

# Appeals

In some cases, individuals who have taken their dispute to court do not agree with the decision of the court. They might feel that the court erred in ruling on the admission of evidence or in the application of the law. They might feel that the evidence presented did not support the decision. For whatever reason, people often consider appealing their case to a higher court. When legal grounds for the appeal exists, such as the reasons presented above, an appeal might be wise. In other cases, where there is no legal basis, appeals are a waste of time and money. Lawyers help their clients decide if an appeal is warranted.

Cases are appealed to *appellate courts*. In Minnesota, most cases are appealed to the Minnesota Court of Appeals. A limited number of cases are appealed directly to the Minnesota Supreme Court. (See the chart provided in the lesson **Minnesota courts**.) Cases on appeal are different than trials. The judges on the court listen to arguments presented by the lawyers representing the parties in the case. There are no witnesses. There is no jury. Instead, the judges review what happened at the trial, listen to the arguments of the lawyers (presented during an oral argument or in a written brief), and decide the case.

Students learn about the appeal process through moot court simulations. By developing and presenting an argument to the judges, students develop an understanding of appellate procedure as well as constitutional issues argued. The format is adaptable to any trial court decision that has grounds for appeal or as a reenactment of Supreme Court decisions. Students can research prior case law as precedent for the issue before the court or simply apply their understanding of the law to the case. However the simulation is used, students will have the opportunity to prepare and present arguments that support their side of the case before judges on an appellate court.

## Students will:

1. Know the role of an appellate court in our judicial system.
2. Understand appellate court procedure and decorum.
3. Analyze issues of constitutional law.

**Materials needed:** Copies of **Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY, INSTRUCTIONS FOR ATTORNEY TEAMS, INSTRUCTIONS FOR JUSTICES, and INSTRUCTIONS FOR LAW CLERKS**

**Time needed:** 2 class periods

**Grade level:** Grades 9-12

## Procedure:

1. Begin the class session by asking, “Who decides if a trial has been fair?” “Who has the last word in deciding what the Constitution means?” “What is meant by a court of last resort?” “What is a ‘higher’ court?”

2. Explain background on appellate procedure:

A case begins in a trial or district court. It is here where witnesses testify, lawyers ask questions, and judges or juries make decisions. A trial court is said to have *original jurisdiction* because it hears a case for the first time.

If a person who loses a case in a trial court wishes to appeal a decision, he or she would take the case to a court with appellate jurisdiction. In the federal court system, the U.S. Court of Appeals is the first court of appellate jurisdiction. After that a case would go to the U.S. Supreme Court which has the final say.

There are no jury trials in appellate courts. Rather, they are *courts of review* which determine whether or not the rulings and judgment of the lower court are correct. The party who brings the suit to the reviewing court is referred to as the *petitioner* or *appellant*. The petitioner argues that the lower court erred in its judgment and seeks a *reversal* of the lower court’s decision. The party who won at the lower court must now argue against the setting aside of the judgment. This party, the *respondent* or *appellee*, wants the appellate court to *affirm* or agree with the lower court’s decision.

The first step in the appellate process, after the filing of a *Notice of Appeal*, is the submission of *briefs* by each party. Each brief identifies the facts of the case, the issues of fact and law, how the trial court ruled, and legal arguments using case law that will persuade the appellate court to affirm or reverse the lower court.

After the briefs are completed, *oral arguments* might be scheduled to answer questions the judges might have. Unlike trial court procedure where many witnesses testify in court, oral arguments are only presented by attorneys. Each lawyer is given a limited amount of time (usually 30 minutes) to present their argument before a panel of judges. The petitioner argues first because their client has brought the appeal to the higher court. Respondent’s argument will immediately follow. Before petitioner begins, he or she may reserve time for a rebuttal following the respondent’s argument. Judges frequently interrupt the attorneys to ask clarifying questions.

Following the oral argument, judges meet together and discuss the merits of the case. Judges will vote, and the majority viewpoint becomes the judgment. A judge for the majority will write the *majority opinion*. Those judges who disagree with the majority may write a *minority* or *dissenting opinion*.

3. Select a case for the moot court. (A case on religious freedom including discussion of law for students and notes for teachers is provided.) Review the background and facts of the case. Identify which parties are the petitioner and respondent. Determine each side’s position before the appellate court. Clarify the issues in the case by listing arguments for each side.

4. Divide the class into attorney teams of four to six students and assign to each team the position of petitioner or respondent. They will prepare arguments to support their positions and present these to

**Procedure cont.**

a court of nine justices. Each side is allowed four minutes for its presentation. (See **INSTRUCTIONS FOR ATTORNEYS**)

An uneven number of justices should be selected including a chief justice. (The Minnesota Supreme Court has seven justices and the U.S. Supreme Court has nine.) They will listen to the attorney arguments and interrupt to ask questions. After oral arguments, the chief justice will lead a five-minute conference in which justices present their views of the case. Each justice will try to persuade the others to agree with his or her interpretation of the case. At the end of the conference, the justices take a final vote. The chief justice may assign a justice to present the decision of the court to the class. (See **INSTRUCTIONS FOR JUSTICES**)

**5.** Remaining students might act as law clerks in helping justices understand the case. (In Minnesota, judges on the Court of Appeals and the Supreme Court each have two law clerks that help research the law and develop the opinions. Law clerks are lawyers who are recent law school graduates.) Assign each clerk to a particular justice. They will meet together during preparation time and discuss the case. (See **INSTRUCTIONS FOR LAW CLERKS**)

As an alternative, select second attorney teams to present additional arguments.

**6.** Depending on the purpose of the activity, preparation time will vary. A complex case requiring additional research may be an outside assignment. A simpler “self-contained” case need only take fifteen minutes of preparation time as students work together.

**7.** Conduct the Moot Court Activity.

**A. Room Set-Up.** Justices should be seated together in a row facing the class. Attorneys can present their arguments by standing in front of the court or seated as a group.

**B. Oral Argument.** (15 minutes)

Have one student announce that court is in session and have students rise as the justices enter the room. The chief justice will open court by announcing the name of the case. He or she will then ask the petitioner’s attorneys to begin their four-minute argument. At any time, the justices may ask questions. Attorney teams should answer questions before continuing the argument. Respondent’s attorney will follow. (You may adapt format by allowing a rebuttal by petitioner. This offers student attorneys a second chance to make their argument after they become comfortable with the format.) After oral arguments, the chief justice adjourns the court.

**C. Follow-Up Conference** (5 minutes)

Justice conferences are done in private. However, for this activity a “**fishbowl conference**” will allow the class to observe the discussion. Justices sit in a circle in the middle of the room with the rest of the class forming an outer circle where they can easily hear and see the discussion.

The chief justice will ask each justice for his or her view of the case. He or she will then facilitate an open discussion before calling for a final vote.

**Procedure cont.**

**8.** Debrief the Moot Court activity. Encourage all students to participate in the discussion. Questions that facilitate discussion include:

- A.** Do you agree or disagree with the decision of the court? Compare the class's decision with the actual case.
- B.** What attorney arguments were most convincing to you? Why?
- C.** Were the questions asked by the justices helpful to the process?
- D.** What do justices consider in deciding how to vote on a case?
- E.** Did you change your mind about the case after listening to the attorney arguments? Judge's conference?
- F.** Why are appellate courts important in our judicial system?

## INSTRUCTIONS FOR ATTORNEY TEAMS

Organize your argument in outline form including the following information:

1. A clear, brief statement of your position and at least two arguments or reasons why the court should adopt your position.

*If you represent the petitioner your position is that the lower court made a wrong decision.* Why? Your argument may focus on whether or not a law is constitutional, trial procedure was fair, or actions by government officials were proper.

*If you are representing the respondent your position is that the lower court made the right decision.* Why? Defend the lower court's position as well as counter the charges made by the other side.

2. Facts from the case that support each argument with an explanation of how each fact supports it.

3. Explanations of any Supreme Court decisions that support your arguments.

### Sample Outline

1. Petitioner's Case
  - A. Introduction and statement of position
  - B. Supreme Court decisions that support argument
  - C. Request for action (uphold trial court or reverse trial court)

Use this outline in your four-minute presentation. Decide which team member(s) will present the information.

Finally, assign at least one team member to answer the justices' questions. He or she should prepare by carefully reviewing the case description.

### Oral Argument:

Begin your argument by saying:

*“May it please the court, my name is \_\_\_\_\_ and I represent \_\_\_\_\_ in this case.”*

Then continue with your argument. Be prepared to stop when a justice asks a question. The attorney team member assigned to questions should answer. Continue presenting your case until the next question is asked. Try to conclude your argument by restating the action you would like the court to take. Remember that your time may be taken up with answering questions.

## INSTRUCTIONS FOR JUSTICES

To prepare for oral arguments, justices should meet with their assigned clerk and review the case. What is unclear to you? What facts do you want clarified? Does a position need more explanation? Together develop questions to be asked by justices during oral arguments. Remember justices can interrupt attorney presentations to ask questions.

Justices and clerks can also review previous court decisions that relate to the issue presented in the case. The court tries to follow previous decisions in order to promote consistency and stability in the legal system. Should the court follow its earlier decisions (*precedent*) or should the court abandon precedent and create new rules? As a justice, you must decide this case.

### ROLE OF CHIEF JUSTICE

**During the Moot Court Activity you may:**

1. Extend the time limits of the attorneys' presentations if you or another judge feel it is necessary.
2. Maintain order in the courtroom by insisting that only one individual speak at any one time and that all statements by the attorneys be directed to the court and not to the attorneys representing the other side in the case.

**At the follow-up conference:**

3. Insist that each judge be initially allowed to express his or her views regarding the case without any comments or questions from the other judges.
4. Provide the judges with the opportunity to question the positions of the other judges and convince them of the merits of their own views.
5. Take a formal poll of the judges and assign one judge to be in charge of presenting the court's majority opinion. If a dissenting or minority opinion exists, provide dissenting judges an opportunity to present their opinion.

## INSTRUCTIONS FOR LAW CLERKS

Law clerks are responsible for such tasks as reading all the appeals filed with the court, writing memos summarizing the key issues in each case, and helping prepare court opinions by doing research and writing drafts.

In this activity, law clerks should read carefully all documents about the case and any relevant Supreme Court decisions. You will discuss the case with your assigned justice and help him or her prepare questions to be asked during oral arguments.

## Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY

### Issue: Free Exercise of Religion

#### A SIGN OF THE TIMES...RELIGIOUS FREEDOM VS. PUBLIC SAFETY

Amish families from Ohio began to arrive in Fillmore County, Minnesota in 1973-74. As a religious community, they have adopted a simple lifestyle and travel by horse and buggy. At first, there were few problems with the Minnesota law requiring an orange and red triangular slow-moving vehicle sign to be displayed on buggies and wagons. Younger Amish, conscious of their position as newcomers and anxious to fit into their new community, tended to use the required sign. Some Amish preferred to display a black triangle outlined in white as a compromise. Others refused to use any sign. They believed the bright colors of the sign and the symbol itself would put their faith in “worldly symbols” rather than in God. Instead, they outlined their buggies with silver reflective tape. If stopped and tagged, Amish drivers usually pled not guilty. Routinely, they were found guilty and then paid the fines.

Concerns were raised by people living in the area. Occasional accidents involving slow-moving vehicles showed the need for such signs to protect public safety. In 1986, Minnesota law was changed to allow the black triangle with a white outline. Many Amish agreed to this compromise. But in 1987, when the law was changed again to require the orange triangle to always be carried in the wagon and used at night or in poor weather, the conflict grew.

Amish who refused to carry the sign began to be ticketed, fined, and sentenced to community service or jail time. Initial fines were \$20 - \$22, and first time jail sentences were seven days. Jail sentences would not have to be served if there were no additional tags within six months. Soon, repeat offenders began to appear back in court within the six month period, refused to pay fines, and were required to serve time in jail.

In December, 1988, Mr. Hershberger and thirteen others appeared before a Fillmore County judge for violation of the sign law. They asked the court to dismiss the traffic citations explaining their refusal to display the sign was based on their sincere religious beliefs and that the sign law punished them for their beliefs through fines and jail time. They wanted to practice their religion without interference from government as guaranteed in the First Amendment. They believed the law should allow an alternative that would not violate their religion - the use of silver reflective tape.

The district judge refused to dismiss the citations. The judge pointed out that the Amish community was divided on whether or not their religion prohibits display of the sign. Because the community was divided, it did not appear to the judge that the religious belief was sincere. Also, the judge felt that highway safety was a more important consideration.

The Amish appealed the decision to the Minnesota Court of Appeals. The Court of Appeals, under court rules, asked the Minnesota Supreme Court to review the constitutional issue right away. The case is now before the Minnesota Supreme Court.

***Issue: Does Minnesota law requiring the slow-moving vehicle sign violate the rights of the Amish to free exercise of religion guaranteed in the Minnesota Constitution and the U.S. Constitution?***

## Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY cont.

### Points of Law

Under Article I, Section 16 of the Minnesota Constitution, individuals are provided the following protections.

**Freedom of conscience; no preference to be given to any religious establishment or mode of worship.** The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit

of any religious societies or religious or theological seminaries.

The First Amendment to the U.S. Constitution reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .” The amendment’s guarantee of freedom of religion contains two parts: (1) the establishment clause, and (2) the free exercise clause.

Under the establishment clause, the state may not treat one religion more favorably than others so as to make it appear that the government is supporting that religion as the state-approved religion. The clause has also been interpreted to forbid government from aiding religion in general over non-religion.

Under the free exercise clause, the state may not restrict the free exercise of religious beliefs either directly or by imposing burdensome conditions on these beliefs.

There is a balance which must be struck between the two clauses. In protecting the free exercise of one religion, it is easy for the government to seem to be favoring (establishing) that religion. For example, if it makes an exception and says that people whose religious beliefs prohibit violence do not have to be soldiers, people with other beliefs might think the government is treating the first religion more favorably.

**Student Handout: CASE STUDY FOR MOOT COURT ACTIVITY cont.**

As with other First Amendment freedoms, the Constitution's protection of religious beliefs must be balanced against the important needs of society as a whole. That means that the importance of a religious activity to a particular religion must be balanced against the harm to society that the activity can cause. For instance, although public dancing with poisonous snakes may be important to a religious group, the danger that such an activity poses to the public could allow the state to prevent it without running afoul of the free exercise clause.

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**Issues that should be considered when arguing for or against the right of the Amish to display alternative slow-moving vehicle signs include:**

- 1.** Should the sincerity of one's religious beliefs be examined by the court? Must everyone practicing the religion hold the same beliefs? How would the court know if an individual was being sincere?
- 2.** Does the government regulation burden the exercise of the religion? In what way?
- 3.** Is the government regulation justified? Is the state's concern for safety of the public using the highways a legitimate state interest? Is there a less restrictive way of accomplishing the goal of public safety? Should the constitutional protection require that the government use the least restrictive alternative

**TEACHER NOTES: Case study for moot court activity**

- 1.** Should the sincerity of one’s religious beliefs be examined by the court? The Minnesota Supreme Court and the United States Supreme Court have held that it has never been a requirement to demonstrate that the sincerity of one’s religious belief is uniformly agreed to by the religious community of which the individual is a member. Instead, the focus is to be on whether the individual claiming First Amendment protection has a sincere religious belief. (The willingness to go to jail probably demonstrates sincere religious belief.)
- 2.** Does the government regulation burden the exercise of the religion? When a statute imposes criminal sanctions including fines and jail time on those who do not obey, it is a substantial burden. In this case, the Amish face a choice of either following their religious beliefs by refusing to adopt “worldly symbols” bearing “loud colors” and suffering the consequent criminal sanctions, or rejecting those beliefs in order to obey the law.
- 3.** Is the government regulation justified? This is the critical issue. Under current United States Supreme Court decisions interpreting the United States Constitution, the government need only show a good reason for the regulation for it to be found constitutional. Under current decisions by the Minnesota Supreme Court interpreting the Minnesota Constitution, the government is required to have a compelling governmental interest which cannot be served by a less intrusive alternative. The Minnesota Constitution offers individuals more religious protection. In a decision by the Minnesota Supreme Court regarding the Amish case presented here, the Court ruled that the Minnesota law violates the Amish’s right under the Minnesota Constitution to freely practice their religion.