

General Information About the Trial

General Trial Script

This is an approximate chronology of the trial. The judge is ultimately responsible for the proceedings. Therefore, he or she should follow this guide throughout the trial to ensure that the proper procedure is being followed.

The sheriffs, court clerk, and the lawyers must also be aware of the procedure so they will know when to speak.

OPENING PROCEDURE

The sheriff will open the court by saying, "Order in the Court. All rise." All persons in the court should stand. The judge will then enter the court room and sit at the bench. The sheriff will say, "Supreme Court now in session. Mr./Madam Justice _____ presiding."

The counsel will then identify themselves:

"May it please My lord/My lady, _____ appearing for the Crown."

"May it please My lord/My lady, _____ appearing for the defence."

ARRAIGNMENT

The court clerk will then stand with the indictment in hand, turn towards the judge and wait for the judge to nod or ask for the indictment to be read. The court clerk will ask the prisoner to stand by saying: "(accused) please stand."

Facing the prisoner, the clerk will read the indictment in a loud, clear monotone voice. After reading the charge the clerk will pause and ask: "(accused), having heard the charge read, how do you plead, guilty, or not guilty?"

After hearing the reply of the accused, the clerk will then turn to the judge and repeat the plea of the prisoner by saying: "(accused) pleads not guilty (or guilty) My lord/My lady."

The court clerk will now swear in the jury and place the accused in the charge of the jury. At this point in a real trial an order excluding witnesses would normally be made. This is not necessary in our mock trial. (However, the witnesses should remember to stick to their stories and not let any evidence presented by any other witnesses influence their testimony.)

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ADDRESS TO THE JURY

At this point the judge addresses the jury, to inform the jury members of their responsibilities.

When the judge's address is finished, court usually has a short adjournment while the jury selects a foreman. This person will be the leader of the jury, and will speak for it. For the mock trial, we will dispense with the election of a foreperson and assume that the person seated in the front row jury seat closest to the judge will be the foreperson.

THE TRIAL

The judge should say: "Does the Crown wish to make an opening statement?"

Now the Crown will make its opening statement in which it will clearly establish its main arguments and outline generally how it will prove its arguments. After concluding his/her opening statement, the Crown will call its first witness by stating: "My Lord/My Lady, the Crown wishes to call (name) to the stand."

As the witnesses are called, they will stand in the witness box until they are sworn in by the clerk. They will then be seated and answer the questions put to them. Note that police officers usually stand while giving evidence although they are permitted to sit if they want to. Also, witnesses should address all their answers to My Lord/My Lady, even though it is the lawyers who are asking the questions.

After the Crown has finished questioning its first witness he/she will say, "No further questions, My Lord/My Lady."

The defence will then proceed to cross-examine the witness and end with, "No further questions, My Lord/My Lady." If the defence has no questions to ask in cross-examination, the defence simply states, "No questions, My Lord/My Lady."

The Crown may re-examine the witness, but only on questions which were raised by the cross-examination.

The Crown counsel may not ask new questions, which they forgot to ask during direct examination.

After examination is finished, the judge will state, "You may step down."

The procedure will continue until the Crown has finished calling all of its witnesses. The defence will then give an opening statement to the jury and proceed with its case by calling its witnesses. Now the above procedure is reversed: the defence conducts direct examination, the Crown cross-examines, then the defence may re-examine (under the same rules).

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RECESSES

If the need arises, either side may ask the judge to grant a short recess. If the judge consents, the clerk will announce, "This court stands adjourned for a short recess."

SUMMATIONS TO THE JURY

When both the Crown and the defence have finished calling evidence, they give closing statements to the jury in which they summarize their arguments.

The rule is that if defence does not call witnesses, Crown counsel addresses the jury first, the defence last. If, on the other hand (as in our mock trial) the defence does call witnesses, the defence addresses the jury first, the Crown last.

After both sides have finished addressing the jury, the judge will "charge" the jury. He or she will briefly review the most important evidence and instruct the jury on the law involved in this case.

THE VERDICT

At the end of his/her charge, the judge will direct the jury to leave the courtroom to consider its verdict. At this time the sheriff will call: "Order in Court." The clerk will rise and say, "This Court stands adjourned until the jury returns."

When the jury has reached its verdict, it tells the sheriff, who notifies the judge. The judge then returns to the courtroom while the sheriff again calls, "Order in Court."

After the judge is seated, the jury should return and then the clerk rises, faces the jury and asks: "Members of the jury, have you reached a verdict?" The foreperson will then stand and say, "We have, My Lord/My Lady." The clerk then asks, "Mr./Madam Foreman, what is your verdict?" The foreperson then states the verdict.

(If the accused is charged on several accounts, the clerk will ask, "What is your verdict on count one?" and so on.)

The clerk will then say, "Members of the jury, harken to your verdict as the court doth record it. You find the prisoner _____ (guilty or not guilty). This is your verdict, so say you all? Please stand to confirm your verdict." (Again, if there are several counts, the clerk repeats them.)

After the jury has given its verdict, the judge should thank the jury for having done their civic duty and tell them they are excused but may remain seated to hear the sentence (if they found the accused guilty) if they want to.

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SENTENCING

If the jury returns a verdict of not guilty, the judge then says: "(accused) please stand. You have been found not guilty by a jury of your peers. You are free to go. This court stands adjourned."

If a guilty verdict is returned, the judge says: Does the Crown and defence wish to speak to sentencing? Then the judge shall say: "(accused) please stand. You have been found guilty by a jury of your peers. Have you anything to say before sentence is passed upon you?"

The defence and the Crown then speak to sentence.

The judge then announces the sentence and states why the sentence is imposed. The sheriff calls, "Order in Court," and the judge leaves. The trial is over.

Rules of examination

When a witness is called to the witness stand to testify in a trial, he or she is subject to three basic kinds of examination.

1. DIRECT EXAMINATION OR EXAMINATION-IN-CHIEF

This is the first line of questioning and is conducted by the counsel who called the witness to the stand. If a witness is a witness for the Crown, then the Crown counsel conducts the direct examination. If a witness is called for the defence, then the defence counsel conducts the direct examination.

The purpose of direct examination is to allow the witness to tell his/her story so that this evidence is before the court. For example, questions such as "Where were you on the night of July 21st?" or "What did you see?" or "Tell the court what happened," are usually asked during direct examination.

Rules of direct evidence are strict. Counsel must not "lead" witnesses by asking "leading questions." A leading question is one in which the answer is suggested by the question. For example, "Were you on the northeast corner of First and Main Street on July 21st at 10:00 p.m.?" is a leading question and will probably be objected to. The correct question is "Where were you on the night of July 21st at 10:00 p.m.?"

If a leading question is objected to by counsel during direct examination, the judge may choose to disallow the question or ask that it be rephrased.

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2. CROSS-EXAMINATION

This is the second line of questioning. It is conducted by the other counsel. Defence counsel cross-examines Crown witnesses and Crown counsel cross-examines defence witnesses.

The purpose of cross-examination is to test the story which a witness told in direct examination. Is it true? Are there inconsistencies in the story? Is the witness' memory of past events as clear as it seems to be?

The rules of cross-examination are considerably more flexible. Leading questions and suggestions are allowed during cross-examination. For example, "You weren't really at the northeast corner of First and Main Street, were you?" or "I suggest to you that you were on the southeast corner of First and Main Street, were you not?" would be allowed.

3. RE-EXAMINATION

This is the third line of questioning. The counsel who conducted the direct examination may re-examine, but only on questions that arose from cross-examination. A new line of questioning cannot be introduced at this stage. If you forgot to ask a question in direct examination, that question may not be asked during re-examination unless it was raised in cross-examination by the other counsel. Be on your guard to ensure that the other counsel does not ask questions during re-examination that should have been asked in direct examination.

Rules of evidence

There are very strict rules of evidence in court. In other words, there are some questions that counsel may not be allowed to ask and some things that witnesses know that they may not tell. The main principles are that a witness may only tell what she/he knows to be true from personal experience, and that which is relevant to the case being heard.

Examples of evidence that is not "admissible" includes:

1. HEARSAY

Generally a witness may only tell what she/he saw or experienced and not what someone else has told him or her was true.

Example: "I saw the blue car hit a red car that was stopped at the stop sign."

– Good evidence, admissible.

"The blue car must have hit the red car that was stopped at the stop sign because that's what my sister told me she saw."

– Inadmissible, hearsay

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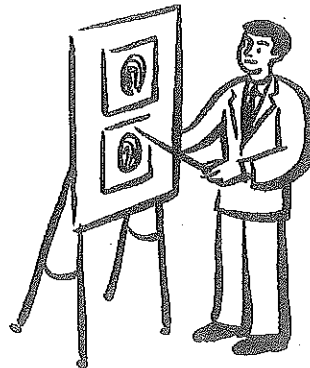
2. IRRELEVANT AND/OR PREJUDICIAL

Generally, only questions that are relevant to the case may be asked, particularly if irrelevant questions could prejudice the accused. For example, if an accused charged with trafficking in cocaine was asked by Crown counsel during cross-examination if it were true that she or he had failed grade ten three times in a row, the defence could object to the question on the grounds that it was irrelevant and prejudicial to the accused. In other words, that question has nothing to do with whether the accused is guilty or not guilty of trafficking cocaine.

In the case of an objection from you or the other counsel to a question or answer, the judge will hear arguments from both counsel before ruling. On occasion, you may decide to withdraw or rephrase a question before the judge has to rule. But remember, what may seem relevant to you may seem very irrelevant to the other counsel. The judge will listen to both sides and see if some relevance can be established. In borderline cases, the judge may decide on the objection by assessing the effect that an answer to the question might have on an accused's case. If it is highly prejudicial, a greater degree of relevance would have to be established before the judge would allow the question to be asked.

OBJECTIONS

Objections should be used very sparingly. A counsel may not object in order to disrupt the other side's questioning or to prevent a question that may be embarrassing from being asked. Counsel can only object on a point of procedure, such as when the other side is leading a witness during direct examination, or when the other side is introducing new evidence in the re-examination of a witness. Because of time constraints, each side must limit the number of objections raised throughout the trial.



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Trial Script Summary

1. The case starts with the sheriff calling: "Order in Court. All rise." Everyone stands. The judge enters and takes his or her seat. Everyone sits down.
2. The court clerk calls the case.
3. The Crown and Defence counsel introduce themselves to the judge.
4. The court clerk reads out the indictment and asks the accused, "How do you plead?"
5. The accused answers, "Not guilty."
6. The judge addresses the jury.
7. The Crown makes an opening statement to the jury.
8. The Crown calls its first witness.
9. The Defence cross-examines the first Crown witness.
Steps 8 and 9 are repeated for each Crown witness.
10. One Crown counsel rises and says, "That concludes the Crown's case, My Lord/My Lady."
11. The Defence begins by making a short opening statement to the jury.
12. The Defence calls its first witness, the accused.
13. The Crown counsel cross-examines the accused.
Steps 12 and 13 are repeated for each defence witness.
14. The Defence counsel makes a closing statement to the jury.
15. The Crown counsel makes a closing statement to the jury.
16. The judge instructs the jury.
17. The jury leaves to decide a verdict.
18. The jury returns.
19. The court clerk asks the jury for the verdict.
20. The foreperson gives the jury's verdict.
21. The judge tells the accused he or she is free to go if the verdict is "not guilty."
22. If the verdict is guilty, Crown counsel and the defence counsel speak to sentence. The judge then sentences the accused.
23. The court clerk says, "Order in Court." Everyone stands. The judge leaves and the trial is over.