

Common Law-Related Education Strategies

Mini-Mock Trial Procedure

Teacher Instructions

Mock trials conducted within one or two class periods help students learn about courts and trials in an interesting and enjoyable way. Although students obviously will not be as polished as they are in more lengthy mock trial programs, their abilities to quickly become familiar with trial process, to learn their roles, and to discuss rules of evidence and constitutional protections will surprise even the most seasoned observer.

In addition to the value of the learning experience for students, mini-mock trials are an excellent activity for lawyers who want a “guaranteed” success. With only little advance preparation, a lawyer can guide the students through the mock trial experience, helping them develop appropriate questions and then serving as the judge for the trial. Most lawyers are so comfortable with this activity, and find the positive student response so rewarding, that they are usually willing to schedule return engagements.

Students will:

1. Become familiar with the role of a trial court in solving disputes. They will also be introduced to court procedure and decorum.
2. Develop an appreciation for the importance of various people in the courtroom.
3. Practice communication and critical thinking skills as they prepare and present their case.
4. Apply the law

Materials needed: Student Handout: MOCK TRIAL PROCEDURE
Student Handout: JUROR BIOGRAPHY
Student Handout: INSTRUCTIONS FOR JUDGES
Selected Mini-Mock Trial Cases

Time needed: 2 class periods

Grade level: Grades 5-12

Procedure:

1. Begin the class session by discussing trials and discuss what the different people do. Depending upon the sophistication of the audience and the time available, short discussions of the following topics can be conducted: trial by judge or jury; civil v. criminal trials; the need for a court reporter and court record; the constitutional right to a public trial; the controversy surrounding cameras in the courtroom; the reason for courtroom decorum.
2. Select one of the cases and read the one paragraph summary of the facts to the students. If the students are skilled in mock trials, do not read the fact summary.
3. Ask the students to volunteer for the parts in the mock trial. Four students should be selected to be the lawyers for each side of the case. One student may present the opening statement, one the direct examination, one the cross-examination, and the other the closing argument, or students may share the tasks. Ask one or two students to help judge the trial. To keep the trial moving, it is extremely helpful to use a lawyer to co-judge the trial. Reserve discussion of objections for later.
4. Also assign students to roleplay the witnesses, bailiff, media representatives and sketch artists (these students can write articles and prepare drawings for the articles) and members of the jury (for any students left). If there is no jury, the judge will decide the case.
5. Before the start of the actual trial preparation, briefly (in a couple of minutes) describe the steps of a trial as presented in the **Student Handout: MOCK TRIAL PROCEDURE**. Remind students that they will be helped through the process by the judge and that confusion at this point is expected.
6. If students have sufficient background and understanding of the trial process, explain the reasons and grounds for objections. (It is recommended that only a limited number of objections be allowed.) Refer to the objection information in the **Student Handout: MOCK TRIAL PROCEDURE**. If they lack knowledge, reserve discussion of objections until one occurs during the trial. (No matter how old the students are, one will object to a question during the trial. The objection might be made in the form of “She can’t do that, can she?” or “This isn’t fair!” Regardless of the language used, the students usually have made the objections at appropriate times. They are now ready to learn about objections.)
7. Tell students they will have approximately 15 minutes to prepare. Although this is a short period of time, the facts of the cases are simple, and a longer period of time results in a restless jury.
8. Provide the following instructions:
 - **Lawyers** - Tell them to read the facts and all of the witness statements (including the witnesses for the other side). They are to prepare an opening statement, questions for all witnesses, and a closing argument. Have them use the **Student Handout: MOCK TRIAL PROCEDURE** in their preparation.

- **Witnesses** - Tell each witness to read his or her statement at least three times so that he or she will be prepared to answer questions. They should then read the other witness statements. Witnesses should then work with the lawyers from their side to help prepare questions.
- **Judge** - Tell the judge to read **Student Handout: INSTRUCTION FOR JUDGES** and be prepared to call the witnesses.
- **Bailiff** - Tell the bailiff to review the procedure for the oath that he or she will administer to each witness. The Bailiff and Judge should fill in the blanks on the first page of the **Student Handout: MOCK TRIAL PROCEDURE**.
- **Jurors** - Ask them to imagine who they will be in twenty years and complete **Student Handout: JUROR BIOGRAPHY** form.

9. Begin the trial with jury selection. This step allows the jury to play an active role. Have the judge (either student or adult) and lawyers ask questions of the prospective jurors. Questions are limited to matters relevant to the particular case and those that help attorneys decide whether or not to challenge a person’s participation on the jury. Sample questions include

- Q. Is there anyone who feels he or she cannot be fair in this case?
- Q. Is anyone related to or does anyone know persons involved in this case?
- Q. Does anyone stand to benefit from a decision in this case?
- Q. Has anyone already formed an opinion about the case?

Explain to the students that jurors are removed from the jury for various reasons. Attorneys can **challenge for cause** any juror who exhibits a bias for or against any one of the parties. Each attorney also has a certain number of challenges called **peremptory challenges** which can be used to strike a juror without giving a reason. For example, a defense attorney may get the impression that a prospective juror simply doesn’t like the defendant and will then use a peremptory challenge to prevent that person from being on the jury. For mock trials, each side is limited to a maximum of one peremptory challenge.

Make certain to leave enough people in the jury to decide the case. Persons removed from the jury should be assigned the role of media representatives and moved from the jury box. Ask them to pretend that they are going to write a news story about the trial and that they should take notes on points they think are important.

10. The trial begins with opening statements from both sides (plaintiff/prosecution first), followed by the examination (questioning) of the witnesses (plaintiff/prosecution case first) and, finally, closing arguments (plaintiff/prosecution first). The trial will take 45 minutes to 1 hour. Remember, the goal of this activity is to increase the students’ knowledge of courts and trials and the law involved. Do not expect them to sound like experienced trial lawyers. You will enjoy watching them develop their questions and arguments on objections and listen to the answers with great care.

11. Instruct the jury at the end of the trial using the jury instructions. Mock trial juries usually require only a few minutes to reach a verdict. After they have announced the verdict, ask them to explain how they decided on it.
12. Ask the media representatives what kind of story they would have written. What was most newsworthy about the trial? What would grab the reader's attention? Did they agree with the jury's decision? Who gave the strongest testimony? (If time is running out, this step can be done while the jury is deliberating.)
13. Debrief the trial. Encourage all students to participate in the discussion of the trial. Questions that facilitate discussion include:
 - Q. What were the strong and weak points of each side?
 - Q. What additional information would have been helpful?
 - Q. Who was the most believable witness? Why?
 - Q. Did any of the student's change their minds during the trial? When and why?
 - Q. Are there other ways that the problem could have been settled? What would have been the advantages or disadvantages?
14. Complete the activity with a short discussion of the need for citizens to participate in the process. Ask them what they will remember to do if they witness an action or are asked to serve on a jury.

Student Handout: MOCK TRIAL PROCEDURE

Participants:

Judge	Bailiff
Prosecution attorneys	Witnesses for prosecution/petitioner
Defense attorneys	Witnesses for defense
Jury	
Representatives of the media (sketch artists, reporters)	

Opening of Trial:

Bailiff: Please rise. The Court of _____ is now in session, the Honorable _____ presiding.”

Everyone remains standing until the Judge is seated.

Judge: “Ms./Mr. _____ (Bailiff’s name), what is today’s case?”

Bailiff: “Your Honor, today’s case is _____.”

Judge: “Is the prosecution ready? Is the defense ready?”

Attorneys: “Yes, your Honor.” (Always say “your Honor” when speaking to the judge.)

Trial Procedure:

- Opening Statement** - prosecution/plaintiff attorney introduces himself or herself and states what their side hopes to prove. Being with “Your Honor, members of the jury,” then state what the facts on your side will show and ask for a verdict in favor of your side.

Defense attorney then says, “Your Honor, members of the jury,” introduces himself or herself and explains the evidence on his or her side that will deny what the other side is attempting to prove. Ask for a verdict of not guilty (criminal case) or for the defense (civil cases).

Attorneys: “Your Honor, members of the jury, my name is _____ and I and my colleagues are representing _____ in this case. We intend to prove _____

Please find _____.

2. **The Oath** - All witnesses are sworn in before they begin answering questions. This is to remind them that they must tell the truth.

Bailiff: “Please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?”

3. **Direct Examination** - prosecution/plaintiff calls it’s first witness to the stand and asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. Witnesses may make up answers to questions that are not included in the witness statements or the witnesses may say, “I don’t know.”

Suggestions for questions

How do you know the defendant?

Who was involved?

What do you know about the case?

When did it happen?

Why were you there?

Questions:

4. **Cross-Examination** - defense/respondent attorney questions witnesses for the other side to try to prove that the witness is lying or can’t remember. For example, the lawyer may ask “Isn’t it true that you really couldn’t see because it was almost dark outside?” Don’t ask questions that let the witness ramble.

Suggestions for questions

Isn’t it true that....

If possible, ask questions that call for a yes or no answer

Questions:

5. After all the prosecution/plaintiff witnesses have been questioned and cross-examined, the defense calls its witnesses and questions them under direct examination. Then the prosecutor/plaintiff cross-examines.
6. **Closing Argument** - each side summarizes the testimony presented during the questioning in a way that will convince the jury to believe his or her side of the case. In a criminal case, prosecution asks the jury to find the defendant guilty. Defense asks the jury to find the defendant not guilty.

Attorneys: “Your Honor, members of the jury, today you have heard testimony about _____ . I would like to remind you of some important information that you should consider in your decision. These facts include

_____ . Please find _____ .

7. **Jury Deliberation** - after hearing the judge’s instructions, the jurors meet to decide guilty or not guilty (criminal case) or to find for the plaintiff or defendant (civil case), and then give their decision to the judge.

Objections

Any attorney may object to a question or the admission of an exhibit. The judge will usually ask the person objecting “on what rule of evidence are you relying?” Then the judge either *sustains* the objection preventing the evidence from being introduced or *overrules* the objection allowing the question or exhibit to be admitted as evidence.

Reasons for objections (also known as *grounds for objection* or the *Rules of Evidence* being relied upon);

Common Objections

- Leading questions:** Prosecutors must allow their witnesses to tell their own stories; they must not lead their witnesses through the story. Defense attorneys must follow the same rule when questioning their witnesses. Leading questions are allowed on cross-examination.
- Immaterial and irrelevant:** The information is not closely related to the case, and is therefore not important.
- Opinions and conclusions:** Unless the witness is an expert, (such as a doctor testifying about medical issues), he or she should not give professional opinions or conclusions.
- Nonresponsive answer:** The witness is not answering the question asked.

These are only a few objections. They are probably the most common ones used. They will adequately serve your needs.

Student Handout: INSTRUCTIONS FOR JUDGES

1. After the bailiff has called the court to order, judge enters courtroom and sits at bench. The judge tells everyone to be seated.
2. After introductory comments (from Student Handout: MOCK TRIAL PROCEDURE), the judge conducts jury selection by asking questions to identify potential jurors who will not be able to be fair. Suggested questions:
 - Is there anyone who feels he or she cannot be fair in this case?
 - Is anyone related to or does anyone know persons involved in the case?
 - Has anyone already formed an opinion about the case?
 - Other questions related to the subject matter of the case.

The judge should let the attorneys ask questions. Students who answer yes to these questions should be removed from the jury and ask to serve as media representatives. Instruct them to sit in an area away from the jury.

3. Thank the jury for serving. Instruct them to ignore anything they have heard about the case from sources outside of the courtroom. Also ask them to listen carefully to the testimony and to raise a hand if they cannot hear.
4. Ask prosecution/plaintiff to begin with their opening statement. Ask them to stand at their table. Then ask defense to do the same.
5. Ask prosecution/plaintiff to call its first witness. Ask bailiff to swear in witness, then ask witness to state name. Instruct attorney to begin direct examination.
6. Ask defense to question the witness. This is called cross-examination.
7. If time permits, allow both sides to continue until there are no more questions.
8. Repeat steps 5-7 for each witness. When defendant calls their witnesses, they will conduct the direct examination of those witnesses and the prosecution/plaintiff will conduct the cross-examination.
9. Take a two-minute recess to give the attorneys time to complete their closing arguments. Ask both sides to present their closing arguments, prosecution/plaintiff goes first.
10. Instruct the jury with the instructions provided using the law from the end of the trial. Ask the jury to gather and decide the case.
11. When the jury returns with its decision, ask for the verdict.

Student Handout: JURY INSTRUCTIONS

Before Trial

Members of the jury, you are to decide this case solely on the evidence presented here in the courtroom. This evidence includes the witness testimony that is entered into the court record. You will not use any objections made by the lawyers and arguments concerning the objections, testimony that the court tells you to disregard, or anything you have seen or heard outside the courtroom

During this trial you are going to hear testimony of witnesses, and you will have to make judgements about the believability of the witnesses. I ask you to be patient, and listen carefully to the testimony of all the witnesses, and keep it all in mind until you hear the entire case. In making your decision, rely on your own experience, your own judgement, and your own common sense.

If at any time during the trial you are unable to hear, please raise your hand. The parties will be asked to speak up.

After Trial

Members of the jury, you have heard all of the testimony concerning this case. It is now up to you to determine the facts. You, and you alone, are the judges of the facts. You will then have to apply the facts to the law as I give it to you.

THE LAW (found at the end of the trial)

If you find beyond a reasonable doubt that the defendant committed this offense(s) you must find the defendant guilty.

If you believe there is reasonable doubt, you must find the defendant not guilty.

Student Handout: JUROR BIOGRAPHY

Name/Address	Phone
County	
Spouse's Name	
Names/Ages of Children	
Education Completed	
Occupation	
Employer	Salary
Is there any reason you are unable to serve on a jury?	