



MiniTrial Starter Pack

Chapter 2 – The Student Handout

MiniTrial Procedure

To run your MiniTrial: –

- decide who is to play which role – see the list of **participants** below,
- decide on a **timetable** for the various stages of the trial – see below,
- set out the room to resemble the approximate **layout** of a court – see the suggested layout below, and
- follow the MiniTrial **instructions** (below) – which contains the dialogue and the "stage" directions you will need.

Participants

- **The Judge** – a Senator of the College of Justice who sits on "the bench".
- **Pursuer** – the person who has brought the action into court and who is seeking an award of damages (an order for payment of money) in this case.
- **Pursuer's** lawyers – Senior and Junior Counsel (a QC and an advocate) instructed by a Solicitor on behalf of the pursuer.
- **Defender** – the person against whom the action has been raised.
- **Defender's** lawyers – Senior and Junior Counsel (a QC and an advocate) instructed by a Solicitor on behalf of the defender.
- **Clerk of Court** – who manages and administers the Court under the Judge's direction.
- **Macer** – who escorts the Judge and the witnesses – so that they are at the right place at the right time.
- **The Jury** (12 jurors) – who are balloted from members of the public.
- **Witnesses** – who are cited to attend court to give evidence.
- **Members of the Public** – who sit in the public gallery.
- **Reporters** / Media representatives – who can tell others what happened.



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ROLES – for MiniTrial	Date:	<i>Understudy or Assistant if required</i>
1. The Judge		
2. Pursuer’s lawyer(s)	Senior Counsel (QC)	
	Junior Counsel	
	Solicitor	
3. Defender’s lawyer(s)	Senior Counsel (QC)	
	Junior Counsel	
	Solicitor	
4. Clerk of Court		
5. Macer		
6. The Jury 1	2	3
4	5	6
7	8	9
10	11	12
7. Witnesses for Pursuer	1. The Pursuer 2.	
8. Witnesses for Defender	1. The Defender 2.	
9. Public / Reporters		



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TIMETABLE for 70 minute Trial : Stage	Starting time	Time allowed
1. Introduction and preliminary matters		10 minutes
2. Opening Speech by Pursuer's Junior Counsel		3 minutes
3. Examination-in-chief of 1 st witness for pursuer		4 minutes
4. Cross-examination		2 minutes
5. Examination-in-chief of 2 nd witness for pursuer		4 minutes
6. Cross-examination		2 minutes
7. Junior Counsel for Pursuer reads Joint Minute etc		2 minutes
8. Opening Speech by Defender's Junior Counsel		2 minutes
9. Examination-in-chief of 1 st defence witness		3 minutes
10. Cross-examination		2 minutes
11. Examination-in-chief of 2 nd defence witness		3 minutes
12. Cross-examination		2 minutes
13. Jury speech by pursuer's counsel		6 minutes
14. Jury speech by defence		6 minutes
15. Judge's charge		6 minutes
16. Jury retire and consider verdict		5 minutes
17. Jury announce verdict		3 minute
18. Discussion		5 minutes



Court Layout

(Chambers / Judge's room)

JUDGE

(sits on the Bench – a separate table perhaps)

The Bench -----

CLERK OF COURT

(sits in the well of the court at the head of the central table)

- O WITNESS** (stands in the Witness Box – a separate seat) **OOO**
- JURORS** **OOO**
- (sit in the Jury Box – rows of seats) **OOO**
- O MACER** (sits near the witness box) **OOO**

The Bar -----

(DEFENDER'S LAWYERS) / (PURSUER'S LAWYERS)
(Sit in rows at the bar of the court – a line of tables perhaps)

Row 1 **Junior Counsel + QC** / **QC + Junior Counsel**

Row 2 **Solicitor + Client** / **Client + Solicitor**

MEMBERS OF THE PUBLIC & REPORTERS
(sit in the public gallery – room)

WITNESSES – WAITING TO BE CALLED
(wait in the witness rooms / room)



Instructions for the Trial

1. The Court convenes / assembles – the Judge is brought on to the bench

The Macer collects the Judge from Chambers and enters court in front of the Judge and announces their arrival with the words (said loudly enough to be heard above any background noise):-

“Court. All rise please.”

Everyone remains standing until the Judge is seated.

2. The Pursuer’s Senior Counsel introduces the Case

Senior Counsel for the pursuer (AB) stands and introduces the case as follows:-

“My Lord (or My Lady), may I mention the case of *Donoghue v Stevenson* which comes before your Lordship (Ladyship) for jury trial today. I appear for the pursuer with my learned Junior – CD. My learned friends WX and YZ appear for the defender, Mr Stevenson. There is a Joint Minute agreeing certain matters and certain heads of damages in this case (which will be produced and referred to in due course) but there are no other preliminary matters so the case can simply proceed to trial.”

The Judge replies:-

"Very well."

3. The Clerk of Court ballots the jury – chosen from those cited for jury service

The Clerk of Court stands and asks the Judge :-

"My Lord shall I empanel the Jury".

The Judge says:-



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"Yes please".

The **Clerk** of Court then simply asks those chosen to be jurors to take their place in the jury box. Each juror should be given a copy of the document known as "The Issue" which is with the case papers (at page 51). It is Document 1 headed "Proposed Issue for the Pursuer".

In MiniTrial there is no need to carry out the full procedure for empanelling a jury. That would involve the Clerk of Court saying to the potential jurors (sitting in the public benches):-

"When your name is called please come forward and take your place in the jury box which is on my right (or left)."

Normally the Clerk would then call out the jurors' names one by one from pieces of paper taken out of a ballot jar/box and the process would continue until the jury is complete (12 jurors) – but that is not necessary in MiniTrial.

In MiniTrial, there is no right to challenge the jurors selected.

4. The Clerk reads the document called "The Proposed Issue for the Pursuer" to the jurors

The Clerk of Court says:-

"Ladies and Gentlemen of the Jury the Issue in this case is in the following terms, ... " *and the Clerk then reads out the words from the Issue which is with the case papers including the full names and addresses of the parties.*

The Clerk then says to the jurors words to the following effect

"Do any of you know either of the parties involved in this case (May Donoghue or David Stevenson) or do any of you have any personal interest in the subject matter of his case which would prevent you from returning a true verdict?"

To which the jurors (in this case) all answer

"No."



5. The Clerk administers the oath to the Jury.

In MiniTrial the Clerk can use a modified form of oath – which uses the word “promise” instead of “swear by Almighty God”. The Clerk administers the oath to the jurors by saying to them:-

"Ladies and Gentlemen of the Jury, please stand and raise your right hands. Do you promise that you will well and truly try the Issue and return a true verdict according to the evidence? Please say 'I do'".

The jurors all reply:-

"I do".

6. The Judge outlines the procedure.

The Judge can then briefly outline the procedure to the Jury – as follows:-

"Ladies and Gentlemen of the Jury, you are about to hear the opening speech for the pursuer in this case – followed by the evidence in this case. Please listen carefully. You may take notes if you wish. This is a civil case – involving a dispute between individuals. It is not a criminal case – which involves a prosecution by the state. May Donoghue is claiming damages – and order for payment of money – from Mr Stevenson. Please keep an open mind until you have heard all the evidence. At the end of the trial you and you alone will be asked to decide upon a verdict and answer the Issue. Junior Counsel for the pursuer will now address you."

(There are some MiniTrial "Jury Observation Sheets and Checklists" with the case papers if the Jurors wish to use them.)

7. Junior Counsel for the Pursuer introduces the case for the Pursuer.

Junior counsel for the Pursuer stands and says (as a courtesy to the court):-

"May it please your Lordship."

Junior counsel then makes his / her way from his seat round into the well of the court to stand directly in front of the jury to deliver the opening speech.



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To assist with preparation a possible outline for this speech can be found in the case papers (see below in **Chapter 3**). Please refer to the outline for details.

The speech ends with Junior Counsel saying something along the following lines:-

“You will now hear the evidence for the pursuer.”

Junior Counsel then returns to his seat.

8. The witnesses give evidence

The **Judge** then invites Senior Counsel for the Pursuer to begin the evidence saying:-

"Who is your first witness?"

Senior Counsel for the Pursuer calls the first witness by saying:-

"My Lord my first witness is the pursuer, May McAlister or Donoghue"

The witness is collected and is shown into the witness box by the Macer.

Students can use MiniTrial to practice for what could be an important part of their "public speaking" – giving evidence.

It is **very** important that **ALL** the witnesses and the lawyers **STAND and SPEAK UP**:-

- **loudly**
- **clearly** and
- **slowly.**

They should try to make sure that everyone in the whole Court – even those at the very back of the room – can

- **hear** what they say without difficulty,
- **remember** what they say and
- **write down** what they say – in notes.



9. The Judge puts each witness on Oath – to tell the truth

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

In MiniTrial the Judge can use a modified "oath" – using "I promise" instead of "I swear by Almighty God".

The **Judge** stands and raises his or her right hand and says:

"Please raise your right hand and repeat after me. "I promise that I will tell the truth, the whole truth, and nothing but the truth.""

10. The Pursuer's evidence begins

The Pursuer's case begins by Senior Counsel for the pursuer asking the witness questions in "examination in chief" followed by cross-examination by the defence (and perhaps re-examination if you wish).

(i) Examination in Chief

Counsel asks clear and simple questions that allow the witness to tell his or her side of the story in his or her own words. If the witness is asked questions which are not included in the witness statements it is probably better for the witness to answer by saying "I don't know" or "I can't remember" or "I'm not sure" or "It's possible".

If need be the Judge may remind students to **"Please keep your voice up"**.

Ideas for questions:

What do you remember?

What happened next?

What did you see?

Remember to ask questions that will let the witness tell the complete story. Try asking what are sometimes called "open questions" starting with words like: -

Who?

What?



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Where?
When?
Why?
How?
Describe?

(ii) Cross Examination

The defence lawyer then questions the witness for the other side to try to show that the witness is lying or mistaken or can't remember. For example, the lawyer may ask "Isn't it true that ... ?"

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

(iii) Re-examination

At this stage, counsel for the pursuer may ask a few questions (if he or she wishes) to clear up or correct any matters that arose during cross examination. In a MiniTrial it might be best to say at first that there will be no re-examination – until the students are more familiar with the process.

Pursuer's case – MiniTrial sequence

Remember the normal sequence of events in MiniTrial is: -

Witness 1 for the Pursuer – "**examination-in-chief**" by the Pursuer's counsel

Witness 1 – "**cross examination**" by the defence.

Witness 2 for the Pursuer – examination in **chief** by the Pursuer's counsel.

Witness 2 – **cross** examination by the defence.

11. The Pursuer's case closes.

After all the pursuer's witnesses have been questioned and cross-examined (and re-examined if necessary), counsel for the Pursuer says :-



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"My Lord at this stage I would ask that Your Lordship allows my learned Junior to read to the Ladies and Gentlemen of the Jury the terms of the Joint Minute which I mentioned at the outset. Your Lordship will see that the parties have agreed certain matters and certain heads of damage."

The judge then says:-

"Very well. Ladies and Gentlemen of the jury, counsel for the parties have reached an agreement about certain matters and about certain heads of damage in what is called a Joint Minute of Agreement. Those matters will become part of the evidence for you to consider. The details of what has been agreed will now be read to you by Junior Counsel for the pursuer."

Junior counsel for the pursuer then moves round in front of the jury again and reads out to the jury the terms of the Joint Minute and the medical report by Dr Simpson which is with the case papers. (See Documents 2 and 4 below at pages 52 and 54 respectively). Junior Counsel then returns to his seat.

Senior Counsel for the Pursuer then says:-

"My Lord on that evidence, with productions, I close the case for the pursuer."

That having been done, the Judge says:-

"Ladies and gentlemen of the jury that concludes the case for the pursuer – May Donoghue. I will now ask Junior Counsel for the defender to introduce the case for the defender – David Stevenson."

12. The Defence case begins

Junior counsel for the Defender stands and says (as a courtesy to the court)

"May it please your Lordship"

Junior counsel then makes his / her way from his seat round into the well of the court to stand directly in front of the jury to deliver the opening speech.



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To assist with preparation a possible outline for this speech can be found in the case papers (see below in **Chapter 3**). Please refer to the outline for details.

The speech ends with Junior Counsel saying something along the following lines:-

“You will now hear the evidence for the defender.”

Junior Counsel then returns to his seat.

Senior Counsel for the defenders then calls the defence witnesses (starting with the defender if he is to give evidence) and questions them in examination in chief. Then counsel for the pursuer cross-examines (and the defence may re-examine) all along the same lines outlined above.

Defender’s case – MiniTrial sequence

Remember the normal sequence of events in MiniTrial is: -

The defender – "examination-in-chief" by counsel for the Defender.

The defender – **"cross examination"** by counsel for the pursuer.

Witness 2 for the Defender – examination in **chief** by counsel for the Defender.

Witness 2 – **cross-examination** by counsel for the pursuer.

Once all the evidence has been heard counsel for the **defender** says:-

"My Lord that closes the case for the defender".

The Judge then says:-

“Ladies and gentlemen of the jury you have now heard all the evidence. We have reached the stage when you will hear closing speeches from counsel – firstly on behalf of the pursuer and then on behalf of the defender.”

It is now time for the "Speeches to the Jury".



13. Counsel for the Pursuer's Speech to the Jury – asking the jury to answer the Proposed Issue “Yes” and to award damages.

Counsel for the Pursuer addresses the jury first, then counsel for the defender.

Each side summarises the evidence presented during the trial – in a way that supports their case.

In a civil case, the pursuer requires to prove his or her case “on the balance of probabilities”. That is different from a criminal case where the Prosecutor requires to prove guilt “beyond reasonable doubt” which is a higher standard.

The speeches to the jury must be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Pursuer's Speech with the case papers in **Chapter 3** below.

14. The Defence Speech to the Jury – asking the jury to answer the Proposed Issue “No” and to award nothing or very little by way of damages.

The defender's speech must also be based on the facts which were given in evidence in court.

If students need one, there is a draft outline of a Defence Speech with the case papers in **Chapter 3** below.

15. The Judge's Charge to the Jury – giving them directions in law

After the Jury Speeches are finished, the Judge "charges the jury" i.e. gives them directions as to the law which they must apply.

The Judge will find the terms of a "charge" (much simplified) in the case papers concerned. See **Chapter 3** below.



16. The Jury Retire – to consider their verdict

The jurors retire to consider their verdict.

Depending on the space available the jury can go to another room, or the corridor, or simply sit where they are to discuss things.

Once the Jurors have retired to consider their verdict, the **Macer** says

"Court rise."

and escorts the Judge back to his or her chambers / other part of the room.

17. The Verdict

When the jury have reached their verdict they let the Clerk of Court know that they are ready to announce it.

The **Macer** brings the Judge back on to the bench – saying:-

"Court rise".

The Jurors return to Court.

The **Clerk** of Court then asks:-

"Ladies and Gentlemen of the Jury – who speaks for you?"

The appointed **spokesperson** for the jury stands and says:-

"I do."

The **Clerk** of Court then says:-

"Have you reached a verdict?"

The **spokesperson** says as appropriate:-

"Yes."

The **Clerk** of Court then says:-

"How do you answer the Issue – ‘Yes’ or ‘No’?"



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The **spokesperson** says as appropriate:-

"Yes" or "No"

The **Clerk** then asks:-

"Was your decision unanimous or by majority".

The **spokesperson** says as appropriate:-

**"Unanimous" or
"By majority"**

The Clerk of Court then asks:-

"How do you assess damages in respect of Head (1) of the Issue for "past solatium"?"

The **spokesperson** says as appropriate:-

"£ X"

The Clerk of Court then asks:-

"How do you assess damages in respect of Head (2) of the Issue for "future solatium"?"

The **spokesperson** says as appropriate:-

"£ Y"

The Clerk of Court then asks:-

"In relation to Head (3) of the Issue for "past wage loss", and as directed by the presiding judge, do you formally assess damages at £200?"

The **spokesperson** says:-

"Yes"

The Clerk of Court then asks:-



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“In relation to Head (4) of the Issue for “expenses”, as directed by the presiding judge do you formally assess damages at £50.”

The **spokesperson** says:-

"Yes"

The **Clerk** of Court records the verdict in writing and then reads it back to the jury giving the total sum awarded as damages and asking them :-

"Ladies and Gentlemen – is that a correct record of your verdict"?

The jurors indicate whether it is a correct record of their verdict.

The Judge then discharges the jurors saying:

"Ladies and gentlemen of the jury thank you for the care and attention you have shown. I can now discharge you from further attendance as jurors in this case. Thank you for performing an important public duty."

The parties are left to contemplate the verdict of the jury.

In due course the successful party will require to enrol a motion (make a written application to the court) asking the Judge to apply the verdict of the jury – i.e. to give formal effect to the verdict.

18. Expenses – and the question of a “Tender”

At that stage the question of who should pay the expenses of the court action will also be determined.

To add a further element of realism to the MiniTrial, the defender may try to anticipate the decision of the jury and try to protect himself against an award of expenses.

He would do so prior to trial by making a formal offer to the pursuer – which the judge and jury do not see.

He would lodge with the Clerk of Court a document called a “Minute of Tender”.



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A form of Tender can be found in the case papers (see document 3 at page 53 below). The amount of money being offered requires to be inserted in the draft Minute.

If at the end of the case the pursuer “fails to beat the tender” – i.e. if the jury awards the same or less than the sum which the defender had already offered – then the pursuer will be found liable to pay the defender’s legal expenses from the date of the tender onwards.

The idea behind it is that if the pursuer had accepted the tender when it was offered she would have ended up with a similar award (or a bigger one) and accordingly all the expense occasioned in the case from then on has been due to the pursuer trying but failing to get more.

For example, if the defender tenders say £10,000 as soon as the action is raised and the pursuer does not accept the tender and she proceeds to trial but is awarded £10,000 or less – then the pursuer will have to pay virtually all the legal expenses.

A tender can put pressure on a pursuer – and it can make the jury’s verdict very interesting.

19. The End.

That is the end of your civil MiniTrial.

Well done to all.

Take a moment to ask the students: -

How could the trial system be made better?

What worked well – and what didn't?



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20. Feedback Please.

If you have any thoughts or suggestions to make about this MiniTrial please send them to SCLR.

All comments and criticisms welcome.

For example: -

1. What did you enjoy about the MiniTrial?
2. What did you learn from the MiniTrial?
3. What did you *not* enjoy about the MiniTrial?
4. What would you like to change about the MiniTrial?

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