

CIVIL MOCK TRIAL

Non-Scripted

Plaintiff v. Fraser Sand and Gravel Ltd.

Issue: Is Fraser Sand and Gravel Ltd. liable in negligence for a teenager's injuries? These injuries occurred when the teenager was dirt biking in a gravel pit operated by Fraser Sand and Gravel Ltd. The teenager rode his/her bike up a hill that suddenly dropped off because Fraser Sand and Gravel Ltd. had removed a portion of the hill for their gravel operations.

A) Participants:

Required:

- 1 Judge
- 1 Court clerk
- 10 – 12 Jury members
- 2 – 6 Plaintiff's counsel (lawyers for the injured plaintiff)
- 2 – 6 Defence counsel (lawyers for the defendant company)
- 3 Plaintiff's witnesses:
 - Plaintiff
 - Teacher / Motor-cross coach
 - Friend
- 3 Defendant's witnesses:
 - Employee of Fraser Sand and Gravel
 - Owner of Fraser Sand and Gravel
 - Motor-cross expert

Optional:

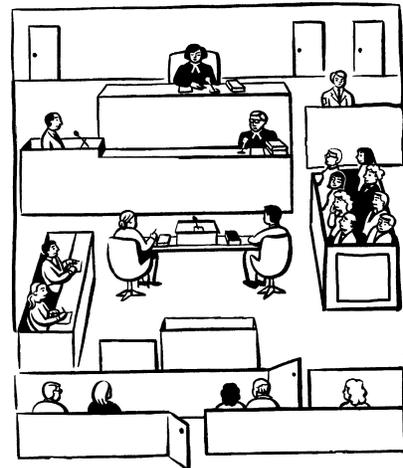
Sheriffs
Journalists
Court artist

B) Exhibits Required:

Diagram of the gravel pit, as included in this package.

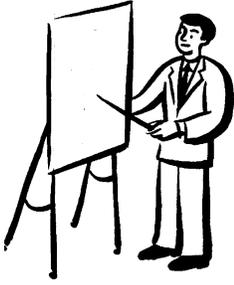
C) Parts:

- 1) Theory sheets
- 2) Witness role sheets
- 3) Trial procedure sheet
- 4) Exhibit



Civil Trial Courtroom

Instructions for the Teacher



- 1) All students involved should receive a copy of the **Trial Theories** and the **Trial Procedure**.
- 2) Select students for roles in the trial or select teams and let the students decide which roles they will play.
- 3) Provide each student with the appropriate copy of the witness **Role sheet** for the part s/he is to play. All "witnesses" should be asked to review this information, and be prepared to answer questions from both plaintiff and defence counsel during the trial. They can memorize their evidence or read from the sheet.
- 4) Provide each student who is a plaintiff or defence counsel with a copy of all witness role sheets and exhibits. Decide which witnesses each counsel will be questioning in either direct examination or during cross-examination. Give them a copy of the relevant sections of the **Legal Counsel** section to help them understand how to write their questions and how to make objections.
- 5) The student playing the part of the judge should receive a copy of their **Role sheet**, the **Trial Procedure** and the **Trial Theories**. The judge will see the exhibits during the trial.
- 6) The student playing the part of the court clerk should receive the **Trial Procedure** and their **Role sheet** and also know the names of each witness involved.
- 7) The jury members should receive their **Role sheets** but otherwise keep the facts of the case from them so that the trial will be more realistic.
- 8) The name of the plaintiff can be invented by the class or it can simply be the name of the student playing the role of plaintiff.
- 9) The gender of all witnesses may be either male or female, as indicated throughout the following pages.
- 10) Before you begin, it may be useful to remind the students about the law of negligence: a person has a duty to act in a reasonably careful manner. Encourage students to focus on the elements outlined in the **Trial Theories**.
- 11) Instruct the class briefly on the techniques of direct examination and cross-examination. Remind the students that leading questions may not be asked during direct examination but they may be asked during cross-examination. Essentially, "leading questions" are those questions that put the answers to the witness.



Trial Theories

Before reading the role sheets of the witnesses in this trial you should know the two opposing theories of the plaintiff and the defence.

Plaintiff's Theory:

The plaintiff's counsel will call witnesses to show that:

- a) the defendant knew that people often rode motor bikes on the defendant's gravel piles and that its "no trespassing" signs were not enough to keep riders out;
- b) the defendant should have known that someone might get hurt if they removed a portion of an often-ridden gravel pile; and
- c) the plaintiff was an experienced motor-bike rider and was riding safely, in control and with care on the day of the accident.

Defendant's Theory:

The Defendant's counsel will call witnesses to show that:

- a) the plaintiff was aware that s/he was riding on private property because of the signs posted and the employees telling them to leave. The plaintiff knew he was not authorized to enter. Therefore s/he assumed any risk of harm when riding on the property; and
- b) the plaintiff is responsible for his/her own injuries because s/he was riding his/her motorcycle too fast for the conditions on the day of the accident.

Students playing the part of plaintiff's or defendant's counsel should study each of the witnesses' role sheets. Counsel should then prepare a list of questions to ask their *own witnesses* to help prove their theory as set out above.

Next, counsel should prepare a list of questions to ask the other side's witnesses that will show that *the other side's* theory is incorrect.

19. The plaintiff's counsel cross-examines the employee.
20. The defence calls its second witness – owner of Fraser Sand and Gravel.
21. The plaintiff's counsel cross-examines the owner.
22. The defence calls its third witness – motor-cross expert.
23. The plaintiff's counsel cross-examines the motor-cross expert.
24. The defence counsel rises and says: **"That concludes the defendant's case, my Lord/Lady."**
25. The judge sends the jury out and then the plaintiff's and defence counsel decide on the form of the questions to be put to the jury for their decision.
26. Plaintiff and defence counsel each make a **Closing Statement** to the jury, in that order.
27. The judge instructs the jury on the law of negligence (if possible), as well as the theories of the plaintiff and the defence. The judge also tells the jury that if the defendant is found liable then they will have to decide on the appropriate award in damages (a dollar amount).
28. Jury leaves to decide a verdict. All stand as the jury exits room.
29. Jury returns. All stand as the jury enters room.
30. The trial judge asks for a verdict. The foreperson of the jury states either:
 - a) **"We find the defendant, Fraser Sand and Gravel, to be liable in negligence for the injuries sustained by the plaintiff _____ while dirt biking on the company's land."**

OR

- b) **"We find the defendant, Fraser Sand and Gravel, not to be liable for the injuries sustained by the plaintiff _____ while dirt biking on the company's land."**

31. The judge thanks the jury for their involvement in the trial process and releases them from their obligations.
 - a) If verdict is **"Not liable"** then the judge dismisses the case.
OR
 - b) If the verdict is **"Liable"** then the judge would order the defendant to pay the plaintiff \$_____ in damages for injuries sustained while dirt biking on the defendant's land.

Optional

32. Counsel may make a motion for judgment in terms of the verdict which means that the judge adopts the questions and answers the jury decided. Counsel may also ask for an order for costs against the other party. The judge could order:

"As the verdict is for the plaintiff then I order judgment in the amount of \$_____ against the defendant. Costs are assessed against the defendant (or each party to pay their own costs)."

OR

"As the verdict is for the defendant, I dismiss the case and order the plaintiff to pay the court costs of the defendant."
33. The court clerk says: **"This court stands adjourned."** Everyone stands, the judge bows and counsel bows in response. The judge leaves and the trial ends.

Plaintiff Witness #1



The plaintiff (name: _____)

My name is _____ and three years ago I was hurt riding my dirt bike at the gravel pit, or "the Pits" as we called it then. I was 13 years old when I was injured. I am 16 now. I have been riding my Suzuki RM100 since I was nine or ten years old. At first I always went riding with my dad, but when I got experienced my dad trusted me to ride with my friends or alone. I was a member of my school's motor-cross team.

I often rode at the gravel pit and lots of other kids on dirt bikes went there too. I rode there over 200 times, usually on the flats but I would always ride up the sand piles six or seven times to see who else was there. There were some signs on the property, but no one has ever hassled me about riding there.

On the day of the accident I was riding alone. I was slowly climbing to the top of a gravel cliff so I could ride on the path along the top. The path was on a flat area that followed the crest of the gravel cliff. I had been on the path lots of times. It was packed down from all of the bikes using it. I was going up the hill about ten kilometers per hour. I was sitting on my bike and walking it with my feet, guiding it along. I was going slowly in second gear because I wanted to stop at the top and check for other riders who might be around.

When I got to the top of the hill there was nothing there. I couldn't stop and I went straight down. The path was gone and I just sort of fell off the cliff. I remember looking straight down for a split second doing a nosedive at the ground. I dropped with my bike, about 15 feet. I was hurt badly. I was in so much pain that I was screaming and my bike was revving on top of me. Someone came along and helped me. S/he said that an ambulance was on the way. S/he asked me my name and phone number and said that s/he would take the bike to my home and tell my parents what happened.

I was badly injured. My right arm was broken and I have nerve damage that means I cannot raise my arm above mid-chest level. My parents have to help me do everything and it has been very expensive because I have had so much therapy done to try and help me use my arm. My chances of employment have decreased and it is difficult to do school work. I can never ride and compete in motor-cross events again. My coach told me I could have been a real strong competitor if I hadn't been injured.

Plaintiff Witness #2



Teacher / Motor-cross coach

I am a teacher at the plaintiff's high school. I was also his/her coach on the school's motor-cross team. I've been teaching at the school for 15 years and I have been a coach for the same amount of time. _____ was a member of my team for two years.

_____ is a good kid and s/he was a responsible rider. S/he attended every practice the team had – we usually met twice a week. S/he was serious about riding, and s/he seemed to spend a lot of time on his/her bike outside of team practices. I think it's really sad what happened to _____, because s/he truly loved the sport and s/he will never ride again. S/he could have earned a lot of money on the circuit if s/he hadn't been injured.

As the coach of the team, I recognize that motor-cross can be a dangerous sport. I try to equip my kids with the skills to handle tough maneuvers. We discuss things like the proper method for approaching a steep incline and the proper technique for riding down steep slopes. I also try to equip my kids with what I call "bike smarts". By that, I mean that I want my kids to really think when they're riding – to take responsibility not just for themselves but also for the safety of fellow riders. Every year I teach my team members these lessons.

I'm aware that a number of my team members bike at the Fraser Gravel Pits and that they have done so for years. Every year I talk to the team and tell them that if I catch any of them riding at the Pits, they'd be off the team. I don't like my team members riding on terrain that can be unpredictable. I tell them that they should only ride on specially designated motor-cross tracks. That said, when I was a child, I also road in gravel pits – I practically grew up in them. I have never seen a hill drop off like the one _____ was injured on.

Plaintiff Witness #3



Friend of the plaintiff (name _____)

My name is _____. I am currently 16 years old. I have known the plaintiff _____ since we were about 10. We went to the same high school and we met on a motor-cross team that practiced a few times a week. I also sometimes saw him/her at the gravel pits – "the Pits", as the riders call them. I go there most weekends to ride and I have been doing that for years. During high school, I'd also go there at least once a week after school.

Sometimes _____ and I used to meet at the Pits. S/he rode at least as much as I did back then so we usually saw each other there about once a week. I think _____ was a good rider – s/he knew how to handle his/her bike. In fact, I think s/he was one of the best riders I've seen at the Pits. We usually stuck to flat ground but we liked to test the hills on occasion.

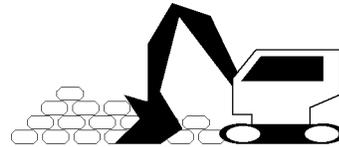
I was not with _____ the day s/he had his/her big accident. I was riding that weekend though. The spot where _____ crashed was a popular hill for a lot of the advanced bikers – both _____ and I had been on it before. It was a good hill because you could pick up a lot of speed coming down the other side. It can be a little difficult going up the hill, at times, and I think the best way to approach the hill is by walking your bike in second gear.

Bikers used the hill that caused _____'s injuries for about one year before his/her crash. The path up and down the hill was clearly worn. Everyone that rode at the Pits knew that it was a great hill. I think that it was a favourite of a lot of advanced riders.

I saw the signs around the Pits but nobody took them seriously. Those signs have been up for years and we were all so used to seeing them that no one really cared. If the old man/woman at the gravel pit saw us, s/he usually would yell for us to get off his/her property. I think that was the owner. But at the time of _____'s accident, the old man/woman was not around much. Sometimes we'd see the younger man/woman that worked there. We thought that employee was cool because s/he didn't seem to care if we were there or not. We always knew we'd have a good day of riding when s/he was on the job.

I've never had a bad crash at the Pits. A couple of my friends have though. One of the exciting things about riding around there is that the terrain is always changing. The gravel operations mean that sometimes hills just disappear from week to week. But in all my years of riding there, I've never seen just half a hill disappear. What I mean is usually the gravel company will clear away an entire hill so that it's completely flat. I've never seen a hill left only half there like the one that hurt _____. Someone certainly did not care about the riders when they dug away part of that hill.

Defendant Witness #1



Employee of Fraser Sand and Gravel (nephew/niece of owner)

My name is _____ and I was the only employee working at the Fraser Gravel site on the day of the accident.

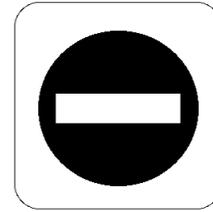
My uncle/aunt owns Fraser Gravel and s/he gave me the job of foreperson. My duties included running an excavator, moving around gravel to different locations on the site, and loading gravel on to dump trucks.

I knew there were a lot of people that rode their motorcycles on the gravel site. It was rare, however, to see someone actually riding on the hills. The motorcycles made so much noise that many of our residential neighbours would complain to us. We put up "Private Property - No Entry" signs all around the boundaries of the site and gates blocking the road entrances but no one obeyed them. They knew it was private property but they came onto the property anyway.

On the day of the accident I removed some sand from Pile #6. At the time I removed the portion of gravel I didn't notice the well-worn motorcycle path. I never thought that removing some of the gravel - just doing my job - would create a risk of injury for a motorcycle rider who was not supposed to be on our property.

At the moment the accident occurred, I was unloading some tools from my truck at the site office. I heard what sounded to me like a motorcycle in third gear. It was revving high and making a lot of noise. Then I heard a crash and some screaming. I jumped in my truck and drove in the direction of the noise. I saw a guy/girl lying on the ground under his/her smashed up motorcycle which was still running. I called an ambulance and found out his/her name and address. After the ambulance left, I took his/her motorcycle over to his/her parents' place and notified them that s/he was injured and was being taken to the hospital.

Defendant Witness #2



Owner of Fraser Sand and Gravel

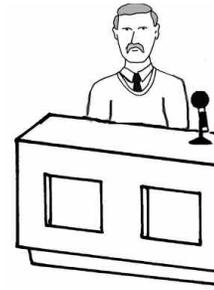
My name is _____ and I am the owner of Fraser Sand and Gravel Ltd. In the late seventies, my company leased land near the Surrey Fraser Docks from B.C. Hydro. My company, Fraser, dredged the bottom of the Fraser River and took out large quantities of sand mixed with water. When the sand dried and settled we had big piles, at one time as much as ten acres of sand in twenty-foot high piles. We sell the sand and transport it by truck to buyers. I hired my niece / nephew _____ to oversee the site.

The motorcycles were a problem and a nuisance from day one. Then, most dirt bikes had two stroke engines. Those engines made a high-pitched whine and the people who lived nearby were annoyed. There were a lot of nice homes being built on the north side of the Fraser and there were complaints from the residents. They wrote to B.C. Hydro because Hydro owned the land; they wrote to the Mayor of Surrey; and they wrote to the Superintendent of the R.C.M.P. They also collected names on a petition.

We did everything we could. We built a gate across the entry, but that didn't keep the motorcycles out. We put up "No Trespassing" signs. That didn't have any effect. The bikers removed them. Hydro sent some security people to the site and they said that there wasn't much that could be done, short of building a Great Wall of China to keep them out. All the Fraser employees who saw motorcyclists were told to tell them to get off the property. The problem was that the bikers were usually there after hours or on the weekends.

I knew that there were motorcycles on the cliffs. They shouldn't have been there. It wasn't up to me to keep them safe. We couldn't stop them from trespassing. Of course I knew that sand was piled up and then dug away at any time to be sold. That is what happens at a gravel pit, after all. Sand is piled up and then it is taken away. Everyone knows that.

Defendant Witness #3



Motor-cross expert

My name is _____ and I teach classes on off-road motorcycle riding. I have 15 years experience teaching off-road riding and, before that, I competed professionally for five years on the North American Extreme Motorcycle Circuit. While a professional rider, my riding skills were recognized in many of the premier motorcycling events such as the nearby Delta Ultimate Motorcycling Event (DUM-E). I won one DUM-E in 1972 and another DUM-E in 1974. I am also qualified to give opinions as to the approximate speed of vehicles based upon an examination of an accident scene.

Defendant's counsel asked me to provide an opinion about how a reasonable and careful driver should operate an off-road motorcycle in off-road conditions similar to the ones the plaintiff was riding in on the day of the accident. As well, the defendant's counsel asked me to visit the scene to determine whether the tracks on the gravel pile supported or did not support the plaintiff's claim that s/he was travelling at ten kilometres per hour at the time of the accident.

Hill climbing

First, a reasonable and safe rider should always keep their feet on the footrests while climbing a hill. Traction is changed by standing on the footrests and by changing your weight. If you take your feet off the footrests and put them on the ground it lightens the weight on the rear tire and causes a loss of traction or grip.

Second, as you come to the top of a hill you must reduce the gas otherwise the front wheel will leave the ground and you will not have steering control or a front brake. This would increase your stopping time and make it more difficult to avoid an problem.

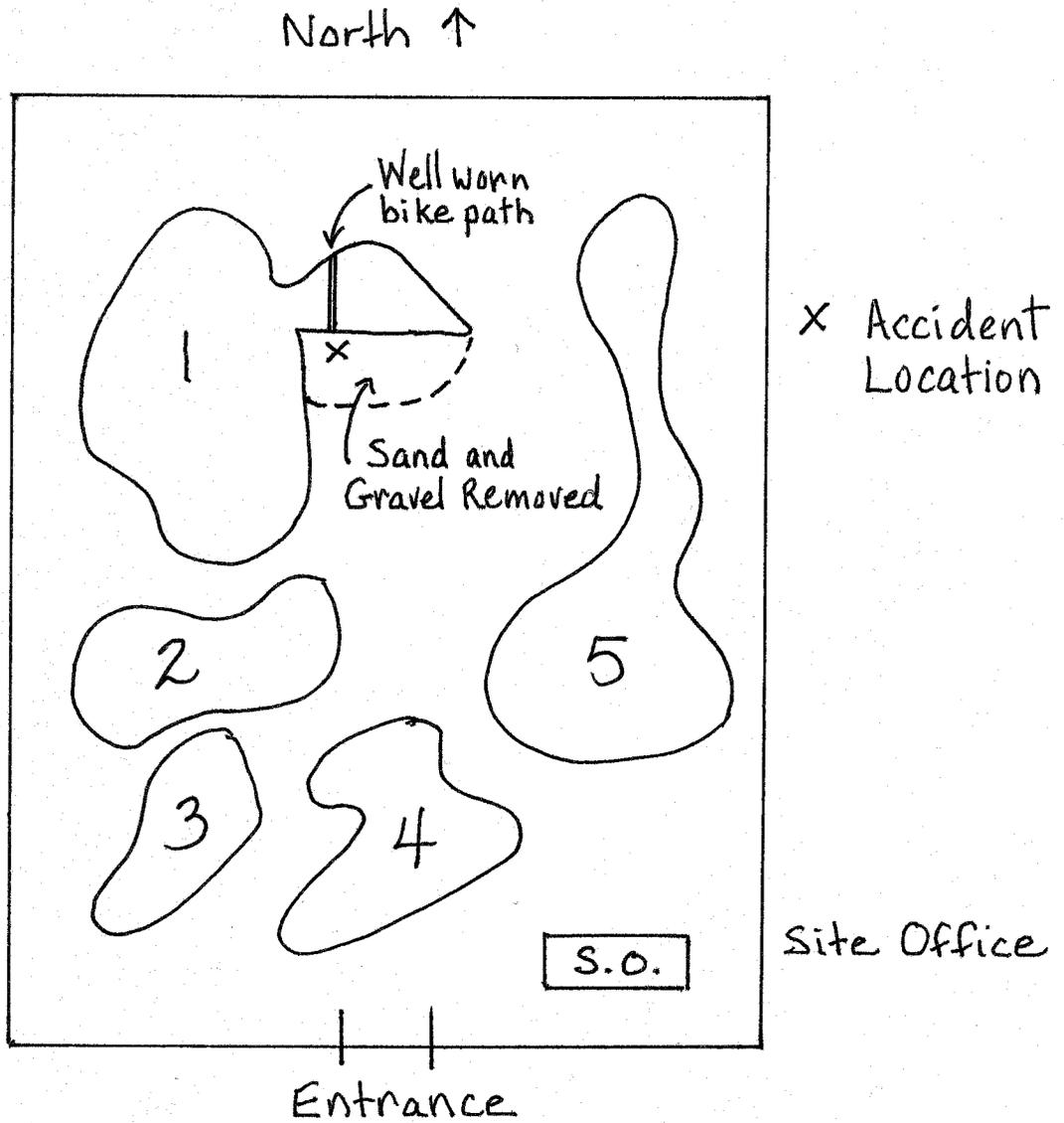
Third, you must always ride a hill with care, as you don't know what's on top.

The plaintiff's speed

The gravel pile that the plaintiff fell off had a 15-foot flat portion just before the cliff that dropped 15-20 feet to the ground. The skid marks left on the flat portion of the gravel pile suggested a speed of close to 30 kilometres per hour.

A person travelling on a motorcycle at 10 kilometres per hour can stop in 6-7 feet. The plaintiff was not able to stop in that distance.

HAND DRAWN MAP OF THE FRASER SAND AND GRAVEL PIT: Aerial view



ROLE SHEETS FOR CRIMINAL OR CIVIL MOCK TRIAL IN SUPREME COURT

Crown/Plaintiff's Counsel Role

You are going to be Crown or plaintiff's counsel # _____ in this trial.

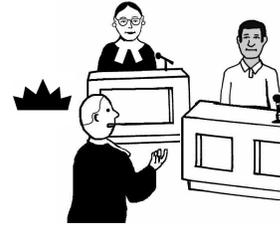
This means that you are going to be a lawyer who works for the government or the lawyer who works for the plaintiff. Your job is to organize and present, before the judge and the jury, all evidence that the government or plaintiff has gathered against the person who is on trial. This is an important job, so be prepared. Read this completely and then read the role sheets of the students who will be called as witnesses.

Before the trial, write out a list of questions to ask each of your witnesses so that all their evidence comes out during the trial. You only have one chance to do this during the trial with each witness so you will have to be organized. During the trial call the Crown or plaintiff's witnesses to the stand in the order that is marked on the role sheet.

Dividing the Work

You and your partner(s) will divide the work. In this trial, there are nine tasks for the Crown or plaintiff's counsel so each of you will take three. After each task we suggest which lawyer should do it.

1. Opening statement to the jury - a short statement that tells the jury what your theory is and what witnesses you are going to call. (Lawyer #1)
2. Questioning Crown/plaintiff's witness #1. (Lawyer #1)
3. Questioning Crown/plaintiff's witness #2. (Lawyer #2)
4. Questioning Crown/plaintiff's witness #3. (Lawyer #3)



5. Cross-examining defence/defendant's witness #1. (Lawyer #1)
6. Cross-examining defence/defendant's witness #2. (Lawyer #2)
7. Cross-examining defence/defendant's witness #3. (Lawyer #3)
8. Closing statement to the jury - a short statement telling the jury what the most important evidence is and why it is clear that the accused person is "guilty beyond a reasonable doubt" or why the defendant is at fault in a civil trial. (Lawyer #2)
9. Speaking to sentence - if the accused student is found guilty, you must be prepared to tell the judge what you think the sentence should be and why. If it is a civil trial then speak to the amount of the damages to be awarded the plaintiff. (Lawyer #3)

The "Trial Procedure" sheet tells you when each task should be done. Study it closely.

Preparing Questions for Your Witnesses

1. Read the Indictment (in a criminal trial) or the Statement of Claim (in a civil trial).
2. Read the theory sheet so you know what your theory is and what the theory of the defence will be.
3. Read your witnesses story sheets. With your teacher's help, make up a list of questions.

Prepare your opening by listing your witnesses and what they will say and what the Crown or plaintiff's theory will be.

Prepare some questions to show the jury *who* your witness is. For example:

- Are you a student? What grade? What school?
- What is your occupation? Where are you employed? For how long? What qualifications do you have? (This is for an expert witness.)

Prepare some questions to show the jury *what* your witness actually saw or heard on the day that the accused persons supposedly broke the law or when the civil dispute arose. Make sure it is clear *where* your witness was, *what* and *whom* s/he saw, *how* it happened and *why* it happened. For example:

- What day did the incident happen on? What time did the incident happen? Where did the incident happen?
- What were you doing?
- What did you see?
- What did you do and why?
- Did you see the accused persons clearly?
- Can you identify the person about whom you are speaking? Do you see that person in court today?
- Point to the person you are describing.

When you have finished making your list of questions check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what your theory is and allow the witnesses' stories to come out completely. Remember that the jury does not know anything about this case so you have to make sure that the story they hear makes sense and is not confusing.

4. Decide in which order to call your witnesses. Send a list to the defence counsel.

5. Interview your witnesses.
6. Try to think about the other side's case and the arguments that they will make. Prepare your witness for cross-examination.

Preparing Questions for the Defence/Defendant's Witnesses

After the defence lawyer has finished questioning each witness it will be your turn to ask questions of that witness. This is called **cross-examining** a witness. It is not easy to do. You do not want to ask the same questions that the defence lawyer asked. Your job is to point out to the jury the weaknesses in the story of the defence witness. You may also want to show that the witness is unreliable.

1. Read the stories of the defence witnesses.

Think of some difficult questions you can ask each person. Try to show inconsistencies in the evidence. Use some of the cross-examination techniques that are described below. For example:

- Do you like the accused/defendant?
- You are very good friends with the accused/defendant, aren't you?
- You discussed this case with the accused/defendant before testifying, didn't you? Are you trying to prevent the accused/defendant from going to jail/being found at fault?

Try to think of at least five or six questions or more for each witness. Try to make the jury see that the defence witness either doesn't really know what happened or is trying to protect the accused/defendant. Perhaps the witness is a close friend or even a boyfriend or a girlfriend of the accused/defendant.

3. Practise these questions on your partners to see if they work.

Witness Examination Techniques

Strategy and planning can be very important when witnesses are prepared to testify.

Preparation of Witnesses

Prepare your case well and know how the witness's evidence will affect or support the theory you are trying to present. See if there are any inconsistencies or weak points in the witness's evidence that you can expand on at trial. For example, if the identity of the accused is in issue then prepare questions touching on eyesight, lighting or the integrity of the identification evidence to support that position. Your examination should check the facts and the memory of the witness as well as to try to uncover some new information.

Direct examination: Be well prepared. Be careful not to ask leading questions and make sure that you ask questions in the correct order. Check to make sure you have not missed anything. Think about and advise your witness as to what types of questions s/he will be asked. Witnesses may be confused about questions that begin with, "Isn't it possible that... ?" You can advise them to answer that question by saying, "It is not possible in this case because it happened this way... "

Cross-examination: Try to use a variety of approaches in questioning the witness. Try not to ask a question of a witness when you are not sure what the answer will be because you might get an answer that hurts your case. Witnesses are usually worried about testifying well and are nervous about being questioned so counsel's approach to questioning can have an effect on how the evidence comes out at trial. Some of the more common approaches include:

- Counsel may be extremely courteous and kind. S/he may flatter the witness about the way they gave their evidence and once the person is off guard counsel follows up with a series of questions like,

"Wouldn't it be fair to say... ?"

Sometimes the flattery confuses the witness who then loses sight of the facts.

- Counsel may test the witness by being a bit nasty or aggressive right at the start of cross-examination to see how the witness will react. Counsel may needle or anger the witness by using questions such as, "Do you think you really can recall details of what happened two years ago?" or "Let me remind you that you are still under oath!" If you can make the witness angry or upset then you have given the judge/jury a different view of that person which may influence whether or not the evidence is believed.
- Counsel may use the phrase "I suggest to you that" to put forward a theory whether it is true or a mere possibility. The scenarios presented in this way put the suggestion before the judge/jury and even though this can be misleading the question will stand.
- Counsel can frame questions so that the answers are either "yes" or "no." This limits the possibility of getting an explanation, which counsel does not want to hear. Often if the witness tries to explain their answer then counsel might interrupt with, "Just answer the question, 'yes' or 'no'." Opposing counsel at this point should object by saying that the witness should be allowed to give their explanation.
- Sometimes counsel deliberately avoids cross-examination on key issues because they know that the answers they receive will 'cement' the case. So instead they question on a side issue in an attempt to affect the witness's credibility by getting him/her to guess. If counsel is successful then the next question may be, "Are you sure that happened?" which leads the judge/jury to find that maybe the evidence is not that reliable after all.
- Counsel may ask questions about whether or not the witness fabricated or made up their evidence by asking if they got together with other witnesses and

discussed the case. If each witness comes up with exactly the same story then they may have rehearsed their testimony. It would look as if they are lying. This makes an impression on the judge or jury.

- Counsel should ask questions about the technical side of the case. Be sure you understand the technical points before you start this line of questioning to avoid looking unprepared and to avoid hurtful answers. Perhaps a thorough investigation has not been done and some evidence may not have been found. For example, in a criminal case there may be other suspects that were not properly investigated. This could raise a reasonable doubt.
- Counsel should ask questions as to whether or not an accused or any other witness was given promises in return for his/her statement. These questions refer to the issue of whether or not that evidence is somehow tainted. This type of evidence may not be believed as the witness received a personal benefit or consideration in exchange for his/her testimony.

Objections

During the trial, you can object if you think that the lawyers for the defence are asking unfair questions. When making an objection, you should stand up and explain to the judge why you are objecting. You should only object a few times during the trial.

Summation

Prepare your summation using actual evidence given at trial which supports your case. Challenge the defence's evidence and point out problems with it stating that the only possible conclusion to be drawn is that the accused is guilty or the defendant is at fault. Remind the jury of the burden of

proof - beyond a reasonable doubt in a criminal case or on balance of probabilities in a civil case.

Prepare for Sentencing or Recommendations on the Amount of Damages

Give your opinion on what the sentence should be considering the sentencing principles and options. Also place the emphasis on protecting the public. In civil cases you are going to argue that the plaintiff should have their actual costs (medical/legal/lost wages) covered and should also get enough money to make up for the loss of future enjoyment of life.

During the Trial

1. Introduce yourself to the judge as follows:

"May it please my Lord/Lady, _____
(your name) appearing for the
Crown/plaintiff."

2. Calling witnesses:

"My Lord/Lady, the Crown/plaintiff
wishes to call _____
(name of Crown/plaintiff witness) to the
stand."

3. End your questions by saying:

"No further questions, my Lord/Lady."

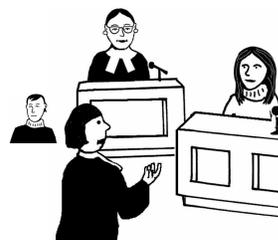
4. Remember:

Always stand when addressing the judge.

Refer to the judge as "my Lord/Lady."

Speak in a loud, clear voice.

Defence/Defendant's Counsel Role



You are going to be defence/defendant's counsel # _____

in this trial. This means that you are going to be a lawyer who defends the accused students who are charged by the government with breaking the law or the defendant who is being sued. Your job is to protect the rights of the accused or the defendant and to present the facts that will show that your client is not guilty of breaking the law or is not at fault in a civil case. You will have to make it clear to the judge and jury that the Crown (the lawyers for the government) has not proven its case. The defence does not have to prove anything and does not have to call witnesses. However, in the mock trial the defence will call witnesses.

This is an important job, so be prepared. Read this completely and then read the stories of the students who will be called as witnesses.

Before the trial, write out a list of questions to ask each of your witnesses so that all their evidence comes out during the trial. You have only one chance to do this with each witness so you will have to be organized. During the trial call the defence witnesses to the stand in the order that is marked on the role sheets.

Dividing the Work

You and your partner(s) will share the work. In this trial, there are nine tasks for the defence counsel, so each of you will take three. After each task we suggest which lawyer should do the task.

1. Opening statement to the jury - a short statement that tells the jury what your theory is and what witnesses you are going to call. (Lawyer #1)
2. Cross-examining Crown/plaintiff witness #1. (Lawyer #1)

3. Cross-examining Crown/plaintiff witness #2. (Lawyer #2)
4. Cross-examining Crown/plaintiff witness #3. (Lawyer #3)
5. Questioning defence witness #1. (Lawyer #1)
6. Questioning defence witness #2. (Lawyer #2)
7. Questioning defence witness #3. (Lawyer #3)
8. Closing statement to the jury - a short statement telling the jury what the most important evidence is and why it is clear that the lawyers for the government have not proved the accused guilty or why the defendant is not at fault. (Lawyer #2)
9. Speaking to sentence - if the accused is found guilty, you must be prepared to tell the judge what you think the sentence should be and why. You should try to get a light sentence. In a civil trial you should speak to reducing the damages to be awarded. (Lawyer #3)

The "Trial Procedure" sheet tells you when each task should be done. Study it closely.

Preparing Questions for the Crown/Plaintiff's Witnesses

After the Crown/plaintiff's counsel has finished questioning their witness it will be your turn to ask questions of that witness. This is called a called **cross-examining** a witness. Your defence will start with the cross-examination of a Crown/plaintiff's witness. You will not be able to question your own witnesses until later in the trial.

Your job is to make the jury see the weaknesses in each Crown/plaintiff's witness's story and to show that the Crown/plaintiff's lawyers have not proved their case. It is not easy to do. You will have to prepare some questions to ask the Crown/plaintiff's witnesses. You do not want to ask the same questions that Crown counsel asked.

1. Look at the indictment (in a criminal trial) or read the Statement of Claim (in a civil trial) before you start in order to see what needs to be proven.
2. Read the "Trial Theories" sheet so you know what your theory is and what the theory of the Crown or plaintiff will be.
3. Study the stories of the Crown/plaintiff's witnesses. Starting with the first witness, think of some difficult questions that you can ask this person that will support your defence. For example:
 - Have you received any benefit in exchange for your testimony?
 - Have you discussed your testimony with other Crown/plaintiff's witnesses? Did they tell you what to say?
 - Did you really see what happened?
 - You do not like the accused/defendant, do you?
 - Do you have a grudge against the accused/defendant?

Try to think of at least five or six questions or more for each witness. Try to make the jury see that the Crown/plaintiff's witness either doesn't really know what happened or is saying things that do not agree with the Crown's/plaintiff's theory. Use some of the cross-examination techniques listed below.

4. Practice these questions on your partner to see if they work.

During the trial listen carefully to what the witness actually says and make sure their testimony is complete. They might miss something like identifying the accused, so later you can use this in your closing to show that the case of the Crown/plaintiff has not been proven.

Preparing Questions for your Witnesses

Look at each of your defence witnesses' story sheets. With your teacher's help, make up a list of questions that will help you prove your theory to the jury.

1. Prepare some questions to show the jury *who* your witness is. For example: Are you a student? Are you employed? Where do you work? What grade?
2. Prepare some questions to show the jury what your witness actually saw or heard on the day that the accused person supposedly broke the law or when the civil dispute arose. It should be made clear *where* your witness was, and he/she should tell his/her own story without help. For example:
 - What time did the incident happen? What were you doing? What did you see? Did you see things clearly?
 - What did you do? Who did you see? Why did you do that?
3. When you are questioning the accused/defendant ask about what happened and try to get answers to explain why the accused/defendant did certain things. Make sure s/he denies the allegations.
4. When you are finished making your list of questions check to see that they are in the right order and that you haven't missed anything. The questions should make it easy for the jury to understand what your theory is. Remember, the jury does not know anything about this case so you have to make sure that the story they hear makes sense and isn't confusing.
5. Decide in which order to call your witnesses and give a list to the Crown/plaintiff's counsel.
6. Interview your witnesses. Try to anticipate the cross-examination questions and prepare your witnesses to answer these.

Witness Examination Techniques

Strategy and planning can be very important when witnesses are prepared to testify.

Preparation of Witnesses

Prepare your case well and know how the witness's evidence will affect or support the theory you are trying to present. See if there are any inconsistencies or weak points in the witness's evidence that you can expand on at trial. For example, if the identity of the accused/defendant is an issue then prepare questions touching on eyesight, lighting or the integrity of the photo line-up to support that position. Your examination should check the facts and the memory of the witness as well as to try to uncover some new information.

Direct examination: Be well prepared. Be careful not to ask leading questions and make sure that you ask questions in the correct order. Check to make sure you have not missed anything. Anticipate and advise your witness as to what types of questions s/he will be asked. Witnesses may be confused about questions that begin with, "Isn't possible that...?" You can advise them to answer that question by saying, "It is not possible in this case because it happened this way..."

Cross-examination: Try to use a variety of approaches in questioning the witness. Try not to ask a question of a witness when you are not sure what the answer will be because you might get an answer that is detrimental to your case. Witnesses are usually worried about testifying well and are nervous about being questioned vigorously so counsel's approach to questioning can have an effect on how the evidence comes out at trial. Some of the more common approaches include:

- Counsel may be extremely courteous and kind. S/he may flatter the witness about the way they gave their evidence and once the person is off guard counsel follows up with a series of questions like, "Wouldn't it be fair to say...?" Sometimes the flattery confuses the witness who then loses sight of the facts.
- Counsel may test the witness by being a bit nasty or aggressive right at the start of cross-examination to see how the witness will react. Counsel may needle or anger the witness by using questions such as, "Do you think you really can recall details of what happened two years ago?" or "Let me remind you that you are still under oath!" If you can make the witness angry or upset then you have given the judge/jury a different view of that person which may influence whether or not the evidence is believed.
- Counsel may use the phrase "I suggest to you that" to put forward a theory whether it is true or a mere possibility. The scenarios presented in this way put the suggestion before the judge/jury and even though this can be misleading the question will stand.
- Counsel can frame questions so that the answers are either "yes" or "no." This limits the possibility of getting an explanation, which counsel does not want to hear. Often if the witness tries to explain their answer then counsel might interrupt with, "Just answer the question, 'yes' or 'no'." Opposing counsel at this point should object by saying that the witness should be allowed to give their explanation.
- Sometimes counsel deliberately avoids cross-examination on key issues because they know that the answers they receive will 'cement' the case. So instead they question on a side issue in an attempt to compromise the witness's credibility by getting him/her to guess. If counsel is successful then the next question may be, "Are you sure that happened?" which leads the judge/jury to find that maybe the evidence is not that reliable after all.
- Counsel may ask questions about whether or not the witness fabricated or made up their evidence by asking if they got together with other witnesses and discussed the case. If each witness comes up with exactly the same story then they may have rehearsed their testimony. It would look as if they are lying. This makes an impression on the judge or jury.

- Counsel should ask questions about the technical side of the case. Be sure you understand the technical points before you start this line of questioning to avoid looking unprepared and to avoid detrimental answers. Perhaps a thorough investigation has not been done and some evidence may not have been found. For example, in a criminal case there may be other suspects that were not properly investigated. This could raise a reasonable doubt.
- Counsel should ask questions as to whether or not an accused or any other witness was given promises in return for his/her statement. These questions refer to the issue of whether or not that evidence is somehow tainted. This type of evidence may not be believed as the witness received a personal benefit or consideration in exchange for his/her testimony.

Objections

During the trial you can object if you think that the lawyers for the Crown/plaintiff are asking unfair questions. When making an objection, you should stand up and explain to the judge why you are objecting. You should only object a few times during the trial.

Summation

Prepare your summation using actual evidence given at the trial which supports your case. Disagree with the Crown/plaintiff's evidence and point out the problems with it. Argue that the only possible conclusion to be drawn is that the accused is innocent or that the defendant is not at fault. Remind the jury of the burden of proof—beyond a reasonable doubt in a criminal trial or on a balance of probabilities in a civil trial.

Prepare for Sentencing or Recommendations on the Amount of Damages

Criminal: In a criminal trial give your opinion on what the sentence should be. Place the emphasis on rehabilitation of the accused and whether the court can help this person become a contributing member of society. Point out the good qualities of the accused, how sorry s/he is, how s/he has learned his/her lesson, if these are true. You may also point out that the accused has the type of family or school background that has contributed to the current problems with the law.

Civil: In a civil case, the defendant's counsel would speak to the amount of money to be awarded the person suing and would try to get that lowered. Details of the defendant's current finances would have to be introduced to show hardship. In jury cases, the jury decides on the amount of damages. Counsel for each side would be asked what questions the jury should consider, such as whether or not the defendant is at fault and if so, how much the defendant should pay.

During the Trial

1. Introduce yourself to the judge as follows:
"May it please my Lord/Lady, ____ (your name) appearing for the defence."
2. Calling witnesses:
"My Lord/Lady, the defence wishes to call (name of defence witness) to the stand."
3. End your questions by saying:
"No further questions, my Lord/Lady."
4. Remember:
Always stand when addressing the judge, and when the accused/defendant must stand, such as on reading of indictment, the return of the verdict and during sentencing.

Refer to the judge as "my Lord/Lady."

Speak in a loud, clear voice.

Witness Role

Witnesses are the people who give testimony or evidence during the trial about what they have seen or experienced.

If you are testifying in a criminal case you may have witnessed the alleged offence or been the victim of the offence or you may be a police officer or expert. In a civil case you may be the plaintiff, defendant, or some other witness who has testimony important to the case.

Think about your role and how your character would look. How would the witness, plaintiff, accused or defendant act and what feelings do you think that character would have? Get yourself into the role and become the character by the way you think, talk and walk.

The witness must answer the questions asked by the lawyers and do so in a clear and truthful manner so that the judge and jury can understand what really happened in the case.



manners, clothes and attitude of the witness. After observing the witness, the jury will reach conclusions about whether or not they believe the evidence of that witness.

5. Be prepared for cross-examination by the other lawyer by thinking about what type of questions you might be asked. Answer as clearly and briefly as possible.
6. If a lawyer asks a question that you do not understand, ask him/her to repeat it.
7. If a lawyer asks a question you cannot answer, tell him/her that you do not know the answer to that question.

Preparation:

1. Read the fact sheet for your witness. You may want to memorize your evidence so you do not have to refer to a sheet while giving evidence. It is better to do your role without prompting.
2. Tell the lawyer who interviews you what happened and how you became involved. Do not tell anyone else, especially the jury members. Others will hear what you have to say in court.
3. If you need to add details to your facts discuss this with the lawyer and the teacher first as you are to stay as close to the facts as possible.
4. A witness's demeanor (actions) while testifying also gives the jury information. The jury will not only hear the words of the witness but will also observe the

Judge's Role



The role of the judge varies from trial to trial. If there is no jury, the judge decides whether an accused person is guilty or not guilty or if the defendant is at fault. When there is a jury, the judge's role is to maintain order in the courtroom, to settle disputes that may arise between the lawyers, to make rulings on the law, to instruct the jury and to sentence the accused if he or she is found guilty or to determine which questions the civil jury must decide at the end of the evidence. In a real trial, a judge would have much more to do. Since this is a short trial, you will only have time to do some of the things that a judge ordinarily does.

Your Role During the Trial

1. When the trial is ready to begin, you will be escorted into the courtroom by a sheriff. You should wait outside the door of the courtroom until the court clerk says, "Order in the court. All rise." When you hear this, you should walk into the courtroom and take your seat. As you are sitting down, make a slight bow and ask everyone to be seated.
2. You will speak to the jury at the beginning of the trial to explain their role in the proceedings. Ask your teacher to show you the scripted criminal trial so you will know how to write your introduction. Basically you are going to tell the jury what the burden of proof is and what your role is in relation to their role.
3. During the trial, you should follow the trial procedure list to make sure that everyone is following the correct order of presentation.
4. If the courtroom gets noisy during the trial, you should ask for "order in the court" and make sure that things quiet down before the lawyers continue. When the lawyers have finished questioning a witness you should excuse

that witness by saying, "You may step down now."

5. If a disagreement on the law or procedure occurs between the lawyers you must be ready to decide the outcome of the argument. For example, if one lawyer objects to a question the other lawyer is asking a witness you must ask the lawyer who objects to state a reason for the objection. Then ask the other lawyer to defend his/her question. You will then make a decision: you can allow the lawyer asking the question to go on, or you can say, "Please do not ask that question" or "Please rephrase the question." You must be ready to settle any dispute.
6. Do not ask questions of the witnesses during the trial. Only lawyers may do this. You may, however, ask to have something that you didn't understand repeated or stated more clearly, such as a witness's answer or a lawyer's question. You should ask witnesses to speak up if they are speaking too softly.
7. When the lawyers have finished making their closing statements to the jury, you must give instructions to the jury. This is called the "charge" to the jury. You will review the evidence briefly and tell how the law should be applied to the facts of the case.

"As members of the jury, you must decide whether the accused is guilty or not guilty. Our law says that every accused person is presumed to be innocent until proven guilty. It is your job to decide whether the Crown lawyers have proven the guilt of the accused beyond a reasonable doubt. If they haven't then you must acquit the

accused. The Crown must prove the particulars of the offence which include the date and place that the crime was committed or attempted, that the accused is the person who committed the crime, and all the elements of the offence. (For example, the elements of robbery are that something was taken without the owner's consent or permission and that the threat of force or force was used to commit the theft. The elements of assault are that there was the threat of force or force applied and that there was no consent to the assault.)

In a civil case you would review the evidence and the law with the jury. You would also tell them how to present their verdict, which is in the form of answering specific questions. You can go over the questions that they will be asked to answer during their deliberation. A sample of the type of questions follows:

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between Pat Panic (Plaintiff) and Billy Bully (Defendant)

QUESTIONS FOR THE JURY

(1) Were the plaintiff's injuries in the accident of September 4, _____ the fault of the defendant?

Yes_ or No_

(2) If the answer to question (1) is YES:

a. What amount of general damages do you award? \$ _____

b. What amount of future wage loss do you award? \$ _____

c. What amount of future medical costs do you award? \$ _____

Dated at the City of _____,
British Columbia, this _____ day of _____,

20__.

CHIEF JUROR

8. After the charge is read you send the jury to the jury room to make their decision by saying:

"In a real trial, you would have to make a unanimous decision. Since time is short, I ask you to decide by a majority decision only. Go now to the jury room to make your decision."

9. When the jury has reached a verdict the foreperson will tell the sheriff who will then inform the court clerk. The court clerk notifies the counsel and the judge and then the jury is brought back into the courtroom.

In a criminal trial:

If the accused is found not guilty, say the following:

" _____ (accused) , please stand. As this jury has found you not guilty, you are free to go."

If the verdict is guilty, ask the lawyers if they have anything to say about what the sentence should be. Listen to them and then say the following:

" _____(accused), please stand. As this jury has found you guilty, it is now my duty to sentence you. Do you have anything to say?"

After the accused has replied, you should say what sentence you think is fair. You can start out by saying:

"In sentencing I must consider:

- The seriousness of the crime.
- The protection of the public.
- General deterrence which means that everyone should know what type of sentence will be given if they commit this type of offence or crime.
- Specific deterrence which considers whether or not the accused needs to be prevented from committing further offences or crimes.

- The possibility for rehabilitation of the accused.
- The personal circumstances of the accused which include his/her age, education, work record, attitude and family situation.

After considering all these factors I sentence you to _____."

Include in your sentence a period of imprisonment (if any) and a period of probation with conditions such as no contact with a co-accused or victim, community service hours, curfew, or restrictions on weapons and place of residence.

Note: If the jury decides that one of the accused is not guilty and the other is guilty, then you will have to do both the guilty and not guilty statements.

End the criminal mock trial by saying, "This court stands adjourned."

In a civil trial:

When the jury returns with a verdict, the clerk then asks the foreperson for details by reading the questions for the jury.

The foreperson gives the verdict. The jury then stands to confirm their verdict.

The questions and the answers for the jury become the last exhibit in the trial.

Note: In a real trial, if the jury has deliberated for three hours or more without reaching a unanimous verdict, the judge may invoke the Three Hour Ruling whereby a verdict can be reached by at least six of the jurors. The 75% verdict is binding. In our mock trial the majority verdict will stand.

Motion for Judgment and Costs

Counsel may make a motion for judgment in the terms of the verdict which means the judge adopts the questions and answers. Counsel also may make submissions for an order as to who pays the costs and the court ordered interest in the case. Usually if the plaintiff is successful then the defendant will be ordered to pay the costs.

Thank the jury for their participation and discharge them from their duty as jurors.

End the civil mock trial by saying: "This court stands adjourned."

Jury's Role

As a member of the jury, it will be your job to listen carefully to all the evidence presented by the Crown/plaintiff and defence lawyers through their witnesses and then to decide what you believe. You will make the final decision as to whether the accused is guilty or not guilty of breaking the law or who is at fault in a civil case. Consider the following:

Criminal Case: An accused person is always considered to be innocent of a crime until s/he has been proven guilty in court. It is the job of the Crown lawyers to prove that the accused broke the law. You have to decide whether the Crown lawyers have presented enough evidence to convince you of the guilt of the accused.

The Crown must prove "guilt beyond a reasonable doubt." This means that you shouldn't decide that the accused are guilty unless you are sure. If you have a doubt as to whether they are guilty and that doubt is "reasonable" (which means that you can give a reason for your doubt) then you should find the accused not guilty. You are *not* allowed to speculate. This means that you can't say "maybe they did it," or "they could have done it if..." *If's* or *what if's* are not allowed. To find the accused guilty, the guilt of the accused must have been *proven* beyond a reasonable doubt.

Civil Case: The burden of proof is on a balance of probabilities which means it is more probable that one side is correct. You do not have to be 100% sure.

You may want to have a pen and pencil to make notes during the trial. Listen carefully to the instructions and charge that the judge gives to you.

In a real trial, everyone in the jury would have to agree to the verdict. In a criminal trial all would have to agree that the accused is either guilty or not guilty and in a civil trial who is at fault. To save time in this



trial, you will give a majority decision. This means the verdict that gets the most votes is the one that will be given in open court.

Before the trial begins, you should elect a "foreperson." The foreperson is the person who sits in the jury box closest to the judge. This foreperson will ask you for your decision in the jury room. S/he will ask you to explain to the jury members the reason for your decision. After everyone has explained his or her reasons, you will vote and the verdict with the most votes will be presented in court by the foreperson. In a civil case, you will answer the questions that have been prepared for you.

When the jury returns to the courtroom, the court clerk or judge will ask if you have reached a verdict. The foreperson will stand and say, "Yes, we have." Then the jury will wait for the accused/defendant to stand before giving their verdict of "guilty" or "not guilty" or answering yes to the finding of fault in a civil case. The jury will be asked by the court clerk, "This is your verdict, so say you all? Please stand to confirm your verdict." You will all stand to confirm your verdict. The judge will either sentence the accused or release them, depending on your verdict. In a civil trial the judge will confirm your verdict and adopt it as the judgment in the case. You will be thanked and let go.

Court Clerk's Role

The court clerk is the assistant to the judge in a criminal or civil trial. Look at the "Trial Procedure" sheet to see what you have to do and when you have to do it. The court clerk has four main things to do:



1. Call the case by saying: Regina v. _____ or Plaintiff (name) v. Defendant (name). Read the indictment at the beginning of a criminal trial. After the judge has been seated, stand up and say in a loud clear voice:

"This Supreme Court is now in session. You, _____ (name of accused), stand charged that on the ___ th day of _____ of this year you did unlawfully _____. How do you plead?"

Get the information needed to fill in the blanks of the indictment from your teacher before the trial starts or read directly from the indictment.

2. It is also your job to swear in the witnesses. Use a Bible. When the witness enters the witness box, and is still standing, take the Bible and hand it to the witness, saying:

"Take the Bible in your right hand. Do you swear that the evidence you shall give shall be the truth, the whole truth and nothing but the truth, so help you God?"

After the witness has said "yes," say to him/her: "Please state your full name and spell your last name for the record." Students of another faith may prefer to make an affirmation instead. In this case, you say:

"Do you solemnly affirm that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?"

After the witness has said "yes," say to him/her: "Please state your full name and spell your last name for the record."

3. You will hand the exhibits to the sheriff once they are entered. The sheriff will show the exhibits to the jury. Sometimes the lawyers will use the exhibit with the witness. Once the lawyer has finished with it then hand it to the sheriff so that it can be shown to the jury.
4. When the jury has returned with a verdict and all jurors are seated in the jury box, you should stand up, face the jury and say:

Criminal Verdict

"Mr/Madam Foreperson, have you reached a verdict? What is your verdict?"

After the foreperson answers then you say:

"This is your verdict, so say you all? Please stand to confirm your verdict. My Lord/Lady, the verdict of the jury is _____." You may then sit down.

Civil Verdict

"Mr/Madam Foreperson, what is your answer to the first question?" If the foreperson answers "yes" then you go through the other questions to get the dollar amounts that the jury has decided on. Then you ask:

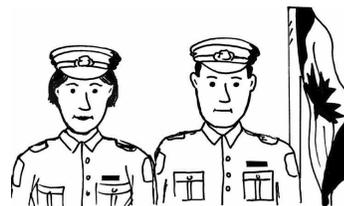
"This is your verdict, so say you all? Please stand to confirm your verdict. My Lord/Lady, will the questions for the jury be the last exhibit in the trial?" The judge says it will and then you mark it as the last exhibit. Trial adjourns.

Sheriff's Role

In our trial we will need two or three sheriffs. Although sheriffs are not police officers, they are peace officers and they are responsible for protecting the judge, jury, court workers, and members of the public during a trial.

Sheriff #1 - In a criminal trial, you are the sheriff who takes care of the accused person. It is your job to sit beside the accused whenever s/he is in the accused box. You should stand beside the accused when they are in the witness box giving evidence. If the accused is in custody it is your duty to make sure they stay in custody and do not escape.

Sheriff #2 - You are the sheriff who sits beside the jury. It is your job to lead the jury into the courtroom at the beginning of the trial and to lead them out of the courtroom when it is time for them to deliberate. You will stay in the jury room with them and will



lead them in again when they have reached a decision. During the course of the trial you will hand the exhibits to the jury for their inspection.

Sheriff #3 - You are the sheriff who protects the judge.

Note: Sheriffs #2 and #3 can be combined into one role. Usually there is only one sheriff for the jury in a civil trial.