and D2 received dramatically different sentences (£25 fine v. 9 months' imprisonment) for exactly the same offence.