

Vocabulary Chapter 7.

1. Provincial Court _____

2. preliminary hearing _____

3. appeal _____

4. Superior Court of the Province _____

5. court of appeals _____

6. Federal Court of Canada _____

7. Supreme Court of Canada _____

8. leave _____

9. beyond a reasonable doubt _____

10. judge _____

11. Justice of the peace _____

12. accused _____

13. duty counsel _____

14. defence counsel _____

15. Crown attorney _____

16. evidence _____

17. court clerk _____

18. court reporter _____

19. transcript _____

20. court security officer _____

21. sheriff _____

22. bailiff _____

23. witnesses _____

24. subpoena _____

25. perjury _____

26. jury _____

27. jury panel _____

28. arraignment _____

29. challenge for cause _____

30. peremptory challenge _____

31. burden of proof _____

32. direct examination _____

33. cross-examination _____

34. motion for dismissal _____

35. direct verdict _____

36. rebut _____

37. surrebuttal _____

38. hearsay evidence _____

39. direct evidence _____

40. circumstantial evidence _____

41. character evidence _____

42. electronic evidence _____

43. wiretapping _____

44. bugging _____

45. *voir dire* _____

46. charge to the jury _____

47. hung jury _____

48. appellant _____

49. respondent _____

Legal Logic

Test Your Aptitude for Law: Activities for Getting Started

Puzzle 1

Six people—David, Ellen, Fred, Luke, Mike, and Susan—were chosen as jurors.

1. Susan was selected last;
2. Ellen was selected before David;
3. Mike was selected before Fred; and
4. Luke was selected somewhere between David and Fred.

Who was selected first?

- | | |
|----------|----------|
| a) Fred | c) Mike |
| b) Ellen | d) David |

Puzzle 2

Twelve jurors are in the courtroom waiting to be seated. The seats are numbered 1 through 12, and each person will take a numbered seat.

1. The jurors with seat numbers 2, 4, 6, 9 and 11 are the only ones who wear a hat;
2. The jurors with seat numbers 1, 3, 6, 8, 10, and 12 are the only ones who wear gloves;
3. The jurors with seat numbers 3, 6, 9, and 12 are the only ones who wear raincoats; and
4. The jurors with seat numbers 4, 8, and 12 are the only ones who wear scarves.

The person who wears a hat and raincoat but no gloves or scarf is sitting in which numbered seat?

- | | |
|------|-------|
| a) 2 | d) 9 |
| b) 4 | e) 11 |
| c) 6 | |

Puzzle 3

A law firm consists of seven partners: Gilbert, Hans, Innes, Johnson, Kilman, Lentz, and Morris. The partners hold frequent but unscheduled meetings. A meeting can be held on Monday, Wednesday, or Friday and only in either the morning or the afternoon.

1. Johnson cannot attend any meetings on Monday;
2. Lentz cannot attend any meetings on Wednesday;
3. If Innes attends a meeting, then Kilman must also attend that meeting;
4. If Gilbert attends a meeting, then both Hans and Morris must also attend that meeting, and
5. Hans cannot attend any morning meetings.

If the meeting is held during the morning, which of the following partners *cannot* attend?

- | | |
|------------|-----------|
| a) Gilbert | d) Kilman |
| b) Innes | e) Morris |
| c) Johnson | |

Puzzle 4

During a criminal trial, the Crown attorney is planning to call six different witnesses: Ted, Vivian, Walter, Jane, Colleen, and Zack. She will call each witness only once, and the order in which she will call them is subject to the following conditions:

1. The fourth witness must be Ted.
2. Walter and Colleen must be called before Vivian.
3. Jane must be called immediately before Walter.

Who was called first and second to take the stand?

- | | |
|--------------------|---------------------|
| a) Walter and Jane | c) Jane and Colleen |
| b) Jane and Walter | d) Zack and Jane |

CANADIAN CRIMINAL COURT STRUCTURE AND AVENUES OF APPEAL

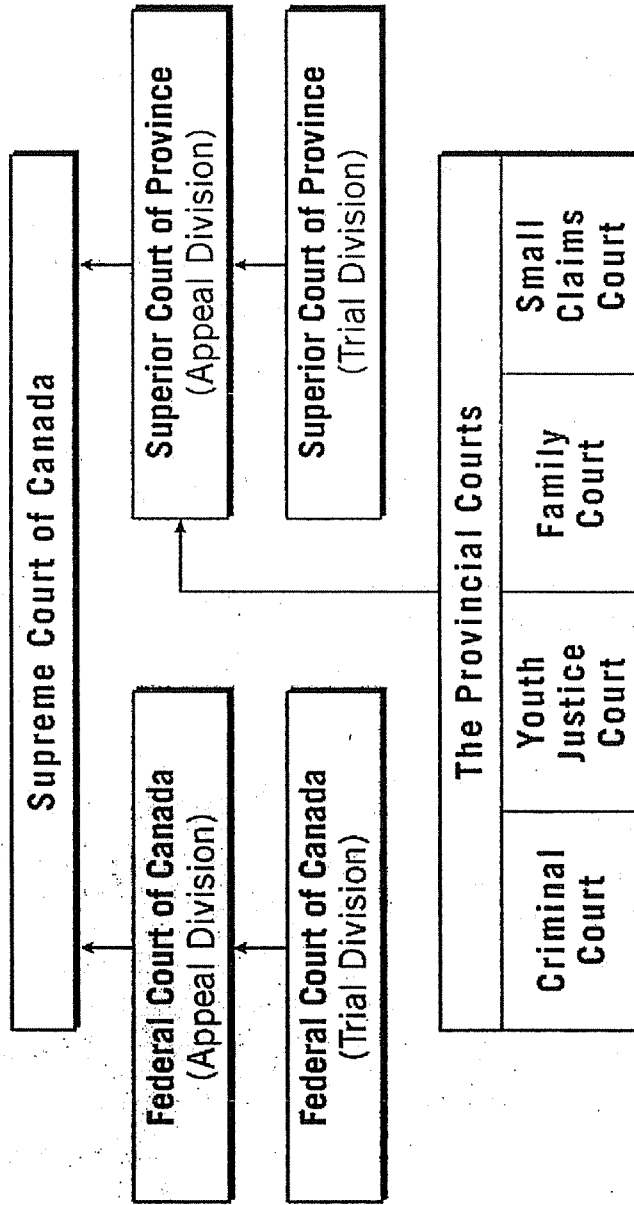
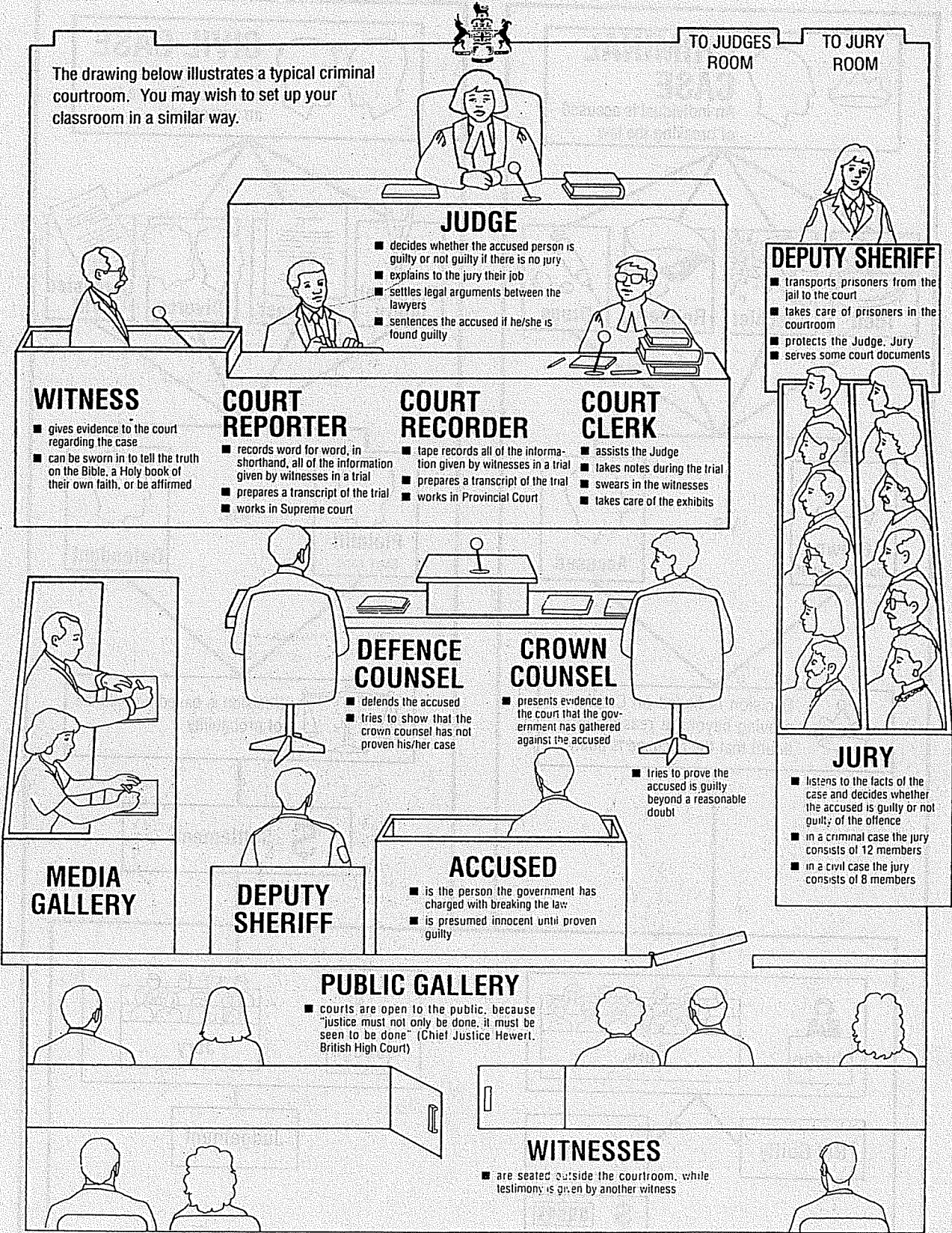


Figure 7.2 The Canadian Criminal Court Structure and Avenues of Appeal, p. 163



CRIMINAL COURT SETTING

The drawing below illustrates a typical criminal courtroom. You may wish to set up your classroom in a similar way.



JUDGE

- decides whether the accused person is guilty or not guilty if there is no jury
- explains to the jury their job
- settles legal arguments between the lawyers
- sentences the accused if he/she is found guilty

DEPUTY SHERIFF

- transports prisoners from the jail to the court
- takes care of prisoners in the courtroom
- protects the Judge, Jury
- serves some court documents

WITNESS

- gives evidence to the court regarding the case
- can be sworn in to tell the truth on the Bible, a Holy book of their own faith, or be affirmed

COURT REPORTER

- records word for word, in shorthand, all of the information given by witnesses in a trial
- prepares a transcript of the trial
- works in Supreme court

COURT RECORDER

- tape records all of the information given by witnesses in a trial
- prepares a transcript of the trial
- works in Provincial Court

COURT CLERK

- assists the Judge
- takes notes during the trial
- swears in the witnesses
- takes care of the exhibits

DEFENCE COUNSEL

- defends the accused
- tries to show that the crown counsel has not proven his/her case

CROWN COUNSEL

- presents evidence to the court that the government has gathered against the accused

- tries to prove the accused is guilty beyond a reasonable doubt

JURY

- listens to the facts of the case and decides whether the accused is guilty or not guilty; of the offence
- in a criminal case the jury consists of 12 members
- in a civil case the jury consists of 8 members

MEDIA GALLERY

DEPUTY SHERIFF

ACCUSED

- is the person the government has charged with breaking the law
- is presumed innocent until proven guilty

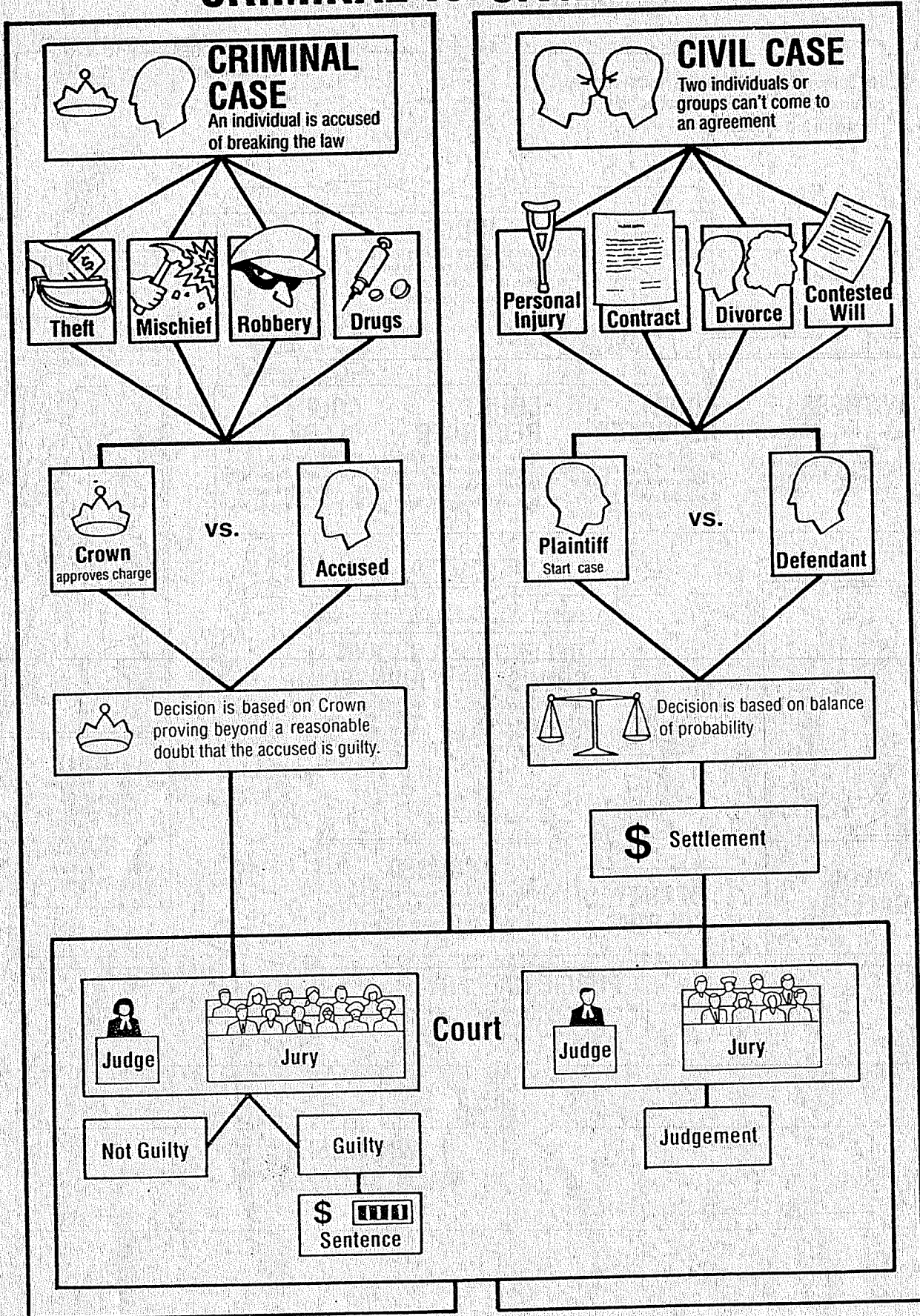
PUBLIC GALLERY

- courts are open to the public, because "justice must not only be done, it must be seen to be done" (Chief Justice Hewert, British High Court)

WITNESSES

- are seated outside the courtroom, while testimony is given by another witness

CRIMINAL vs. CIVIL LAW



CRIMINAL COURT SETTING

This chart shows the layout of a criminal courtroom in Supreme Court, as well as the various courtroom personnel. The layout of your local court may differ.

1. JUDGE

The judge has many roles in the courtroom. When there isn't a jury the judge will decide whether the accused is guilty or not guilty based on the evidence presented in court. He or she will explain to any jury their job and legal responsibility and settle legal arguments between the lawyers. If the accused is found guilty, the judge passes sentence.

A Supreme Court judge is called "My Lord", or "My Lady". A Provincial Court judge is called "Your Honour".

2. COURT CLERK

The court clerk is the judge's assistant. The clerk takes notes during the trial, such as the time the trial started, who were the witnesses and the lawyers on the case, and the time the trial was completed. The clerk also swears in the witnesses.

Swearing in is also known as "taking an oath" and this is normally done on the Holy Bible. But an individual can request to be sworn in on his or her own holy book. A witness may also be affirmed, which means he or she is sworn to tell the truth.

The court clerk is also responsible for the security of the exhibits, which are the objects of evidence (i.e. fingerprints, weapons, etc.).

3. COURT REPORTER

The court reporter works in Supreme Court. The court reporter types, in a form of shorthand, every word that is said in the courtroom. The minimum

required speed for a court reporter is 200 words per minute.

After the trial is complete, if a written record of the trial is requested, the court reporter will produce it. This written record of the words spoken at a trial is called the trial transcript.

4. COURT RECORDER

The court recorder works in Provincial Court and has a similar function as the court reporter except that he or she tape records the testimony given in court instead of writing it.

5. DEPUTY SHERIFF

Deputy Sheriffs take prisoners from a jail to the courtroom and tend that prisoner in court. They make sure that the courtroom is safe for everyone, including the judge, the jury, the accused and anyone who comes into the courtroom and courthouse.

They notify all people who come to court for jury duty. They make sure these jury people are safe while on jury duty.

6. CROWN COUNSEL

The Crown Counsel is a lawyer who works for the government. The Crown Counsel presents the evidence to the court that the government has gathered against the accused person. The Crown Counsel tries to prove that the accused person is guilty of breaking the law.

7. DEFENCE COUNSEL

Defence Counsel is a lawyer who is hired to

defend the accused person. Defence Counsel tries to show that the Crown Counsel has not proven the case beyond a reasonable doubt. He or she does this by finding flaws in the Crown's evidence.

8. JURY

The jury listens to the testimony given in court by the witnesses and decides whether the accused is guilty or not guilty. In a criminal case the jury consists of 12 members. In a civil case the jury consists of 8 members.

Jury members must be Canadian citizens and between the ages of 18 and 69 years. They are selected randomly from members of the community. This is usually done from a computer-generated list, generally consisting of 75 to 100 names. These people will be called to appear at court by notice from the Sheriff.

All of the prospective jurors will be gathered in the courtroom just prior to the trial. Each of their names will be printed on a card and mixed in a barrel or other container.

The names will be selected one at a time from the barrel by the court clerk and people asked to step forward until 12 members of the jury are selected (in a criminal trial). The Crown Counsel and Defence Counsel have the right to accept or reject them as jury members.

The Defence Counsel can reject potential jurors without giving a reason. This is known as a challenge. The defence has 20 challenges for high treason or first degree murder, 12 challenges if the accused faces a possible sentence of five years or more, and four challenges if the possible sentence is under five years.

The Crown Counsel can also reject potential jury members. However, they are limited to only four challenges. In addition, the Crown can ask up to 48 potential jury members to stand aside. This means that if a jury cannot be selected from the names called, the potential jurors that were asked to stand aside can be called upon again.

Once the jurors have been selected, they will be sworn in, and the trial can begin.

9. WITNESSES

The witnesses tell the court what they know about the facts in their testimony. They are sworn in by the court clerk. This may be done by swearing on the bible, swearing on a holy book of the witness's faith, or being affirmed. No matter how they are sworn in witnesses must promise to tell the truth.

10. ACCUSED

The accused is the person the government has charged with breaking the law. The accused is always presumed innocent until proven guilty.

11. PUBLIC GALLERY

The courts are open to the public at all times, as justice must not only be done but seen to be done. The only exception to this rule would be if for example a witness were very young and the testimony was very difficult. The judge might order the court room closed but this rarely occurs.

QUESTIONS FOR REVIEW

1. Why is it important to have a judge present?
2. Why is it important that the court clerk take good care of all exhibits?
3. Why is it important to have a court recorder or a court reporter in the courtroom?
4. Why does the Deputy Sheriff sit next to the accused?
5. What is the significance of the name "Crown Counsel"?
6. Why is there no Crown Counsel in a civil case?
7. How many jury members sit on a criminal trial?
8. How many jury members sit on a civil trial?

CHOOSING A JURY

Name: _____

Date: _____

Suppose you are either the Crown or defence counsel preparing to select a jury for the murder trial outlined below. Select your role after reading the following information describing the offence, the factors to consider for jury selection, the list of potential jurors, and the task.

Note: In Canada, all that is known about potential jurors before jury selection takes place is the person's name, address, and occupation.

The Offence

A professional hockey player from Eastern Europe, aged 28, has lived in Canada for the past 10 years. He has been charged with murdering his Canadian-born wife, aged 27, after he came home drunk and stabbed her repeatedly. The woman was employed by a prestigious law firm, where she had enjoyed considerable success. The accused had a lucrative contract with a Canadian hockey team, but the contract had expired and the team was not going to re-sign him.

Factors to Consider for Jury Selection

Age: Young people have different experiences and may be more flexible in their beliefs than older people.

Wealth: Research shows that wealthy people are more sympathetic toward the Crown, the poor toward the defence.

Name: The name of the juror may give you a clue about the person's nationality, which may have a bearing on the case.

Occupation: Choice of occupation may give clues about the person's lifestyle and level of education.

Unemployed males: Research shows that unemployed males between the ages of 20 and 30 tend to favour the accused.

Ms., Miss, or Mrs.: Research shows that one's preference for "Mrs." may suggest conservative attitudes, whereas "Ms." may suggest more liberal attitudes.

Note: These factors are not meant to be taken as value judgments in any sense. They are merely used by lawyers to gain whatever advantage they can in selecting a jury.

The Task

If you are the defence attorney, you are looking for jurors who can identify with the accused. If you are the Crown attorney, however, you are looking for jurors who can identify with the victim. The list of potential jurors on the following page shows some of the people summoned for jury selection. Seven jurors have already been selected. Your task is to

- a) select the final five jurors from the list provided and list them in order of preference,
- b) compare your list with that of a partner and be able to defend your choice of jurors, and
- c) explain to your partner why you rejected the other five jurors.

(continued on page 195)

List of Potential Jurors			
Name	Type of Dwelling	Occupation	Age
Mr. Craig Edwards	bungalow, suburbs	professional hockey player	25
Ms. Hossein Khan	duplex, city centre	corner-store owner	50
Mr. Paul Feldman	mansion, suburbs	sports-store owner	35
Mrs. Joan Hunter	apartment, suburbs	secretary	25
Mr. Sam Golta	apartment, industrial area	truck driver	60
Ms. Minole Khani	student housing	university student	20
Mrs. Lina Scott	exclusive condominium, city centre	retired	65
Mr. Chris Hares	bungalow, farm	unemployed	30
Mr. René Gagnon	house, city limits	sports announcer	50
Mr. Ed Yee	apartment, city limits	teacher	35

I am acting as _____ (attorney for the Crown or defence)

I have rejected the following five people as jurors:

1. _____
2. _____
3. _____
4. _____
5. _____

I have selected the following five people as jurors, listed in order of preference:

1. _____
2. _____
3. _____
4. _____
5. _____

STEPS IN JURY SELECTION

Name: _____

Date: _____

It has been a week since you completed a five-day murder trial as a juror. Recall the steps in the jury selection process by putting the scrambled steps below in the correct order.

- | Steps | Activity |
|-----------|---|
| 1. _____ | a) Names of the people on the jury panel are written on cards that are put into a ballot box and selected at random. |
| 2. _____ | b) Some people are challenged for cause and dismissed. |
| 3. _____ | c) Some people are dismissed on a peremptory challenge. |
| 4. _____ | d) On the fifth day, the jury reaches a unanimous verdict of guilty. |
| 5. _____ | e) You receive a summons from the court, requesting you to report for jury duty. |
| 6. _____ | f) The murder trial begins, and you listen carefully to the evidence. |
| 7. _____ | g) All the jurors leave the courtroom and go to the jury room to pick a foreperson to guide their deliberations. |
| 8. _____ | h) You take the juror's oath. |
| 9. _____ | i) The judge explains to you and the other jurors what will take place during the trial. |
| 10. _____ | j) On the fifth day, the judge charges the jury. |
| 11. _____ | k) As you and the other jurors enter the courtroom, you notice other court participants, such as the judge, the lawyers, the court recorder, and the sheriff. |

STAGES IN A CRIMINAL TRIAL BY JURY

Name: _____

Date: _____

It has been a week since you completed a five-day murder trial as a juror. Recall the stages in the criminal trial by putting the scrambled steps below in the proper order.

- | Steps | Activity |
|-----------|---|
| 1. _____ | a) The defence presents its opening statement. |
| 2. _____ | b) The accused is arraigned. |
| 3. _____ | c) The defence presents its closing arguments. |
| 4. _____ | d) The Crown examines witnesses. |
| 5. _____ | e) The jury deliberates. |
| 6. _____ | f) The defence presents a surrebuttal. |
| 7. _____ | g) The judge addresses the jurors, asking them to appoint a foreperson. |
| 8. _____ | h) The Crown presents its opening statement. |
| 9. _____ | i) The defence can bring a motion for dismissal. |
| 10. _____ | j) The jury is selected. |
| 11. _____ | k) The defence examines witnesses. |
| 12. _____ | l) The jury returns a verdict. |
| 13. _____ | m) The Crown rebuts. |
| 14. _____ | n) The judge charges the jury. |