

## **The History and Legality of Trial by Combat as Popularized by HBO's *Game of Thrones***

By Patrick Reilly

HBO's *Game of Thrones* is a critically acclaimed and wildly popular television series based on the *Song of Ice and Fire* novels from George R. R. Martin. The fictional series described by Martin as "modern fantasy" features magic, mystery, intrigue, romance, and adventure."<sup>1</sup> It also features an interesting example of alternative dispute resolution: trial by combat.

In the series, trial by combat is just what it sounds like – a means in which a party can prove his or her innocence when accused of a crime through single combat instead of through a standard trial.<sup>2</sup> The accused chooses between representing himself or, if unable, may ask for a champion to step in his place.<sup>3</sup> If the accused is victorious, he is cleared of all charges – if he is defeated and not killed, then he is judged to be guilty and condemned to death.<sup>4</sup>

Trial by combat is not merely historical fiction. It dates back to 700 AD where it was practiced by custom among Germanic tribes. It flourished in the Middle Ages as a form of common law and was officially sanctioned in the Holy Roman Empire. It was even in existence during the eighteenth and nineteenth centuries in Great Britain. For instance, in 1818, a British court ruled that a defendant accused of murder could invoke his right to trial by combat even though the practice had not been used for centuries.<sup>5</sup> The defendant was judged innocent when his opponent never showed up for the fight.<sup>6</sup> In 1819, the law was repealed.<sup>7</sup>

Some argue that the practice is still legal in the United States, as it was inherited by the thirteen colonies on or before 1776 when the law was still in effect in Great Britain.<sup>8</sup> Those people contend that the founding fathers did not exclude trial by combat from the United States Constitution while inheriting other tenets of British common law.<sup>9</sup> It does not appear that anyone has tried to invoke the clause in the United States just yet.

However, a British man tried to invoke his "ancient right to trial by combat" in 2002 to avoid paying a £25 fine for a traffic ticket.<sup>10</sup> The man argued to a British court that his right to fight a champion nominated by the Driver and Vehicle Licensing Agency (the British equivalent to the DMV) was still valid under European human rights legislation.<sup>11</sup> He offered to take on the clerk with "samurai swords, Gurka knives, or heavy hammers."<sup>12</sup> Court Magistrates for the town of Bury St. Edmunds disagreed, fining him £200 with £100 in court costs.<sup>13</sup>

It is unimaginable that a U.S. court would seriously consider a trial by combat claim in this day and age, despite its television appeal. However, the fact that the claim did exist – and some say still does – again proves that people (past and present) continue to explore unique alternative dispute resolution methods.

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<sup>1</sup> See [http://www.georgerrmartin.com/grrm\\_book/a-game-of-thrones-a-song-of-ice-and-fire-book-one/](http://www.georgerrmartin.com/grrm_book/a-game-of-thrones-a-song-of-ice-and-fire-book-one/).

<sup>2</sup> See [http://gameofthrones.wikia.com/wiki/Trial\\_by\\_combat](http://gameofthrones.wikia.com/wiki/Trial_by_combat).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See <http://www.businessinsider.com/trial-by-combat-in-the-united-states-2013-11>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* See also Neilson, George. Trial By Combat From Before The Middle Ages to 1819 A.D. Kessinger Publishing, 2006.

<sup>8</sup> See <http://www.businessinsider.com/trial-by-combat-in-the-united-states-2013-11>.

<sup>9</sup> *Id.*

<sup>10</sup> See <http://www.telegraph.co.uk/news/uknews/1416262/Court-refuses-trial-by-combat.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See <http://www.telegraph.co.uk/news/uknews/1416262/Court-refuses-trial-by-combat.html>.