05

TRIALS

(A) What is a Trial?

(B) How Should I Prepare for a Trial?

(C) What happens during a Trial?

CHAPTER 5

TRIALS

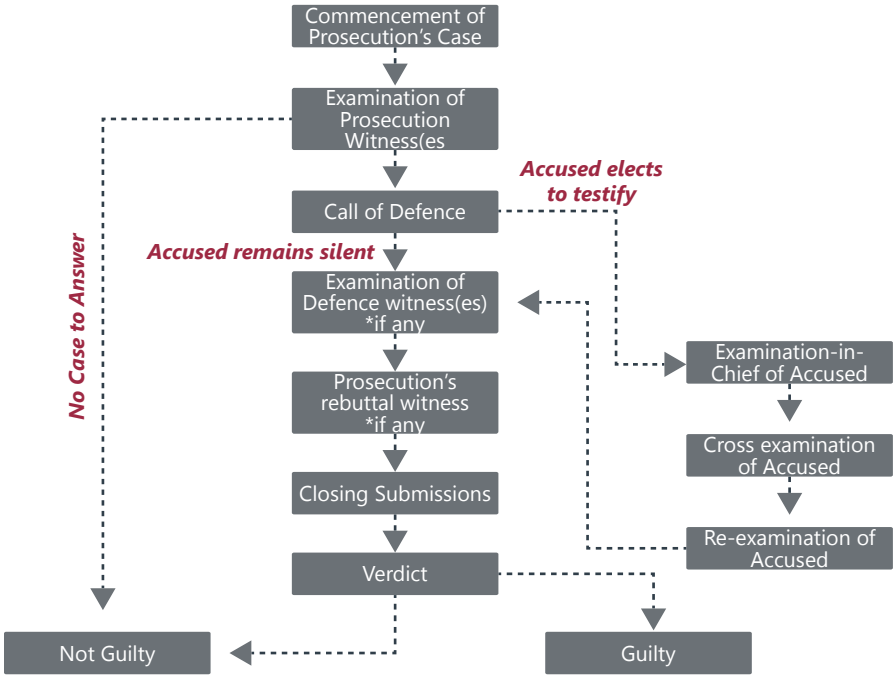
(A) What is a Trial?

A trial is held for the purpose of determining whether you are guilty of the charges brought against you. During the trial, the Judge will hear the evidence produced by you and the Prosecution in accordance with the law. Exhibits may be produced, which may take the form of witness testimonies, documents, videos, photographs, and objects. The Judge will try to find out the truth of what had happened by assessing the accuracy and credibility of the evidence presented.

After hearing all the evidence presented, the Judge will then decide whether to convict or to acquit you.

An overview of the trial process is as follows:

Overview of the Criminal Trial



(B) How Should I Prepare for a Trial?

The Judge can only consider evidence presented in Court. You must therefore bring along evidence, including witnesses (if any), in support of your defence on the day of the trial. Both sides have a right to call witnesses. All witnesses will be sworn and affirmed under oath, and will be subjected to questioning by you and the Prosecution. If you want to rely on what someone else says or knows, that person must come to Court so that the Prosecutor will be able to ask him/her questions.

If disclosure of the Case for the Prosecution and the Case for the Defence has been conducted previously, you would need to give notice in writing to the Court and all other parties if you wish to call any witness or produce any exhibit that has not been disclosed in your Case for the Defence. If you are going to introduce a new witness, the written notice must state the name of the witness and an outline of what he or she will be testifying on. If you are introducing any exhibits, the written notice must provide a description of the exhibit.

The Judge can only consider evidence presented in Court; whatever that is not brought to Court will not be considered.

(1) Witnesses

You must make sure that all your witnesses turn up for the trial. If you are not sure whether the witnesses are willing to turn up, you should apply at the Central Registry (State Courts Towers Level 2) for a "Summons to a Witness" to be issued against that witness. A fee of $20 is payable for every Summons issued. A Court process server will then help you to serve the document on the witness.

(2) Documents

Prepare the documents and all the evidence that you intend to rely on for your defence. You need to prepare at least 4 copies of the documents. One (the original) for the Court, one for the Prosecution, one for the witness and one for yourself.

As a general rule, you should also ensure that the maker[6] of any document is in Court. Otherwise, the document may not be admitted as evidence for the trial. For instance, if you are seeking to introduce a WhatsApp message or Facebook message sent by another person, you may wish to consider calling the person as a witness, so that he can state in Court whether he was the sender of that message.

Your documents should be prepared well in advance of the trial. This is particularly important as the Court may direct you (and the Prosecution) to submit these documents before the actual trial date.

(3) Preparation

You may also wish to prepare a list of questions that you wish to pose to (i) your own witnesses and (ii) the Prosecution's witnesses.

(4) Admitting documents and photographs etc. as evidence at trial

Both sides are allowed to show the Judge relevant exhibits. If you want the Judge to consider any documentary exhibits, you should prepare four copies of it and bring the original to Court.

The maker of the document or the person who took the photograph should come to Court. Otherwise, the Court may not consider it.

Resource: To-Do List
Bring evidence needed to Court
Have the original and at least 4 copies of each document to be used as evidence
Ensure that the author or maker of the document comes to Court *Otherwise the document may not be considered as evidence
Contact witnesses and ask them to attend the trial
Make sure all your witnesses attend the trial
Apply for a "Summons to a Witness" requiring the witnesses to attend the trial at the **Central Registry (State Courts Towers, Level 2)** when trial date(s) is/are given. Cost: $20 for each summons

[6] For example, if you intend to rely on a medical certificate, the doctor who issued the medical certificate will have to attend Court to prove that he made the document. Another example is, if you have a letter from your company which you intend to rely on, you should ask the person who signed off on the document to attend the hearing to prove that he made the document.

You should introduce the documents and photographs through the relevant witness by asking the witness to tell the Court (in examination-in-chief):

- ► What is this?
- ► How and when was it obtained/made/taken?
- ► What is the purpose of this document or what does the photograph show?

Exhibits must be marked and formally admitted before they can be part of the evidence. This means that the Judge will name each piece of document by a letter and a number (e.g. P1 or D1), and the document must satisfy the requirements of the law before it can become a piece of evidence. You should mark your copy of the document when it is marked by the Court either for identification or as admitted evidence. Similarly, for ease of identification, the Court will identify witnesses using references such as "PW1", "PW2" or "DW1", "DW2".

(C) What happens during a Trial?

During a trial, both sides will be given enough time and fair opportunity to address the Court fully on their side of the case. The Prosecutor and you will take turns to present the case. You should wait patiently for your turn to speak. When it is your turn to speak, speak audibly into the microphone, as the proceedings are recorded.

You should take your own notes and record down what was said by the witnesses. If you require pen and paper, you may request for them.

In the course of a trial, the Judge may interrupt you or the witnesses and ask questions to clarify and to get additional facts so that the Judge has all the information needed to decide your case.

The sequence at the trial is as follows:

Step 1: Commencement of Prosecution's case

After the charge is read and explained to you, the Judge will confirm with you whether you wish to plead guilty or claim trial to the proceeded charge(s). If you wish to claim trial, the Prosecution will start presenting their case first. The prosecution may begin with an outline of its case and what it expects to establish through the trial.

Step 2: Examination of Prosecution's witness(es)

The examination of each prosecution witness consists of 3 stages: (i) Examination-in-Chief; (ii) Cross-examination; and (iii) Re-examination. When a witness is on the stand, the rest of the witnesses must remain outside the Courtroom or in the witness room. You should ensure that your witnesses are not in the Courtroom as well.

(1) Examination-in-Chief

The prosecution will call their witnesses to give evidence in the listed order. Exhibits may also be presented as evidence through the witnesses. You should listen carefully to the questions and answers, and make notes for your own reference.

The Prosecutor should not ask leading questions. A leading question is a question that suggests to the witness the answer. For example, "You saw him clearly at the void deck that day, didn't you?" is a question that hints to the witness the answer to the question. Instead, the Prosecutor should ask "What did you see him do that day?" If the Prosecutor asks a leading question, you may stand up and say that you object to it.

(2) Cross-Examination

After each witness's Examination-in-Chief, you will be allowed to cross-examine the witness by asking him/her questions, including any leading questions. You may also show the witness any documents, videos or photographs, to challenge what he has said.

You should use this opportunity to ask each witness questions to test the witness's credibility and the accuracy of his account of events. However, you may not ask questions that would embarrass, insult or annoy the witness. Specifically, in criminal proceedings involving sexual or child abuse offences, the accused shall not ask questions relating to the victim's sexual experience with other persons or physical appearance without the Court's permission.

Resource: Important things to take note of
You are not allowed to ask questions that would annoy, insult or embarrass the witness
The Judge is not your lawyer and will not help you to think of questions. It is your responsibility to ask the right questions that will help your case
Before ending your cross-examination, you should think thoroughly about your defence to make sure that you did not miss out anything crucial

You may ask questions to highlight that:

- There are inconsistent or illogical aspects to the witness's testimony.
- The witness has incorrect or insufficient knowledge.
- The witness is unreliable (e.g. his memory or ability to see clearly are in doubt).
- The witness is not telling the truth.

Finally, you may also give your version of what happened to the witness and ask the witness if he agrees with it. These are known as "put questions".

(3) Re-Examination

After your cross-examination, the Prosecution is allowed to re-examine the witness by asking further questions in order to clarify some of the answers given during cross-examination. You may object if the Prosecution poses leading questions or raises issues which were not brought up during cross-examination.

Evidence given in Court: **Possible objections**

During the Prosecution's examination-in-chief, cross examination or re-examination, it is possible for you to object to certain questions being asked or certain evidence being given. When you object, you do so by standing up and saying "I object, your honour". You will then explain why you objected and the other party has a chance to respond to the objection and the Judge will then decide if the question should be allowed. Some examples of the types of questions or evidence that may be objectionable are listed below.

Irrelevant evidence

- In general, any evidence that does not relate to the charges brought against the Accused and/or co-accused is inadmissible.
- All irrelevant evidence will be disregarded by the Judge.
- If the Judge asks a question or directs anyone to move on and ask questions on a different area or issue, it is not to cut anyone off or to help any side. It is to ensure that time is not wasted and that the case is decided on relevant facts only.

Character

- As a general rule, the Prosecution cannot lead evidence to show that you are a person of bad character. This would include evidence such as your past criminal record.
- However, if you bring up evidence suggesting that you are a person of good character, the Prosecution may use any such evidence (including past criminal records) to show that you are a person of bad character.
- You would be making claims that you are a person of good character if you ask the Prosecution's witnesses questions about your good character, make statements to this effect during your evidence-in-chief, and/or call witnesses to give evidence on your good character.

Hearsay

- Hearsay is a statement by a person who is not in Court as a witness tendered to prove the truthfulness of the facts therein: it could be an oral statement that was overheard by one of the witnesses in Court or a written document.
- For example, if A is called to Court as a witness in a murder trial, and he says, "I heard B say that he saw C commit the murder', this would be hearsay as A has no personal knowledge. A's statement is inadmissible as hearsay and B should be called to testify.
- There are several exceptions to the hearsay rule such as where: (i) maker of statement is dead, cannot be located, or overseas and cannot be made to testify; (ii) the statements are contained in ordinary business documents. You may wish to refer to s 32 of the Evidence Act (Cap 97) to find out what the exceptions to the hearsay rule are.

Opinion

- In general, witnesses should only give evidence on facts which they personally saw, heard or experienced and not inferences/opinions based on those facts. You should not ask your witnesses questions requiring them to draw inferences or state their opinions.
- If you require a witness to provide his opinion on a specialised point (e.g. medical evidence or accident reconstruction), that witness should be called to testify as an expert witness. If you call an expert witness, you will need to ask questions regarding the witness's qualifications and experience as an expert in the field.

Step 3: Call of Defence

After the Prosecution has called all their witnesses, the Court will decide if the Prosecution has presented a sufficient case such that you must answer the charge. You may make a submission of no case to answer if you think that there is insufficient evidence to support the Prosecution's case.

If there is sufficient evidence to support the Prosecution's case, the Court will ask you to present your defence, and the "Standard Allocution" will be read to you. You will be given two options by the Judge: (i) give evidence from the witness stand; or (ii) remain silent.

If you choose to remain silent, the Court may draw all reasonable inferences, including those unfavourable to you. The Court may take your silence into account when deciding whether you are guilty or not.

If you choose to give evidence, you will have to give evidence from the witness box, on oath or affirmation, and be subject to cross-examination by the Prosecution. Whichever you choose, you can call other witnesses to give evidence to support your case. The same procedure of (i) Examination-in-Chief; (ii) Cross-Examination; and (iii) Re-examination will apply for all defence witnesses.

Call of Defence
Standard Allocution

I find that the Prosecution has made out a case against you on the charge(s) on which you are being tried. There is some evidence, not inherently incredible, that satisfies each and every element of the charge(s). Accordingly, I call upon you to give evidence in your own defence. You have two courses open to you. First, if you elect to give evidence you must give it from the witness box, on oath or affirmation, and be liable to cross-examination. Second, if you elect not to give evidence in the witness box, that is to say, remain silent, then I must tell you that the Court in deciding whether you are guilty or not, may draw such inferences as appear proper from your refusal to give evidence, including inferences that may be adverse to you. Let me also say, whichever course you take, it is open to you to call other evidence in your own defence. You may confer with your counsel on the course you wish to take.

I now call upon you to give evidence in your own defence. How do you elect?

Step 4: Examination of the Accused

(1) Examination-in-Chief

Assuming that you have chosen to give evidence, you will be the first person to go on the stand. You may ask the Judge for some time before you begin your case to think about what you want to say in your defence.

You may then begin by giving a summary of the reasons of why you are not guilty. After taking the oath, you should state your full name, age, and current occupation. Then, you can go on to give your version of what happened. This is the "Examination-in-Chief of the Accused", and is an opportunity for you to present your version of the matter.

(2) Cross-Examination

The prosecution will then ask you a series of questions to cross-examine you. The prosecution may seek to produce statements made earlier by you in the course of the investigations. If you disagree with the admissibility of these statements as evidence for the trial, an ancillary hearing (see below for more information) will be held before the Judge for his determination before the trial continues. Do note that even if the statements are admitted, you may argue that the Judge should accord very little weight to them (e.g. because they do not show that you were guilty of the offence).

(3) Re-Examination

After the cross-examination, you will be allowed to clarify what you said in response to the Prosecutor.

Step 5: Examination of the Accused's Witnesses

When you have finished giving your evidence, you may then call your other witnesses to the stand one at a time.

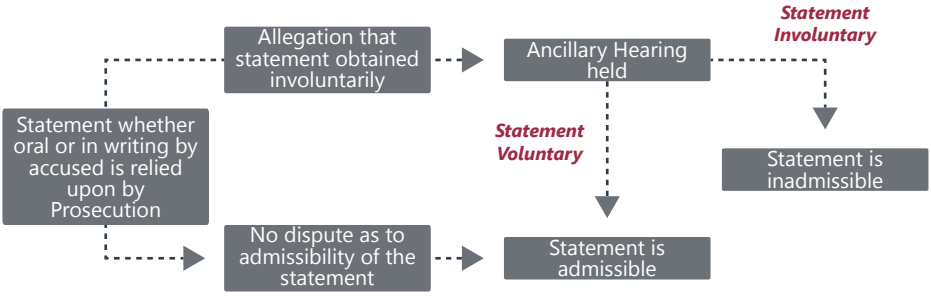
Resource: Important things to take note of
It is very important that all the evidence you want the Judge to hear is given during your case
You should avoid making inappropriate remarks about people or things
Focus on telling the Judge what happened on that day in question. Irrelevant things do not help the Judge to decide the case
If you produce evidence to the Court, explain to the Judge what the evidence is for and give some details about it

Ancillary Hearing

If there is any dispute on the admissibility of any evidence, the Court may exercise its discretion to call an Ancillary Hearing to determine whether the evidence is admissible. In brief, an investigative statement is admissible if the following conditions are met:

- It was made to a police officer above the rank of sergeant
- It was not obtained through threat, inducement or promise by a person of authority; and under the belief that the Accused would gain any advantage or avoid something bad in relation to the offences he/she was charged with.
- It was not obtained under oppressive circumstances (e.g. deprivation of food and drink or medication) such that the Accused's free will was sapped and he gave the statement to gain an advantage or avoid something bad in relation to the offences he/she was charged with.

During the Ancillary Hearing, the Court is concerned about the voluntariness of your statement. Therefore, you should concentrate on how your statement was recorded, what happened during the recording of the statement and why it affected you to the extent that you gave the statement involuntarily. The Judge will then announce his decision as to whether the statement should be admitted.



(1) Examination-in-Chief

You should ask your witness to give some basic information to the Court, such as his name, age, NRIC and occupation. If you have called expert witnesses, you should ask your witness to tell the Court about his qualifications as an expert. An expert witness is someone who has specialised knowledge that supports your case. E.g. doctors and engineers

You may then ask your witness any question which you think may help you, or weaken the Prosecution's case. However, you should only ask questions that the witness is able to answer, and the witness should only testify to relevant facts within his personal knowledge.

Resource: Things not to ask a witness
His views of the evidence of other witnesses
His opinions (unless he is an expert witness)
His comments on the law
What the intentions, thoughts and views of another person were

The questions you ask your own witnesses should be open-ended questions. This means that the questions asked must not lead the witness to the answer you want. You must not state your version of the events and ask the witness if he agrees with it. For example, you should not ask questions like "On that day in question, do you agree that I was having dinner with you?" Instead, you may wish to ask "What were you doing on that day in question?" It is generally easier to frame an open-ended question if you begin with "Who", "What", "Where", "When" or "How".

(2) Cross-Examination

Once you are done asking your witnesses questions, the Prosecution will then cross-examine your witnesses. The prosecution may ask leading questions to challenge their evidence during cross-examination.

(3) Re-Examination

After your witness has been cross-examined by the Prosecution, you will be able to re-examine your witnesses to clarify what your witnesses said in cross-examination. You may ask the witness questions to explain or contradict matters put to him by the Prosecution which he might have been unable to clarify during cross-examination.

Resource: What to do during Re-examination
Re-examination is not another opportunity for you to raise new evidence
Re-examination must only be used to explain or clarify matters referred to in cross-examination
You should ask open-ended questions, instead of putting your version to the witness and asking him to agree or disagree

Step 6: Prosecution's Rebuttal witness

The prosecution may then call or recall witnesses at this stage to rebut the evidence you have raised in your defence. A rebuttal witness can only be called to rebut new information introduced by your defence. You will also be given the chance to cross-examine them.

Step 7: Closing Submissions

At the end of the trial, you and the Prosecutor will be given the opportunity to make closing submissions. The purpose of this is to let parties summarise the evidence and arguments to persuade the Judge to decide the case in their favour.

Resource: Important things to take note of
You should focus on the relevant issues and explain to the Judge why he should believe you
You may highlight the weaknesses of the evidence presented by the Prosecution, or explain why you should be found "not guilty"
You will be allowed to talk about all of the evidence given at the trial. This includes any document, photograph or video which has been put into evidence. You may not bring up new evidence at this stage

You will be asked to make your closing submissions first, followed by the Prosecution. If you need time to prepare your closing submissions, you may ask the Judge for some time. If you cannot remember what was said at trial, you may apply for a copy of the Notes of Evidence via the Central Registry (State Courts Towers, Level 2). Notes of Evidence is a word-for-word transcript of what had been said by the different people in Court.

Step 8: Verdict

Finally, the Judge will decide the case and announce his decision in a verdict. If you are acquitted (i.e. found not guilty), the trial process comes to an end and you are free to leave. If you are convicted (found guilty), the case will proceed to mitigation and sentencing where the Judge will decide how you will be punished. If you are unsatisfied with the verdict or sentence or both, you may file an appeal with the Central Registry (State Courts Towers, Level 2) within 14 calendar days from the announcement of the sentence. (See Chapter 7 for information on Appeals).