

# **SCALES Project**

## ***Appeal Process in a nutshell . . . almost***

**presented on February 12, 2004 by**

**Frank G. Clement, Jr., Judge  
Court of Appeals of Tennessee**

If a person, company, organization or governmental entity is a plaintiff or defendant in a lawsuit, (all of whom we generally identify as a “party”) and is dissatisfied with the result of a decision by a court (Juvenile Court, Probate Court, Circuit Court, Chancery Court, Criminal Court), that party may “appeal” the decision to the appropriate appellate court. There are three Tennessee appellate courts (state appellate courts), the Court of Criminal Appeals of Tennessee, the Court of Appeals of Tennessee and the Supreme Court of Tennessee. But for a few exceptions (workers’ compensation appeals being one of them), appeals go directly to either the Court of Criminal Appeals or the Court of Appeals, not to the Supreme Court.

The appellate courts do not “try” the case anew (the witnesses do not testify again and there is no jury). The role of the appellate court is to review what occurred in the previous court, with the review limited to and based upon the “official record” from the previous court. The official record from the previous court typically includes the legal papers (civil warrant, complaint, indictment, motions, orders of the previous court, etc.), and usually a transcript of the evidence. The transcript of the evidence is prepared by a stenographer (an independent person who attended the hearing(s) and “recorded” what was said verbatim). If there is no stenographic (verbatim) transcript, the parties and the judge may prepare a summary “statement of the evidence” which is a paraphrased recollection of the testimony (which is not favored due to the differing impressions of what was or was not said).

Appeals are generally based upon one or more of four broad complaints: (1) the judgment is contrary to the evidence presented; (2) the wrong law was applied resulting in an incorrect judgment; (3) the correct law was applied but the judge misunderstood and/or misapplied the law, the result of which is an incorrect judgment; or (4) the judgment is incorrect due to a combination of applying the wrong law and/or misapplying or misunderstanding the correct law and/or the evidence.

The Standard of Review by which an appellate court examines a case on appeal varies depending on the nature of the case or the issues presented. For example, if the appeal is based on the evidence, or lack thereof, and the judgment was made by a judge without a jury, then the appellate court examines the judgment with a presumption that it is correct unless the preponderance is otherwise. However, if the appeal is based on the evidence, or lack thereof, and the decision was made by a jury, instead of the judge, the jury’s verdict

may not be overruled unless there is no material evidence to support the jury's verdict. If the issue presented on appeal is limited to the judge's application of the law, the standard is again different for there is no presumption and the appellate court is permitted to reach its own legal conclusion without a presumption for or against the judge's conclusion of law. Of course, there are occasional exceptions to the standards of review, remember *Catch 22*?

The appellant (the party who initiated the appeal) and the appellee (the adverse party) are required to present briefs which identify the issues presented for review, the facts of the case and the applicable law. The law of Tennessee (state law) is primarily comprised of three categories, one is constitutional law, another is statutory law (statutes) and the third is "case law." Constitutional law is that law set forth in the Constitution. Statutes are laws enacted by our state legislature, the General Assembly of Tennessee, which is comprised of our State Senators and State Representatives. "Case law" gets its name from the cases that are decided by the appellate courts, Stated another way, case law is comprised of the opinions that resulted from cases that were appealed. Case law is the result of written appellate opinions wherein the appellate judges interpret and apply the facts and the law to each case. These written opinions are then applicable to future disputes that involved similar facts and law. Accordingly, the next time a judge hears a similar dispute, he or she will refer to the previous similar opinion to hopefully apply the law in a consistent manner.

Statutes are also identified as the Tennessee Code and are found in a set of books identified as the Tennessee Code Annotated, which is also identified by the following: Tenn. Code Ann. and T.C.A. In your materials the Tennessee Uniform Arbitration Act, a statute, is codified (listed) as Tenn. Code Ann. 29-5-301. The numbers stand for the "Title," "Chapter," and "Section" of the Tennessee Code. Therefore, this Act is identified as Title 29, Chapter 5, Section 301. Written opinions are identified by the names of the parties, the book in which the opinion is published, the appellate court that authored the opinion and the year the opinion was filed. For example, one of the cases cited by the appellant in *Phillips v. A & H Construction Company* is cited as *Sudduth v. Williams*, 517 S.W.2d 520 (Tenn. 1974). In long form, *Sudduth v. Williams* was a dispute involving Marcie Sudduth, widow of Guy Lawrence Sudduth, who sued Harold Williams, doing business as Williams Texaco Service, and Continental Insurance Company. The opinion resulting from that dispute was published in volume 517 of the South Western Reporter, 2<sup>nd</sup> Series, the opinion starts at page 520 of that volume and the opinion was authored by the Supreme Court of Tennessee in 1974. If that opinion had been written by the Court of Appeals in the year 2003, the parenthetical would read (Tenn. Ct. App. 2003) and of course would be published in a more recent volume. The most recent opinions (the ones which do not yet appear in a bound volume) will be released in a yet to be published volume that will be identified as 114 S.W.3d. \_\_\_\_.

At the hearing, counsel for the appellant and appellee are typically afforded fifteen minutes each to present their oral argument to the Court. Members of the Court may ask questions. Following the hearing the Court will adjourn and one of the justices will be designated to prepare the opinion of the Court. The draft opinion will be circulated to all five justices who review the opinion and recommend changes, if desired. Once a majority of the Court, at least three justices agree the opinion is ready to be published to become part of the case law of Tennessee.

## CHAPTER V THE JUDICIAL BRANCH

The phrase “passive yet powerful” best describes the judicial branch of government. This branch has the most power of any of the three branches. Under the proper circumstances a court can tell the General Assembly that a law it passed is unconstitutional and therefore is not valid. Also, under certain circumstances a court could tell the Governor or a Commissioner that a particular action violates a statute or the Constitution and therefore the action cannot be taken. The judicial branch of government serves as a check on the powers of the other two branches of government.

As powerful as it is, the Judicial Branch cannot institute actions on its own. The courts must wait for someone (a party to a lawsuit) to bring the question up in the proper manner. This is normally done by filing a lawsuit and proceeding through the judicial process. The Judicial Branch thus is the branch that *interprets* the law.

Basically, there are two types of cases tried in our courts. *Criminal* cases are those involving a crime or wrong against the people of the state. An example of this would be a theft, because a thief is a menace to society as a whole and should be punished for committing that crime. The other type of case is a *civil* case. These types of cases are usually between individuals or groups of persons. An example would be a failure to fulfill a contract for a service. Civil cases usually involve only the people immediately concerned.

A court's *jurisdiction* is its authority to hear and decide cases. The authority of the first court in which a case is tried is called original jurisdiction. A decision -- *judgment* in a civil court or *sentence* in a criminal court -- can be *appealed* to a higher court with hope that a different decision will be reached. A court which has jurisdiction to hear appealed cases is called an *appellate* court.

Basically, the court system in Tennessee can be broken down into the categories of Supreme Court, intermediate appellate courts, trial courts, and non-jury courts. Although circuit courts are often thought of as the place where the judicial process “begins”, let us start at the highest court in Tennessee, the Supreme Court.

### Supreme Court

In Tennessee, the Supreme Court is the court of last resort. There is no higher court in Tennessee to which an appeal can be taken. What this court says is “the law”. A limited number of issues can be appealed from this state court to the federal court system. An example of this is where a federal constitutional issue is appealed to the United States Supreme Court. In such a case, the U. S. Supreme Court's decision prevails over the Tennessee Supreme Court's decision.

Tennessee's Constitution says in Section 1, Article VI:

“The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish...”

Section 2 of that same Article states:

“The Supreme Court shall consist of five Judges, of whom not more than two shall reside in any one of the grand divisions of the State. The Judges shall designate one of their own number who shall preside as Chief Justice. The concurrence of three of the Judges shall in every case be necessary to a decision.”

By express language the Constitution says the Supreme Court’s jurisdiction is appellate only. The Supreme Court cannot try cases de novo, nor can it render advisory opinions. It has been held the Legislature cannot confer original jurisdiction on it. As part of its inherent power the Supreme Court has prescribed its own rules of practice.

In most instances the Supreme Court decides which appealed cases it will hear and which it will not hear. However, in capital punishment cases that are affirmed by the Court of Criminal Appeals, the Supreme Court must hear the appeal.

A 1992 law gave the Supreme Court the right to reach down and assume jurisdiction over certain undecided cases in the intermediate appellate courts. This jurisdiction only applies to cases of unusual public importance in which there is a special need for an early decision and which involves:

1. state taxes,
2. the right to hold or retain public office, or
3. issues of constitutional law.

Both the Supreme Court and the intermediate appellate courts are known as appellate courts. Proceedings before these courts are different than those in trial courts because there are no witnesses and no juries. Prior to appearing before the court to make oral arguments, the attorneys for each side submit written arguments, called briefs. The decision of the appellate court is handed down in writing and is called an opinion.

The Supreme Court holds sessions in Knoxville, Nashville and Jackson. Qualifications for a judge of this court include being at least thirty-five (35) years of age, a resident of the state five years before election and authorized to practice law in the courts of Tennessee.

In 1994, the General Assembly enacted a new method for selecting justices for the Supreme Court and judges for the intermediate appellate courts. It is known as the "Tennessee Plan." Under this law, the Judicial Selection Commission nominates judges and the governor appoints one of the three nominees.

Once the judge is in office, a separate Judicial Evaluation Commission evaluates and reports on the judge's judicial performance. Results of the evaluations are published in newspapers across the state to help voters decide whether the judges should be retained. At election time, the voters only vote "yes" or "no" on whether the judge should be retained in office.

## **Intermediate Appellate Courts**

Any decision of a lower court is subject to appeal to a higher court. The Intermediate Appellate Courts' job is to correct mistakes that may have been made in the lower court. The higher court may reverse the lower court's decision, uphold the action, or throw the case entirely out of court.

During the first years of Tennessee history, one Supreme Court was set up to hear appeals. Although there is still only one Supreme Court, the General Assembly has established intermediate appellate courts to assist with the enormous burden of appealed cases. The two intermediate courts of appeal are the Court of Appeals and the Court of Criminal Appeals.

*Court of Appeals.* The Court of Appeals, along with the Court of Criminal Appeals ranks just below the Supreme Court and above all other courts. It is composed of twelve (12) judges who serve for terms of eight (8) years. Judges of this court are selected and retained under the provisions of the "Tennessee Plan" which is discussed earlier in this chapter.

This court rotates between the three grand divisions of the State holding court in Knoxville, Nashville and Jackson. The twelve judges also rotate in panels of three (3) for each session of court.

This court has the authority to review all *civil* cases, but no *criminal* cases. In all civil cases it has the right to fully review except certain cases which can be reviewed only by the Supreme Court. These types of cases are listed earlier in this chapter. As in the Supreme Court, no witnesses or juries are present, and attorneys present oral and written arguments.

*Court of Criminal Appeals.* In 1967, the General Assembly created a State Court of Criminal Appeals to handle the heavy case load of appealed criminal cases. This court reviews criminal appeals in much the same manner as the Court of Appeals reviews civil cases.

Twelve (12) judges serve on the Court of Criminal Appeals. They are selected and retained under the provisions of the "Tennessee Plan", which was explained earlier in this chapter. They serve eight (8) year terms.

The Court has rotating panels of three (3), five (5), or seven (7) judges meeting in the State's three grand divisions. Court is held in Knoxville, Nashville and Jackson. This court hears appeals from trial courts in felony and misdemeanor cases, as well as post-conviction petitions. As with all of the intermediate appellate courts, a majority of the judges must agree before an opinion is rendered.

## **State Trial Courts**

Both in England and the United States the judicial system has traditionally been divided into the two areas of civil law called "equity" and "law." The Chancery Courts are the equity courts and Circuit Courts are the law courts. Through the years, the distinction between these two types of courts has become blurred. Tennessee is one of a very few states which has both chancery and circuit courts. Most states have only one trial level court.

*Circuit Court.* This court is one of general jurisdiction and administers justice

according to law in its cases. This is the court where the majority of jury trials are held.

Circuit Court has exclusive jurisdiction to decide the validity of wills. This court is also the criminal court, unless a separate criminal court is set up by law in its geographic area of responsibility. It has jurisdiction along with Chancery Court to grant divorces, and authorize the adoption of children. There is no upper limit on the amount of money damages it has the power to award. It cannot hear questions concerning less than \$50 on debts or contracts.

This court, whether sitting as a civil or criminal court, has appellate jurisdiction over suits started in any inferior court such as General Sessions Court. A case appealed from a lower court to this court is heard *de novo*. That means brand new, as if the first trial had not taken place.

Civil cases heard in Circuit Court are appealed to the Court of Appeals. Criminal cases heard in Circuit Court are appealed to the Court of Criminal Appeals. In certain instances an appeal can be taken directly to the Supreme Court.

In 1984, the state trial courts were divided into thirty-one districts. Statutory law allows any circuit judge, chancellor or criminal court judge to hear the cases of another judge.

The judges in each judicial district select a presiding judge who is responsible for reducing delays and dividing up the workload on a fair basis. Judges are authorized to publish uniform rules of practice in their district.

Circuit and criminal court judges must be thirty (30) years of age, a resident of the state for five (5) years and of the circuit one (1) year, and must be licensed to practice law in Tennessee. They are elected to a term of eight (8) years.

As with other state trial courts, vacancies which occur after September 1, 1994, are filled according to the provisions of the "Tennessee Plan" previously discussed in this chapter. Under this plan the Judicial Selection Commission holds a public meeting to discuss the candidates in the district where the trial court vacancy is to be filled. The Judicial Selection Commission nominates three candidates and the governor appoints one of them to the vacant position.

The term of a trial judge selected by this method ends on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy. Consequently, a selected judge who wants to remain in office must run for that office in the regular August election.

*Chancery Court.* The Circuit court is somewhat like a general store – nearly everything can be found on its shelves. But the Chancery Court is like a small store, specializing in only a few items. There is a reason for this. Sometimes the enforcement of a particular law may be unfair to an innocent person. Such a case may be taken to a Court of Chancery.

The history of courts of chancery dates back to early times in England. In those days there was little written law, and might was right. To protect the people, the king's chancellor was given the responsibility for seeing that unscrupulous nobles and other powerful persons were held in check, and that justice was administered. By degrees this administration of justice – or *equity* – was handled through courts of chancery.

The principles of these English courts were incorporated into the early judiciary system of North Carolina, and accordingly into the system of Tennessee. That is why we now have courts of chancery. In most states the circuit courts try both law and equity cases. The court of chancery is often referred to as the "Court of Equity."

The powers of a chancery court are broad, but there are many cases that it does not handle. It does not try cases involving injuries to persons, property or character. Neither does it try cases involving robbery, murder, or other crimes. It does try to equalize contracts, obligations and other business dealings between citizens when they are unable to settle their differences by themselves.

Chancery Courts have similar jurisdiction with circuit courts in all civil cases except where there may be unliquidated damages to a person or property. Unliquidated damages are those which are open to question and must be determined by a jury. An example would be the amount of money to be paid a person for injuries received in an automobile accident. Liquidated damages, on the other hand, are those which are set out in advance, such as a clause in a contract that sets out a certain amount of money to be paid as damages in the event of a default.

Chancery Court cases can be appealed to the Court of Appeals and in some cases, directly to the Supreme Court.

The judge in a chancery court is called a chancellor. Chancellors must be thirty (30) years of age, a resident of the state for five (5) years, and a resident of the district for one year prior to election. Chancellors must have a license to practice law in Tennessee. They are elected to a term of eight (8) years. Vacancies in office are filled according to the "Tennessee Plan" discussed earlier in this chapter.

*Probate Court.* Proceedings which prove or disprove the validity of a will or dispose of the property of a deceased person are filed in probate court. The jurisdiction of this court is often combined with that of the general sessions court of a particular county.

### **Non-Jury Courts**

The next level of courts usually have a limited area of responsibility and are limited in terms of the size and type of case over which they have jurisdiction.

*General Sessions Court.* The jurisdiction of Tennessee's general sessions courts varies from county to county based on statutes and private acts enacted by the state legislature. Every one of Tennessee's ninety-five (95) counties has at least one general sessions court which hears civil and criminal cases.

The civil jurisdiction of this court is limited in the amount of money it can award and the types of cases it can hear. With the exception of a few of Tennessee's larger counties, general sessions courts jurisdiction does not exceed \$25,000. However, a party in general sessions court can recover personal property no matter how great its value.

In criminal cases, jurisdiction is limited to preliminary hearings in felony cases and trials of misdemeanor cases in which the defendant waives the right to a preliminary hearing, a grand jury investigation and a trial by jury in criminal or circuit court. Misdemeanor cases are those crimes for which the penalty is not greater than eleven months and twenty-nine days in

jail.

Other areas of responsibility such as juvenile cases, probate and divorce cases have been assigned to general sessions courts through private acts passed by the state legislature.

Judges of general sessions courts must be thirty (30) years of age, a resident of the state for five (5) years and of the county or geographic area for one (1) year prior to election. General sessions judges are elected to an eight (8) year term.

General sessions judges must be attorneys, although non-attorney incumbent judges may continue in office until they retire or are defeated. A non-lawyer general sessions judge cannot commit a juvenile to the state penal system. In these situations, a licensed attorney is appointed to make the decision.

*Juvenile Court.* Court actions against minors (persons under eighteen (18) years of age) are heard in Juvenile Court. This court has exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent and neglected. In some areas, juvenile court judges also have concurrent jurisdiction with circuit, chancery and probate courts.

*Municipal Court.* Approximately 300 cities and towns have their own court in which the judge interprets and applies the ordinances of the municipality. Although jurisdiction varies widely, most city judges have the authority to assess fines up to \$50 and jail sentences up to thirty (30) days in jail.



The following chart shows additional information concerning civil, criminal, and ordinance violations cases.

**Chart A: Civil, Criminal, and Ordinance Violation Cases**

	<b><u>CIVIL</u></b>	<b><u>CRIMINAL</u></b>	<b><u>ORDINANCE VIOLATIONS</u></b>
Who starts court action?	Any individual or group	Government	Local government
Reason for court action	To decide the rights and duties of parties in a dispute To get compensation for a wrong	To punish or rehabilitate a criminal To deter others from committing crimes To protect society	To punish violators To deter others from committing crimes
Types of cases	Contract disputes Negligence Divorce/child custody Discrimination Small claims	Robbery Murder Vandalism Assault Embezzlement	Traffic Disorderly conduct Building code
Standard of proof	Preponderance of the evidence	Beyond a reasonable doubt	Varies depending on nature of the violation and consequences
	<b><u>Steps in the civil process*</u></b>	<b><u>Steps in the criminal process*</u></b>	<b><u>Steps in the ordinance violation process*</u></b>
	1. complaint filed by plaintiff 2. complaint served on defendant 3. response filed by defendant 4. discovery 5. pretrial conference 6. jury selection (if it is a jury trial) 7. trial 8. judgment/verdict 9. appeal	1. arrest 2. initial appearance 3. preliminary hearing and/or grand jury 4. arraignment 5. discovery 6. jury selection (if it is a jury trial) 7. trial 8. judgment/verdict 9. sentencing 10. appeal	1. citation 2. initial appearance 3. discovery 4. pretrial conference 5. trial 6. judgment 7. sentencing 8. appeal

\*These are general outlines of the civil, criminal, and ordinance violation processes. The precise steps followed and the order in which they occur vary from state to state and may also differ depending on the seriousness of the case.

## **Attorney General and Reporter**

Article 6, Section 5 of the Tennessee Constitution states in part: “An Attorney General and Reporter for the State, shall be appointed by the Judges of the Supreme Court and shall hold office for a term of eight years.” Tennessee is the only state in the Union to select its State Attorney General in this manner.

*Duties and Powers.* The duties and powers of the State Attorney General and Reporter include:

1. prosecuting all criminal cases in the appellate courts;
2. representing the State of Tennessee in civil actions;
3. instituting civil lawsuits against those who commit antitrust violations;
4. issuing legal opinions on questions submitted by appropriate governmental officials;
5. reviewing all regulations, leases and contracts of state government; and
6. reporting the opinions of the state’s appellate courts.

The Attorney General has a staff and several attorneys to assist in carrying out these duties.

## **District Attorneys General**

Tennessee’s thirty-one District Attorneys General are charged with the responsibility of representing the State of Tennessee by prosecuting those who commit crimes. Each represents a district composed of one or more counties. There is a District Attorney General for every circuit or district in which a criminal court judge is provided by the law.

*Qualifications and Terms.* These “attorneys for the state” are elected by the people of their district for a term of eight (8) years. A District Attorney General must have been a resident of the State for five (5) years and of the district for one (1) year.

*Duties and Powers.* In a criminal case, it is the duty of the District Attorney General to prosecute and prepare the case for trial. The "D.A." has a staff and several attorneys to assist in carrying out these duties.

The first action is to go before the *Grand Jury*, which is composed of twelve citizens as members, and a thirteenth citizen as foreman. The D.A. or the law enforcement officer presents to this jury all the available information on the crime. If the Grand Jury believes that a trial should be held on the basis of the evidence presented, an “indictment” is returned against the person charged with the crime. Then the case is placed on the docket of the court for trial at the proper time.

The trial is conducted before a Judge and a jury of twelve persons known as a *petit or trial jury*. Again the District Attorney General “speaks for the whole people” of the state, while

the accused person has the right to have a defense lawyer or lawyers.

In addition to his duty as “prosecutor” for the state in criminal cases, it is also the additional duty of the District Attorney General to:

1. dismiss all witnesses that are not needed in criminal cases;
2. superintend and advise the Clerks of the Circuit and Criminal Courts in the making out of a caption to be prefixed to the proceedings of the court, at each term;
3. give an opinion without charge, whenever called upon by any county officer in the district, upon any question of law relating to the officeholder's duty of office;
4. call upon the clerks of the county, circuit, criminal, and chancery courts the second day of each term for the execution docket and ascertain whether any execution placed in the hands of the sheriff has not been returned and if not, to move for judgment against the sheriff and sureties;
5. institute suits for the recovery of property that cannot be inherited because there is no one who is competent to inherit it;
6. move for judgment against a sheriff, for failure to pay into the county treasury monies collected under the small offense law;
7. call for the revenue bond from the clerk of the county commission and forward same to the comptroller, if same has not been forwarded; and notify the clerk, if the clerk's bond has not been executed and recorded, that a motion will be filed in court to force the execution of the bond;
8. prosecute all motions against delinquent collectors of public revenue;
9. make a detailed statement to the comptroller on the first day of August each year of all claims placed for collection;
10. call on every clerk in the district at the first court after November 1 each year for the receipts for the public monies collected and for the comptroller's receipt and the clerk's statement of monies collected;
11. prosecute any person reported by the clerk of the county commission for breach of the revenue laws in relation to certain licenses;
12. inquire into the use of money by the clerk for any court and, if money is found to have been improperly used, to prosecute without a prosecutor;
13. prosecute the agent of any foreign bank doing business in this state without a license;
14. attend to all suits brought by overseers of roads in the circuit or criminal courts;
15. report to the Comptroller and the Treasurer any uninherited property belonging to the state in the district;

16. prosecute all criminal cases removed from a state court to any inferior federal court; and
17. assist the Attorney General of the State in the bringing, prosecution, or defense of all cases in the circuit and chancery courts in which the Attorney General is required to appear for the protection of the state or the public interest.

### **District Public Defenders**

The United States Constitution requires each state to provide an attorney to persons charged with committing a crime who cannot afford an attorney. In 1989, the legislature established a statewide system of District Public Defenders. This system replaced the prior practice of appointing a private attorney for each indigent defendant.

It is the job of the District Public Defender to represent indigent defendants in state criminal court cases. An indigent person is one who does not have sufficient means to pay reasonable compensation for the services of a competent attorney.

*Qualifications and terms.* District public defenders are elected by the people of their district for a term of eight (8) years. A district public defender must have been a resident of the state for five (5) years and of the district for one (1) year immediately preceding election to office.

As with the district attorney, the public defender has a staff and several attorneys to aid in protecting the rights of clients.

### **Administrative Office of the Courts**

The Administrative Office of the Courts (AOC) provides support services to the Tennessee Supreme Court and the entire state court system. The director is appointed by the Supreme Court, oversees the AOC, and is the administrative officer for the courts.

Duties include: preparing the court system's annual budget; providing judicial education, law libraries, training and technical support for judges and personnel; administering court payroll accounts; education for new judges; compiling data; and disbursing funds to court-appointed attorneys who represent indigents.

# Introduction to the Tennessee Judicial System

The **judicial branch**, one of the three basic divisions of state government, serves as a check on the powers of both the legislative and executive branches. Through the power of judicial review, the courts rule on the constitutionality of legislation passed by the Tennessee General Assembly and considers the legality of administrative policies and regulations.

Tennessee's judicial system is derived from a **constitutional foundation**: "The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery, and other inferior courts as the legislature shall from time to time ordain and establish . . . ." (Article VI, Section 1, Constitution of the State of Tennessee).

Although not a part of the court system, the offices of the attorney general, district attorneys general and district public defenders are associated with the judicial branch of state government. The **attorney general** represents the interests of the state in civil litigation and in criminal cases in the appellate courts. The 31 **district attorneys** serve as prosecuting counsel in criminal cases in the trial courts. **Public defenders** and **court-appointed private attorneys** represent indigent defendants, primarily in criminal cases.

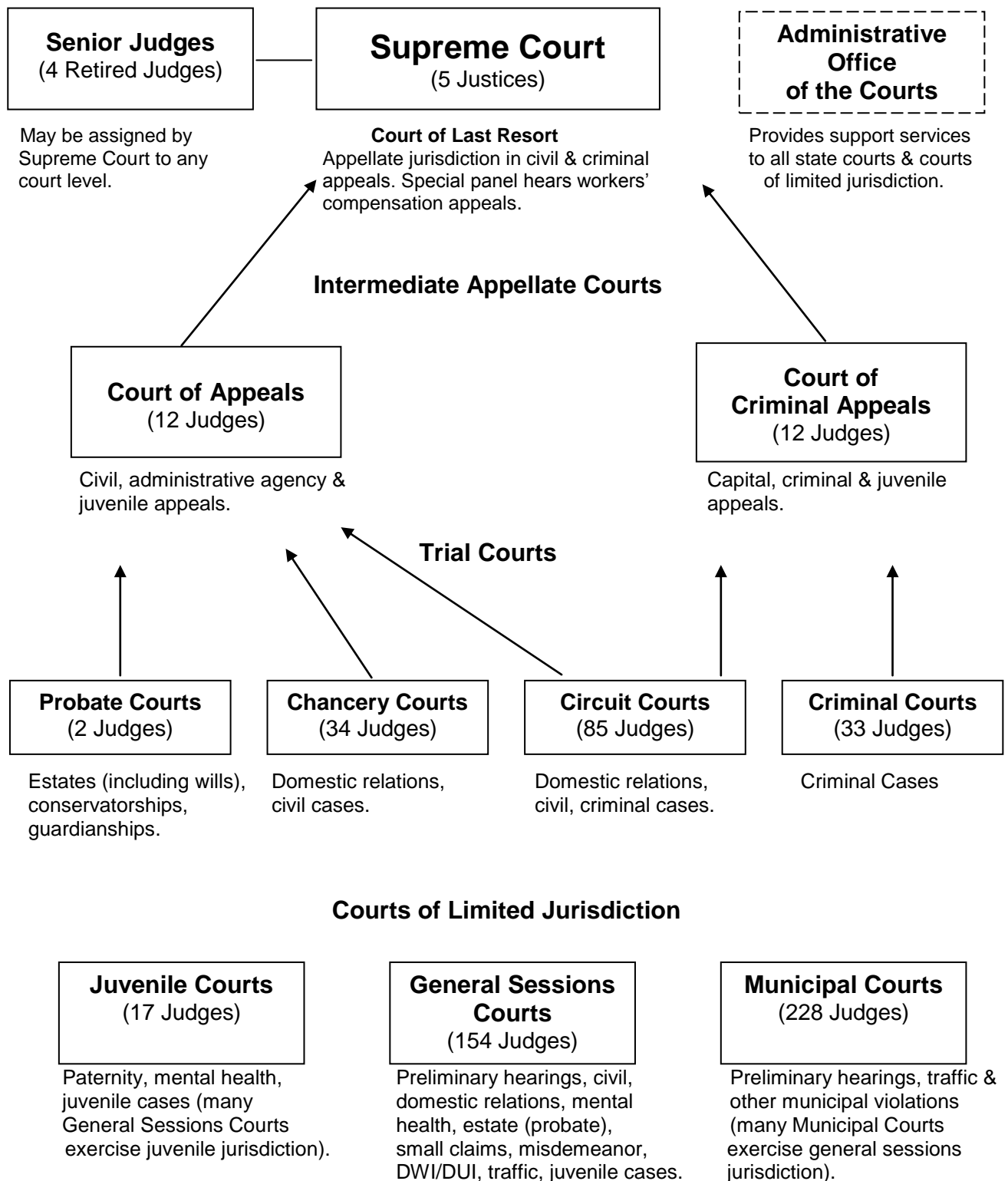
The **Supreme Court** is the highest court in the state. The five justices are nominated by the Judicial Nominating Commission, appointed by the governor and retained by a "yes-no" vote for eight-year terms. The majority of this court's workload consists of criminal and civil cases appealed from lower state courts.

The **intermediate appellate courts** -- the Court of Appeals and Court of Criminal Appeals -- hear civil and criminal cases appealed from the trial courts.

The state's **trial courts** include Chancery, Criminal, Circuit and Probate Courts. Judges in these courts are chosen by popular election within their judicial districts.

The fourth level of courts in Tennessee is composed of the **courts of limited jurisdiction** -- General Sessions, Juvenile and Municipal Courts. Their respective counties or municipalities fund these courts.

# Tennessee Judicial System



# The Jury System

**“That the right of trial by jury shall remain inviolate and no religious or political test shall ever be required as a qualification for jurors...”**

***Article I, Section VI, Tennessee Constitution***

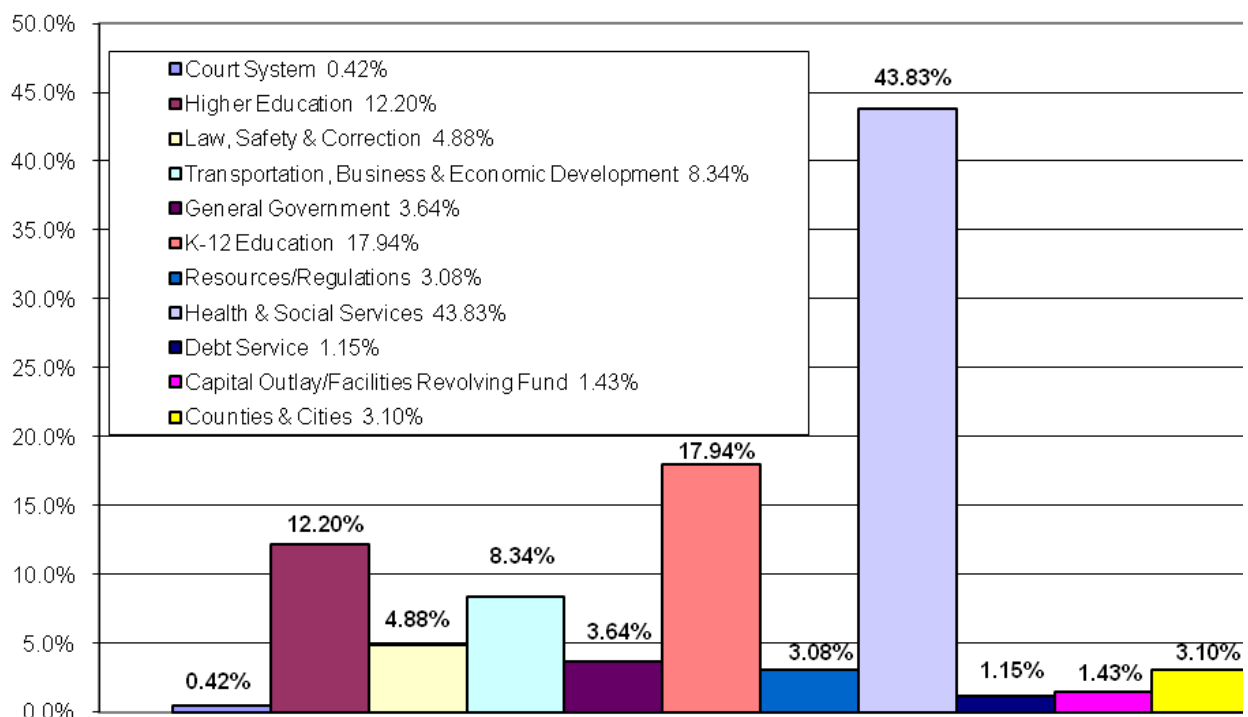
The Sixth Amendment to the United States Constitution also guarantees any citizen accused of a crime a speedy and public jury trial. A jury in Tennessee consists of 12 citizens selected from public records, such as voter registration, to make a decision based on facts in a case. State law regulates the right to a jury trial in civil -- or non-criminal -- cases, but in a criminal case where the accused could be imprisoned, there is an absolute right in Tennessee to a trial by jury. Juries are chosen from a “jury pool,” selected at random to come to court for possible service.

Lawyers for both sides and the judge may ask potential jurors questions during a process called “voir dire,” a French term meaning “to speak the truth.” The process is intended to ensure that jurors will be impartial and fair. Prospective jurors may be excused “for cause,” such as conflict of interest or bias. Each side also may exercise a limited number of “peremptory challenges,” and dismiss a potential juror without stating a reason. While there is a right to a trial by jury, there is no requirement that a defendant have a jury trial. In some cases, the accused asks for a “bench trial” in which the judge hears the case and renders a decision. In Tennessee, judges impose sentences on defendants found guilty by juries except in death penalty cases. Juries also impose fines over \$50 in criminal cases.

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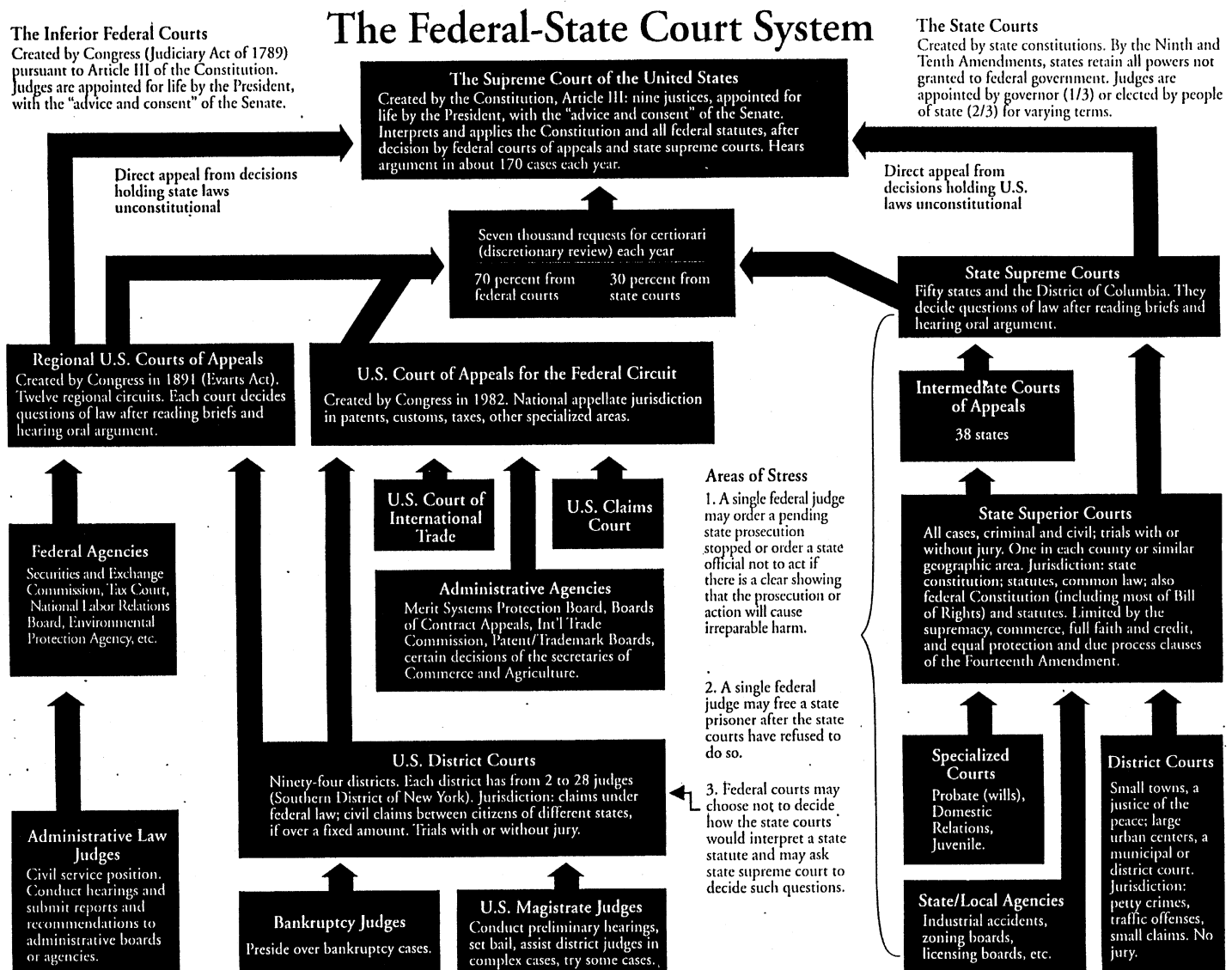
**Total State Budget**  
Fiscal Year 2008-09



# Organization of the Federal Court System

The federal judicial branch of government is composed of the federal courts. The United States Supreme Court is the highest court in the federal system and has the last word on issues of federal law and the federal Constitution. The courts just below the U.S. Supreme Court, the intermediate federal courts, are known as circuit courts of appeal. There are 13 federal circuit courts in the country. Tennessee is within the jurisdiction of the Sixth Circuit Court of Appeals. Thus, federal cases originating in Tennessee are appealed to the Sixth Circuit Court of Appeals. The federal trial court in which federal lawsuits originate is the federal district court. Tennessee is divided into three federal districts -- western, middle and eastern.

Federal courts may constitutionally hear only two types of cases: cases involving a federal law question and cases involving citizens of two different states when the amount in dispute is greater than \$75,000.





# **"FACES OF JUSTICE: AN INTRODUCTION TO THE COURTS"**

This program was developed by the American Judicature Society under a grant from the State Justice Institute. Founded in 1913, the American Judicature Society is a national organization of judges, lawyers, and others who support the American justice system. It has granted permission to The SCALES Project to use and distribute copies of this DVD and the accompanying materials at no cost. The American Judicature Society retains all rights to the program. For more information, contact the American Judicature Society, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602.

## **Overview**

This DVD program explains the basics of the justice system. Two narrators, Amy and Roberto, review the constitutional framework of our system of government, give examples of some of our constitutional rights and explain that the United States is a "nation of laws," meaning that laws are intended to apply equally to everyone.

Next, they focus on the judicial branch of government. Amy and Roberto explain that the function of courts is to resolve disputes according to the law. They give viewers a tour of the courtroom and an explanation of the roles of the judge and others.

Finally, through the courtroom experience of a friend of Amy's and Roberto himself, they illustrate what happens in a civil and a criminal case.

## **Learning Objectives**

This DVD should provide examples to students of what happens at the trial level of the justice system. Later materials and exercises will teach students about the appellate process.

As a result of this program, students should be able to:

- ✓ Explain the function of state and federal constitutions and the role of courts in our system of government.
- ✓ Describe the major courtroom actors and their functions and explain the differences between civil and criminal cases.

## **Notes to Teachers**

The DVD contains three main substantive sections: (1) the introductory material about the Constitution, individual rights, and courts; (2) the civil case scenario involving Mai's dispute with her landlord; and (3) Roberto's criminal case scenario. At the end of the first two sections, the screen will briefly go black in case the teacher wishes to stop the DVD and lead a discussion on the material covered in that section. Of course, the teacher may choose to conduct one discussion at the end and not interrupt the DVD.

The DVD is approximately 30 minutes long.

## Suggested Post-DVD Discussion Questions

### Introduction

- What is a right?

A right is a power or privilege to which we are entitled because we live in or visit the United States.

- Where do rights come from?


The United States Constitution, the Bill of Rights and the federal, state and local laws tell us our responsibilities.

- Other than those shown on the DVD, what are some of the rights we have?

Examples include the right to own property, the right to a safe workplace, and the right to a free public education through high school.

- Why should we know what our rights are?

The United States has a rights-based legal system, so it is important that we all know and understand our rights. Along with those rights comes the responsibility to know and understand them so we can assert and protect them if necessary and respect the rights of others.

 Suggested Exercise : Exercise # 1, Your Bill of Rights


### Mai's Civil Case

- What was the basis for this court case?

A disagreement about the meaning of a provision in the lease.

- Rather than going to court, how could Mai and the landlord have resolved their differences?

Alternative Dispute Resolution. Rather than going to court, people who have a serious disagreement can go to private, community-based, or court-connected organizations to help them resolve their differences. These organizations include neighborhood mediation centers, private arbitration, and rent-a-judge arrangements. In addition, the court may direct potential litigants to court-annexed mediation or arbitration centers.

 Suggested Exercise: Exercise #2, Alternative Dispute Resolution

## Roberto's Criminal Case

- The roles of the judges in Mai's and Roberto's cases were alike in some ways and different in some ways. What were some of those similarities and differences?

*Similarities:* Both judges listened to all the witnesses, examined evidence, and ensured that the court proceedings followed correct procedures.

*Differences:* The judge decided Mai's case, but the jury decided Roberto's case.

- What does presumption of innocence mean?

After an arrest and up to the time of a conviction, it is officially presumed that the accused person is innocent of any criminal charges. In other words, a person should be thought of as innocent until he or she is proven guilty in a court of law. Therefore, as long as bail is paid, the accused usually will remain free until the final outcome of the trial. To get a conviction, during the trial the prosecutor must prove beyond a reasonable doubt that the accused is guilty.

- In Mai's case, she brought suit against her landlord. Who brought the case against Roberto?

The people of the state, represented in court by the prosecutor.

 Suggested Exercise : Exercise # 3, You Be the Judge

## General Questions

- In both scenarios, each party was represented by an attorney and each side told its story in court. In Mai's case, the judge listened to both sides and decided the case; in Roberto's case, the jury made the decision. This right of each side to tell its story to an impartial fact finder is a hallmark of the Adversary System. What are some benefits and drawbacks of the adversary system?

*Benefits:* Ensures that both sides get to tell their stories in court; improves litigants' perceptions of the fairness of the process; increases the public's willingness to accept and follow court decisions, and therefore, improves public confidence in the courts.

*Drawbacks:* High legal fees; delays in getting cases to court; perceptions of unfair treatment can undermine public confidence in case outcomes and the justice system.

## YOUR BILL OF RIGHTS

**Directions:**

The following is a list of rights as specified in the Bill of Rights of the United States Constitution. Rank from 1 to 10 your most important rights. Be prepared to explain your rankings.

**(1 = most important, 10 = least important)**

- \_\_\_\_\_ Right to bear arms
- \_\_\_\_\_ Right to freedom of speech
- \_\_\_\_\_ Right to legal counsel
- \_\_\_\_\_ Right to protection from cruel and unusual punishment
- \_\_\_\_\_ Right to freedom of the press
- \_\_\_\_\_ Right to a jury trial
- \_\_\_\_\_ Right to freedom of religion
- \_\_\_\_\_ Right to protection from unreasonable searches and seizures
- \_\_\_\_\_ Right to peaceably assemble
- \_\_\_\_\_ Protection from self-incrimination

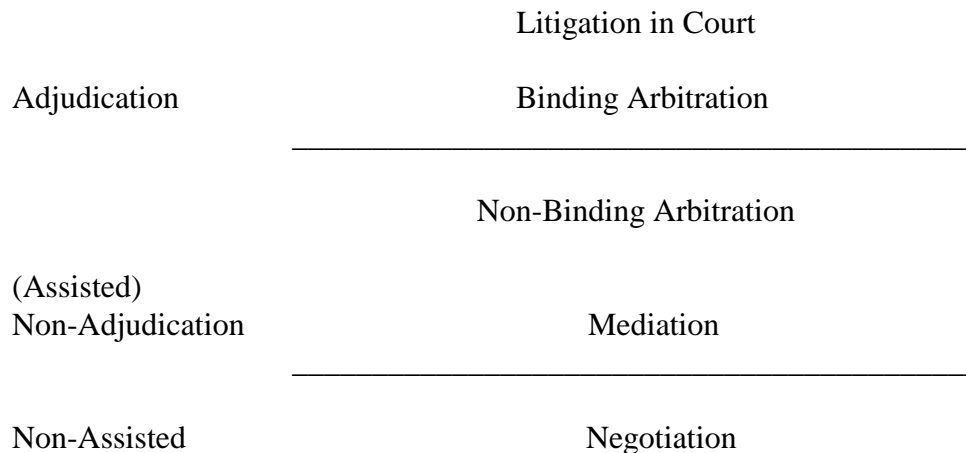
## ALTERNATIVE DISPUTE RESOLUTION

### Introduction

"Alternative Dispute Resolution" or "ADR" is a term used to refer to methods used to settle disputes other than by litigation in a court. Because litigation is expensive, many disputes are not worth taking to court. Boundary line problems, tree limb complaints, consumer complaints, landlord and tenant arguments and similar conflicts are often not worth the costs of filing fees and attorney fees. ADR gives people an alternative outlet to resolve their disputes peacefully.

ADR methods exist along a continuum from adjudication to negotiation, as illustrated below. In adjudication, the parties submit their dispute to a third person, such as a judge, who decides upon a resolution. However, in negotiation, the parties work out the resolution themselves. Where an ADR method fits on the continuum depends upon how much the neutral third party, rather than the disputants, directs the resolution of the conflict. The two most common forms of ADR are mediation and arbitration.

### DISPUTE RESOLUTION CONTINUUM



### Mediation

Mediation is a form of assisted negotiation. A neutral third party, called a mediator, meets with the parties both individually and together to encourage and aid their negotiations and resolution of the dispute. It is an informal process, in which courtroom procedures do not apply. Testimony is not taken and the parties may speak directly to the mediator or to one another. In mediation, the decision-making authority rests with the parties. The role of the mediator includes helping the parties to identify issues and interests, foster joint problem solving, and explore settlement alternatives.

### Advantages of Mediation

- Allows each party to participate and maintain some control over the result.
- Avoids the expense of a trial.
- Reduces time spent waiting for outcome of proceeding.
- Allows parties to choose the time and place of the proceeding.
- Can reduce emotions and clarify issues, even if a settlement is not obtained.

### Arbitration

Arbitration is an adjudicative device in which a neutral third party, called an arbitrator, or a panel listens to the arguments presented by the disputants and renders a decision. It is similar to litigation where a judge or jury decides the case. Arbitration may be non-binding or binding. Non-binding arbitration is an informal proceeding in which the arbitrator or panel provides the disputants with an advisory decision or otherwise aids a settlement. Binding arbitration is a more formal proceeding in which the arbitrator or panel receives presentations from the disputants and renders a decision that the parties previously have agreed to accept. Certain rules of procedure and evidence may apply. If a party is not satisfied with the results of arbitration, he or she can go to court.

### Advantages of Arbitration

- Allows parties to choose arbitrators with expertise in the subject matter.
- Avoids the expense of a trial.
- Allows parties to choose the time and place of the proceeding.
- Reduces time spent waiting for outcome of proceeding.
- Can reduce emotions and clarify issues, even if a settlement is not obtained.

### Suggested Discussion Questions

- What kinds of disputes can ADR be used to resolve?

ADR may be used for any case that could be litigated in court. In addition to civil cases, a form of ADR called victim-offender mediation, can be used in criminal cases. The principles of ADR can also be used to solve other disputes, including those involving students. This may take the form of an "honor court" or other less formal proceedings.

- What are the advantages of ADR?

ADR is less expensive than litigation in court, allowing more people afford to seek justice. In addition, ADR can reduce the total time the parties spend waiting for an outcome. Since ADR can eliminate cases that can be promptly settled, the courts can devote more time and resources to disputes in which questions of law or other difficult or novel issues must be decided.

ADR may help reduce the stress attendant in court proceedings. For example, mediation of divorces and child custody cases may allow the disputants to reduce the hurt that too often follows an adversary determination of a case. People are generally happier with dispositions when they have had a role in formulating those dispositions or when they have had an opportunity to tell some neutral person their side of the dispute.

## CAN THIS NEIGHBORHOOD BE SAVED?

Fred and Ginger have been next-door neighbors for ten years. Recently, there was a house burglarized on the next block. Fred installed an expensive alarm system that would emit a piercing shriek if an intruder entered his house. Ginger bought a Doberman puppy from the local pet store to serve as a watchdog. Ginger's puppy, "Killer," stays in the house during the day, but is kept in an outdoor pen at night. The pen is located in the corner of Ginger's yard that is nearest to Fred's bedroom window. Unfortunately, Killer barked at anything that moved, including passing cars, squirrels, and the leaves on the trees. After being kept awake for several nights by Killer's incessant barking, Fred's nerves were shattered. He decided to take a two-week vacation in Antarctica to calm his nerves. He confronted Ginger and told her, "Get rid of the dog by the time I get back or else!" As a compromise, Ginger promised to have the dog pen moved to another corner of the yard. Fred agreed to the compromise and left on his vacation.



While Fred was away, lightning struck his house and set off his alarm system. No one could locate Fred in Antarctica to obtain his permission to enter his house, so the alarm shrieked for several days. In desperation, Ginger broke a window to get into Fred's house, cutting her hand in the process. She ripped out the alarm wires, ruining the \$2,000 alarm system. Ginger, still upset, vowed not to move the dog pen after all. When Fred returned from his trip, he and Ginger had another angry confrontation, but nothing was resolved. Killer, distressed by the noise the alarm had made, had begun to yowl constantly. After another sleepless night, Fred snuck into Ginger's yard and let Killer out of the pen. The dogcatcher picked him up, and it cost Ginger \$100 to retrieve the puppy from the pound. Ginger threatened to sue Fred. Fred threatened to sue Ginger.

Divide into groups and answer the following questions:

- What claims does Fred have against Ginger?
- What claims does Ginger have against Fred?
- Do you think litigation in court, arbitration or mediation would work best in this situation? Why?
- You are the neutral third party who must settle this dispute. How would you resolve it?



## YOU BE THE JUDGE

*Case Facts:* Sue, a Sunday School teacher, was Christmas shopping at Wal-Mart and found a pair of earrings she wanted to purchase. When she placed them in the shopping cart, they fell through the cart and onto the floor. She picked them up and placed them in the zippered side pocket of her purse. A store detective observed her actions. After she completed her shopping, Sue went through the checkout line to pay for her purchases. As she walked out of Wal-Mart, the store detective stopped her and asked to see her receipt. Not seeing the earrings on the receipt, he asked her to open the zippered pocket of her purse. The earrings were still there. Sue apologized and told him that she had simply forgotten to pay for them and that she had put them in her purse because they kept falling out of her cart.

**Under the law, a person commits shoplifting if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent.**

Do the above facts establish "beyond a reasonable doubt" that Sue is guilty of shoplifting?

YES \_\_\_\_\_ NO \_\_\_\_\_

## **FEDERALISM**

### **THE SYSTEM OF GOVERNMENT IN THE UNITED STATES**

In the United States, we are governed by both national and state governments and our rights are protected by state and federal constitutions. Basically, the same structure of government exists at both the state and federal levels.

There are three branches of government - executive, legislative and judicial. The President is head of the federal executive branch, but it also includes various executive agencies such as the Department of Defense and the Office of Attorney General. The federal legislative branch is known as Congress and is composed of the House of Representatives and the Senate. Each state has two senators, but the number of representatives from a state varies, depending on the population of the state. Tennessee has nine representatives.

The federal judicial branch of government is composed of the federal courts. The United States Supreme Court is the highest court in the federal system, and has the last word on issues of federal law and the federal constitution. The courts just below the U.S. Supreme Court, the intermediate federal appellate courts, are known as Circuit Courts of Appeal. There are thirteen federal circuit courts in the country. Tennessee is located within the jurisdiction of the Sixth Circuit Court of Appeals. Thus, federal cases originating in Tennessee are appealed to the Sixth Circuit Court of Appeals. The federal trial court in which federal lawsuits originate is the Federal District Court. Tennessee is divided into three federal districts, western, middle and eastern. Federal courts may constitutionally hear only two types of cases: 1) a case involving a federal law question and 2) a case involving citizens of two different states when the amount in dispute is greater than \$50,000.

The governor is the head of the executive branch of state government. Just as the federal government, the state executive branch also includes agencies such as the Department of Agriculture and the Department of Correction. The legislative branch of the state government is known as the

General Assembly. It is composed of the State House of Representatives and the State Senate. The State of Tennessee is divided into both House and Senate districts. One senator and one representative are elected from each district. Currently there are 33 state senators and 99 state representatives.

The third branch of government in Tennessee is the judicial branch. Tennessee's judicial branch is derived from Article VI, Section 1, of the Tennessee Constitution which says that "The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior courts as the Legislature shall from time to time, ordain and establish...." Currently, Tennessee has four levels of courts - the Supreme Court, the intermediate appellate courts, the trial courts and the courts of limited jurisdiction. The highest state court is the Supreme Court of Tennessee. The Tennessee Supreme Court is the final authority on matters of state law. However, decisions of the State Supreme Court on matters of federal law may be reviewed by the United States Supreme Court. The next level, the intermediate appellate courts, includes both the Court of Appeals and the Court of Criminal Appeals. Civil cases, those not involving criminal law, can be appealed directly and automatically to the Court of Appeals. Examples of civil cases are medical malpractice cases, divorce cases, and property dispute cases. Criminal cases may be appealed directly and automatically to the Court of Criminal Appeals. Examples of criminal cases are death penalty first-degree murder cases, rape and robbery cases.

Directly below the intermediate appellate courts are the state trial courts where most suits of importance begin and end. It is in the trial courts that evidence is presented and jurors decide cases. Tennessee's trial courts include Chancery, Criminal and Circuit courts. Only civil cases are tried in Chancery courts and only criminal cases are tried in Criminal courts. However, both criminal and civil cases may be tried in Circuit courts. Judges in all of Tennessee's trial courts are chosen by popular election within their judicial district. There are thirty-one judicial districts in Tennessee. However, the number of courts in each district varies, so there are more than thirty-one trial judges in the state.

The fourth and final level of courts in Tennessee is generally known as the courts of limited jurisdiction, which includes Municipal, General Sessions and Juvenile courts. Limited jurisdiction means that the courts have only limited authority to hear particular types of disputes. For example, Juvenile courts may only resolve issues relating to juveniles. Most of the judges of these courts are popularly elected.

The federal constitution provides minimum protections for our individual liberties. Neither the state nor the federal government can pass laws infringing on that minimum protections. However, a state through its own constitution may provide a citizen with greater protection than the federal constitution. Therefore, although a state law or action may be constitutional under the federal constitution, it may be unconstitutional under the state constitution. Federal courts may rule on issues of state law when deciding a case that involves both federal and state law issues. On issues dealing with state law questions, the federal courts are bound by prior decisions of the state courts. Likewise, state courts may rule on issues of federal law, but as to those issues, the state courts are bound by prior decisions of the federal courts.

Examples of federal law questions are immigration issues, application of federal civil rights laws and federal constitutional law, such as 1<sup>st</sup> Amendment free speech questions, and 2<sup>nd</sup> Amendment right to bear arms questions.

Examples of state law issues are property line disputes between neighbors, contract disputes, personal injury lawsuits, and state constitutional law issues, such as the right to a free and appropriate public education and the state constitutional right to free speech.

### **Student Worksheet Activity #1 (Federalism)**

**Directions:** You have just read and discussed the system of government in the United States, and specifically, the federal and state judiciary. Now is your chance to apply the knowledge you gained to some actual cases. Please read the short summaries below and decide whether the case involves a federal law issue or a state law issue.

<b>CASE</b>	<b>ISSUE</b>
1. I believe that my United States constitutional rights were violated when a book I wrote was censored by the government. I have decided to sue the United State government.	
2. My neighbor's pit bull terrier bit my child. I am angry and have decided to sue the owner for medical costs and suffering totaling \$4500.	
3. I was arrested for speeding. The police searched my car at the scene of the crime and found a stolen VCR. I objected to the search at the time it took place. I believe that my United States constitutional rights were violated.	
4. I am suing my dry cleaner for staining my favorite dress. I am seeking \$15,000 in costs and damages.	
5. I believe that my right to free speech was denied by the school administration. I was suspended for printing vulgarities. I am suing to get back into school with a clean record.	
6. My apartment building collapsed, and the builder has sued the construction material supplier, claiming the supplier was responsible for the building falling down.	
7. I was arrested for violating the Brady Bill concerning the registration of firearms.	
8. I was arrested for violating a local "pooper scooper" law that requires residents to clean up after their pets.	

### **Teacher Answer Key Activity #1 (Federalism)**

**Directions:** You have just read and discussed the system of government in the United States, and specifically, the federal and state judiciary. Now is your chance to apply the knowledge you gained to some actual cases. Please read the short summaries below and decide whether the case involves a federal law issue or a state law issue.

<b>CASE</b>	<b>ISSUE</b>
1. I believe that my United States constitutional rights were violated when a book I wrote was censored by the government. I have decided to sue the United State government.	FEDERAL LAW ISSUE
2. My neighbor's pit bull terrier bit my child. I am angry and have decided to sue the owner for medical costs and suffering totaling \$4500.	STATE LAW ISSUE
3. I was arrested for speeding. The police searched my car at the scene of the crime and found a stolen VCR. I objected to the search at the time it took place. I believe that my United States constitutional rights were violated.	FEDERAL LAW ISSUE
4. I am suing my dry cleaner for staining my favorite dress. I am seeking \$15,000 in costs and damages.	STATE LAW ISSUE
5. I believe that my right to free speech was denied by the school administration. I was suspended for printing vulgarities. I am suing to get back into school with a clean record.	BOTH FEDERAL AND STATE CONSTITUTIONAL LAW ISSUE
6. My apartment building collapsed, and the builder has sued the construction material supplier, claiming the supplier was responsible for the building falling down.	STATE LAW ISSUE
7. I was arrested for violating the Brady Bill concerning the registration of firearms.	FEDERAL LAW ISSUE
8. I was arrested for violating a local "pooper scooper" law that requires residents to clean up after their pets.	STATE LAW ISSUE

## **THE TENNESSEE SUPREME COURT**

### **General Information**

The Tennessee Supreme Court is the highest court in the State of Tennessee. It is similar to the United States Supreme Court, the highest court in the nation. The Tennessee Supreme Court derives its existence and authority from Article VI of the Tennessee Constitution. It is comprised of five justices, who are appointed by the governor and then elected every eight years on a “yes-no” retention vote. Two of the justices are at-large representatives while each of the remaining three represents a grand division of the state, west, middle and east. No more than two justices may reside in the same grand division of the state. To be eligible to serve on the Tennessee Supreme Court, one must be at least 35 years old, a resident of the state for five years or more, licensed to practice law in this state, and a citizen of the United States.

Once elected, the five justices choose a chief justice. The chief justice is the administrative head of the state court system. He or she has authority to assign special and retired judges, and to transfer judges to equalize docket imbalances. The position of chief justice currently rotates from one justice to another.

### **Jurisdiction**

The Tennessee Supreme Court sits en banc, meaning that the entire court hears the oral arguments for a case. The court has both appellate and original jurisdiction. Appellate jurisdiction is the power of the court to review a case that has already been decided by a lower court. The scope of the court's appellate jurisdiction may be changed by legislation. Original jurisdiction gives the Tennessee Supreme Court power to hear cases in the first instance and is more limited than appellate jurisdiction. Examples of subjects over which the Supreme Court has original jurisdiction include matters involving regulation of the practice of law and Supreme Court rules.

The Tennessee Supreme Court is the court of last resort and the final arbiter of disputes arising under state law. It reviews judgments and rulings of the lower state courts, including the Court of Criminal Appeals and the Court of Appeals. Tennessee Supreme Court decisions interpret state law and set standards, or precedents, which must be followed by all Tennessee state courts in future similar cases. No other court has jurisdiction to review decisions of the Tennessee Supreme Court on issues of state law. However, the United States Supreme Court is the court of last resort and the final arbiter of disputes arising under federal law, and may review decisions of the Tennessee Supreme Court in which federal law issues are decided.

Appeals brought to the Tennessee Supreme Court do not involve a trial of the case in the sense that no witnesses appear and no evidence is taken. Instead, the Supreme Court reviews the record of the trial, which includes a transcript of the evidence, the orders entered by the court below, and the documents filed by the attorneys in the court below, and corrects any errors the lower court made in the application of law, such as rulings on the admission of evidence or interpretations of a law passed by the legislature. Either the plaintiff or defendant may appeal in a civil case. In a criminal case, the defendant may always appeal a conviction, but only certain rulings in criminal cases may be appealed by the state. For example, the state may never appeal a jury verdict of not guilty.

### **Gaining an Appeal**

To gain an appeal, the party disagreeing with the lower court's decision must file both a notice of appeal and the record with the Supreme Court, if by law the appeal is direct to the Supreme Court without going through the Court of Appeals or the Court of Criminal Appeals. Automatic direct appeal to the Supreme Court is rare.

In most cases, the Tennessee Supreme Court is not required to grant an appeal and review a case. Instead, the court exercises what is known as discretionary review. Discretionary review means that a party cannot automatically appeal to the Tennessee Supreme Court, but must seek permission to appeal. The party disagreeing with the lower court's decision must file an application for permission to



appeal. The application contains a statement of the issues involved in the case and the reasons why the Supreme Court should grant review. Some of the more common reasons that prompt the court to grant review include, 1) the need to settle a question of law about which there is confusion, 2) the need to rule on a question of law that has not been ruled upon by any other Tennessee court, and 3) the need to correct an error in application of the law.

The party satisfied with the lower court's decision files an answer to the application for permission to appeal. In the answer, the party opposing an appeal discusses the reasons why the court should not grant review, and attempts to convince the justices to uphold the decision of the lower court.

The Tennessee Supreme Court holds a conference once every month during which the justices discuss and decide whether to grant or deny the applications for permission to appeal. The court reviews approximately 1000 applications each year, and of that number, grant permission to appeal in approximately 100 cases. Permission to appeal will be granted if two of the five justices vote yes on the application. If an application is denied, the party seeking an appeal has no other avenue of relief unless an issue of federal law is involved; in which case, the party may seek an appeal with the United States Supreme Court. The chances of gaining review with the United States Supreme Court are very slim.

### **Processing an Appeal**

If an application is granted, the party seeking an appeal - the appellant - then files a supplemental brief which discusses in depth the issue in the case and lists and explains the laws and case decisions that support the appellant's arguments. The party opposing appeal - the appellee - has a specific time period after the appellant's supplemental brief is filed to file an answer brief. The appellant then has a short period of time within which to file a reply brief in response to the appellee's answer. If neither of the lawyers request oral argument, the case will be decided by the court on the basis of the record and the briefs. If the case is argued, appellate court rules give each side 30 minutes

to present its side of the case orally to the entire Supreme Court. The Constitution requires that the court meet in Nashville, Knoxville and Jackson to review cases, which are then argued in the city nearest the area where they arose.

The appellant argues first, then the appellee. During oral arguments, the lawyers highlight key points of their positions and answer questions from the justices. In deciding the cases the five justices read and study the briefs submitted by the parties, as well as the record. This requires a great deal of reading. Only issues presented in the briefs and at oral arguments will be considered, but the justices perform additional research on their own during the decision-making process. Of course, not every error in application of law will result in a reversal of the judgment or ruling that is the subject of the appeal. Only if the error had an impact upon the judgment of the lower court will reversal be ordered.

Immediately after completion of oral arguments, the justices meet in conference to discuss the views of the members of the court and to take a preliminary vote on the decision in the case. The chief justice presides, and in general, other members of the court express their views. The chief justice assigns the case to one of the justices who has voted in the majority.

### **Preparation of an Opinion**

After the case is assigned, a proposed opinion will be prepared. An opinion is a statement of the Supreme Court's decision and a statement of the legal reasons supporting the decision. The written opinion will either affirm, which means that the judgment or ruling of the lower court is correct, reverse, which means that the judgment or ruling of the lower court is rejected, or modify the judgment or ruling of the lower court that is the focus of the appeal. Once prepared, the opinion is circulated to the other justices by the author one week before the court's monthly conference. Either before or during the monthly conference, other justices may make suggestions for modifying, adding to or deleting from the proposed opinion. Concurring opinions and dissenting opinions are circulated as early as possible by the justices who agree or disagree with the proposed opinion. A concurring opinion is one in which a justice agrees with the result reached by the proposed opinion, but not for the

same reasons given in the proposed opinion. A dissenting opinion is one in which a justice disagrees with the result reached by the majority of the other justices. At least three of the five justices are required to constitute a majority.

Concurring and dissenting opinions must be circulated no later than 2 months after the proposed opinion is circulated; however, any justice may request that a case be passed at conference for a reasonable time for further study or until a dissent or a concurring opinion may be prepared.

Once the proposed opinions - majority, dissents, and concurrences - have been discussed and approved by the members of the court, the opinion is released to the public and published by the West Publishing Company in the Southwestern Reporter, which is found in law libraries. Opinions ordinarily are released on Mondays, unless otherwise ordered by the court.

**Student Worksheet Activity #2 (TN Supreme Court)**

**GROUP WORK ON THE TENNESSEE SUPREME COURT**

**Directions:** Complete this worksheet on the Tennessee Supreme Court

Type of Court: \_\_\_\_\_

Jurisdiction: \_\_\_\_\_

Number of Justices: \_\_\_\_\_

Where does the Court hear cases? \_\_\_\_\_

How old does one have to be to be a justice on the Court? \_\_\_\_\_

Does the Court receive testimony from witnesses? \_\_\_\_\_

How are the justices selected and for how long do they serve?

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**Teacher Answer Key Activity #2 (TN Supreme Court)**

**GROUP WORK ON THE TENNESSEE SUPREME COURT**

**Directions:** Complete this worksheet on the Tennessee Supreme Court

Type of Court: Appellate

Jurisdiction: Original and Appellate

Number of Justices: Five

Where does the Court hear cases? Nashville, Knoxville and Jackson

How old does one have to be to be a justice on the Court? Thirty-five years old

Does the Court receive testimony from witnesses? No

How are the justices selected and for how long to they serve?

The justices are appointed by the governor and then elected every eight years on a “yes-no”  
retention vote.

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## **UNDERSTANDING THE ROLE OF PRECEDENT**

### **What is the Role of Precedent?**

Decisions of the Tennessee Supreme Court and the United States Supreme Court are recorded for public use. Although not the law in the sense of legislation, Supreme Court opinions help "flesh out" the "body of law" because they are often interpretations of the law, i.e., applications of the general law to a particular case. The court's decisions set precedent for all Tennessee courts. Precedent is a rule of law established for the first time by a court deciding a particular type of case and is thereafter a guide to other courts deciding similar cases. In that sense, the decisions courts make in individual cases argued before them are far more reaching than just the case being considered.

In the United States, the doctrine of precedent prevails and past decisions are generally considered to be binding in future cases involving the same material facts. This rule is called stare decisis, which is a Latin term that means, "let the decision stand." This rule is strictly followed by lower courts when applying decisions of higher courts in the same jurisdiction. Courts can limit the impact of the doctrine of precedent by distinguishing the facts in cases being decided from the facts in precedent-setting cases.

### **What is Persuasive Authority?**

Precedent is binding only for courts in the same jurisdiction or judicial system. In other words, a Kentucky decision is not precedent for the courts of Tennessee, but it is persuasive authority. A Kentucky decision would be precedent for Kentucky courts, while a Tennessee decision in Kentucky would be viewed as persuasive authority.

Persuasive authority is a decision by a court of another jurisdiction, ordinarily the decision of another state's appellate or Supreme Court. The Tennessee Supreme Court may look to the law established and followed by other states' courts in decisions dealing with similar facts and issues. In examining the decisions of other states, our court is often able to profit from the expertise and

experience of other states in determining similar issues. Bear in mind that the key word is "persuasive." It is always within the discretion of the Tennessee Supreme Court as to whether it will adopt or discard the reasoning and decisions of the courts of other states.

**NOTE:** During oral arguments, notice if the lawyers mention precedent and/or persuasive authority.

**Student Worksheet Activity #3 (Precedent)**

**MINDBENDERS\*\*\*\*MINDBENDERS\*\*\*\*MINDBENDERS**

Working in a group, review the briefs\*\* filed by the parties in the cases you will hear on the day of SCALES, then:

1. Make a list of all the cases that are “Tennessee authority,” or “Tennessee precedent” mentioned by the lawyers in the briefs.
2. Make a list of all the cases that are “persuasive authority,” or cases from other states or federal courts, mentioned by the lawyers in the briefs.
3. Compare and contrast your group’s lists with the lists of other groups.

**\*\*YOUR TEACHER HAS A SET OF BRIEFS FOR YOUR USE\*\***



## **CASE STUDY PROCEDURE**

Using the facts of the case your class is scheduled to hear, complete the following exercise:

**1. Identify the facts.**

List the facts of the case. Do not make up any information that is not given. What are the most important facts? Are any important facts left out of the story?

**2. Identify the issue/s.**

Are any rights in conflict in this case? What questions or issues does this case ask the court to answer? State the question or questions the case raises in a few sentences.

**3. List the arguments.**

Make up an argument for each side, the appellant and the appellee.

**4. Give your decision in the case and the reasons for the decision.**

If you are working in a group, you might discuss your decision and reasoning with other group members and listen to their thoughts.

**5. Read the briefs that the lawyers for each party have filed in the case.** (Alternative: Read the case summary in the SCALES project student booklet.)

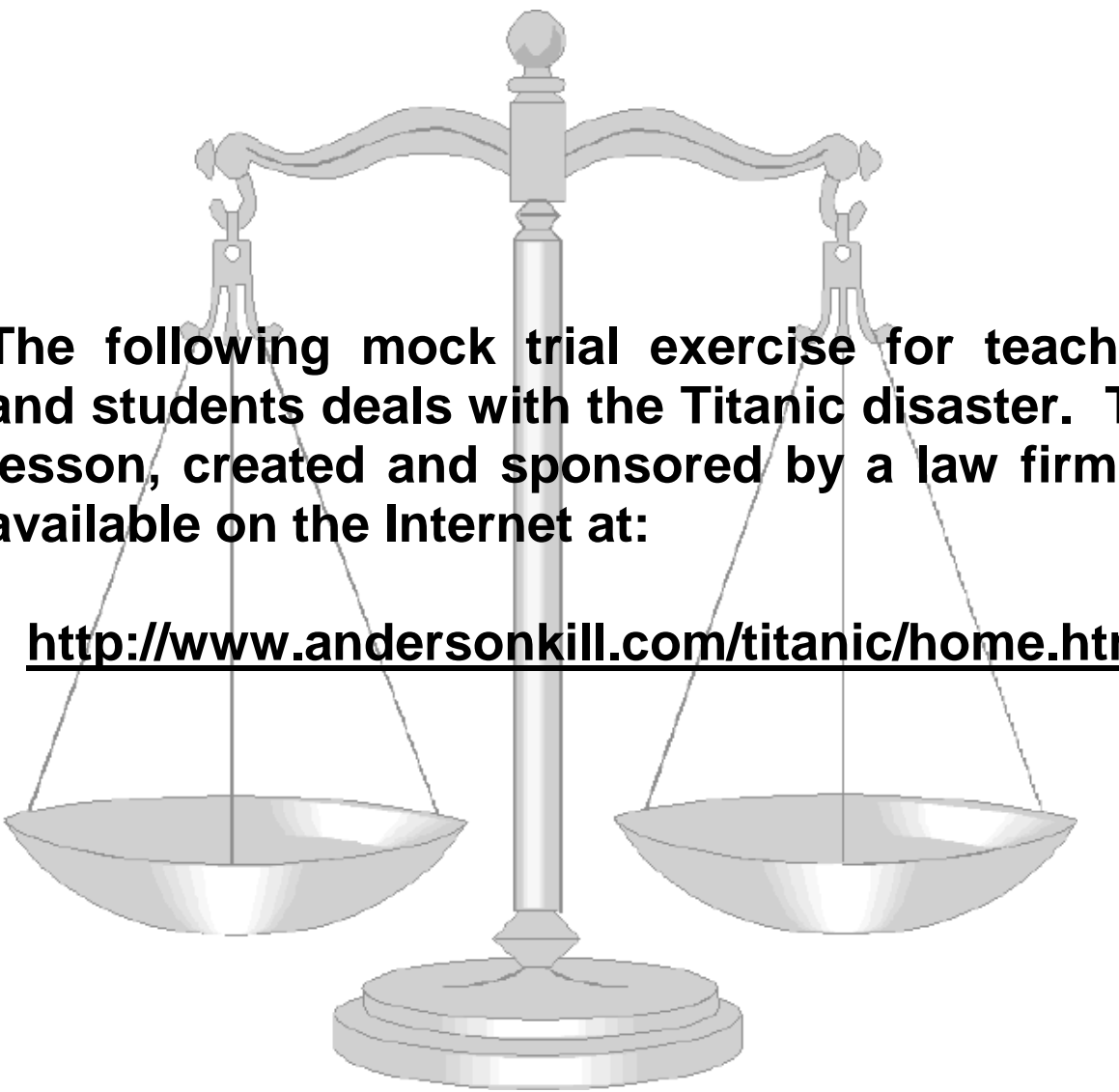
**Compare your answers to questions 1, 2 and 3 above to the facts, issues, and arguments presented in the briefs (or case summary). Does the information given in the briefs (or case summary) change your decision in this case?**



# Titanic

# Mock

# Trial



**The following mock trial exercise for teachers and students deals with the Titanic disaster. The lesson, created and sponsored by a law firm, is available on the Internet at:**

**<http://www.andersonkill.com/titanic/home.htm>**

# INTRODUCTION



## *Introduction*

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**Welcome** to Anderson Kill & Olick's Titanic mock trial site. Each year on Take Your Daughter to Work Day we conduct a mock trial to show our daughters and the daughters of many of our pro bono clients what we do each day. This year we staged the trial of The White Star Line, the operator of the R.M.S. Titanic. Our daughters were so interested in this trial, even more so than any of the previous mock trials we had done, that we decide to give everyone the opportunity to participate in this mock trial by posting trial materials on the Internet as part of our celebration of Law Day, May 1, 1998.



**The Story** for the most part is true. Hans Jensen and his fiancé, Carla Jensen were passengers on the Titanic along with Carla's uncle and cousin. Carla did have quarters in the single woman's section on the lower deck of the ship and did leave the Titanic in Life Boat 16. The evacuation process was supervised by Second Officer Lightoller, a witness in the mock trial. He was able to launch Collapsible Boat D, but this was the last lifeboat launched from the Titanic before it sank. As Boat D was being lowered past A-Deck, the other witness in the mock trial, Swedish Military Attaché Bjornstrom-Steffansson, really did dive into the partially full lifeboat. The amazing story of Officer Lightoller being sucked under by the sinking ship and then blown back to the surface by an exploding boiler is also true. The information about what happened to Hans Jensen that night is speculation, because neither he, nor either of Carla's relatives survived the sinking of the Titanic. The sinking of the Titanic deeply affected Carla and when she died in 1980 she was buried in the nightgown that she wore the night she was lowered in Lifeboat 16 into the dark, freezing waters of the North Atlantic.



**To Use the Site** start with the basic facts below, then decide how you are going to proceed. The site has information about [Hans Jensen](#), his fiancé [Carla Christine Jensen](#) who sues on Hans' behalf, the defendant [White Star Lines](#) and the witnesses, the Titanic's [Second Officer Lightoller](#) and [Swedish military attaché Bjornstrom-Steffansson](#). A memoranda of law explaining [negligence law](#) and White Star's [defenses to negligence](#) are on the website along with an [exhibit](#) showing where each party was as the ship was being evacuated. A set of [links](#) provides more information about Titanic, the U.S. judicial process, and Law Day. At the end of the testimony, the judge has a [jury charge](#) to read to the jurors and they have a [verdict sheet](#) to fill out and return to the judge. In addition, a [glossary](#) of trial related terms is included.

The materials can be used in many different ways by a variety of groups. While designed for classroom use, the materials can be used by a scout troop for law merit badges, by an after school program, such as computer or debate club, or even by summer camp or party. Younger students may be most interested in finding out about the Titanic and doing research on the Internet, while older students can explore

some of the more complex issues such as the jurisdiction of U.S. courts to decide cases between non-U.S. citizens. A [Teacher's Guide](#) provides more information about the [American Judicial Process](#) and ways to use the material.

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**THE FACTS:** On Sunday, April 14, 1912, just four days after setting out on its first voyage with passengers aboard, the R.M.S.TITANIC passenger ship struck an iceberg off the coast of Newfoundland at 11:40 p.m., and subsequently sank at 2:20 a.m.

Of the 2,227 people aboard when the ship started its trans-Atlantic voyage, a total of 1,522 died in the disaster. Among the dead, was a 20-year-old named Hans Peder Jensen. Jensen's fiancé, Carla Christine Jensen was among the remaining 705 passengers ultimately rescued by the CARPATHIA liner, several hours later.

On the fateful evening, the ship's radio room received several ice-warning messages from other ships in the area; including the Baltic, the Caronia, the Amerika, and the Californian. According to the testimony of surviving officers, only the message from the Californian was posted in the chartroom.

At 9:20 p.m., Captain Smith retired for the evening, leaving Second Officer Lightoller in charge. Lightoller's watch was over at 10:00 and he then made his rounds of the ship before retiring to bed. Captain Smith was awoken at 11:40 p.m., by a grinding vibration, and proceeded to the bridge in his pajamas to investigate. He returned to his room, after a brief discussion with Third Officer Herbert Pitman about the noise. Ten minutes later, the severity of the situation was brought to Smith's attention by Fourth Officer Boxhall, who informed him that "the water was up to F-Deck in the Mail Room."

Upon receiving orders from Captain Smith, Second Officer Lightoller immediately began to load women and children into Lifeboats. During the next 2 ½ hours, many lifeboats left partially full. By 2:00 a.m., all but four lifeboats had been lowered, and every distress-flare had been fired.

At dawn on April 15th, 1912, the CARPATHIA arrived on the scene, and those who had not yet frozen in the icy, North Atlantic waters, were rescued.

# **TEACHER'S GUIDE**



### *Teacher's Guide to Jensen v. White Star Lines*

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The movie, *Titanic*, starring Leonardo DiCaprio and Kate Winslet, has created great interest in the story of the Titanic. This site gives teachers a way to use the interest generated by the movie to illustrate how the American judicial system works. It was designed for teachers and students to participate in a mock trial involving the tragic story of the Titanic.

The case involves true facts of the Titanic's maiden voyage, which resulted in over 1500 fatalities. This Teacher's Guide will help you prepare your class for the trial by covering such issues as [Assignment of Roles](#), [Timing of the Trial](#), [Legal Issues](#) and [Skills](#).

Students need not be limited to just the facts presented on the website. They may add facts to their arguments from a variety of sources as long as they are consistent with the [mock trial facts](#) as we have prepared it. The story is based on actual people who were on the Titanic, but certain literary embellishments have been added, particularly as to what Hans Jensen did the night the Titanic sunk. Since neither he nor fiancée's male relatives survived the accident to tell their story, we have created a plausible possibility of what might have happened to them that night.



#### **Assignment of Roles**

The roles of the plaintiff, defendant, attorneys, bailiff, witnesses, and jurors should be assigned prior to the material being handed out. Listed below are the roles that may be assigned to students:

**Plaintiff:** [Carla Christine Jensen](#) (19) was the fiancée of twenty-one year old [Hans Peder Jensen](#). Despite the fact that both had the same last name, they were never married. They prepared wills before leaving on their trip naming each other executors. Carla, as executor of Hans' will is suing the owner of the Titanic, [White Star Lines](#), for negligence in operating the boat and causing the death of her fiancée.

**Plaintiff Attorney(s):** You may assign as many attorneys to represent Carla as needed. Attorneys can be assigned individually or as teams to handle particular witness' testimony, research, preparation, and document-drafting. You can even assign one class to represent the plaintiff and another to represent the defendants.

**Defendant:** [White Star Lines](#) - appears at trial by [Second Officer Charles Herbert Lightoller](#). Second Officer Lightoller was on-duty when the Titanic hit the iceberg and can testify about White Star



Lines' duty of care towards its passengers, whether this duty was breached and whether the breach caused the death of Hans Jensen.

**Defendant's Attorney(s):** You may assign as many attorneys to represent White Star Lines as needed. Attorneys can handle particular parts of the testimony, preparation, and document-drafting, if any.

**Witness:** Lieutenant Mauritz Hakan Bjornstrom-Steffanson - The Lieutenant was a Swedish Military attaché. Mauritz will testify about his interaction with the deceased, Hans Peder Jensen, prior to his jumping on to the last life boat to leave the ship, Collapsible Boat D, as it was being lowered away.

**Bailiff:** The role of the Bailiff is optional and requires a student to announce the beginning and ending of the proceeding, call witnesses, administer oaths and take the jury's verdict to the judge.

**Jury:** Between six and twelve students should be assigned to play the roles of jurors. Their deliberations can be public so students can see the interaction of jurors or private as in a real trial.

**Judge:** We recommend the teacher play the role of the judge. He or she should keep track of time, rule on admissibility of evidence and on any motions made.



### Timing

The trial can be done in as little 45 minutes as set forth below, but works better if done over two days with research assigned before the first days hearing. A 2 day trial will also give students the feeling for the amount of preparation that goes on each day after the trial is over. The short trial can be done as follows:

Trial Preparation:	10 minutes
Opening Statements:	2 minutes for each party
Plaintiff's Case:	10 minutes
Defendant's Case:	10 minutes
Optional: Defendant's motion of directed verdict:	1 minute
Ruling on motion to dismiss for its case:	1 minute
Plaintiff's rebuttal of defenses	5 minutes
Closing Statements:	2 minutes for each party
Jury Deliberation:	5-10 minutes
Verdict and Judgment:	2 minutes

If witnesses do not get on and off quickly and are allowed to ramble, the trial could easily be two hours. The class should participate in a post-trial discussion about the issues involved and the positive and negative aspects of each party's representation.



### Legal Issues

In order for the plaintiff to prevail in this case, all elements of [negligence](#) must be proven by a preponderance of the evidence. The defense counsel should raise [defenses](#) such as Hans contributory negligence, superseding cause that breaks the causal connection between White Star's negligent acts and Hans' death and assumption of the risk. The law applied in this case has some of the aspects of the law of New York during the year of 1912, which is much more pro-company than is today's law. For example, contributory negligence is no longer an absolute bar to plaintiff recovering. Most states now use some form of comparative negligence so that negligence by the plaintiff reduces the amount that the plaintiff can recover rather than barring all coverages as happens with contributory negligence. For older students, you may want to discuss the consequences for society if the jury decides not follow the law as set forth by the judge.



### **Skills and Subjects**

This exercise was developed so that students could develop their public speaking skills, research abilities and writing techniques. You may require students to submit legal briefs outlining the analysis of their arguments prior to trial. Alternatively, after the jury has rendered its verdict, the class can write the judge's opinion, which must justify the jury's verdict. A third possibility would be to have your students prepare an appellate brief for either party arguing why the verdict should be overturned or upheld on appeal.

While this virtual trial teaches about the U.S. Judicial system, students will also learn about history at a time when classes in society and particularly European society, had a major effect on daily life and the way people behaved even in life threatening emergencies. Students will also use math skills to compute damages and to argue about which calculation methodology should be used. Damages can be made very complex, e.g. net inflation adjusted, after tax compensation or fairly simple years of life expectancy times present wages.

Ideally, this project should consist of both Internet and library research. Students will find lots of material on the Web and in books. For example, there are pictures of Carla Jensen on the web. (We did not find any pictures of Hans and face in the header image is a stand-in.) Some of the information the students will find is contradictory or wrong. Being able to distinguish reliable information from unreliable and implausible information is another important skill that can be developed through the mock trial. Obviously, things said in the Titanic movie by DiCaprio or Winslet are fictitious and inadmissible. While the Titanic movie was very well researched and is much more accurate than many "historical" movies, things such as the loading of the lifeboats and other scenes from the movie are not admissible evidence unless it can be shown by other evidence, such as the testimony of the witnesses that movie represents a true depiction of what actually happened (and even then most real courts would not allow such evidence.) You, acting as judge, can help students distinguish between admissible, reasonable, reliable information and speculation, gossip and hearsay.

If you want to make this a week long unit, you could, follow the following outline:

#### **Titanic Trial Week Schedule**

Monday: Discuss the Titanic and assign roles

Tuesday: Student research, interview witnesses

Wednesday: Prepare pre-trial motions and review testimony  
Thursday: Preliminary hearing to rule on evidence and jury selection  
Friday: Trial and verdict



### **Multi-class and non-classroom groups**

In addition to working with a single class, you can also use this material with multiple classes participating. For example, you could have one class represent the plaintiff, another class could represent the defendant and witnesses could be drawn from a third class or even a different grade. Witnesses could also be other adults. With larger numbers of students, groups can be assigned to different duties such as interviewing witnesses, preparing motions, and library and Internet research

The website can also be used in non-classroom settings such as with scout troops for a law merit badge. Other groups that could use the material:

- Computer clubs emphasizing Internet research and putting briefs on the web
- Summer camps or at home on rainy days
- After school programs
- Theme parties for a variety of age groups
- Bar association law day functions

# **JUDICIAL PROCESS**



## *The Judicial Process in the U.S.*

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### **Introduction to the U.S. Judicial Process**

We have created this mock trial website to help illustrate in a fun interactive manner how the U.S. legal system works and the important role-played by the people who serve on juries. Our legal system cannot work if citizens don't participate. If you do not support the legal system by participating in it, then everyone suffers the consequences of a system in which only a few people determine what is right and wrong. Jury service is a crucial part of our system of justice. Americans expect our courts to decide fairly and are justly upset, when this does not happen, but try to imagine a world where judgements are rendered without citizen input and you expect the decision to be unfair.

At Anderson Kill & Olick, we believe that all of us need to contribute to our country by performing our civic obligations. One of our very important civic obligations is to participate as jurors in the legal system when called upon to serve. In providing this mock trial outline, we hope in some small measure to help educate students about our system of justice and the importance of jury service.



### **The American Legal System**

As former colonists of Great Britain, the Founding Fathers of the United States adopted much of the legal system of Great Britain. We have a "common law," or law made by courts rather than a monarch or other central governmental authority like a legislature. The jury, a panel of ordinary citizens chosen to decide a case, is an integral part of our common-law system.

Use of juries to decide cases is a distinguishing feature of the American legal system. Few other countries in the world use juries as we do in the United States. Over the centuries, many people have believed that juries in most cases reach a fairer and more just result than would be obtained using a judge alone, as many countries do. Because a jury decides cases after "deliberations," or discussions, among a group of people, the jury's decision is likely to have the input from many different people from different backgrounds, who must as a group decide what is right.

Juries are used in both civil cases, which decide disputes among private citizens, and criminal cases, which decide cases brought by the government alleging that individuals have committed crimes. Juries are selected from the U.S. citizens and summoned (required by court order to appear for jury selection). "Panels," or consisting of set numbers, of jurors are called for each case requiring a jury.

The judge assigned to the case oversees the selection of jurors to serve as the jury for that case. In some states, prospective jurors are questioned by the judge; in others, they are questioned by the lawyers representing the parties under rules dictated by state law.



### **The Parties to a Civil Trial:**

**Plaintiff.** The plaintiff is the person who begins the suit. In the complaint, the plaintiff states, or alleges, that he or she was injured by the conduct of another. The plaintiff usually is represented by a lawyer.

**Defendant.** The defendant is the individual sued by the plaintiff. The defendant usually is also represented by a lawyer. The defendant disputes the statements, or allegations, in the plaintiff's complaint or may admit the allegations, but argue that he or she has a valid defense to the claims such as self-defense.

**The Judge.** The judge decides which disputed facts (evidence), may be presented to the jury. The judge also tells the jury in "jury instructions" what the applicable law is. The judge decides the issues of law (see the glossary) in the case.

**The Jury.** The jury is a group of ordinary citizens selected to decide the case. A jury usually is made up of a group of six or twelve individuals, depending on state law. In most states, a jury must reach a unanimous verdict. That is, all members of the jury must agree with the decision. Some states allow for less than a unanimous verdict in some civil cases. If less than the required number of jurors agree, then the jury is a "hung jury." That means that the jury was unable to reach a decision. In that case, the case can be tried again.

**Witnesses.** Witnesses must have specific knowledge of what happened. Witnesses are generally not allowed to present hearsay testimony (such as gossip). Expert witnesses may not know the specific facts in the case but may use their specialized knowledge to help the jury understand complex evidence, such as the degree of intoxication that results from drinking certain amounts of liquor.

**The Bailiff.** The bailiff is a court officer charged with keeping order in the court and helping the jury. A bailiff also may oversee custody of prisoners while in court during criminal cases.

Additional terms are defined in the [glossary](#) and you can find out more information about the U.S. judicial system on the [links](#) page.

# **GLOSSARY**



### *Glossary of Trial Terms*

Glossary	
<u>Term</u>	<u>Definition</u>
Admission against interest	Statement by a party to the action that contradicts testimony or other evidence presented by that party in the case. An admission against interest is admissible evidence even though otherwise is hearsay.
Answer	A response by the defendant to the allegations made by the plaintiff in the complaint.
Breach	The breaking or violating of a duty that one owes to another person, as defined by law. A duty may be an affirmative act or an omission or failure to perform an act required by one's relationship to another.
Burden of proof	A party's obligation to establish by evidence certain facts necessary to prove that party's case. In a civil case, the plaintiff has the burden to prove by a "preponderance of the evidence" that he or she is entitled to recover or other relief.
Business record	A business record is a document maintained in the ordinary course of business. The party seeking to introduce the business record into evidence shows by evidence (usually oral), that the business record was made and kept in the ordinary course of business at or near the time of the transaction discussed in the document, by one having a duty to record. A business record is admissible even though it otherwise is hearsay.
Cause of action (or claim for relief)	A situation or state of facts that may entitle a party to recover.
Civil action	In general, any action that is not a criminal proceeding. All actions brought to enforce, redress, or protect private rights.



Closing argument (or summation)	A summary of the evidence and argument of the party's position at trial, made by the party's attorney. It does not constitute evidence.
Complaint	Initial pleading, commencing an action under statutory codes or rules of civil procedure. Complaints include statements of the court's jurisdiction and facts tending to show that the plaintiff is entitled to relief. A complaint may include different causes of action and may seek alternative forms of relief.
Contributory negligence	Actions by the plaintiff which constitute a breach of duty; a plaintiff's failure to protect himself or herself from injury contributed to the injury. If the defendant establishes contributory negligence by the plaintiff, the plaintiff is precluded by law from recovering any damages.
Credibility	That quality in a witness that renders him or her believable.
Defendant	The party sued by the plaintiff in a civil action.
Directed verdict	Verdict entered by trial judge when the party with the burden of proof has failed to present sufficient facts to establish its case and judge decides that the only one possible result that a reasonable jury would be to find the defendant not liable. A defendant is required to preserve certain arguments for appeal, to move for directed verdict when the plaintiff finishes its case. To preserve arguments for appeal, a plaintiff is required to move for a directed verdict when all of the evidence has been presented.
Duty	An obligation or conduct defined in the law as reasonable conduct in light of the perceived risk.
Elements	The constituent parts of a cause of action that the plaintiff must prove in order to prevail.
Exhibit	Documents, diagrams, or other objects presented as evidence in court during a trial or hearing as proof of facts of a party's position, identified by party and numbered, usually consecutively.
Hearsay	A type of testimony that relates not what a witness knows from personal knowledge but what others have told him or what he or she has overheard. It is a statement by someone other than the original speaker, and it is offered in evidence to prove the truth of the matter asserted. Hearsay generally is not admissible unless it falls under certain exceptions provided in the rules of evidence.

Issue of fact	A version of facts maintained by one party and challenged by another. Issues of fact are decided by triers of fact, usually juries.
Issue of law	An issue involving interpretation of law where the facts are not disputed and from which only one conclusion can be drawn. Issues of law are decided by judges, not juries.
Issue of law and fact	An issue involving both interpretation of the law and resolution of disputed factual issues.
Judgment	An official decision by a court deciding the respective rights and claims of parties to an action.
Jurisdiction	The power of a court to decide a matter in controversy presented to it. The existence of judicial jurisdiction assumes that the court has control over the matter in controversy and the parties.
Jury	A certain number of men and women, selected according to law, and sworn to consider and decide matters of fact presented to them.
Jury deliberations	The process by which a jury meets separately to decide matters presented to it based upon the legal principles (or "instructions") given by the court.
Jury instructions	A statement of the law made by the judge to the jury, informing the jury of the law that applies to the case.
Negligence	Failure to use such care as a reasonably prudent and careful person would use under similar circumstances, proximately causing injury to another.
Objection	A statement by a party in open court challenging evidence before it is presented to the jury.
Opening statement	A summary, presented by a party before the trial begins, of the evidence that the party anticipates will come into evidence.
Plaintiff	A person who brings a civil action against another and seeks redress for alleged civil (non-criminal) wrongs.
Preponderance of evidence	A standard of proof in civil cases in which the evidence as a whole shows more likely than not that the facts sought to be proved are more probable than not. A preponderance of evidence is determined not by the number of witnesses, but by the greater weight of all of the evidence, considered as a whole. A plaintiff must prove its case by a preponderance of the evidence in order to recover.

Proximate Cause	An event (including a failure to act) that produces, without any intervening cause, in the injury and without which the injury would not have occurred.
Summation (or closing statement)	A summary of the evidence and argument of the party's position at trial, made by the party's attorney. It does not constitute evidence.
Verdict	The formal decision or finding made by a jury, empanelled and sworn to decide a cause of action and reported to the court.
Verdict form	A form that sometimes is presented to a jury seeking answer to specific questions on the causes of action and possibly other issues raised by the parties.

**PLAINTIFF**



*Estate of Hans Peder Jensen*

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Hans Peder Jensen was 20 years old when he boarded the White Star Line's R.M.S. Titanic. He was traveling with his fiancé [Carla Christine Jensen](#) who was a year younger than Hans. While they shared the same last name, they were not related and had not yet married. They both grew up in the town of Eskildstrup, Denmark.

Since Hans did not survive and his body was never found, all evidence of his actions on the night of the Titanic sinking come from the survivors.

Hans and Carla each signed a will before they left on Titanic. Hans' will has been brought from Denmark to New York City where the trial is taking place. His will names Carla as his sole heir and executor of his estate. As Hans' executor, Carla stands in Hans' place for bringing suit. Therefore, Hans' estate, by its representative, Carla Jensen, is the plaintiff in the suit against White Star Lines.

**DEFENDANT**



*Estate of Hans Peder Jensen*

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# **PLAINTIFF'S BRIEF**





**ESTATE OF HANS PEDER JENSEN,**

## NEGLIGENCE

The tort of negligence is:

1. doing something that a person using ordinary care would not do, or
2. not doing something that a person using ordinary care would do. W. Page Keeton et al., Prosser and Keeton on the Law of Torts, §§ 28-31.

Ordinary care means the attention or skill that a reasonable person would use under similar circumstances. In order to prove negligence we must prove four elements:

1. that there is a duty of care owed to a person;
2. a breach of that duty occurred;
3. there is a reasonably close casual connection that causes injury (proximate cause); and
4. that injury causes actual damage or loss.

### WHITE STAR LINES' DUTY TO ITS PASSENGERS

The first element of negligence is that the defendant owed a duty of reasonable care to a plaintiff, or to a class of which the plaintiff is a member. The White Star Line, as the owner and operator of the R.M.S. Titanic, clearly owed a duty of care to all of the passengers on its ship. The passengers paid to sail aboard the most luxurious passenger liner that had ever existed. Each and every passenger relied upon the Defendant, The White Star Line, to safely take them to New York. The White Star crew owed a duty of care to provide passengers with not only a room, food and heat, but most importantly a safe trip to their destination New York City.

### WHITE STAR LINES' BREACH OF DUTY OF CARE

The second element of negligence requires that the defendant's breach of its duty by failing to conform to the required standard of care. A breach of duty occurs if the Defendant's conduct creates an unreasonable risk of harm to others. It is an objective test: whether a reasonable person would have conducted himself as the defendant did. It is **not** a subjective test, which would mean you would have to ask whether the crew thought they were behaving reasonably. The White Star Line and its agents, the crew of the Titanic, behaved in an unreasonable manner in many ways, all of which individually and collectively resulted in the most modern ship in the world, equipped with a modern radio, hitting a large iceberg on a clear night in calm seas.

### CAUSATION OF FATAL INJURIES TO TITANIC'S PASSENGERS

The third element of negligence is that breach of duty is both the cause in fact and the legal or proximate cause of the plaintiff's injuries by the defendant. The plaintiff can show that the breach of duty is the cause in fact if, but for defendant's conduct, the plaintiff would not have been harmed. To show causation a plaintiff also must prove that Defendant's conduct was the proximate cause of the harm alleged by the plaintiff. *Atlantic Coast Line R. Co. v. Daniels*, 70 S.E. 203 (Ga. 1911). The Defendant can be liable only for the consequences of his negligence, which were reasonably foreseeable at the time he acted. *Id.* If the Defendant's breach of duty caused the Plaintiff's injury, but the

Defendant could not foresee that such breach of duty would result in the type of injury that the Plaintiff suffered then there is cause in fact, but no proximate cause. The crew certainly could have foreseen that operating a ship at night at a high rate of speed in iceberg infested waters could result in damage that would sink the ship and kill many passengers; and this was not the only cause of Mr. Jensen's death. There were many others.

#### DAMAGES TO JENSEN'S ESTATE

The final element of a cause of action for negligence is proof of actual damages from the defendant's negligence. Plaintiff's damages here include the emotional, physical, and financial loss suffered by Mr. Jensen's and to Miss Jensen, who as Mr. Jensen's sole heir will inherit the compensation to be paid to Mr. Jensen's. We will show that Mr. Jensen suffered:

1. the loss of his life,
2. the loss of a lifetime of lost wages of an excellent carpenter
3. the excruciating pain and suffering of freezing to death, and
4. the mental anguish of knowing he would die and that he would never see his fiancé again.

Plaintiffs also seek punitive damages to punish White Star for its wanton and reckless behavior of failing to properly operate and control the Titanic.

#### CONCLUSION

For the foregoing reasons, the Court should instruct the jury on the elements of negligence as set forth above.

Dated:\_\_\_\_\_

New York, NY

Respectfully submitted,

\_\_\_\_\_

Attorney for the Estate of Hans Peder Jensen

# **DEFENDANT'S BRIEF**



**ESTATE OF HANS PEDER JENSEN,**

A. CONDUCT OF FELLOW PASSENGERS AS SUPERSEDING CAUSE: For example, when a thief steals a car with the keys in the ignition and runs over a pedestrian, the car's owner typically will not be liable for the pedestrian's injury. The thief's acts will supersede and cancel out the car owner's negligence in leaving his keys in his car. Thus, if a fellow passenger murdered Mr. Jensen in retaliation for a bad business, the murder would be a "superseding cause" and clearly, White Star Lines would not be liable for Mr. Jensen's murder. If Mr. Jensen's fellow passengers behaved in such a uncontrolled manner that Mr. Jensen decided on his own to step-in to try to control his fellow passengers, even though he had been told Second Officer Lightoller that no such assistance was needed, and as a result, the boat had to be launched without him then Defendant White Star Lines can not be liable for the actions of the fellow passengers or White Star Lines. Clearly, Lieutenant Bjornstrom-Steffansson was able to both control the crowd and still find room in a lifeboat; and Mr. Jensen could have also done so .

B. MR. JENSEN'S CONDUCT AS SUPERSEDING CAUSE OR ASSUMPTION OF THE RISK: Even if his fellow passenger's conduct was not a superseding cause canceling any negligence by The White Star Line, Mr. Jensen's own actions were a superseding cause. Mr. Jensen voluntarily chose to step out of Lifeboat D. Everybody that remained in Lifeboat D lived. There was no need for Mr. Jensen to leave the boat when additional women arrived, since the lifeboat was not full when it was lowered away. Mr. Jensen voluntarily "assumed the risk" of his actions and the resulting injury. A person "assumes the risk" of injury when, with full knowledge and understanding of an obvious danger, he voluntarily exposes himself to a known danger. In such a situation, the injured person cannot recover for injury resulting from that danger. Once again, Defendant White Star Line is not liable for Mr. Jensen's injuries.

The following example illustrates this principle. Imagine you are sitting in the stands along the first baseline at a major league baseball game. You know that particular batter is known for swinging late fouling balls down the first baseline. When one of the batters does hit a foul ball that hits you in the head. You cannot recover for your injury because, by attending the game, you assumed the risk that you might get hit. See Murphy v. Steeplechase Amusement Co., 166 N.E.2d 173 (N.Y. 1929).

Here, it is clear that Mr. Jensen "assumed the risk."

- First, he no doubt had knowledge of the risk or danger presented by not staying in the lifeboat.
- Second, as a twenty-one year-old of at least average intelligence, he understood that risk and danger.
- Third, he voluntarily exposed himself to that risk by declining to remain in the seat he occupied.

Because Mr. Jensen's actions that night reveal that he voluntarily assumed the risk that he might not survive, the Plaintiff cannot recover.

## **II. MR. JENSEN'S OWN CONTRIBUTORY NEGLIGENCE BARS PLAINTIFF'S CLAIM**

Contributory negligence is fault by the Plaintiff, which in conjunction with the negligence of Defendant, causes Plaintiff's injury. Any amount of contributory negligence bars recovery, even a minuscule amount of negligence. For example, even if White Star was 99.9% negligent and Mr. Jensen was .01% negligent, the law bars Plaintiff from recovering against White Star. Thus, even though White Star may have been negligent and that negligence was the major part of the cause of Mr. Jensen's death, the Plaintiff may not recover if Mr. Jensen did anything that contributed to his own death. So, if Mr. Jensen died because he disregarded the directions of the crew and jumped overboard without his life jacket, or because of his drinking Mr. Jensen did not act at all time in a reasonable manner and such unreasonable action, even if slight, contributed to his death, Mr. Jensen's contributory negligence would bar any recovery by Plaintiff.

### **CONCLUSION**

As the testimony has revealed, Mr. Jensen's conduct the night of April 14-15, 1912 demonstrates the acts of others, of Mr. Jensen, or of both, caused the death of Mr. Jensen. Alternatively, Mr. Jensen's own acts of negligence contributed to his own death. In either case, Plaintiff may not recover against White Star Lines.

Dated: \_\_\_\_\_

New York, NY

Respectfully submitted,

\_\_\_\_\_

Attorney for White Star Lines

**WITNESSES**





## Witnesses

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There are three witnesses to Titanic sinking in the case of *Estate of Hans Jensen v. The White Star Line*. The witnesses, even Carla Jensen, have information that is helpful to both sides. So, either party may call any of the witnesses or this information favorable can be brought out on cross-examination. The witnesses have provided documents to the lawyers for the parties, which are linked below. In addition, we have linked some searches to help you get started with your on-line research. The three witnesses are:

[Carla Christine Jensen](#), the fiancée of Hans Peder Jensen. Carla is not only a witness, but also the executor of her fiancée's estate. Unlike a criminal trial, in a civil trial the parties to a trial can be made to testify, so Carla can not claim her fifth amendment rights against self incrimination unless she would be required to provide evidence of a crime by her. You will find a variety of information on the Web about Carla. Her name appears on many websites as this [Infoseek search](#) shows.

[Second Officer Charles Herbert Lightoller](#) was on watch from 6-10 pm. He played an important role in the evacuation as can be seen from this [Altavista search](#). As you will also see, all the sources do not agree about the various events of that night, but this is almost always the case when people try to remember dramatic events, before the invention of electronic recording.

[Lieutenant Mauritz Hakan Bjornstrom-Steffansson](#) is the Military Attaché in Sweden's New York Consulate. Information about him appears on many websites as shown by this [Excite search](#).

[Note: Mr. Bjornstrom-Steffansson behavior the night the Titanic sank in reality was somewhat different than is portrayed by these witnesses here. For the purposes of the virtual trial, you should disregard, any evidence gathered from outside sources that do not agree with one of the witnesses' accounts. Even among these three witnesses, however, each saw the behavior of the other party somewhat differently. Unless instructed otherwise, you can use outside sources to support any witnesses' account of the events of that night. You may call additional witnesses if there is time, but in order to present all the issues set forth in the jury charge, you will need to call each of these three witnesses.]

## *Carla Christine Jensen's Information for Her Attorney*

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*Prepared at the request of Counsel  
Attorney Client Privilege*

You asked me to tell you what happened on the horrible trip on the Titanic.

I left Eskildstrup, Denmark with my fiancé, Hans Jensen, my brother, Svend, and my cousin, Niels, to travel to the United States. We all planned on living in Oregon. They were going to be carpenters in the City of Portland. We chose the Titanic as our means of travel because it was supposed to be "unsinkable" and "the safest boat in the world." We were very excited about being on such a new boat. On the ship, I stayed in a cabin on Deck F, in the back part of the boat with all the other single women. Hans, Svend, and Niels stayed on the other end of the boat.

Around midnight on April 14, 1912, I remember being awoken by a loud sound. I didn't think much of it, so I went back to sleep. Then, around 1:30 a.m., the girls in the next cabin came and woke me up. I could barely understand what they were saying. They told me that we had to leave the boat immediately because something had gone wrong. I only had time to put on a pair of stocking slippers and overcoat to cover my nightgown.

We rushed up the six decks from where our cabin was, to the lifeboat deck. As I got to the top of the stairs leading to the deck, I saw Hans. He was on his way to find me. Hans had been helping load passengers on the lifeboats for nearly an hour because there weren't enough seamen to load all of the passengers. But when he didn't see me after a short time, he started to get worried.

We headed towards the boat's railing and I could see that only women, children, and crewman were supposed to get on the lifeboats. Everyone was concerned, but no one was screaming. I could even hear the band playing, "Nearer My God to Thee!" When it was my turn to get on the boat, Hans told me that I'd probably be in New York a few days before him, but to wait for him. He gave me a hug, kiss on the forehead, and said he'd see me soon. After I sat down in the boat, he helped the seamen get the ropes unstuck and stood at the rail until I disappeared into the darkness. That was the last I ever saw of Hans.

I had known Hans since we were little, but we didn't pay attention to each other until he returned from his duty with the Danish Army. The only picture I have of him, he's in his cadet's uniform. He learned carpentry from my cousin Neil who said that Hans was going to be quite a success. Hans just had such a beautiful way of crafting wood. People from all over Eskildstrup admired his work. He even had a list of people that wanted to place furniture orders with him.

We decided to go to America because in Denmark Hans could only make about \$10 a week. But he had been told that for doing the same work in America, he could make over \$25 a week. We knew that America was growing rapidly and that good carpenters could make a lot of money if they did good work.

## *Second Officer Lightoller's Memo to the White Star's Lawyer*

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Prepared at the request of the White Star Line Counsel  
Attorney Client Privilege

You asked me to write down what happened the night the Titanic sank.

### **BEGINNING OF MY WATCH**

I came on duty that night promptly at 6:00 p.m. for my watch, which ends at 10:00 p.m. Around 7:30, when I finished my dinner, I noticed that the temperature had quickly dropped since I began my watch. However, the sky was still clear and the sea calm. Captain E.J. Smith remarked how cold it had gotten when he arrived on the bridge at 9:00 p.m. He told me to increase to 22-1/2 knots so that we could set the record. The day before we had made 536 miles.

### **DISCUSSION WITH CAPTAIN**

The Captain and I discussed how navigating through this area was the most crucial part of the trip. Since we had received only one isolated ice warning from the ship, *Caronia*, I believed that there was very little ice around. After the Titanic sank, I learned we had received ice warnings from three other ships. I thought that if there were any icebergs in the vicinity, the light reflecting from the stars would allow us to see them. The Captain left the bridge around 9:20 p.m.

### **WARNING TO FELLOW OFFICERS**

I instructed Sixth Officer Moody to let the other men know in subsequent watches that they should be on the look out for small chunks of ice, since at that time I only knew of one report of ice. By 10:00 p.m. my shift was over, so I gave First Officer Murdoch the ship's course and speed. I also mentioned the possibility of ice being in the area. I went to bed after completing my round of the ship. Around 11:40 p.m., as I was just closing my eyes, I felt a vibration. I ran to the deck to see what had happened. Although we didn't see anything, both Third Officer Pitman and I agreed that the ship had hit something.

### **LOADING LIFE BOATS 12 & 16**

Around midnight, I was informed that F Deck by the mail room had been flooded. As soon as Captain Smith gave me the orders, I began loading women and children on to lifeboats. I remember seeing a passenger on the davits untangling lines out of the corner of my eye. I called over to him and said it was not necessary that he help us. He responded that Officer Moody asked if him to work on these lines while Moody worked on the lines on the other end of the lifeboat. When we were done loading Life Boat 12, he jumped down and asked me if I had seen his fiancée, Carla Jensen. I smelled alcohol on his breath and asked him if he had been drinking. He told me his birthday was the next day, April 15th, and that he had had two drinks with his fiancée's relatives to celebrate. I corrected him and said that it was already his birthday, since it was now after midnight. I then asked what class his fiancé was

in and he said third class. I told him that I didn't know many passengers in third class, but that he'd better go look for her. As we were loading Life Boat 16, I saw Jensen kiss what I presumed to be his fiancé and help her into the boat.

## **COLLAPSIBLE BOAT D**

I then went to assemble Collapsible Boat D. Because of the way the passengers began to act, several of the officers armed themselves with guns and encircled the boat, allowing only women to take seats. A Swedish military attaché named Bjornstrom-Steffansson tried to help control the crowd. But I could see that he was only interested in remaining near one of the last remaining lifeboats, because he kept looking over his shoulder at the boat. Jensen returned and began assisting us by controlling the crowd. I told him once again that we didn't need his help, but he did seem to be doing a good job.

I could tell that although Jensen wasn't the type to start a fight, he certainly wouldn't back down from one -- and I think the passengers knew that. As soon as it appeared there weren't anymore women to put on the boat, we decided to allow some of the men to get in, so I told Jensen to get aboard the boat. Just after Jensen got in, more women showed up, so I told everyone in Boat D to make room. There was a murmuring in the crowd as the men not on the boat realized there was still space in Boat D. When I said, "make room" Jensen and most of the other men jumped out and Jensen helped calm the crowd. I turned and ordered the men to start lowering the boat immediately so it wouldn't tip over and also because the lines were likely to tangle as the deck tilted more sharply. As the boat was lowered past A Deck, two men jumped on to the boat from the A Deck promenade. I sent two crewmen to follow the boat down. When I turned around, I did not see Jensen anywhere.

## **RESCUE**

The water began to rise rapidly, so I jumped on to the roof of the officers' quarters to free Collapsible Boat B. The deck was now tilting steeply, so once the ropes were partially sawed through, Boat B broke away and flew into the water. One of the boat's funnels started to fall towards me so I jumped from the roof into the very icy water and ended up near a grate over an engine room air intake. The force of the water filling the air intake sucked me down against the grate as the boat went under. Luckily, the cold water rushing through the grate hit the boilers, which blew and blasted me back to the surface. I swam to Collapsible Boat B, which was upside down, and pulled myself on top of it with many other men, where most of us remained until the Cunard Lines' *Carpathia* arrived and took us aboard in the morning. I believe I was the last man pulled from the water alive.

## *Mauritz Hakan Bjornstrom-Steffansson's Letter to White Star Line Counsel*

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Lieutenant Mauritz Hakan Bjornstrom-Steffansson  
Military Attaché  
Consulate General of His Majesty Gustaf V  
Kingdom of Sweden  
New York, New York

General Counsel  
The White Star Line  
New York, New York

Sir:

It has come to my attention that Ms. Carla Jensen is suing your respected company and I believe that you would be interested in my recollection of the events of that night. I am the Military Attaché to the Consulate of the Government of Sweden in New York City. As such, I am experienced in reporting events accurately and objectively.

I have vivid recollections of the night the Titanic sank. That evening I was drinking lemonade in the first class smoking room with several other gentlemen. At 11:40, we all felt the boat slightly vibrate. The vibration was so slight as interrupt only momentarily my vigorous debate with Hugh Woolner about the changing world order. Our debate was interrupted by a White Star Line officer who told me that I needed to put my life jacket on immediately. Since I'm a military man, I obeyed the officer, put on my lifejacket, and went to see how I could help the other passengers.

As I approached the Boat Deck, I saw that it was busy with passengers from all classes, even passengers from the lower decks had ventured up. I immediately stood to and assisted the women and children in preparing to board the lifeboats. Hugh reassured the women as they were waiting to board. He joined me as I helped passengers such as Mrs. Edward Candee, into the boats.

I had been working on untangling the ropes of Lifeboat 12, which presented some difficulty due to their poor design, when this man, who I later learned was Hans Jensen, rudely pushed me out of the way. He jumped up on the rail and rashly untangled the ropes while hanging over open water. Officer Lightoller came over and told Jensen to get down from the railing. When he jumped down next me to where I stood waiting to explain to him how a gentleman behave, I was not surprised to smell alcohol on his breath, which no doubt gave him the courage to do such a foolish thing. Second Officer Lightoller must have smelled it too, because he asked Jensen who he was and if he had been drinking, before I had a chance to say anything.

While Officer Lightoller was reprimanding Jensen, I went over to comfort the distraught ladies. As I continued to comfort ladies, I saw over their shoulders Jensen kissing some woman who may have been this purported fiancé that has brought suit against you.

As we were accompanying the ladies towards the remaining lifeboats I heard a shot and saw that Second Officer Lightoller had his men in a ring around Boat D and some of them had their guns at the ready. Jensen was once again interfering with the officers duties by standing before them face toward the upset passenger, which resulting in his blocking the officers line of fire should the crowd become uncontrollable. Seeing how unruly the crowd had become, I told the passengers, a few of whom were even first class passengers, to back away and let the sailors do their job. I kept looking over my shoulder to make sure the sailors were assembling the boat properly. Jensen continued to interfere with the officers doing their job properly, but did keep the crowd far away enough from the officers so that they could readily use their sidearms were there a need to do so.

Once all the women in the immediate area had been loaded, Lightoller allowed certain men to board. Jensen quickly got on board. I hung back in case there were other women who needed to board, which as it turned out there were. When

Lightoller called for the passengers in the boat to make room, Jensen to my surprise, got out of the lifeboat rather than simply moving over like some other passengers. Once these women were boarded, unfortunately, Lightoller appeared to have lost his nerve and ordered the boat lowered, when I could clearly see there were empty seats in the boat. Jensen had gotten the men from the lower decks calmed down so there was nothing else for Hugh and I to do. This was the last I saw of Jensen.

I called to Hugh and we both went down the first class stairs to the A Deck where the boat was just passing in its descent to the water. We both decided it was best if we accompanied the women, since there was plenty of room and the women might need our help. I let Hugh jump first. With a short jump, I dropped a surprising distance into that part of the boat where there were no ladies. Our landing in the boat caused no serious disruption and we continued to assist in calming the ladies.

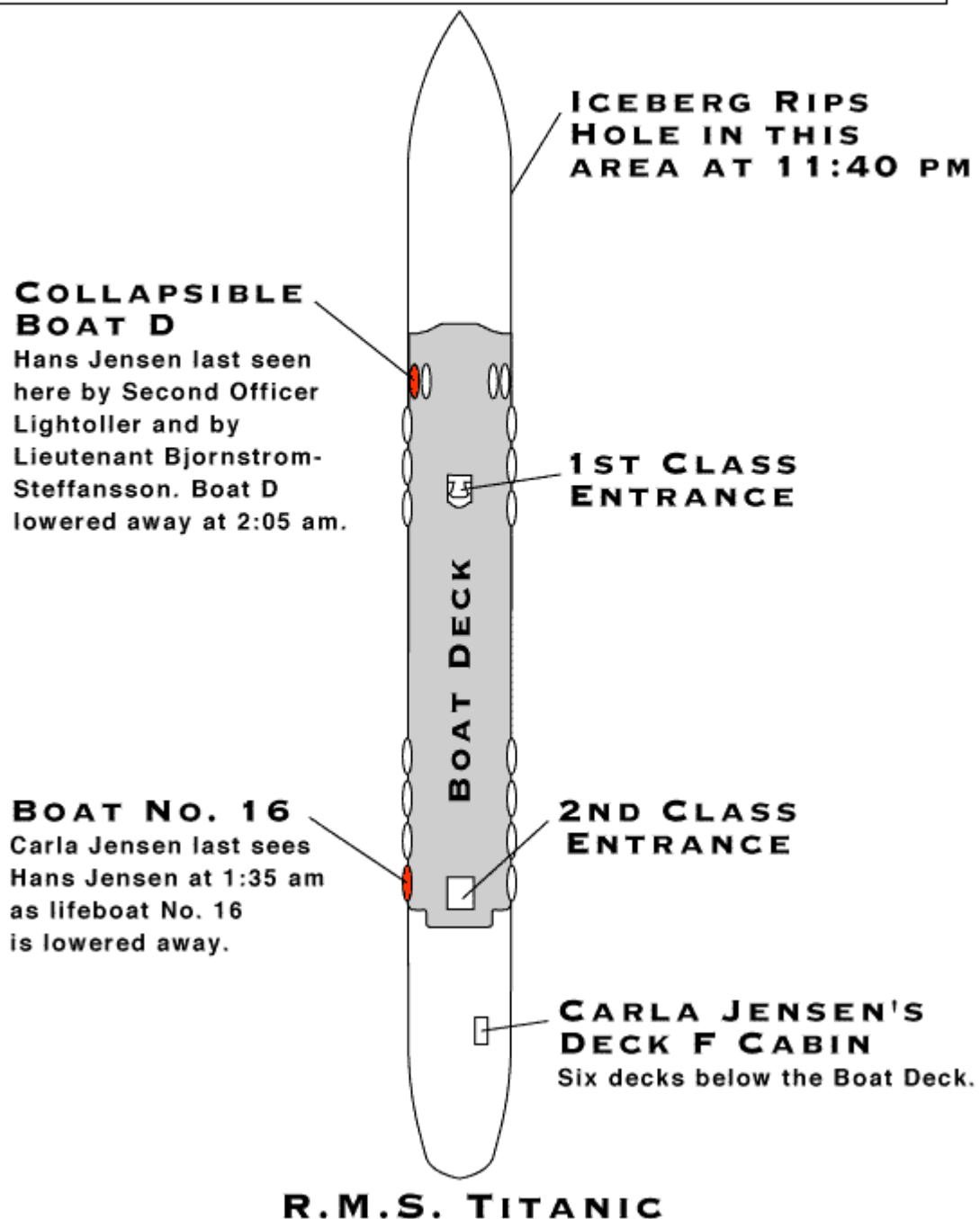
Please feel free to call on me if I can be of any service to your excellent line.

Your faithful servant,

Lieutenant Mauritz Hakan Bjornstrom-Steffansson Military Attaché Consulate General of His Majesty Gustaf V Kingdom of Sweden New York, New York

# EXHIBIT

**JENSEN V. THE WHITE STAR LINE  
PLAINTIFF'S EXHIBIT I.**





# **JURY CHARGE**



### *Jury Charge*

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**Members of the Jury**, you are about to deliberate and decide the verdict in the case of Estate of Hans Jensen versus White Star Lines. You are hereby charged to obey the law as I will explain it to you. Your job is to determine what the true facts are and apply them to the law as I explain it to you. You are not to allow sympathy or animosity for either of the parties to this suit to sway your determination of the facts or your interpretation of the law. You must all decide unanimously whether the defendant, White Star Lines, should be liable for the claims made by the plaintiff, Carla Christine Jensen, Executor of the Estate of Hans Peder Jensen.

**BURDEN OF PROOF** - The Plaintiff has the burden of proof on all her claims, while the Defendant has the burden of proof on all of its defenses. A party must prove a claim or defense by a preponderance of the evidence. A preponderance of the evidence is to prove that something is more likely than not. In other words, a preponderance of the evidence means when the evidence on one side is greater than the evidence on the other side and makes you believe that the evidence is more likely true than not. If the evidence is evenly balanced, then you must decide against the party with the burden of proof.

**JURY TO DETERMINE CREDIBILITY OF WITNESSES** - You are the sole judges of the credibility of the witnesses. You alone are to determine whether to believe any witnesses. If there is any conflict in the testimony, it is your function to resolve the conflict and to determine where the truth lies. If you believe that any witness has shown himself to be biased or prejudiced, either for or against either side in this trial, you may consider whether such bias has affected the ability of that witness to tell the truth.

**DUTY** - You must decide if White Star Lines has a duty to exercise reasonable care to provide for its passengers safety. I hereby charge you that as a matter of law, White Star Lines has this obligation. You therefore must decide if White Star Line breached this duty through its negligence.

**NEGLIGENCE** - You must decide whether White Star Lines was negligent. Negligence is the failure to exercise reasonable or ordinary care. Thus, negligence is doing something a person using reasonable or *ordinary care* would not do, or *not doing something* a person using *ordinary care* would do.

**CAUSE** - If you decide White Star Lines was negligent you must decide if that negligence caused the injuries and damages suffered by Hans Peder Jensen. An injury or damage is caused by an act, or a failure to act, when a preponderance of the evidence shows, that the act or omission played a substantial part in bringing about the injury or damage. There may be more than one cause of an injury. Each person whose negligent act is a cause of an injury is responsible.

**CONTRIBUTORY NEGLIGENCE DEFINED** - Mr. Jensen's estate may not recover his damages if you find that his own negligence was a cause of his injury. The defendant has the burden of proving that the plaintiff's negligence was a cause of the plaintiff's injury.

**SUPERSEDING CAUSE** - If you decide that despite White Star Lines' negligence, that plaintiff voluntarily decided not to seek safety without reasonable excuse, or, if some third party's act intervened that resulted in White Star Lines' negligence no longer being the cause of Mr. Jensen's injury, then you shall decide for the defendant, White Star Lines. The defendant must prove by a preponderance of the evidence that such superseding cause happened. If the evidence is evenly balanced as to the intervening cause, you shall decide for the plaintiff.

**DAMAGES** - If you find for the plaintiff, then you shall award to the plaintiff a sum of money that will compensate his estate for all the damage suffered by him, which was caused by the negligence of the defendant. You should award any future earnings to the plaintiff for the lost wages of Hans Peder Jensen. In determining this amount, you may consider Mr. Jensen's health, physical ability and earning capacity at the time of his death.

**After deciding these matters, you are instructed to fill out the Special Verdict Form and return it to me. Fail not to perform your duties faithfully, truly and with out prejudice. You may now retire to deliberate.**

# **JURY VERDICT SHEET**



*Jury's Special Verdict Sheet*

**Jurors, after deliberation of all the testimony, documents and exhibits you are to carefully consider the evidence and come to a unanimous conclusion as to each question below:**

**Elements of the plaintiff's prima facie case of Negligence:**

Negligence is a "tort," a private (non-criminal) wrong or injury. To prevail on a claim of negligence, a plaintiff must prove by a preponderance of the evidence the following four elements:

1. Duty of reasonable care to the injured party,
2. Breach by the defendant of the duty of reasonable care,
3. Proximate (legal) causation of the plaintiff's injuries (here, in this case, the cause of Mr. Jensen's wrongful death);
4. Damages.

**1. Duty of Reasonable Care:**

(a) Was Hans Peder Jensen a Foreseeable Plaintiff to The White Star Line?

Yes \_\_\_\_, No \_\_\_\_

(b) Did The White Star Line owe a duty of reasonable care to its passenger, Hans Peder Jensen?

Yes X, No \_\_\_\_ (The judge has determined that as a 'matter of law' The White Star Line owed Mr. Jensen a duty of reasonable care so you *need not decide this matter.*)

**IF THE ANSWERS TO THE ABOVE QUESTIONS 1.(a) AND (b) ARE ANSWERED "YES" PROCEED TO THE NEXT QUESTION:**

**2. Breach of the Duty Owed:**

Did The White Star Line breach the duty of care owed to Hans Peder Jensen?

Yes \_\_\_\_, No \_\_\_\_

**IF THE ANSWER TO QUESTION 2 IS "YES" PROCEED TO THE NEXT QUESTION:**

### 3. Causation:

(a) Factual Causation: ***But for*** the fact that Hans Peder Jensen was on board the TITANIC, would he have died?

Yes \_\_\_\_\_, No \_\_\_\_\_

(b) Proximate Causation: Was there a direct connection between the actions or omissions of the crew of The White Star Line and Jensen's death?

Yes \_\_\_\_\_, No \_\_\_\_\_

IF BOTH QUESTIONS ARE ANSWERED "YES" THEN PROCEED TO THE NEXT QUESTION:

### 4. Damages:

(a) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***wrongful death*** of Hans Peder Jensen?

Amount \$\_\_\_\_\_

(b) In what amount, if any, is The White Star Line liable to pay the plaintiff for loss of Hans Peder Jensen's ***future wages*** for the remainder of his work life?

Amount \$\_\_\_\_\_

(c) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***physical pain and suffering*** of Hans Peder Jensen prior to his death?

Amount \$\_\_\_\_\_

(d) In what amount, if any, is White Star Lines liable to pay the plaintiff for the ***mental anguish*** of Hans Peder Jensen prior to his death?

Amount \$\_\_\_\_\_

(e) In what amount, if any, is White Star Lines liable to pay plaintiff for ***punitive damages*** for wanton or reckless disregard in failing to properly perform its duties to plaintiff and to Hans Peder Jensen?

Amount \$\_\_\_\_\_

### Defenses Available to White Star Lines:

1. Superseding Cause: Was an ***intentional act*** by any person other than an employee of White Star Lines that acted as a superseding cause of Hans Peder Jensen's death? (The intentional act could be by Hans Peder Jensen himself).

Yes \_\_\_\_\_, No \_\_\_\_\_

2. Contributory Negligence: Was Hans Peder Jensen, in any way, ***contributory negligent*** in his own death? If so, plaintiff

Yes \_\_\_\_\_, No \_\_\_\_\_

3. Assumption of the Risk: Did Hans Peder Jensen *assume the risk* of his own death?

Yes \_\_\_\_\_, No \_\_\_\_\_

Jurors, after you have come to a unanimous conclusion as to each question below, the completed verdict sheet must be returned to the judge or bailiff.