

The Trial

by Sophia



WHAT'S COVERED

In this lesson, you will learn the standard structure of trials in the United States legal system. Specifically, this lesson will cover:

1. Jury Selection

At trial, the first order of business is to select a jury. In a civil case of any consequence, either party can request one, based on the Sixth Amendment to the U.S. Constitution. The judge and sometimes the lawyers are permitted to question the jurors to be sure that they are unbiased.

This questioning is known as the *voir dire* (pronounced vwahr-DEER). This is an important process, and a great deal of thought goes into selecting the jury. A jury panel can be as few as six persons, or as many as twelve, with alternates selected and sitting in court in case one of the jurors is unable to continue. In a long trial, having alternates is essential; even in shorter trials, most courts will have at least two alternate jurors.

In both criminal and civil trials, each side has opportunities to challenge potential jurors for cause.

IN CONTEXT

In a case against Audi, the attorneys representing Audi will want to know if any prospective jurors have ever owned an Audi, what their experience has been, and if they had a problem with their Audi that was not resolved to their satisfaction. If so, the defense attorney could well believe that such a juror has a potential for a bias against her client. In that case, she could use a challenge for cause, explaining to the judge the basis for her challenge. The judge uses discretion to either accept the for-cause reason or reject it.

Even if an attorney cannot articulate a for-cause reason acceptable to the judge, he may use one of several **peremptory challenges** (no reason needed) that most states (and the federal system) allow. A trial attorney with many years of experience may have a sixth sense about a potential juror and, in consultation with the client, may decide to use a peremptory challenge to avoid having that juror on the panel.



TERM TO KNOW

Peremptory Challenge

The right of a party to challenge a juror without giving a reason. This right is limited to a particular

2. Opening Statements and Witness Testimony

After the jury is sworn and seated, the plaintiff's lawyer makes an **opening statement**, laying out the nature of the plaintiff's claim, the facts of the case as the plaintiff sees them, and the evidence that the lawyer will present. The defendant's lawyer may also make an opening statement or may reserve his right to do so at the end of the plaintiff's case.

The plaintiff's lawyer then calls witnesses and presents the physical evidence that is relevant to the proof. The direct testimony at trial is usually far from a smooth narration. The **rules of evidence** (that govern the kinds of testimony and documents that may be introduced at trial) and the question-and-answer format tend to make the presentation of evidence choppy and difficult to follow.

IN CONTEXT

Anyone who has watched an actual televised trial or a television melodrama featuring a trial scene will appreciate the nature of the trial itself: Witnesses are asked questions about a number of issues that may or may not be related, the opposing lawyer will frequently object to the question or the form in which it is asked, and the jury may be sent from the room while the lawyers argue at the bench before the judge.



TERMS TO KNOW

Opening Statement

The statement each side of a lawsuit makes to a jury to introduce the case.

Rules of Evidence

Court rules governing the admissibility of evidence at trial.

3. Cross-Examination and Redirect Examination

After direct testimony of each witness, the opposing lawyer may conduct **cross-examination**. This is a crucial constitutional right; in criminal cases it is preserved in the Constitution's Sixth Amendment (the right to confront one's accusers in open court).

The formal rules of direct testimony are then relaxed, and the cross-examiner may probe the witness more informally, asking questions that may not seem immediately relevant. This is when the opposing attorney may become harsh, casting doubt on a witness's credibility, trying to trip her up and show that the answers she gave are false or not to be trusted.

This use of cross-examination, along with the requirement that the witness respond to questions that are relevant to the case, distinguishes common-law courts from those of authoritarian regimes around the world.

Following cross-examination, the plaintiff's lawyer may then question the witness again: This is called **redirect examination** and is used to demonstrate that the witness's original answers were accurate and to show that

any implications otherwise, suggested by the cross-examiner, were unwarranted.

The cross-examiner may then engage the witness in recross-examination, and so on. The process usually stops after cross-examination or redirect.



TERMS TO KNOW

Cross-Examination

A procedure whereby the opposing side is allowed to question the other side's witnesses in a trial or deposition, usually limited in scope by the content of the direct examination in a trial.

Redirect Examination

The procedure whereby the side that first testified on direct examination is allowed to conduct another examination of a witness limited to matters that came up on cross-examination in a trial.

Recross-Examination

The procedure whereby the side that performed cross-examination is allowed to conduct another examination of a witness limited to matters that came up on re-direct examination in a trial. There is no limit to how long these processes may continue.

4. Judge's Responsibility

During the trial, the judge's chief responsibility is to see that the trial is fair to both sides. One big piece of that responsibility is to rule on the admissibility of evidence.

➞ **EXAMPLE** A judge may rule that a particular question is out of order - that is, not relevant or appropriate - or that a given document is irrelevant.

Where the attorney is convinced that a particular witness, a particular question, or a particular document (or part thereof) is critical to the case, he may object to the court's ruling by saying "**objection**," in which case the court stenographer will note the objection.

On appeal, the attorney may cite any number of objections as adding up to the lack of a fair trial for her client and may request a court of appeals to order a retrial. If no objection is made, it is **waived**.

For the most part, courts of appeal will not reverse and remand for a new trial unless the trial court judge's errors are **prejudicial** or an **abuse of discretion**. In short, neither party is entitled to a perfect trial, but only to a fair trial, one in which the trial judge has made only **harmless errors** and not prejudicial ones.



TERMS TO KNOW

Objection

A formal challenge by a party to an offer of evidence or testimony by the opposing side in a trial.

Waiver

The relinquishment of a right to object to evidence in court if a timely objection is not made.

Prejudicial

A judge's errors at trial that substantially affect an appellant's legal rights.

Abuse of Discretion

A judge's failure to exercise sound and reasonable discretion; an error of law by the court.

Harmless Errors

Errors made by a judge at trial that are deemed not to have any meaningful effect on the appellant's rights.

5. Directed Verdict and Closing Arguments

At the end of the plaintiff's case, the defendant presents his case, following the same procedure just outlined. The plaintiff is then entitled to present **rebuttal** witnesses, if necessary, to deny or disagree with the evidence the defendant has introduced. The defendant in turn may present a rebuttal witnesses.

When all testimony has been introduced, either party may ask the judge for **adirected verdict**— a verdict decided by the judge without advice from the jury.

This motion may be granted if the plaintiff has failed to introduce evidence that is legally sufficient to meet her burden of proof or if the defendant has failed to do the same on issues on which she has the burden of proof.

➞ **EXAMPLE** Say the plaintiff alleges that the defendant owes him money and introduces a signed promissory note, and the defendant cannot show that the note is invalid. The defendant must lose the case unless he can show that the debt has been paid or otherwise discharged.

The defendant can move for a directed verdict at the close of the plaintiff's case, but the judge will usually wait to hear the entire case until deciding whether to do so. Directed verdicts are not usually granted, since it is the jury's job to determine the facts in dispute.

If the judge refuses to grant a directed verdict, each lawyer will then present a closing argument to the jury (or, if there is no jury, to the judge alone). The closing argument is used to tie up the loose ends, as the attorney tries to bring together various seemingly unrelated facts into a story that will make sense to the jury.



TERMS TO KNOW

Rebuttal

A witness whose testimony is given for the purpose of contradicting prior evidence, or testimony presented by a witness for the other side in a trial.

Directed Verdict

A verdict decided by the judge without advice from the jury, often occurring when the plaintiff (or prosecutor in a criminal case) has not presented sufficient evidence

6. Jury Instructions

After **closing arguments**, the judge will instruct the jury. The purpose of jury instruction is to explain to the jurors the meaning of the law as it relates to the issues they are considering and to tell the jurors what facts they must determine if they are to give a verdict for one party or the other.

Each lawyer will have prepared a set of written instructions that she hopes the judge will give to the jury. These will be tailored to advance her client's case. Many a verdict has been overturned on appeal because a trial judge has wrongly instructed the jury.

The judge will carefully determine which instructions to give and often will use a set of pattern instructions

provided by the state bar association or the Supreme Court of the state. These pattern jury instructions are often safer because they are patterned after language that appellate courts have used previously, and appellate courts are less likely to find reversible error in the instructions.



TERM TO KNOW

Closing Argument

The concluding statement made by each party to a jury summarizing the evidence, law, and reasons why the jury should find in their favor.

7. Verdict and Post-Trial Motions

After all instructions are given, the jury will retire to a private room and discuss the case and the answers requested by the judge for as long as it takes to reach a unanimous verdict.

Some minor cases do not require a unanimous verdict. If the jury cannot reach a decision, this is called **hung jury**, and a **mistrial** is declared, requiring the case to be retried. When a jury does reach a verdict, it delivers it in court with both parties and their lawyers present.

The jury is then discharged, and control over the case returns to the judge. If there is no jury, the judge will usually announce in a written opinion his findings of fact and how the law applies to those facts. Juries just announce their verdicts and do not state their reasons for reaching them.

The losing party is allowed to ask the judge for a new trial or for **judgment notwithstanding the verdict** (often called a judgment n.o.v., from the Latin *non obstante veredicto*). This is called for when a jury fails to apply the law correctly.

Rule 50(b) of the Federal Rules of Civil Procedure called "Judgment as a Matter of Law" provides the authorization for federal judges making a judgment contrary to the judgment of the jury. Most states have a similar rule.



TERMS TO KNOW

Hung Jury

A jury that is unable to agree on a verdict.

Mistrial

A trial declared to be invalid due to an error in the proceedings.

Judgment Notwithstanding the Verdict

Also known as judgment n.o.v., a judgment entered by order of court at the end of a proceeding, despite a contrary verdict.



SUMMARY

In this lesson, you learned that a trial begins with **jury selection**. Once the proceedings are underway, the plaintiff's lawyer gives an **opening statement** and calls **witnesses to testify**. The defendant's lawyer can **cross-examine** the plaintiff's witnesses, and the plaintiff's lawyer can then respond with a **redirect examination**. After the plaintiff's entire case has been presented, the defendant's lawyer will

repeat this process. Either party may request a **directed verdict** which means that the judge will make the final decision instead of the jury. If this does not happen, both sides will give **closing arguments**. The judge will then read the **jury instructions** and the jurors will deliberate until they reach a **verdict**.

The **responsibility of a trial judge** is to ensure justice to all parties to the lawsuit. The judge presides, instructs the jury, and may limit who testifies and what they testify about. In all of this, the judge will usually commit some errors; occasionally these will be the kinds of errors that seriously compromise a fair trial for both parties. Errors that do seriously compromise a fair trial for both parties can result in a **post-trial motion** to overturn the decision.

Best of luck in your learning!

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TERMS TO KNOW

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A judge's failure to exercise sound and reasonable discretion; an error of law by the court.

Closing Argument

The concluding statement made by each party to a jury summarizing the evidence, law, and reasons why the jury should find in their favor.

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Rebuttal

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Recross-Examination

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Rules of Evidence

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