

## General Notes on Literature Based Mock Trials for Teachers

### Civil Case v. Criminal Case

It's helpful to understand the fundamental differences between civil and criminal cases. Often concepts that only apply to criminal cases are confused when discussing civil cases.

#### Nature of a Criminal Case

Let's start with the nature of a criminal case. A criminal case is one which is always brought by the government, either the state or federal government against a person believed to have committed a crime. A crime is an offense against ALL of society and for that reason a criminal case is brought in the name of the government against the accused on behalf of every member of the community.

The victim of the crime, if alive, will be a witness but does not bring the lawsuit. For example, let's say Brie Chase punches Ched Dar with such force that Ched falls and hits his head so hard he becomes unconscious. The event took place in Fromage, Pennsylvania. Ched has a long recovery with some residual neurological damage that the doctors indicate may never resolve.

Brie is arrested and charged with the crimes of assault and attempted murder. The name of the case will be Pennsylvania v. Brie Chase NOT Ched v. Brie. Ched is a witness to the alleged crime which is an offense against everyone in society. If the case is successful, the end result will be some punishment imposed on Brie.

Although some laws do allow for some restitution to a victim, the overall goal of a criminal case is to fix the harm to all of society that occurs when a crime is committed. Ched can file a civil action against Brie and request damages for harm suffered, but remedying the harm to the victim specifically is not the fundamental goal of a criminal case -- again the goal is to address the harm to the entire society that results from criminal actions.

#### Rights in A Criminal Case

##### **Presumed Innocent**

Notice that in the example involving Ched and Brie, the crime was referred to as the "alleged crime." That's because in our legal system defendants are presumed innocent until proven guilty. That's not the case in all legal systems across the globe. The right to be presumed innocent is one of the defendant's fundamental rights in the American system of justice.

##### **Right to Remain Silent and Right to Counsel**

A defendant has also the right to remain silent and not have that silence used against him/her/they. In a criminal case, the defendant who cannot afford to pay for an attorney is entitled to have one paid for, while in a civil case there is no right for a civil defendant to have paid counsel if the defendant is unable to afford to pay.

## **Burden of Proof**

What's at risk in a criminal case is grave - there is the possibility in many cases that the defendant will lose liberty or even life. Because of the serious nature of a criminal case, the prosecution must prove the case by **beyond a reasonable doubt**. That burden of proof requires that the jury be *strongly* convinced that the prosecution has proven all components of the crime and has also proven by the same degree that that the defendant is the one who has committed the crime.

## **Other Due Process Rights**

Throughout the process, a defendant has a right to due process. Due process includes an array of rights such as the right to be informed of the charges against the defendant, the right to present evidence, cross examine witnesses and the right to an impartial determination of the facts and unbiased application of the law.

## **Right to a Jury Trial / Unanimous Verdict**

Again, due to the seriousness of a criminal case, the defendant has a right to a trial by jury and in most circumstances the jury's decision (this is called the verdict) must be unanimous. Additionally, the public has a right to view a criminal case and this right was designed to act as a check on the process.

## **Jury Verdicts**

The jury verdict in a criminal case is either **guilty** which means that the prosecution has proven the case against the defendant by beyond a reasonable doubt or **not guilty**. Note that language in a criminal case a jury (or a judge if the defendant decides to waive the right to a jury trial) NEVER declares that a defendant is innocent. **The verdict of not guilty means that the prosecution has not met its burden of proof** to show beyond a reasonable doubt that the defendant is guilty. In fact think that the defendant most likely committed the crime in question, but that is not sufficient to convict the defendant - jurors must be convinced beyond a reasonable, or small doubt, that the defendant is guilty.

## **Right to Be Tried Only Once: Double Jeopardy**

Finally, in a criminal case, the prosecution (the government) gets one shot to prove the defendant guilty. Our Constitution prohibits double jeopardy, which means that a person cannot be tried twice for the same crime - ever- once the case has progressed sufficiently. Any time a jury comes back with a verdict of not guilty the prosecution cannot retry the case - even if new evidence emerges or even if the defendant then confesses to the crime. Only a defendant that is found guilty has the right to appeal and request a new trial.

## **Nature of a Civil Case**

In contrast to a criminal case, the typical civil case is brought to remedy or fix some wrong to a person (in the law, the term "person" includes companies and other organizations as well as human beings). One of the most common types of civil cases is a personal injury case in which a person alleges harm to them caused by another's negligence. For most criminal cases there will be an equivalent civil case that can be brought by the victim. For example, the estate of a murder victim can sue the defendant for wrongful death. In the scenario of Ched v. Brie which we discussed in the section regarding the nature of criminal cases, Ched can sue Brie for a civil action of battery. All of these actions, negligence, wrongful death and battery are types of tort actions in which the goal is to remedy the plaintiff for some personal harm allegedly caused by the defendant. There are also many other types of tort actions such as libel, fraud, and trespass. Other typical types of civil actions include breach of contract cases and real estate and other property disputes.

The plaintiff in a civil case is the person who contends that they were harmed, and the defendant is the person (again the term person includes companies, associations, and government agencies) the plaintiff contends caused the harm. Notice that the name of the case will be Injured Party v. Party Alleged to Cause Harm.

The typical result that is sought in a civil case is called **damages** which means money to compensate the plaintiff for the harm suffered. In a civil trial there is no possibility that the judge will impose a jail term or other criminal sentence if the plaintiff is successful.

### **Rights in a Civil Case: Attorney Representation**

As mentioned above the defendant in a civil case does not have the right to free counsel and must pay for an attorney. The same is true of the plaintiff - if the plaintiff wishes to bring a lawsuit no free counsel is provided. (As a side note, insurance policies such as auto or home insurance and other agreements will typically cover attorney representation but, unlike a criminal case, there is no Constitutional right to free representation). Some statutes, such as civil right laws may provide for the right to recover attorneys' fees, if successful from the opposing party and some nonprofits such as Community Legal Services may provide free assistance to low income plaintiffs for certain cases but there is no inherent right to free counsel.

### **Civil Cases: Jury Trials and Trial Procedure**

Whether the plaintiff has a right to a jury trial depends on the nature of the type of action brought. There is no Constitutional right to a jury trial in ALL civil cases. If there is no jury, then a judge determines the facts and applies the law at the end of the case. This is called a Bench Trial. Both sides do have the right to present evidence and cross-examine witnesses and, as in a criminal case, the plaintiff, that is the party bringing the lawsuit has the burden of proving the case. A party's silence in a civil case, unlike in a criminal case, may be used against them and a jury may be instructed to draw an adverse inference from the party's failure to speak.

### **Civil Cases: Burden of Proof**

Because of what is at stake in a civil case, the burden of proof is "lighter". However, the burden or obligation to prove the case is still on the person bringing the lawsuit, the plaintiff. In most civil cases, the risk is that the defendant will have to convey money to the defendant, but the defendant's life and liberty are never at stake. The plaintiff in a civil case then must prove their case by a **preponderance of the evidence** - NOT by beyond a reasonable doubt. This means that the plaintiff must convince the jury or judge that it is more likely than not that the defendant caused the plaintiff harm. This also means that a defendant could be found not guilty in a criminal case and then be found responsible in a civil case. One of the most famous examples is that of OJ Simpson who was found not guilty by beyond a reasonable doubt of unlawfully causing the deaths of his wife and another man, but was found liable in the subsequent civil case and ordered to pay damages to the victim's survivors.

### **Civil Cases: Verdict and Appeal**

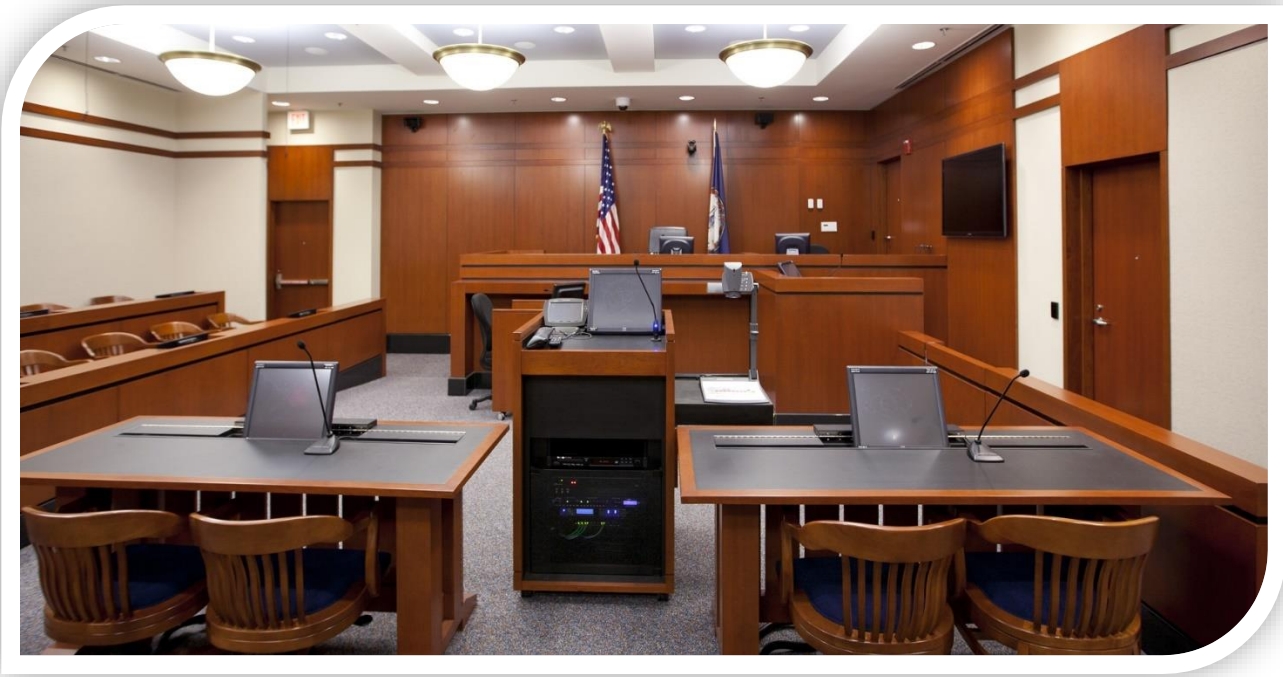
The jury or judge in a civil case also returns a verdict, but the terms "guilty and "not guilty" are NEVER used. Instead the jury finds in favor of the plaintiff, and if so, generally will then determine a monetary amount of damages or the jury can find in favor of the defendant. Following a verdict in a civil case either party may appeal if they have grounds. There is no Constitutional prohibition against double jeopardy component that applies to a civil case.

## **Both Civil and Criminal Cases**

- The party bringing the lawsuit bears the burden of proving the case.
- The case is adversarial. Plaintiff v. Defendant
- The court where the case is heard is called the **trial court**.
- A Judge will preside over the case and make determinations on objections to evidence, and if there is a jury, provide instructions to a jury.
- The procedure of the cases is close to identical.

### **A Note on Trial Courts, both Civil and Criminal:**

Typically, the courtrooms seen on television and in movies are those of trial courts. In a trial courtroom there is always a place for the jury to sit, called the jury box. There will also be a table for the Prosecution (or Plaintiff in a Civil case) case and one for the defendant. The party bearing the burden of proof (the Prosecution or Plaintiff) will sit closest to the jury. There will also be a stand for testifying witnesses and room for a court clerk, stenographer and other court officials in addition to the judge's bench. Most courtrooms also have seating for visitors to observe the court. The right to observe a criminal case is one of our Constitutional rights designed to ensure the fairness of the process. Modern courtrooms may also have considerable technology to enable the showing of videos, animations and other demonstrations.



## Procedure of a Case in Civil and Criminal

**Step 1: Opening Statements** outline the party's legal position and highlights the evidence that will be presented. The Opening Statement is the first chance each side has to make an impression on the judge and jury (if there is one) and set the stage for what is to come. A basic rule for Opening Statements is to never promise evidence that is not presented. Opening Statements are not evidence.

- The party bringing the case presents an Opening Statement which highlights the evidence that the party expects to present.
- The defendant then presents its Opening Statement.

### **Step 2a: Presentation of Evidence General Note on evidence:**

A case is proven through "evidence." Each cause of action, whether criminal or civil will have specific elements which must be proven. For example, to prove that Max committed first degree homicide evidence must be presented to establish that: (1) Max acted with premeditation; (2) Max acted willfully; and, (3) Max acted deliberately to cause the death of the victim. In a civil case of negligence where Ty sues Rider contending that Rider ran a red light and hit Ty's car, causing property and personal injury, Ty must prove that: (1) Rider has a duty to exercise reasonable care in driving; (2) that duty was owed to Ty; (3) Rider breached that duty; (4) the breach was the actual and proximate cause; (5) of damages to Ty. Every cause of action, whether civil or criminal has defined elements which must be proven by the party bringing the lawsuit.

### **Step 2b: Presentation of Evidence - Types of Evidence**

- The party bringing the lawsuit presents evidence first. Types of evidence include:
  - a. Witness testimony (Witness must swear or promise to tell the truth).
  - b. Real Evidence which are things such as material items. This category is broad and could include a bloody weapon, a traffic ticket, a soda can which exploded. A thing which is relevant to a case is called real evidence. Real evidence must be presented through a witness who can testify to the validity of the evidence.
  - c. Demonstrative evidence includes diagrams, animations and charts which explain evidence. This is also presented through a witness.

### Step 2c: Presentation of Evidence: Questioning Witnesses

- The party presenting evidence does so through witnesses.
- **Direct Questions:** When the party presenting the evidence calls a witness to the stand, the witness must be questioned through DIRECT QUESTIONING. The major exception to this rule would be basic background information such as a person's occupation or age or relationships. On direct for example it would be acceptable to ask, "The defendant is your son, isn't that so?" even though it's a leading question.
  - Direct Questioning means asking open-ended questions which do not suggest the response. Typically, direct questions ask "Who", "What," "When", "Where", "Why"
    - i. Example of Direct Questions:
      1. What did you do when you got up on the day in question?
      2. Why did you go to that place?
      3. Who did you meet there?
      4. How did you accomplish your plans?
- **Cross-examination:** Once the party presenting the witness has completed their questioning, the other side gets to cross examine. This is done through leading questions which require "yes" or "no" responses. Leading questions suggest a response unlike direct questions.
  - ii. Examples of Leading Questions:
    1. Isn't a fact that you screamed at the victim at the bar on the night of the murder?
    2. Did you or did you not tell Bob that his wife was having an affair?
    3. Isn't it true that you were wearing a pink dress on the day of the murder?
- **Redirect and Recross:** A Judge may allow redirect and recross to clarify matters brought up in the previous testimony but in constructing trials with students we will typically not go past cross-examination.

### Note about Expert Witnesses:

*Experts are witnesses who by experience and / or education have an expertise who is permitted to testify regarding their field if relevant to the case. Experts must be qualified. In other words, the party presenting the expert must establish that the expert has the credentials to testify in that field. Only expert witnesses are permitted to answer hypothetical questions when testifying.*

### Step 3: Resting the Case:

Once the plaintiff has completed presenting all the evidence, the plaintiff **rests** and the defendant presents its case. The order described above presenting witnesses is the same for the defendant. In other words, the defendant calls witnesses and questions them using direct examination and then the plaintiff cross-examines. Once the defendant has presented all its evidence, the defendant will rest.

### Step 4: Closing statements (Also called closing arguments)

Each side will present closing statements which sum up the evidence and present how that side sees the law. It is the last chance to persuade the jury. Which side brings closing statements first depends on the court. In Pennsylvania in criminal cases the Prosecution presents the last closing argument in civil cases the plaintiff typically presents the first closing statement.

### Step 5: Jury Instructions

Once closing statements are completed, if there is a jury, the judge will instruct the jury on their responsibilities and on the law. These instructions are very important because they will set out the law for the jurors. The job of the jury in both civil and criminal cases is to make factual findings and apply the law to the facts as the jury finds them. For example, a jury may decide not to believe a witness's testimony because the witness was shown to have a bias or the testimony itself was not believable. However, the jury decides what to believe and determines the facts of the case. Once the facts are determined, the jury's next job is to apply the law to the facts and come up with a decision, called the verdict.

## Step 6: The Verdict

Once a jury has come to a decision it will render its verdict. In a criminal case, the jury's decision on the verdict typically ends the jury's responsibility. Capital cases present an exception to that rule in many states where after finding a defendant guilty, the jury will then hear evidence regarding the appropriate penalty and reconvene to decide or make a recommendation on whether the defendant should receive the death penalty. In a civil case, if a jury decides in favor of a plaintiff, the jury will typically then decide the amount of damages to award the plaintiff.

## Step 7: Appeals

In a civil case either party can appeal. Typically appeals are limited to issues of law, not fact. Examples of legal issues include whether a judge properly admitted or excluded evidence and whether the proper jury instructions were provided. The party bringing the appeal must also show that the error likely made a difference in the outcome of the case. In a criminal case only the defendant who has been found guilty has the right to appeal the verdict. As in a civil case, the party appealing in a criminal case must show that something went wrong with the application of the law or with the implementation of the defendant's constitutional rights AND show that the error likely made a difference in the outcome of the case. Examples of grounds for appeal in a criminal case include ineffective assistance of counsel (which means that the defendant's right to attorney was flawed), improper exclusion or admission of evidence and improper jury instructions.

### A Note on Appellate Courts:

Because the job of appellate courts is to resolve issues of law and not to find facts, the courtroom looks very different from the trial court. In an appellate courtroom there is no jury box and no witness stand. Appellate courts do not hear witnesses or receive evidence. Judges on an appellate court read the transcript of the record from the trial court. A podium is provided for the lawyers to make legal arguments. Strict time limits are applied to the arguments. The party bringing the appeal presents the first argument and may be interrupted by the appellate judge or judges with questions. The party who opposes the appeal then presents their arguments in the same manner. In some cases, the appealing party may rebut. Once the appellate arguments are complete, the judges will consider the case and all the arguments. A decision is seldom made the same day as the appellate argument and may take many weeks.



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