

EXPLAIN

4. Examine figure 1. In what way does this image undermine the principle of the presumption of innocence?
5. Read the case study in this section, 'Presumption of innocence — on your bike'. Joshua Carew was held in solitary confinement for approximately six weeks before a bail hearing in the Supreme Court. Briefly outline what this suggests about the attitude of the Queensland government towards the presumption of innocence principle.

DISCOVER

6. The media is expected to avoid news coverage that undermines the presumption of innocence. However, there are many cases where the media has ignored this principle. Charges made against Martin Bryant in 1996 are one example. Find out more about what the media did before the Bryant case went to court.

PREDICT

7. What might happen if an accused person went to court and was put on trial without the presumption that they were innocent?

THINK

8. Discuss the advantages and disadvantages of the principle of presumption of innocence.

3.3 What is a fair trial?

In Australia, we believe that our legal processes protect the right of every accused person to receive a fair trial — a trial held before a competent, independent and unbiased court recognised by law. You would presume that your side of the story would be listened to. You would expect that you would be provided with the opportunity to contest any charges made against you. You would think that the person listening to both sides would not favour either of those sides.

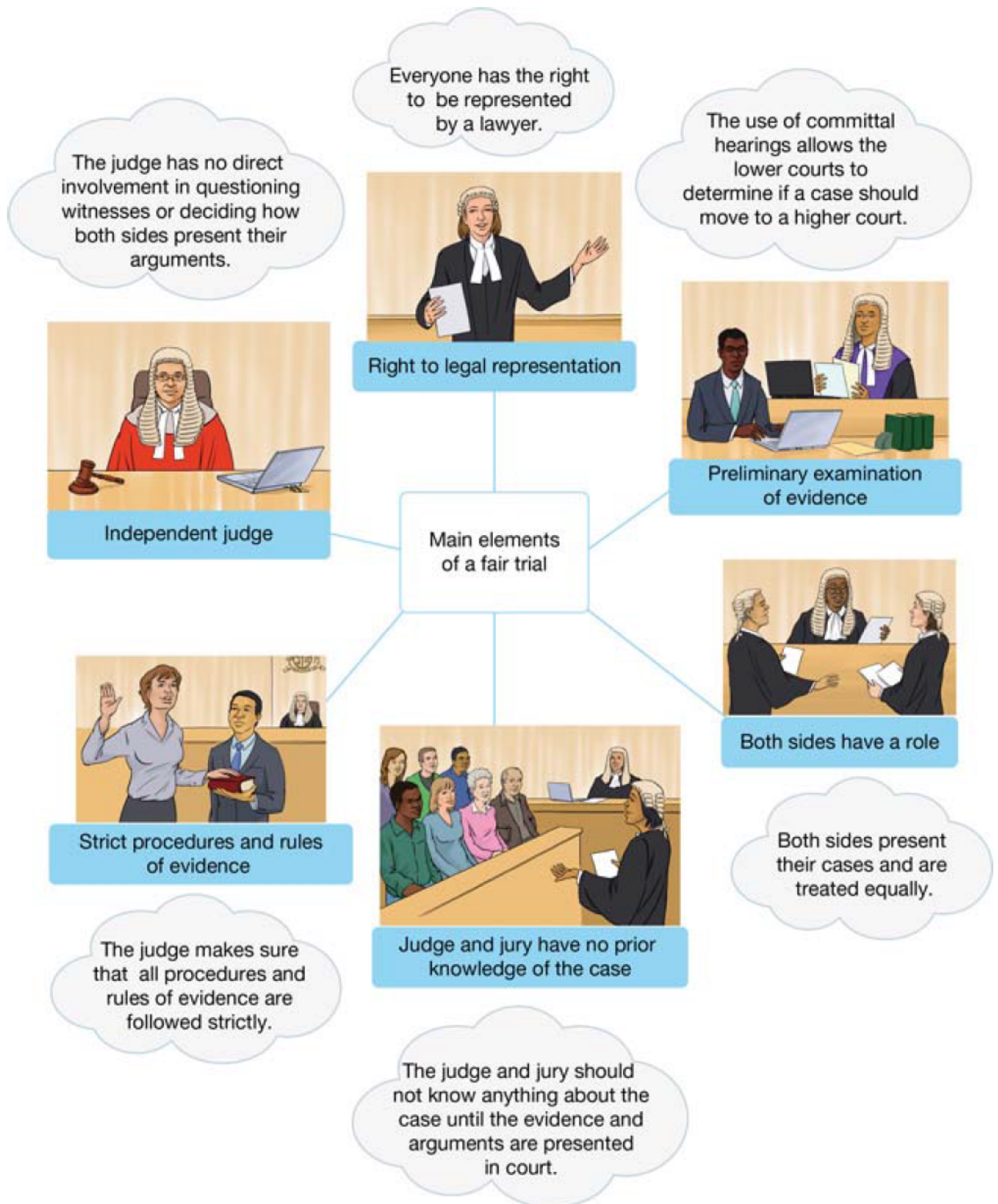


FIGURE 1 Main elements of a fair trial

Main elements of a fair trial

The main elements of a fair trial are summarised in figure 1. Let us now look at each element in more detail.

Preliminary examination of evidence

When a person is charged with a criminal offence, he or she will be told to attend a magistrates court. The magistrates courts hear minor offences and some serious cases. They also examine very serious cases to decide whether the accused person should be put on trial in a higher court. This is called a [committal hearing](#). If the magistrate decides that there is enough evidence and the case is serious enough, the case will be heard in the District (or County) Court, or in the Supreme Court.

Committal hearings guarantee a fair trial because they allow an accused person to know the case against him or her. They also provide the opportunity for the accused person to gather evidence and to test the evidence of the prosecution.

Right to legal representation

In a fair trial, everyone has the right to [legal representation](#). In certain cases, legal aid can be provided for people who cannot afford the cost of hiring a lawyer (see section 3.4).

Both sides have a role

The right to a fair trial means that everyone is entitled to be treated equally by the court. Both sides have the right to present their case. The two opposing sides will gather evidence and present their case to an independent judge or magistrate. The side with the strongest argument is likely to win the trial.

Independent judge

The judge is very much like the umpire in a game of football. His or her job is to make sure that both sides follow the rules. Judges are independent, which means that they have no direct involvement in questioning witnesses or deciding how either side will present its arguments. The judge makes sure that all the rules of evidence and procedure are followed and that both sides are treated equally.

Judge and jury have no prior knowledge of the case

Neither judge nor jury should know anything about the case until the evidence and arguments are presented in court. Jurors must listen very carefully to the evidence given in a trial and make a decision based only on that evidence and the law. They are not allowed to discuss the case with anyone else, even after the trial has finished.



FIGURE 2 Any citizen who is listed on the electoral roll can be randomly summoned for jury service.

Strict procedures and rules of evidence

A fair trial will follow strict procedures. These procedures are designed to ensure that each side has an equal opportunity to present its own case as well as challenge the evidence introduced by the other side. A fair trial will also observe strict rules for the type of evidence that can be looked at in court. The procedure for a trial in a higher court with a jury is shown in figure 3.

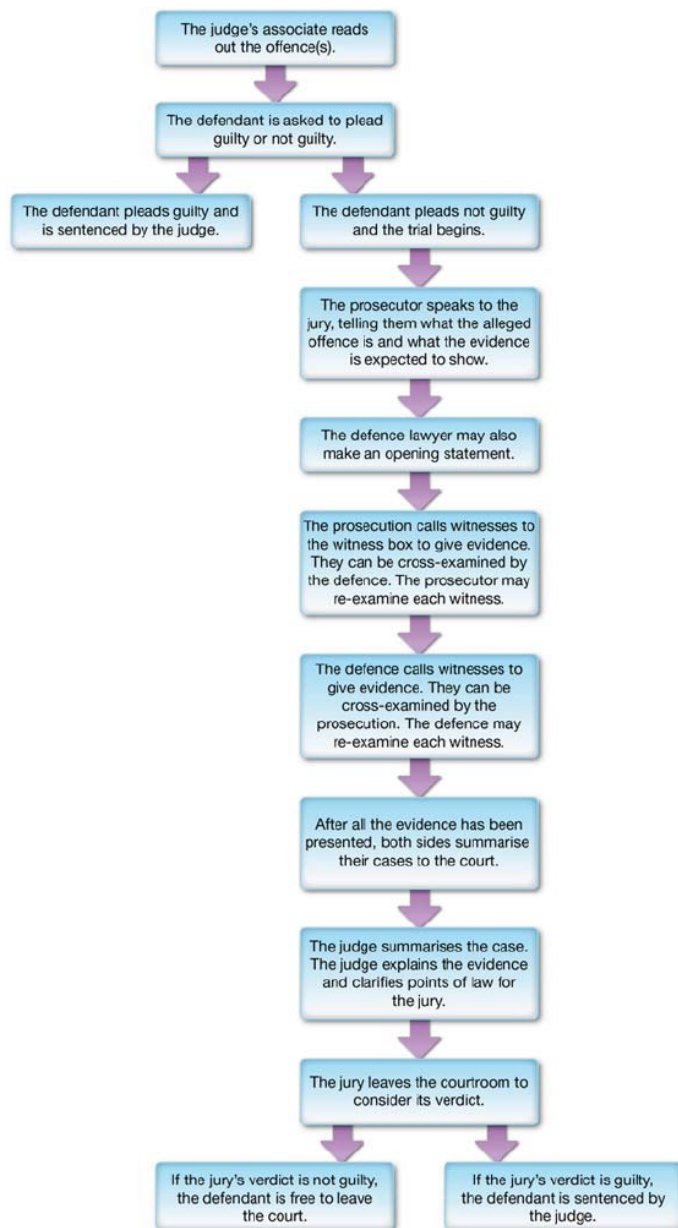


FIGURE 3 Procedure for a trial in a higher court with a jury

Witnesses can be asked to give evidence at a criminal trial if they are the victim of the crime, if they have direct information about the crime or if they are an expert providing specialist opinion. Expert witnesses might give evidence on topics such as whether a written document matches the handwriting of the accused, or whether the accused person's actions might have been influenced by things such as mental illness or prescription drugs. Each witness must take an oath or affirmation promising to tell the truth.

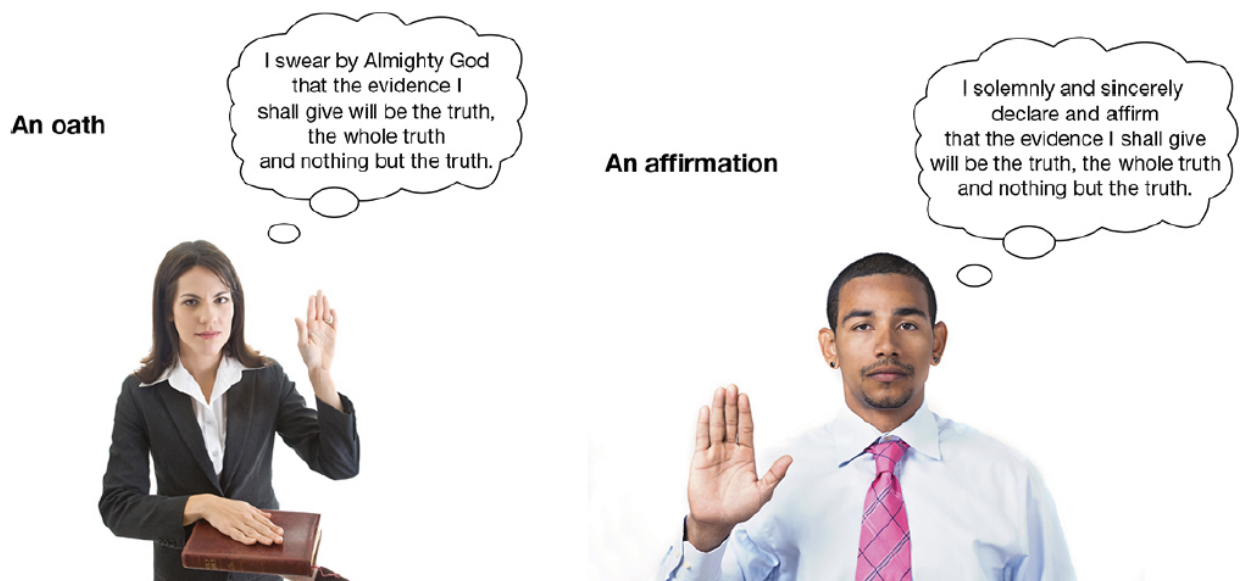


FIGURE 4 Before witnesses in court can give their testimony, they have to take either an oath or an affirmation promising to tell the truth.

Activities

REMEMBER

1. What is a committal hearing?
2. What is legal representation?
3. Briefly outline the following elements of a fair trial:
 - a. preliminary examination of evidence
 - b. right to legal representation
 - c. both sides have a role
 - d. independent judge
 - e. judge and jury have no prior knowledge of the case
 - f. strict procedures and rules of evidence.

EXPLAIN

4. Draw your own diagram showing the steps involved in a trial with a jury. Use an appropriate illustration for each step to show that you understand it.

5. Explain the role of a juror and a witness in a fair trial.
6. When can a judge question a witness?
7. How does a person come to be selected to serve on a jury?

DISCOVER

8. Using internet resources, find the website of the magistrates court in your state and research the type of cases that it hears. Does your state's magistrates court have committal hearings?
9. Using internet resources, find the website of the District (or County) Court or the Supreme Court in your state and research the type of cases that it hears.

THINK

10. Roleplay a mock trial of a person who has been charged with robbing a bank. (Refer to the information in section 3.1 and the process described in figure 3 to help you.) Divide up the courtroom roles — a list of roles necessary is shown below. Allow people sufficient time to prepare their case. An example has been provided for you in the case study below. Set the classroom up like a courtroom and see if the accused receives a fair trial.

Roles in a mock trial

- Judge
- Judge's associate
- Tipstaff
- Jurors (12)
- Prosecutor
- Counsel for the defence
- Accused
- Witnesses
- Members of the public
- Members of the media
- Police officer

eBookplus

Interactivity

The courtroom

Searchlight ID: INT-1206

CASE STUDY

Sample case for a mock trial

Andrew Accused has been charged by the police with armed robbery. The police allege that on the morning of Friday, 18 February, Andrew entered the Bank Easy branch in Bondi. He approached the teller, Thuong Teller, and said to her, 'This is a stick-up. Fill this bag with money or you will get shot!' At the time, Thuong was serving Colin Customer. Bao Bankworker, another teller, and Maria Manager, the branch manager, were also in the bank at the time. Andrew was arrested by Purujit Policeman as he tripped in the doorway. Andrew claims that he was not carrying a gun and that he was only joking around with Thuong.

11. Complete the following table to explain how each element contributes to a fair trial. The first response has been done for you.

Element of a fair trial	How it contributes to a fair trial
Preliminary examination of evidence	The use of committal hearings allows an accused person to know the case against him or her and provides the opportunity to gather evidence and to test the evidence of the prosecution.
Right to legal representation	
Both sides have a role	
Independent judge	
Judge and jury have no prior knowledge of the case	
Strict procedures and rules of evidence	