

of 1869, 1878, 1888 for “Quakers and Moravians.” In *The Oaths Act 1909* the law included Jews.

9. *The Oaths Act 1978* states the law and how to take oaths:

England, Wales and Northern Ireland manner of administration of oaths

1) Any oath may be administered and taken in England, Wales or Northern Ireland in the following form and manner: - The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words “I swear by Almighty God that...” followed by the words of the oath prescribed by law.

2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question.

3) In the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any lawful manner.¹⁴

10. In Section 1(3) those not Christians or Jews may take an oath in “*any lawful manner*”. For recent cases on choosing an oath or affirmation and the courts attitudes see *R v Abdul Majid*.¹⁵

11. To show the range of what has been established as a “*lawful manner*” helps understand the tolerant multi-belief society of the U.K. of religious beliefs or none.

12. The relevant religious volume is taken in the left hand usually and the words read from a card or repeated if illiterate. The oaths are: (a) New Testament of the Holy Bible for Christians swearing by God, or Rastafarians by Jah or (b) Jews (covered or uncovered) on the Old Testament or (c) Muslims by Allah holding the Qu’ran/Koran, without or after purification, which may be accommodated by adjournment of the Court (d) Hindus usually by Gita or (e) Sikhs on the Adi Granth swearing by Guru Nanak.

13. Buddhists “*affirm*” usually, as do Quakers, Moravians, atheists and agnostics and those who do not wish to sully the sacred volume of their religious beliefs in secular matters.

¹⁴ Note that in Scotland after “God” is inserted “and as I shall answer to God on the Day of Judgement”. For Courts Martial see *Schedule/Annexe Naval Courts- Martial General Orders (Royal Navy) Order 1991*.

¹⁵ [2009] EWCA Crim 2563 ; *R v Naeem Saddiq 2010* [EWCA Crim 1962, and the article *Making the Right Choice?*, by R. ARSHAD, Barrister, June 2012 Counsel http://www.stmarysflc.co.uk/docs/Counsel_2012_06_Arshad.pdf.

14. Having discussed the contexts and forms of oaths it is important to consider who can take the oath. All people must be “*competent*” defined by understanding the importance and seriousness of it. Mental competence is essential and based on the proof of the medical evidence.

15. Children and young people are an area of law where there is the juxtaposition of understanding the importance of giving evidence and the need to tell the truth. We should not forget the “*why*” of the oath.

16. The 17th century Sir Matthew Hale postulated that a child under 12 years old who was raped should be allowed to give evidence with or without an oath: “whether the infant be sworn or not, it is necessary to render their evidence credible, that there should be concurrent evidence to make out the fact, and not to ground a conviction singly upon such an accusation without or without oath of an infant.”¹⁶

17. To determine who can swear an oath the law excludes children under 12 years old even though a person can be convicted on the evidence given by a child.¹⁷

18. A child of more than 14 years can take the oath on the same basis as adults. The understanding of the importance to tell the truth is based on the court deciding “*the balance of probabilities*” on the evidence and argument submitted. Even though it is a criminal trial it is not the criminal test for guilt – objective certainty.

19. Under the *Children and Young Persons Act 1963 Section 28 (1)* the requirement of *The Oaths Act 1978, s 1* is changed to: “*I promise by Almighty God*” instead of “*I swear by almighty God*”.

Oaths: English law religion v French secularism, an update

20. In deciding on any “*lawful manner*” in the Oaths Act, I would submit that the recent *Scientology case* has now extended the manner and nature of beliefs for swearing oaths.

To add an update regarding what constitutes “*a religion*”. The decision defining religion was in *Sergal*.¹⁸ It was about whether the Church of Scientology was a religion, so its place of worship could be registered for conducting marriages. *Sergal* was overturned on 11 December 2013 by the

¹⁶ Hale 1636, p. 635.

¹⁷ See *RvB* [2011] Crim. L. R.233,CA. and Youth Justice and Criminal Evidence Act 1999 Section 53 (1) *Counsel Magazine* July 2012: Child Q England’s Youngest Witness, by C. WIGGIN (child abused at 2 years old giving evidence by video of the abuse at 3 years old by using dolls showing his stomach had been stamped on by the abuser).

¹⁸ *R v Registrar General, Ex p Segerdal* [1970] 2 QB 697.

Supreme Court in *R (on the application of Hodkin and another) (Appellants) v Registrar-General of Births, Deaths and Marriages (Respondent)*.¹⁹ That case makes a classical analysis and review of “religion”: in statutes; in English cases; in the decisions from other common law systems; by noting academic and expert writings as well as the plain word dictionary definitions of Chambers and the Oxford English Dictionary. It mentions but declines to consider Article 9 of the Human Rights Convention 1950. The case was about whether the Church of Scientology was a *religion*, so it could have its place of worship registered for marriages under the relevant statute.

21. Lord Toulson stated in paragraph 34: “There has never been a universal legal definition of religion in English law, and experience across the common law world over many years has shown the pitfalls of attempting to attach a narrowly circumscribed meaning to the word. There are several reasons for this – the different contexts in which the issue may arise, the variety of world religions, developments of new religions and religious practices, and developments in the common understanding of the concept of religion due to cultural changes in society.”

22. It should be remembered that although the concept of deism or theism was a fundamental concept inherent in religion according to *Sergal*, the Charities Act 2011 Section 3(2)(a): states “‘religion’ includes – (i) a religion which involves belief in more than one god, and (ii) a religion which does not involve belief in a god.” Also that in Employment Tribunals rights for religious worship have been decided to include paganism ancient and modern, as in 20th century Wiccan beliefs (see the case of Ms Karen Holland).

23. French law avoids the *in extenso* analysis of what is “religion”. It is dismissed by the 1905 French law on the Separation of the Churches and State (loi du 9 décembre 1905 concernant la séparation des Églises et de l'État). That law derives from Article 10 of the *Rights of Man 1789* and is currently set out in the first 2 Articles of the *Constitution of 4th October 1958*. For a review and comparison of the decision in the Scientology case I recommend reading the *National Assembly of France report No. 2468* on “sects”. This report states on religion in “1. Impossibility of Legal Definition” stating “The absence of a legal definition of “sectes” is a result of the French notion of secularism (“laïcité”).²⁰

¹⁹ [2013] UKSC 77.

²⁰ <http://www.assemblee-nationale.fr/rap-enq/r2468.asp>.

II. PERJURY— “BE YOU NEVER SO HIGH THE LAW IS ABOVE YOU”. THE PERJURY ACT 1911; THE ARCHER CASE

24. There is no doubt that perjury is an insidious threat to all legal systems. Fact based true statements and those of honest opinion are the foundation stones. False statements, dishonesty and lies, neuter the criminal and civil and constitutional basis of democratic systems. They neuter the rule of law. In the past, in the present, absent the rule of law, societies develop arbitrary inhuman systems not to be dignified by the epithet “legal”.

25. The crime of “perjury” is essential to systems based on the rule of law and particularly the so-called “*common law system*”. That system relies on true statements not false. The statements may be of many sorts: oral, in writing in words or numbers particularly when in “accounts”. In the later case it was in on this basis that arrests took place regarding the “expenses scandal” of Members of Parliament set out in the Report of Sir Thomas Legg.²¹

26. The independence of the judges is complemented by lawyers in the United Kingdom jurisdictions. Lawyers have a duty as part of the administration of justice to expose perjury and false witness. It is trite law to say they cannot “aid or abet” a perjury of their client, which is a criminal offence in itself.

27. The current law is set out in *The Perjury Act 1911 [PA 1911]*. It has been subsequently amended but states in s.1. (1): If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he shall be guilty of perjury, and shall, on conviction thereof on indictment, be liable to penal servitude for a term not exceeding seven years, or to imprisonment ... for a term not exceeding two years, or to a fine or to both such penal servitude or imprisonment and fine.²²

28. The elements of the main offence are clear. The offence is triable on indictment. The maximum penalty is 7 years in prison. Aiding, abetting or inciting an offence of perjury is also an indictable offence subject to the same sentence: a maximum penalty of seven years imprisonment, a fine or both. A person who is not a competent witness, but is sworn by mistake,

²¹ 1 February 2010

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmmemest/348/348.pdf>

²² <http://www.legislation.gov.uk/ukpga/Geo5/1-2/6/section/1>

cannot be indicted for perjury.²³ The statement must have been deliberate, not a mistake, and material.

29. The definition and scope of “*Judicial proceedings*” are cast wide. Included is any statutory or legal process with the “power to hear, receive and examine evidence on oath. Statements may be written (including electronic/digital forms/live TV) or oral (direct in person or by recorded electronic/digital forms) and by extension signed, for example if deaf and/or dumb.” [Criminal Justice Act 1988 s 32 provides that evidence by a live TV link is a statement for the purposes of the Perjury Act].

30. The seriousness and sentencing is set out clearly following the decision of *R v Archer*²⁴; Lord Archer, formerly Chairman of the Conservative Party and a well known author, had been the plaintiff in libel proceedings. These arose from newspaper allegations that he had had sexual intercourse with a prostitute. Subsequently at trial it was established that Archer had had sexual intercourse as alleged.

31. The sentencing was: “(1) Perverting the course of justice by procuring a false alibi - two years' imprisonment. (2) Perverting the course of justice by concealing the existence of a diary, providing his secretary with a blank diary and details to fill in, and using it as genuine - four years' imprisonment. (3) Perjury by falsely swearing an affidavit about documents in his possession - three years' imprisonment. (4) Perjury that the diary was in existence and contained certain entries - four years' imprisonment.

All sentences to run concurrently. Sentences upheld on appeal.

32. Sentences for perjury are severe because it is an offence against the administration of justice. The factors taken into account are: “(1) the number of offences committed; (2) the level of premeditation; (3) the persistent nature of the offending; (4) the impact that the false statement on the proceedings, and (5) whether the perjury embarked upon involved other people.”²⁵

33. The CPS sentencing guidelines indicate that no distinction should be drawn as to the level of sentence whether the proceedings concerned were of a civil or criminal nature.²⁶

Kidnapped by a gang, detained overnight, subjected to violence and made to contact his partner and demand money. At their trial he gave false

²³ *R v Clegg* (1868) 19 LT 47. (EA 1851, s 16).

²⁴ 2003 2 Cr. App. R. (S) 86.

²⁵ See Crown Prosecution Service CPS :

http://www.cps.gov.uk/legal/s_to_u/sentencing_manual/perjury/

²⁶ See: *R v Dunlop* [2001] 2 Cr. App. R. (S) 27; *R v Cunningham* [2007] 2 Cr. App. R. (S) 61.

evidence to the effect that he had not been kidnapped and that he had instigated the violence. His defence of duress was rejected. Four years' imprisonment upheld.²⁷

34. Other than the *Perjury Act s 1* there are other perjury offences. *Criminal Justice Act 1967 section 9*: A witness who makes a statement which is tendered as evidence in a criminal trial or court-martial will be liable to prosecution for perjury.

35. False Statutory Declaration (PA 1911, s 5). It is an offence of perjury to make a false statutory declaration which is not made on oath for court proceedings. This declaration may be in writing or made orally. The other types of declaration are: (1) an abstract (2) account (3) balance sheet (4) book entry or certificate (5) inventory (6) report, or questionnaire. An oral declaration or an oral answer must be that which a defendant is required to make by or under any Act of Parliament for the time being in force. This may be in the form of an interview with the Official receiver or information provided in an Official Receiver's Questionnaire. It is a requirement that corroboration from at least one witness as to the falsity of the statement will have to be proved.

36. At common law it is an offence to *pervert the course* of justice. It undermines the justice system. This offence is very wide: "*Any act or course of conduct tending and intended to interfere with the course of public justice*". But this offence will usually only be charged where there are serious aggravating features²⁸.

CONCLUSION

37. If God and the monarch appointed by God and the monarch's law or right is only now a reality for the few, then perhaps we should thank God that the law is now operable "*Be you never so high, the Law is above you,*" Lord Denning was wont to say.

38. As a "*European citizen*", for so we are defined in the Lisbon Treaty, we are all secular as are our rights – *nos droits*. Perhaps we could take from Descartes: *Cogito ergo sum* (*I think therefore I am*) and the phrase "I am my own responsibility" of J.-P. Sartre (*Matthieu: "Je suis ma propre responsabilité"* (*Chemins de la Liberté*). The result might be :

²⁷ See The Serious Fraud Office:
<http://www.sfo.gov.uk/media/103061/perjury%20web%201.pdf>

²⁸ *R v Sookoo* [2002] EWCA Crim 800.

*“Je suis mon Droit, mais je le garde grâce à l’indépendance des juges et “The Rule of Law”.*²⁹

²⁹ *Oaths: with acknowledgement to:* Dilpreet K. DHANOA, Barrister 4-5 Gray’s Inn Square Chambers and to Mark ELDRIDGE, Barrister, 5 Pump Court Chambers, London.