



DPP v O'Donnell Trial

Preparation in advance:

Each witness should only receive their own statement and not anyone else's. The barristers and solicitors on each side can receive everything. The jury should not receive **anything**. The only evidence that the jury are allowed to consider or think about is the evidence that witnesses give directly in Court. Basically, this means that even if someone gives a statement to the Gardaí saying "Jenny stole my bicycle", the jury cannot read this statement during the trial. Ms X must come to Court, get in the witness box and say "Jenny stole my bicycle". This is a very important rule in Irish law so it's important that witnesses say everything you need them to say in order for you to win your case.

One important thing to think about before you start your trial is what are the **elements** of the offence, that means what things do I need to prove in order for the jury to find that the person is guilty of the crime. In this case, Ms O'Donnell is charged with theft.

For theft you need to show:

- 1) That the box of chocolates that was allegedly stolen **belonged to** Cecelia Dillon,
- 2) That the box of chocolates was **stolen by** Joanne O'Donnell,
- 3) That the owner of the chocolates, Cecelia Dillon, **didn't give Joanne permission** to take the chocolates and
- 4) That **Joanne knew** that the owner, Cecelia, didn't give her permission to take the chocolates.

Counsel and solicitors for the Defence and the Prosecution should write down this checklist before the trial starts and tick off each "element" as they go along. So, if Cecelia is called as a witness and says "I owned the box of chocolates that was stolen", the Prosecution can check off number 1 on the list. It is the job of the Defence to attack each of these elements. This means that even if Cecelia says "I owned the box of chocolates that was stolen", the Defence can still try and prove that she **didn't** own the box of chocolates that was stolen. You should be creative in your arguments and try to prove in any way that you can that the Prosecution is wrong or has made a mistake and that your client, the "accused" is not guilty.

The Prosecution must prove **each element** of the offence, number 1 to number 4, in order to "win".



The Defence only need to show that **one** of these elements isn't true in order to "win".

The different roles

You will need students to play the following roles:

- 1 Judge
- 1 Registrar
- 1 Judicial Assistant
- 2 Defence counsel (One junior, one senior) OR 1 Defence counsel
- 1 Defence solicitor
- 2 Prosecution counsel (One junior, one senior) OR 1 Defence counsel
- 1 Prosecution solicitor

Depending on the size of your class, you can decide whether to have one or two counsel for each side. Counsel is another name for a barrister. They will be the people speaking to the Court, making speeches and asking witnesses questions. The solicitor will sit with the barristers and keep a careful note about what is being said. They should be checking that the barrister isn't missing anything and they should also make sure that they write down the answers witnesses are giving to questions. It is important that the barristers and solicitor on each side work together and are a team. Great teams win more cases than one great barrister who doesn't work with their solicitor.

You will also need students to play the following roles:

- Joanne O'Donnell
- Garda Gerard Muldoon
- Cecilia Dillon
- Vincent O'Toole
- John Brennan
- Derek Maguire
- Jury (12 people)





How to Question Witnesses

The main part of your trial is questioning witnesses. There are special rules which apply to questioning witnesses depending on whether or not they are **your** witness.

If you are questioning your own witness, you should open all of your questions with Who, What, When, Where, Why and How. You **can't** give the witness clues about what you want them to say. For example, if you are counsel for the Prosecution you can't ask Cecelia "Ms Dillon, did Ms O'Donnell steal your box of chocolates?" but you **can** ask her "Ms O'Donnell, **who** stole your box of chocolates?"

If you are questioning a witness who is on the other team, the opposite rule applies. You do not ask them Who, What, When, Where, Why and How. You can ask them whatever you want. This is called "cross-examining". The best way to "cross-examine" is to put short statements to the witness. So here, if you acted for the Defence you might ask Cecelia (Ms Dillon) something like "Ms Dillon, you didn't see Ms O'Donnell take the box of chocolates, did you?"

No matter who you are questioning, you should take them from the start of their story to the end. Look at the witness statement for the witness and start them off by asking them where they were on the date of the theft. What were they doing? Who were they with? What happened first, what happened next, etc. Remember, you are telling a story so you start at the beginning and take them to the end.

Questions should be short and clear. Keep it simple – this will help the jury understand your case.



Running of the Trial

(i) Calling the case on

Before the trial begins, counsel for the defence should sit together on one side of the Court with their solicitor, and counsel for the prosecution should sit on the other side of the Court with their solicitor. The Registrar and the judicial assistant should sit at the top of the “Court” facing the room. When everyone is ready to go, they should let the judicial assistant know. The judicial assistant will then go and get the Judge.

The judicial assistant should walk into the Court before the Judge and say “all rise” to the room. This means everyone in the room should stand up while the Judge walks in and wait until she sits down before they can resume their seats. Once the Judge is sitting at the top of the Court, the Registrar should “call the case on”. In this case the Registrar will say “The case of DPP against Joanne O’Donnell, WWDP 12 of 2017, for trial.”

Once the registrar says this, the case has started. The Judge will then say that the jury can be brought in. The judicial assistant should then go out of the room and bring the jury in. Once the jury are seated, the case is ready to go.

(ii) Being put “in the charge of the jury”

In jury trials in Ireland, the jury are the people who will decide whether or not someone is guilty of an offence. Even though the Judge is in the Court when the case is being heard, they are there to make sure that the lawyers in the case are following the rules and being fair. They are not involved in making any decisions until the jury decide that the “accused” (who is the person on trial) is guilty.

So, at the start of each trial, the accused person, here Ms O’Donnell, is put “in the charge” of the jury. You do this as follows:

The Registrar will say: “Are you Joanne O’Donnell?”

Joanne should stand up and say “Yes.”

The Registrar will say: “You are charged with one count of theft. How do you plead? Guilty or not guilty?”

And then Joanne will say “Not Guilty.”

The Judge should then look at Joanne and say “You are now placed in the charge of the jury”.

(iii) Opening speech

Counsel for the Prosecution will kick the case off with a short speech to the jury. Keep it short and simple; the point of your speech is to give the jury an idea as to what the case is all about. So here you might say that this case is about a stolen box of chocolates and that you will show the jury that the accused, Ms O'Donnell, stole a box of chocolates from Cecelia Dillon. Keep it short and simple – save the drama for your closing speech!! The defence does not make an opening speech.

(iv) The Prosecution case

The Prosecution goes first. They will call all of their witnesses. Then the Defence will call their witnesses (if they have any) and then the case will finish.

Each time a witness is called, they will first be questioned by the side calling them (i.e. witnesses being called by prosecution are first asked questions by the prosecution). Once the side calling the witness has finished their questions, that witness is “cross-examined” by the other team (i.e. the defence cross-examine the prosecution witness). Once the cross-examination is finished, the prosecution can call their next witness.

The Prosecution should decide what order to call their witnesses in. You should think of your case as telling a story to the jury so better to start at the beginning. A good order to call your witnesses for this trial would be:

1. Cecelia Dillon – questioned by counsel for the Prosecution
Cross-examined by counsel for the Defence
2. John Brennan – questioned by counsel for the Prosecution
Cross-examined by counsel for the Defence
3. Garda Muldoon – questioned by counsel for the Prosecution
Cross-examined by counsel for the Defence
4. Vincent O'Toole – questioned by counsel for the Prosecution
Cross-examined by counsel for the Defence



When you are finished with all of your witnesses, counsel for the Prosecution should then say “That’s the State’s case Judge”. This means your case is finished and it is the Defence’s turn.

(v) The Defence case

The Defence goes next. You should call your witnesses in the following order:

1. Joanne O’Donnell – questioned by counsel for the Defence

Cross-examined by counsel for the Prosecution

2. Derek Maguire – questioned by counsel for the Defence

Cross-examined by counsel for the Prosecution

When you are finished with your witnesses, counsel for the Defence should say “That concludes the Defence case Judge”.

(vi) Closing speech of the Prosecution

This speech is your last chance to convince the jury that they should convict the accused. Go through the **elements** referred to above and summarise what the witnesses have each said in their evidence.

(vii) Closing speech of the Defence

This speech is your last chance to make sure your client gets acquitted (found not guilty). Poke as many holes in the case of the Prosecution as you can. If they have not proven one of the elements then tell the jury that. Be as dramatic as you want. Remember, if your client is found guilty they could go to prison so really try your best to convince the jury that Ms O’Donnell didn’t do what the Prosecution says she did. The prosecution must prove their case beyond a reasonable doubt. Therefore, you should tell the jury that unless they are *very sure* that Ms O’Donnell stole the box of chocolates, they must acquit her. Remind the jury that Ms O’Donnell is entitled to the benefit of the doubt.

(viii) “Charge” to the jury / The Judge’s speech

The Judge should now speak to the jury about the case. The Judge should remind the jury what the **elements** of the offence are by listing them off from 1 to 4. The Judge should also explain that the jury needs to be **very sure** that Ms O’Donnell stole the chocolates. If the Jury thinks Ms O’Donnell **could**



have bought the chocolates herself in the other shop, then the jury should find Ms O'Donnell not guilty.

(ix) Jury deliberations

The Judicial Assistant will now bring the jury into a separate room where they will have a chat about the evidence and everyone will decide together whether to find Ms O'Donnell guilty or not guilty. The Judicial Assistant must **not** talk to the Jury about the case and should leave the room once she has brought the jury in. She should wait just outside the door so that she can bring the jury back when they are finished. The jury all need to agree together on one result. If this is not possible then at least 10 people need to agree in order for there to be a verdict / result.

The jury should also choose a "foreperson". The foreperson will be the one to announce to the Court whether Ms O'Donnell is guilty or not guilty.

When the jury is ready, the Foreperson should let the Judicial Assistant know they are ready and the Judicial Assistant should bring the jury back into the Court.

(x) Verdict

Once the jury has come in and taken their seats, the Registrar should stand up and say "**Does the jury find Ms O'Donnell guilty or not guilty?**"

The Foreperson should then stand up and say either guilty or not guilty, whatever the result is that the jury has agreed.

This will be the end of the case.