CLASSROOM LAW PROJECT proudly sponsors the 26th Annual Statewide

2011-12 Oregon High School Mock Trial Competition

Lee Cavanaugh
v.
Cup of Joe, Inc.

Coffee too hot to handle?
Follow this civil case to decide who is responsible when customer gets burned and sues

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CLASSROOM LAW PROJECT™

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November 2011

Dear Coach, Parent, Friend, Supporter:

Thank you. You are working hard to ensure that young people have the experience of a lifetime. Mock trial is unlike any other high school competition. Academics, knowledge of the judicial system, quick-wittedness and teamwork are at the core of this program where young men and women are on equal footing. You are instrumental in bringing this experience to them. It means a great deal to them to have your support. Thank you for making a difference.

If you haven't already seen positive changes in the students as they prepare for the competition, I know you will. While the high school mock trial is designed to clarify the workings of our legal institutions for students, a great deal more than that goes on.

The mock trial experience provides students with the opportunity for interaction with positive adult role models – teachers, lawyers, and others. As students study our hypothetical case under their guidance, they acquire a working knowledge of our judicial system. You will notice an increased proficiency in reading and speaking skills; also critical thinking skills such as analyzing and reasoning; and interpersonal skills such as listening and cooperating. This hands-on experience outside the classroom is one where students not only learn essential knowledge about the law; they also gain valuable life skills.

We ask for your help in continuing this successful program. Classroom Law Project, an Oregon non-profit organization, is the sponsor of the annual high school mock trial. The mock trial program costs about $30,000. Less than half of that comes from teams' registration fees. I know that you have been asked many times to give and I understand that your ability to do so may be limited. But to the extent that you can, please consider how valuable this program is to the young people in your life and write a check accordingly. Any amount you can give is very appreciated; just send it to the address below. Your donation is tax deductible. Classroom Law Project is also affiliated with the Oregon Cultural Trust – another way to leverage your giving. Thank you.

Sincerely,

Marilyn R. Cover

Marilyn R. Cover
Executive Director

Classroom Law Project is a non-profit organization of individuals, educators, lawyers, and civic leaders building strong communities by teaching students to become active citizens.

ACKNOWLEDGMENTS

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CLASSROOM LAW PROJECT is grateful to its **Circle Members**, those businesses, law firms, and associations that provide ongoing support for all programs

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CLASSROOM LAW PROJECT gratefully acknowledges the Wyoming High School Mock Trial program, South Carolina High School Mock Trial Competition and the South Carolina Bar for the use if their case materials. CLASSROOM LAW PROJECT expresses its sincere thanks for their permission to modify the materials for use in Oregon.

Heartfelt appreciation is extended to all teacher and attorney coaches, regional coordinators, county courthouse personnel, attorneys, and other volunteers whose dedication and hard work make the regional and state competitions successful. Without the efforts of volunteers like these, this event would not be possible.

2011-12 Oregon High School Mock Trial Competition

Lee Cavanaugh v. Cup of Joe, Inc.

TABLE OF CONTENTS

CLASSROOM LAW PROJECT

2011-12 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the twenty-sixth annual Oregon High School Mock Trial Competition.

Each participating team will compete in a regional competition. Winning teams from each regional will be invited to compete in the state finals in Portland on March 16-17, 2012. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Albuquerque, New Mexico, May 3-6, 2012.

The mock trial is designed to clarify the workings of our legal institutions for young people. In the mock trial, students take on the roles of attorneys, witnesses, court clerks and bailiffs. As students study a hypothetical case, consider legal principles and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they learn about our judicial system and hone invaluable life skills (public speaking, team building, strategizing, decision making, to name a few) in the process.

Since teams are unaware of which side of the case they will present until minutes before the competition begins, they must prepare for both the plaintiff and defense. All teams will present each side at least once.

Mock Trial judges are instructed to follow the evaluation criteria when scoring teams' performances. However, like the phrase "beauty is in the eye of the beholder" points out the differences that exist in human perceptions, that same subjective quality is present when scoring mock trial. Even with rules and evaluation criteria for guidance, as in real life, not all scorers evaluate a performance identically. While CLASSROOM LAW PROJECT and competition coordinators try to ensure consistency in scoring, the competition reflects this quality that is a part of all human institutions, including legal proceedings.

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to discuss personal responsibility, corporate responsibility, and if or when damages should follow. It is loosely based on the 1990 case of *Liebeck v. McDonald's*; however all characters, events and circumstances in this mock trial are fictitious. By participating in mock trial, students will develop a greater capacity to understand important issues raised in cases like these.

II. PROGRAM OBJECTIVES

For the **students**, the mock trial competition will:

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. Provide the opportunity for interaction with positive adult role models in the legal community.
3. Provide an interactive experience where students will learn about law, society, and the connection between the Constitution, courts, and legal system.

For the **school**, the competition will:

1. Promote cooperation and healthy academic competition among students of various abilities and interests.
2. Demonstrate the achievements of high school students to the community.
3. Provide a challenging and rewarding experience for participating teachers.

III. CODE OF ETHICAL CONDUCT

At the first meeting of the Mock Trial Team, this code should be read and discussed by students and their coach(es). **The Code of Ethical Conduct governs participants, observers, guests and parents** at all mock trial events**.**

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism of any kind is unacceptable. Students' written and oral work must be their own.

Coaches, non-performing team members, observers, guests, and parents **shall not talk to, signal, or communicate with** any member of the currently performing side of their team during trial. Likewise, these individuals shall not contact the judges with concerns about a round; concerns by these individuals should be taken to the competition Coordinator. These rules remain in force throughout the entire competition. Currently performing team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Non-team members, teachers and coaches must remain outside the bar in the spectator section of the courtroom.

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are not allowed to view other teams in competition so long as they remain in the competition themselves. *Except,* the public is invited to attend the final round of the last two teams on the last day of the state finals competition – approximately 2:00 p.m., March 17, in the Hatfield Federal Courthouse, Portland.

Students promise to compete with the highest standards of deportment, showing respect for their fellow students, opponents, judges, coaches, and competition Coordinator and volunteers. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the rules. Students will not willfully violate the rules of the competition **in spirit or in practice**.

Teacher coaches agree to focus attention on the educational value of the mock trial competition. **Attorney coaches** agree to uphold the highest standards of the legal profession and zealously encourage fair play. All coaches shall discourage willful violations of the rules. Coaches will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct. Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students. Teacher and attorney coaches should ensure that students understand and agree to comply with this Code. Violations of this Code may result in disqualification from competition.

Charges of ethical violations involving persons other than the student team members must be made promptly to the Competition Coordinator who will ask the complaining party to complete a dispute form. The form will be taken to the competition's communication's center, where a panel of mock trial host sponsors will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in the Rules of the Competition.

All participants are bound by all sections of this Code of Ethical Conduct and agree to abide by its provisions.

IV. THE CASE

STATE OF OREGON	)	
	)ss.	
COUNTY OF CHINOOK	)	
		IN THE MOCK TRIAL COURT
LEE CAVANAUGH	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. MT2011-20012
	)	
CUP OF JOE, INC., a Delaware corporation	)	
	)	
Defendant.	)	

CIVIL COMPLAINT

COMES NOW the Plaintiff, LEE CAVANAUGH, by and through Plaintiff's attorneys, and does state and allege as follows:

1. Plaintiff is a citizen and resident of the City of Riverton, County of Chinook, State of Oregon.

2. Defendant is a corporation, incorporated under the laws of the State of Delaware, registered to do business in the State of Oregon and doing business in the City of Riverton, County of Chinook, State of Oregon.

3. This court has jurisdiction over the subject matter of this action and over the person of all parties. Venue is properly laid in this court.

4. On or about June 21, 2010, at approximately 8:15 a.m., the Plaintiff purchased a cup of coffee from the drive through window at Defendant's establishment on Campbell Avenue in the City of Riverton, County of Chinook, State of Oregon.

5. As Plaintiff was holding the cup of coffee, the lid on the cup of coffee came off suddenly and unexpectedly, which allowed coffee to splash onto Plaintiff. Defendant's employee had not properly secured the lid prior to delivering the cup of coffee to Plaintiff. In addition, the coffee in the cup was served at an unreasonably hot temperature, which rendered the coffee unreasonably dangerous to the consumer.

6. Defendant and its employees were negligent, careless, reckless, grossly negligent, willful and/or wanton in one or more of the following particulars:
   a. Maintaining and serving its coffee at a holding temperature, which rendered it unfit for consumption and unreasonably dangerous to customers, such as Plaintiff;
   b. Serving its coffee in cups with lids that were insufficient to protect customers, such as Plaintiff, from the dangers posed by the unreasonably hot coffee;
   c. Failing to provide lids that were designed to securely contain the coffee in the cups and permit the safe delivery of coffee to customers, such as Plaintiff, in cars;
   d. Failing to secure the lid on the cup that was served to Plaintiff;
   e. Failing to train and supervise its employees in the preparation and serving of coffee;

f. Failing to warn its customers, such as Plaintiff, of the dangers posed by the unreasonably dangerous temperature of the coffee;
g. Failing to warn its customers, such as Plaintiff, of the dangers posed by its employee's failure to secure the lid on the cup of coffee properly prior to serving the coffee to customers;
h. Failing to warn customers, such as Plaintiff, of the dangers posed by the dangerous and defective cups and lids used to serve coffee to customers; and
i. Failing otherwise to exercise that degree of reasonable and ordinary care necessary to avoid foreseeable injuries to its customers, such as Plaintiff.

7. In addition and in the alternative, Defendant is also strictly liable for the injuries sustained by Plaintiff because it sold a product to Plaintiff that was defective and unreasonably dangerous to user under circumstances that included the following:
   a. The Defendant was in the business of selling the product to customers, such as the Plaintiff;
   b. The Defendant expected the product to reach its customers, such as the Plaintiff, without substantial change in condition;
   c. The product did reach Plaintiff without a substantial change in condition; and
   d. The product was delivered in a condition that rendered it unsafe, when put to a use that was reasonably foreseeable considering the nature and function of the product.

8. As a proximate result of Defendant's acts and omissions, negligence and strict liability, as alleged herein, Plaintiff has suffered injuries and damages, which include:
   a. Severe bodily injuries consisting of first, second and third degree burns to the leg, abdomen, arm, wrist and hand, which have required medical treatment;
   b. Past, current and future medical expenses for treatment of these injuries;
   c. Permanent disfigurement;
   d. Permanent impairment and disability;
   e. Past and future loss of wages and/or earning capacity; and
   f. Pain, suffering and loss of enjoyment of life.

WHEREFORE Plaintiff prays for judgment against Defendant and for an award of compensatory and punitive damages, recovery of costs as allowed by law and such other and further relief as may be proper.

DATED this 2nd day of June 2011.

Sam Jones

Sam Jones
Jones and Associates, LLC
100 North 3rd Street
Riverton, Oregon 97000
Attorney for Plaintiff

STATE OF OREGON	)	
	)ss.	
COUNTY OF CHINOOK	)	
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LEE CAVANAUGH	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. MT2011-20012
	)	
CUP OF JOE, INC., a Delaware corporation	)	
	)	
Defendant.	)	

ANSWER TO CIVIL COMPLAINT

COMES NOW the Defendant, Cup of Joe, Inc., by and through its attorneys and for its answer to Plaintiff's Civil Complaint does state and allege as follows:

1. Defendant admits the allegations contained in paragraph 1 of Plaintiff's civil Complaint.

2. Defendant admits the allegations contained in paragraph 2 of Plaintiff's civil Complaint.

3. Defendant admits that this court has jurisdiction over the subject matter and the person of the parties and that venue is properly laid in this court.

4. The Defendant is without sufficient information to form an opinion or belief regarding the veracity of the allegations contained in paragraph 4 of the Complaint. Therefore, the allegations in paragraph 4 of the Complaint are denied.

5. Defendant denies the allegations contained in paragraph 5 of Plaintiff's civil Complaint.

6. Defendant denies the allegations contained in paragraph 6 of Plaintiff's civil Complaint.

7. Defendant denies the allegations contained in paragraph 7 of Plaintiff's civil Complaint.

8. Defendant denies the allegations contained in paragraph 8 of Plaintiff's civil Complaint.

9. As an Affirmative defense Defendant states that Plaintiff's alleged damages and injuries were the proximate result of negligence or other fault on the part of the Plaintiff, in one or more of the following ways:
    a. Plaintiff failed to act reasonably for Plaintiff's own safety by removing the lid from the cup, while traveling in a moving vehicle and without permitting the coffee to cool;
    b. Plaintiff ignored the known risks and dangers of the product and otherwise failed to heed specific warnings regarding the product;
    c. Plaintiff mishandled and misused the product in an unsafe manner; and
    d. Plaintiff otherwise failed to exercise reasonable and ordinary care to avoid foreseeable injuries to Plaintiff's self.

   The negligence or fault of Plaintiff must be compared to any fault on the part of the Defendant, if

any, and such fault bars Plaintiff's recovery in whole or in part.

WHEREFORE Defendant prays that this court enter judgment against Plaintiff and award Defendant its costs as allowed by law and for such other and further relief as may be proper in the premises;

Dated this 5th day of August 2011.

Chris Smith

Chris Smith
Smith & Smigh LLC
200 North 5th Street
Riverton, Oregon 97000
Attorney for the Defendant

STATE OF OREGON	)	
	)ss.	
COUNTY OF CHINOOK	)	
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LEE CAVANAUGH	)	
	)	
Plaintiff,	)	
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	)	
CUP OF JOE, INC., a Delaware corporation	)	
	)	
Defendant.	)	

STIPULATIONS

THE PARTIES stipulate as follows:

1. All exhibits are authentic and are true and accurate copies of the originals. No objection will be made as to the authenticity of any trial exhibit. The parties reserve all other objections to the admissibility of any trial exhibit until time of trial. Any trial exhibit may be offered by either party, subject to the mock trial rules and stipulations by the parties.

2. The cup and lid in Exhibit 5 are not the actual cup and lid but they are identical to the cup and lid used by the Plaintiff on June 21, 2010.

3. Issues relating to the constitutionality of punitive damages may not be raised by either party.

4. All witness statements are signed and sworn according to court rules.

5. The parties agree to a bifurcated trial with amount of damages, if any, to be decided in Phase 2, a separate proceeding (not a part of the mock trial).

DATED this 2nd Day of October 2011.

Sam Jones
Sam Jones
Jones and Associate LLC
100 North 3rd Street
Riverton, Oregon 97000
Attorney for Plaintiff

Chris Smith
Chris Smith
Smith & Smith LLC
200 North 5th Street
Riverton, Oregon 97000
Attorney for the Defendant

STATE OF OREGON	)	
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COUNTY OF CHINOOK	)	
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LEE CAVANAUGH	)	
	)	
Plaintiff,	)	
	)	
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	)	
CUP OF JOE, INC., a Delaware corporation	)	
	)	
Defendant.	)	

JURY INSTRUCTIONS

Jury Instruction No. 1
DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may find the truth as to the facts of a case – direct and circumstantial evidence. An example of direct evidence would be the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is the proof of facts or circumstances from which the existence or non-existence of other facts may be reasonably inferred. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable forms of proof and should be given the weight you feel is appropriate in light of all the evidence.

Jury Instruction No. 2
EXPERT TESTIMONY

A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject about which he testifies. An expert witness may offer opinions on questions regarding the issues in the case to assist you in deciding the issues. You are not bound to accept an expert's opinion as conclusive, but should give it the weight to which you feel it is entitled. In determining the weight to be given to an opinion, you may consider the qualifications of the expert, the credibility of the expert, the information upon which the opinion is based and the reason for the opinion. You may disregard an expert's opinion if you find it to be unreasonable or not adequately supported.

Jury Instruction No. 3
OPINION BY LAY WITNESS

In determining the weight to be given to an opinion expressed by any witness (who did not testify as an expert witness), you should consider credibility, the extent of the witness's opportunity to perceive the matters upon which the opinion is based and the reasons, if any, given for it. You may disregard any opinion if you find it to be unreasonable or not adequately supported.

Jury Instruction No. 4
PREPONDERANCE OF EVIDENCE – DEFINITION

"A preponderance of the evidence" is defined as the amount of evidence, taken as a whole, which leads the jury to find that the existence of a disputed fact is more probable than not. You should understand that "a preponderance of the evidence" does not necessarily mean the greater

number of witnesses or exhibits.

Jury Instruction No. 5
BURDEN OF PROOF

In this action, the Plaintiff has the burden of proving by a preponderance of the evidence the following:
1. That the Defendant was at fault;
2. That the Defendant's fault was the cause of the injury and damage to Plaintiff; and
3. The nature and extent of the injuries and damages claimed.

The Defendant has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following:
1. That the Plaintiff was at fault; and
2. That the Plaintiff's fault was the cause of the injury and damage to Plaintiff.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

Jury Instruction No. 6
NEGLIGENCE AND ORDINARY CARE – DEFINED

When the word negligence is used in these instructions, it means the failure to use ordinary care. Ordinary care means the degree of care that should reasonably be expected of the ordinary careful person under the same or similar circumstances. The law does not say how such an ordinary careful person would act. That is for you to decide.

Jury Instruction No. 7
CAUSE – DEFINED

An injury or damage is caused by an act, or a failure to act, whenever it appears from the evidence in the case that the act or omission played a substantial part in bringing about the injury or damage.

Jury Instruction No. 8
MULTIPLE CAUSES

If more than one act or failure to act contributed to the claimed injury, then each act or failure to act may have been a "cause" of the injury within the meaning of these instructions. A cause does not have to be the only cause or the last or nearest cause. It is sufficient if the act or failure to act joins in a natural and probable way with some other act or failure to act to cause some or all of the claimed injury.

Jury Instruction No. 9
FORESEEABILITY

The negligence, if any, of any person is not a "cause" of any injuries or damage to the Plaintiff within the meaning of these instructions, unless injury to a person in the Plaintiff's situation was a reasonably foreseeable consequence of that negligence. The exact or precise injury need not have been foreseeable, but a person may be found to be a "cause" of Plaintiff's harm within the meaning of these instructions if a reasonable careful person, under similar or the same circumstances as Defendant, would have anticipated that injury to a person in the Plaintiff's situation might result from Defendant's conduct

Jury Instruction No. 10
CUSTOM

In determining whether anyone was or was not negligent, you may consider any evidence of any custom of an industry in conducting it s operations. However, the standard of care is not fixed by custom, as custom cannot overcome the requirements of reasonable safety and ordinary care. The

standard is always ordinary care, and the presence of absence of custom does not alter that standard. What others do is some evidence of what should be done, but is not conclusive evidence, and is never a substitute for ordinary care. An operational practice, although long indulged in, but which does not afford reasonable protection to those engaged in that operation, does not relieve from liability those responsible if it results in negligently causing injury or damage.

Jury Instruction No. 11
STRICT LIABILITY IN TORT

One who sells any product in a defective condition unreasonably dangerous to the user or consumer or his property is liable for physical harm caused thereby to the ultimate user or consumer or his property if the seller is engaged in the business of selling a product and it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. This rule applies although the seller has exercised all possible care in the preparation and sale of his or her product and the user or consumer has not bought the product from or entered into any contractual relation with the seller.

Jury Instruction No. 12
UNREASONABLY DANGEROUS PRODUCT

A product is defective when it is in an unreasonably dangerous condition. The term "unreasonably dangerous" means unsafe when put to use that is reasonable foreseeable considering the nature and function of the product.

Jury Instruction No. 13
PRODUCTS LIABILITY – DEFECTIVE CONDITION

A product is defective if, at time of sale or distribution, it contains a manufacturing defect, a design defect, or is defective because of inadequate instructions, or warnings in the instructions, or warnings reasonable necessary for the product's safe use.

Jury Instruction No. 14
DUTY OF BUYER, USER OR CONSUMER

A seller is entitled to expect that the buyer, user or consumer of a product will use the product in a manner that is reasonably foreseeable by an ordinary consumer who purchases or uses the product with the ordinary knowledge of its characteristics that is common to the community.

Jury Instruction No. 15
MEASURE OF DAMAGES – PERSONAL INJURY

Regardless of how you decide on the question of liability, if you decide for the Plaintiff on the question of liability, if you find that the Plaintiff is 50 percent or less at fault, during Phase 2 you must fix the amount of money that will reasonably and fairly compensate the Plaintiff for those elements of damage proved by the evidence, taking into consideration the nature, extent and duration of the injury.

The claimed elements of damage are:

a. The pain, suffering and emotional distress experienced as a result of the injuries (and those reasonably probable to be experienced in the future);
b. Disability and/or disfigurement;
c. Loss of enjoyment of life and any loss of enjoyment of life reasonably probable to be experienced in the future. The award for this specific element should not duplicate the award given or any other element of damage;
d. Loss of earnings. The failure of time, earnings, profits, salaries lost to this date and the present cash value of any earnings reasonably probable to be lost in the future, taking in consideration any lost earning capacity of the plaintiff;
e. Medical expenses. The reasonable expense of necessary medical car, treatment, and services received to date and any medical expense reasonable probable to be incurred in the future.

Whether any of these elements have been proved is for you to determine. The actual amount of

damages, if any, shall be decided in Phase 2 of this bifurcated trial.

Jury Instruction No. 16

COMPARATIVE FAULT

Your verdict in this case must be determined on the basis of the comparative fault of the parties.

A Defendant is at fault when (1) the Defendant is "negligent" and/or is "strictly liable" for selling a defective product and (2) the Defendant's conduct is a "cause" of Plaintiff's injury or damage.

It will be necessary for you to determine the comparative fault, if any, of each of the parties involved in the occurrence. It also will be necessary for you to determine the total amount of damages, if any, sustained by the Plaintiff.

Your findings as to fault will affect the Plaintiff's recovery. The Defendant's liability for damages is limited to the percentage of fault, if any that you find is attributable to the Defendant. The Plaintiff's recovery is reduced by the percentage, if any, of fault that you find is attributable to the Plaintiff. If you find that the Plaintiff's fault exceeds fifty percent, the Plaintiff will not be entitled to recover any damages.

The verdict form provided to you includes spaces for you to record your determination of the parties' comparative fault on a percentage basis.

If you find that the Plaintiff was at fault in some percentage, do not make an adjustment to account for the percentage of fault you attribute to the Plaintiff when you record the total amount of Plaintiff's damages on the verdict form. The judge – not the jury – is responsible for reducing plaintiff's recovery to account for the percentage of fault, if any that the jury attributes to the Plaintiff.

In explaining the consequences of your verdict, I have not meant to imply that either the Plaintiff or the Defendant is at fault. That is for you to decide in conformity with these instructions.

##

STATE OF OREGON	)	
	)ss.	
COUNTY OF CHINOOK	)	
		IN THE MOCK TRIAL COURT
LEE CAVANAUGH	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. MT2011-20012
	)	
CUP OF JOE, INC., a Delaware corporation	)	
	)	
Defendant.	)	

VERDICT FORM

WE, the jury, find as follows:

1. Was the Defendant negligent?
   Yes _____ No _____

2. Is the Defendant strictly liable for selling a defective product, as defined by the instructions?
   Yes _____ No _____

If you answered both questions "No," do not proceed further. Sign the verdict form and inform the Bailiff you have reached a verdict. If you answered one or both questions "Yes," answer the following question.

3. Was the negligence and/or strict liability of the Defendant a cause of Plaintiff's injuries and damage?
   Yes _____ No _____

If you answered question 3 "No," do not proceed further. Sign the verdict form and inform the Bailiff you have reached a verdict. If you answered question 3 "yes," answer the following question.

4. Was the Plaintiff negligent?
   Yes _____ No _____

If you answered question 4 "No," go to question 7. If you answered question 4 "Yes," answer the following question.

5. Was the negligence of Plaintiff a cause of Plaintiff's injury and damage?
   Yes _____ No _____

If you answered question 5 "No," go to question 7. If you answered question 5 "Yes," answer the following question.

6. What percentage of the total fault is attributable to the following persons (note: the total fault must add up to 100 percent):

Plaintiff	_____	%
Defendant	_____	%
TOTAL	100	%

DATED this day of March 2012,

_____
Jury Foreperson

STATEMENT OF LEE CAVANAUGH

My name is Lee Cavanaugh. I am 30 years old. I live at 1212 Penny Lane in Riverton, Oregon. I was born and raised in Riverton and I am a single parent. I am employed by Riverton Community Bank as the Loan Department Manager. I have been with the bank since graduating from the University of Oregon. As the Department Head, I am responsible for loans for all four branches of the bank, although my office is located in the City Center Branch.

My hobbies are playing guitar and playing tennis. Well, those used to be my hobbies, anyway. My injuries – particularly to my right arm and hand – prevent me from doing those things.

I was severely burned when I spilled hot coffee on my right arm, stomach, and right leg. This happened on June 21, 2010. I was on my way to work with my co-worker, Jody Bartlett. We carpool to work because we live close to each other. Also, we both work at the City Center Branch and have the same hours. Jody is one of six loan officers who work for me. We worked together as tellers until I was promoted to head teller for the branch. Jody and I have worked our way up at the bank together. Jody had been there a few years and was my trainer when I started as a teller. We both moved over to customer service and then to the loan department at about the same time. Even though I had gotten the promotion to head up the loan department when Jody had also applied for it, we remained friends.

The week of June 19, 2010, was Jody's week to drive. I was in the passenger seat. Jody had missed breakfast, so we decided to stop at the drive-thru at Cup of Joe. I usually wait until I get to work to have my second cup, but Cup of Joe has pretty good coffee, so I ordered a large regular with cream and sugar. Jody handed the cup to me with the sugar and cream packets. We were pulling out of the parking lot when the top popped off the cup. There must have been a hump or drop or something between the driveway and the street because Jody's SUV bounced as we were turning out.

I know that Cup of Joe is trying to say that I took the lid off the cup, but I didn't. I did order cream and sugar, but I wasn't going to put it in the coffee while I was in the car. I was just holding the cup when the car bounced. I don't know if the lid came off because it wasn't secured properly or if I squeezed that flimsy paper cup with the jolt. All I know is the lid came off. That is when the coffee spilled and changed my life forever.

The coffee spilled on my right hand, the inside of my right forearm, my lower abdomen on the right side, and the front and inside of my right thigh. My first reaction was to scream. I grabbed the first thing that I could find – the pile of napkins Jody had placed on the middle console and tried to wipe the coffee off. It was too late. It is kind of hazy, but I think Jody pulled off the street and tried to help me. I remember that Jody's food ended up in my lap and on the floor, along with my cup, the sugar and cream packets, and what was left of my coffee. It was a mess, but I didn't care. The pain was unimaginable.

Jody came around and opened my door. I sort of dove out. It was like my clothes were on fire. I tore off my pants. That was a mistake. The coffee had fused my clothes to my skin, so the pants took my flesh with it. I think that must have been when I passed out.

The next thing I remember is returning to consciousness when one of the EMTs touched my arm. I guess he was treating it somehow. All I know is it felt like my head exploded with pain. There was yelling and movement and horrible pain. They must have given me some medication or something because I have no memory of anything after that until I woke up in the hospital bed.

I was still kind of out of it, but I remember seeing Dr. Gentry and the nurses. I remember someone cutting off my clothes. I certainly remember the debridement procedure. That was the worst pain I have ever experienced in my life. It was like I was being burned over and over again with each piece

of burned skin or melted clothing the doctor removed. I kept begging for pain medication, but they just told me that they were already giving me something in an IV. After what seemed like hours of this painful procedure, Dr. Gentry told me that I needed to have surgery to graft the skin from my uninjured leg to my burned arm. That is when I knew just how serious my injuries were.

I guess I was somewhat naïve to think that the skin graft would be the end of it. When I was finally released from the hospital after more than a week, Dr. Gentry told me that my ordeal was far from over. I was told to expect one and possibly more reconstructive surgeries and months of physical therapy to regain function in my hand.

It turned out that I had to undergo two more surgeries and I still don't have normal function. I cannot play tennis at the level I used to. My game had really been improving when I was injured. But the guitar is truly a tragic loss for me. I know that I was an amateur, but in my heart I think that I might have had a career in it if I hadn't been burned. I played regular gigs with a small band on the weekends at local night spots; we even did some out of town shows last summer.

Then there are the scars. The one on my thigh is just awful. Shorts and bathing suits are out of the question unless I want to deal with rude stares and thoughtless questions. But I can't hide the scar on my hand and wrist. I spend all day at the bank across the desk from customers. I am right handed. I have to write, talk on the phone, pass documents – all with my right hand with the customer right there. Every time I reach for something, my scars are there. It is very awkward for my customers. I can tell they are uncomfortable, the way that they look away or seem distracted from our conversation.

If you had asked me the day before how badly a person could be hurt by a spilled cup of coffee, I would have said that you might expect it to hurt; maybe some blistering that would take a few days to heal. I never would have guessed that coffee would cause you to be burned so badly that you would have to have multiple surgeries and live with gruesome and debilitating scars for the rest of your life.

After this lawsuit started, I realized that the manager who served the coffee was the parent of a girl in the same soccer league as my daughter. A few weeks before I was burned, our daughters' teams were playing each other and his/her daughter tripped mine. When I yelled that it was a foul, Alex (whose name I did not know at the time) yelled at me, "She needs to learn how to play and stop blaming everyone else for her problems." I think I replied something like, "We'll see what the league officials have to say about it" or something like that, but I never pursued it. I had really forgotten about that until this lawsuit.

I don't think the soccer incident had anything to do with my being burned. I'm not sure the manager could have even seen me enough to recognize me in the passenger seat of Jody's car. It's just a weird coincidence.

I have reviewed this statement. The material facts are true and correct.
Signed,

Lee Cavanaugh
Lee Cavanaugh

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon
My commission expires: December 31, 2012

STATEMENT OF DR. CAM GENTRY

My name is Cam Gentry. I received my bachelor's degree at Boston College, and medical degree from the University of Colorado. After a residency in the University of Colorado Department of Surgery, I completed a clinical fellowship in the University of Colorado Hospital Burn Center. I am now an attending surgeon at Oregon Valley Medical Center where I have been the Director of the Trauma Center for seven years. In addition to fulfilling duties in patient care, I am a virtual (Internet) consultant for the University of Colorado Hospital Burn Center Research Laboratory that has an emphasis on aberrant healing processes including hypertrophic scar formation and chronic non-healing wounds. I have published 34 articles in the area of wound repair, treatment for burns, and scar prevention. I have been a member of the National Burn Association since 1991 and have served on that organization's Research, Ethics, and Outreach Committees. I am also on the editorial board of the American Burn Treatment Journal.

I was on duty at the Oregon Valley Trauma Center when Lee Cavanaugh was brought in by ambulance. The patient was somewhat sedated, but clearly in extreme discomfort. We removed the clothing and immediately assessed the patient's burns. The patient was reasonably stable. We began to administer intravenous pain and anxiety medication.

The most crucial element of burn treatment is to evaluate the extent and degree of the injury. A skin burn is damage to the dermis caused by exposure to heat, electricity, or chemicals. Extreme heat causes cell damage through rapid protein denaturation. The depth of the burn depends on how deeply the heat penetrates the skin. Lee suffered a scald. A scald is a burn caused by hot liquid or steam, known as "wet heat." A scald travels much more quickly into the skin and underlying tissues than a burn caused by a flame, known as "dry heat." A scald resulting from wet heat with a surface temperature of more than 156°F will produce immediate vessel clotting and death of the tissue. Dry heat results in such damage at a higher temperature. Burn depth depends on four factors: the temperature of the heat source, whether the source is wet or dry, the thickness of the affected skin layer, and the length of time the source is in contact with the skin. Extended exposure to a high temperature wet heat source on thinner skin is the most damaging type of burn injury.

Burns are usually classified in terms of degree. First-degree burns are minor and extend only into the epidermis. (I have provided a chart to illustrate the dermis layers.) First-degree burns are characterized by erythema or redness and relatively minor pain at the burn site. In addition to erythema, second-degree burns fill with clear fluid and blister superficially. Although it might seem counter-intuitive, a second-degree burn might be more or less painful than a first-degree burn. It depends on the extent of nerve damage. The more damage to the nerves, the less pain. Less nerve damage, however, results in excruciating pain. Second-degree burns ordinarily extend through the epidermis and into the papillary dermis layer, but can also involve the reticular dermis. Third-degree burns turn red, blister, fill with a purplish fluid, and have skin charring resulting in eschars, or hard, leathery scabs. Third-degree burns are usually painless because of the destruction of the nerve endings in the burned areas.

Lee suffered burns on the front of the right thigh and abdomen and on the right hand, wrist, and forearm. The burn to Lee's abdomen was a first degree burn. The burns to Lee's thigh were second-degree burns. The burns to Lee's hand and forearm were third-degree burns.

In addition to the degree of the burn, the extent of the injury must also be evaluated. We calculate the percentage of the body affected by both second and third degree burns.

Lee suffered second degree burns to about 6% of his/her body and third degree burns to about 5% of his/her body. The burns to the hand and arm were more severe probably due to the fact that those areas were exposed to the hot liquid first and for a longer period of time. The application of ice at the scene likely worsened the injury to the arm and hand. The leg injury, while less severe, was complicated by the fact that the patient's pants were made of a synthetic fabric that adhered to the skin.

Lee was treated first with a douse of cool water for approximately 10 minutes. This was done to help alleviate the pain and reduce swelling. We then debrided or cut away the blistered skin on the thigh, then covered it loosely with a sterile dressing to prevent infection. The injury to the hand, wrist, and arm required more extensive treatment. The surgery included excision of the dead tissue and preliminary grafting. Unless they are smaller than about an inch square, third degree burns require a skin graft to heal. We removed healthy skin from Lee's left thigh and transplanted it to the wrist and forearm. Lee was hospitalized for nine days. This was necessary because it takes seven to fourteen days for the grafted skin to properly adhere to the wound site. Until that occurs, there is significant risk of tearing and infection. Not only that, but the site from which we harvest the healthy skin, known as the "donor site" takes up to fourteen days to heal, as well. In addition, the patient experiences significant pain at both sites, which generally should be managed in a hospital setting.

I have followed Lee's rehabilitation and reconstruction treatment since discharge from the hospital. The burn site on Lee's abdomen remains discolored, but is expected to have a completely normal appearance. The burns on Lee's thigh and forearm near the elbow are hypertrophic. Hypertrophic scars are raised scars that are thick and red. Generally, hypertrophic scars improve with time. Lee has been receiving steroid injections and applications to speed this improvement. Unfortunately, Lee has what is called a contracture scar on the area between the right forefinger and right thumb extending down and around to the inside of the right wrist. A contracture is a permanent tightening of skin that develops when the normal elastic connective tissue is burned and inelastic fibrous tissue replaces it during the healing process. The muscles and tendons beneath the surface of the skin contract preventing normal movement – hence the name. Contractures limit mobility and can ultimately result in degeneration of the nerves.

Function restoration is a second step in the treatment process, after healing. Lee's treatment required two additional operations to correct or release the contracture on the hand and wrist. Extensive physical therapy was required following each restoration procedure. In spite of these efforts, Lee is not likely to regain full function of the right hand and wrist. In addition, Lee will have permanent scarring on the thigh and arm and permanent scarring and deformity on the hand and wrist. Although in my opinion to a reasonable degree of medical certainty Lee should be physically able to resume activities such as tennis and playing the guitar, I would expect the skill level to be diminished as a result of the permanent loss of strength and dexterity in the affected areas.

Obviously, it is my medical opinion that exposure to the hot coffee served by the Defendant was the cause of Lee's injuries.

Although I am a practicing trauma surgeon I am frequently hired as an expert witness in burn cases. I cannot tell you how much income I make per year from being an expert witness, as my spouse keeps track of that and handles all the accounting and taxes for that income. I do know that my income from expert fees in litigation is now greater than my income from the hospital (which is about $250,000 per year), but I do not think I could ever leave "the real world" of trauma surgery; money isn't everything. This is reinforced every day when I see people like Lee – or especially children – who've been horribly injured through no fault of their own. No amount of money could adequately compensate someone for trauma like that.

I charge $400 per hour for expert testimony, with a minimum of $2,500 per day that I am in court for trial testimony. I have been hired as an expert in approximately 200 cases in the past three years. My role as an expert usually begins with a review of the records and a preliminary opinion to the attorney who hired me. If the attorney wishes to use my opinion, I am then asked to do additional work such as examining the injured victim and providing deposition and possibly trial testimony.

I treated Lee, so my involvement with this case was not initially through the attorney. However, I am both a fact witness and an expert witness for my opinions today, so I am being paid for my expertise and experience at my usual rate in rendering my opinions for this case.

I have reviewed this statement, and I have nothing of significance to add at this time. The material facts are true and correct.

I have reviewed this statement. The material facts are true and correct.
Signed,

Cam Gentry
Cam Gentry

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon
My commission expires: December 31, 2012

STATEMENT OF TAYLOR VICKERS

My name is Taylor Vickers. I am 48 years old. I live in Riverton, Oregon. I am employed by the Chinook County Health Department.

One job of the Chinook County Department of Health is to protect the public by preventing food-borne illness. The county health department has adopted uniform regulations for food service operations that were developed by the Oregon Department of Health. I am Food Protection Supervisor for the Chinook County Health Department. My job is to supervise the permitting and inspection of all retail food establishments in the county. We are the people who put up those Chinook County Food Safety Inspection stickers that you see in food retail businesses. The food safety ratings are based on a numerical score that coincides with a letter grade, just like a test grade in school. If you see Grade A, then the establishment scored between 88 and 100 points at its last inspection. A Grade A facility typically exhibits very good to acceptable scores based on an unannounced routine inspection or an upgrade following remedial efforts based on a prior lower grade. The county health department will also conduct unannounced complaint inspections in response to complaints from citizens.

An important mission of the Chinook County Health Department -- and the regulations that provide the framework for its activities in restaurant inspection -- primarily concern food-borne illnesses. Our job is to make sure that establishments serving food maintain their food at proper temperatures and maintain a sanitary environment to avoid the spread of disease-causing bacteria. Our regulations do not address burn prevention practices. We do not inspect for burn hazards, and burn risk is not part of our evaluation, permitting, or food safety rating system. I am very concerned about this. I believe that assessment of burn injury risk is an integral part of food safety.

Approximately 2 million people seek medical attention for burns in the United States each year. Between 50,000 and 70,000 of them require hospitalization. Did you know that the second most frequent area where those burns occur is in the kitchen (outdoors is the most common)? Water and coffee scalds account for 40 percent of burn injuries to restaurant workers, the fourth most common occupation of victims. Given this tremendous risk, I do not understand why the county health department regulations do not include requirements for burn prevention. It wouldn't cost any more money. We already conduct comprehensive inspections of the premises. In fact, we already have the equipment – we use industrial thermometers to measure the temperature of the water used to clean equipment, dishes, and utensils as well as the tap water. Measuring the temperature of hot beverages like coffee or tea and hot liquid foods like soup or gravy could simply be part of the routine inspection. I have written memos to my supervisors and letters to members of the Oregon Legislature, but the regulations have not changed.

I believe that injuries like those suffered by the Plaintiff in this case could easily be avoided if restaurants and other food service establishments were required to comply with guidelines designed to prevent burns. I am sure that this particular injury would not have occurred because I had received complaints about the temperature of the coffee sold at this Cup of Joe in the past. In fact, in the two years prior to Lee Cavanaugh's accident, I processed nine complaints about coffee sold at the Riverton Cup of Joe. By "processed," of course, I mean that I only read them and passed them on to the manager, Alex Frye. Because the complaints did not raise a potential food regulation violation, my hands were tied. I was unable to conduct a Complaint Inspection or require that Cup of Joe reduce the hold and serving temperatures of its coffee. I could only mention the complaints to the Cup of Joe manager during my twice-yearly Routine Inspections. Although I was not happy about the coffee complaints, the Cup of Joe restaurant in Riverton has received a Grade A rating at every inspection since the establishment opened.

I had had just about enough of it, though, when I found out about what happened to Lee Cavanaugh. I received a call from Dr. Gentry at the Oregon Valley Medical Center late in the afternoon on June 23, 2010. That is when I decided to take matters into my own hands. I pulled out my inspection equipment the following Monday morning and went to Cup of Joe for an unannounced Complaint

Inspection. I measured the temperature in the three coffee machines. The temperatures were 189° F, 194° F, and an unbelievable 201° F. These temperatures rendered this coffee not fit for consumption and potentially hazardous to the health of the workers and customers who handled it.

The severity of injury with scalds depends largely on the temperature of the hot liquid. According to the Exposure to Hot Liquids Chart published by the National Institute for Injury Burn Prevention, at 120° F (the recommended temperature setting for home water heaters), skin requires five minutes of exposure for a third-degree burn to occur. Increase that to 125° F, and the exposure time to third-degree burning is reduced to two minutes. When the temperature of a hot liquid is increased to 140° F it takes only five seconds for a serious burn to occur. Coffee and other hot beverages are usually served at 160° to 180° F. Such beverages are not fit for consumption at those temperatures. While it might be appropriate to store such liquids at those high temperatures, they should not be served or consumed until they have sufficiently cooled to about 125° F.

The reason I know this is because before I was with the Chinook County Health Department, where I have been or the last 10 years, I was a health and safety inspector in California. My area of expertise was fire prevention. In the course of that job, which I held for more than fourteen years, I participated in a variety of training and educational programs. I have been certified by the California Association of Fire Safety and the National Institute for Burn Injury Prevention after completing each association's continuing education program series. I currently serve on the Burn Injury Task Force and previously served as that group's chair. I am also a lay member on the Community Outreach Committee of the Riverton Medical Center, which produces pamphlets for adults and coloring books for children about the household hazards that frequently cause burn injuries. This is where I met Dr. Gentry.

Prevention of burn injuries in children is of particular importance to me. When I was a child, my cousin suffered third-degree burns over 40% of his body from a scald when a babysitter put him into a bathtub without checking the water temperature. He suffered the rest of his life from debilitating scars and was never able to live a normal life.

It is true that I was an active member of the environmental protection group Save Our Mother when I was in California, and that I participated in rallies protesting food production practices by fast food restaurants such as Cup of Joe that cause slash and burn deforestation in order to raise cattle in developing countries, but there is no active chapter in Oregon, so I still pay my dues and get the newsletter but I no longer actively participate in these protests.

Like I said, what happened to Lee Cavanaugh was a completely preventable tragedy, just like what happened to my cousin. Unfortunately, Cup of Joe is not subject to any penalty because the cause of this tragedy is unregulated by the Chinook County Health Department. For that reason, my boss required me to delete my Complaint Inspection from the county database. I did keep a copy for my reference, however.

I have reviewed this statement. The material facts are true and correct.
Signed,

Taylor Vickers
Taylor Vickers

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon. My commission expires: December 31, 2012

STATEMENT OF DEVON RUTLEDGE

My name is Devon Rutledge. I live in Portland, Oregon. I am a graduate of the University of Oregon where I obtained both my B.S. in Marketing and Management and M.B.A. I am the Director of Quality Assurance (DQA) for Cup of Joe Food Corporation. The Quality Assurance Division is responsible for conducting research and developing policy related to product and service quality for all 127 Cup of Joe stores nationwide.

Before landing the top spot at Cup of Joe in 2002, I was a customer service research analyst for Tar Cups Coffee, LTD. I am confident that my experience with Tar Cups is what made me attractive to the VIPs at Cup of Joe. Everyone is so into coffee these days. To survive in the food and beverage business, you must offer a good cup of coffee. Cup of Joe execs were looking at a new campaign that would change the company's image from a fast food burger joint to a restaurant offering a variety of menu items cooked fresh, to order, and fast. That means serving a higher-quality coffee. That is a challenge for a fast food company. We aren't a coffee shop like Tar Cups. We aren't going to sell four-dollar lattes from our drive-thru windows. Our customers want a hot cup of good coffee, served fresh and fast.

I know this because one of my first assignments as DQA at Cup of Joe was to review market research on the issue. Cup of Joe takes customer satisfaction very seriously. We are constantly measuring customer satisfaction and expectation through a variety of methods. We have response cards at the stores, we offer promotions through our 1-800 number available to customers to give us feedback, and we review and address every negative comment or complaint we receive. In addition to these methods of gauging the level of satisfaction of our current customers, we also study the needs and wants of potential customers through market research tools like surveys and product testing. We use a company called MustSearch for our surveys. MustSearch has a database of 10,000 consumers who have agreed to periodically participate in market research. If we have a new product idea, or if sales slump for a particular menu item, or if we want to know if people prefer straws with wrappers or straws without wrappers, we develop a survey or product test with MustSearch. They conduct the study and provide us with the resulting data.

We did one such study regarding fast food coffee in February 2004. I studied that report very carefully before making my recommendations to the company in a memo dated March 30, 2004. From that study, we learned that both taste and temperature were important factors to coffee drinkers. Our customers want hot coffee and they want it to stay hot until they finish drinking it. Two factors determine whether that can be accomplished: the holding temperature and the make-up of the cup and lid. It was as a result of this study that we selected our coffee brand, developed our marketing strategy, and wrote relevant updates to our operations and training manual.

Cup of Joe started selling coffee in 1996, at the same time the breakfast menu was launched and the operating hours were extended to begin at 6:30 a.m. We sell 1.3 million cups of coffee every year. In the ten years since Cup of Joe started selling coffee, the company has received approximately 264 complaints of burns allegedly caused by Cup of Joe coffee. That is miniscule – statistically insignificant.

Approximately half of those involved had what I would consider serious burns – that is, burns that required medical treatment. In cases where the burn was caused by an employee, such as a cashier spilling coffee on a customer, overfilling a cup, or failing to secure a lid, the company has made settlements. Of course, that is the right thing to do in such a case. Lee Cavanaugh's claim is a different story. There is no indication of employee error here.

In spite of that handful of claims, we did not feel that it was necessary to consult burn experts or change our policies regarding coffee temperature. A burn hazard exists with any food substance served at 140 degrees or above. You have to brew coffee at a temperature higher than that because it won't brew otherwise. You have to hold and serve coffee at a higher temperature than that or you lose flavor and the ability to maintain heat until it is fully consumed. I did recommend using foam

cups instead of cheaper paper ones, but that was to maintain the temperature of the coffee longer, not to enable us to hold it at a lower temperature.

It is simple. If we are at fault, we pay. But we won't pay when we are not at fault. Our coffee is hot. The cup says so. People know it even without being told. Sure your average person wouldn't expect that a coffee spill would cause you to wind up in the emergency room or in surgery because of a third-degree burn, but people do know that coffee is hot and that they need to be careful.

I have reviewed this statement. The material facts are true and correct.
Signed,

Devon Rutledge
Devon Rutledge

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon
My commission expires: December 31, 2012

STATEMENT OF ALEX FRYE

My name is Alex Frye. I am 28 years old. I live at 76 Oak Street. I am the weekday manager at the Cup of Joe in Riverton. I began my career with the Cup of Joe Corporation when I was 16. I worked as a cashier part-time evenings and weekends and full-time in the summer at the Cup of Joe back home. After graduating from high school, I attended Cup of Joe University, a three-month training program for employees wishing to move into management positions. Shortly after completing the program at Cup of Joe-U, I moved to Riverton to take the position of assistant manager at the Cup of Joe store that was just opening. The Campbell Avenue Cup of Joe was the one-hundredth store in the nation. It was a very exciting and important milestone for the company. I was promoted to weekday manager four years ago.

I am the top production manager (in terms of sales and profit) in Riverton and one of the top five in this state. You don't reach this achievement by being sloppy. I know what I am doing and I know how to run a restaurant. Because of this, I receive not only monetary bonuses but also additional stock in the Cup of Joe company. I am not only an employee, I am a stockholder and I am proud of our ability to properly and safely serve good food at reasonable prices.

I was on duty on the morning of June 21st when Lee Cavanaugh spilled the coffee. In fact, I was covering the drive-thru. It was a very busy morning, as most had become since we started promoting our new coffee. I am aware that the Cup of Joe operations and training manual says that our coffee must be brewed at 195° to 205° and held at 180° to 190° for optimal taste. Cup of Joe actively enforces this policy. This is within the standards recommended by the American Coffee Association. I do not believe that our coffee was held at a temperature higher than that. I was not at work when Taylor Vickers came for inspection on June 26th, so I can't verify the numbers in the Complaint Inspection Report. However, I spot check the coffee urns once a week and have never encountered a holding temperature above 190°. Of course, as I said, brew temperatures might be higher than that.

The health inspector did report to me a few complaints that our coffee was too hot, and I know that the company has received other claims of burns from hot coffee, but I am sure that if we sold coffee at a lower temperature, our customers would not be happy. Coffee is supposed to be hot; that is what our customers expect according to the market research reports conducted through our Quality Assurance Division which are shared with all store managers. Maybe we could use foam cups instead of paper ones, but the profit margin on coffee sales is important. Our customers want their coffee fast, hot, and cheap. Fancy cups increase the price.

I am sure that the people who complained were like Lee Cavanaugh, trying to drink hot coffee in their cars. That is the rare case. Our drive-thru and to-go customers buy coffee on their way to work or home, with the intention of consuming it when they get there. And guess what? They want it to still be hot when they get there.

Of course hot coffee can cause burns, but unless the corporate office changes its policy – which I don't think it should – then I have no intention of reducing the holding temperature of our coffee.

Besides, all of our customers are on notice that our coffee is hot. The cup says "Hot" on the side of it. Sure our soda cups say "Cold" on them, so it is not really a warning, but it is a reminder. People are responsible for themselves. I get so tired of these frivolous claims. People tripping on the sidewalk, poking themselves with a fork, burning their lips on hot coffee, then trying to blame us. Well, we are an easy target – deep pockets. Blame Cup of Joe, make them pay, they have tons of money. It's not right. Cup of Joe is made up of hard-working employees, just trying to earn a decent living for their families. These crazy lawsuits put all that at risk.

This case in particular. I served that cup of coffee to the Plaintiff. I said, "Be careful! That coffee is hot!" I know that lid was on tight, because I put it on there. It didn't spill on me or on the driver. Lee Cavanaugh must have been taking the lid off to put in the cream and sugar when it spilled.

I do admit that I was surprised when I heard that Lee Cavanaugh suffered third-degree burns. I think that is the worst burn you can get. I did not know that even really hot coffee was hot enough to cause that severe of a burn. None of the other complaints we received involved such serious burns. It only goes to show how important it is for people to be careful when they are handling something as hot as a cup of coffee.

I've been told that Lee Cavanaugh is claiming I yelled something derogatory during a soccer match between our daughters' teams a few weeks before the incident. I don't remember that specifically but I do tend to be one of those parents who yells a lot at games. I guess I am pretty competitive and I like to see that in my kids as well. I certainly did not do anything to intentionally hurt Lee Cavanaugh with the coffee. I see a lot of people go through the drive-thru and I did not recognize Lee at all.

I have reviewed this statement. The material facts are true and correct.
Signed,

Alex Frye
Alex Frye

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon
My commission expires: December 31, 2012

STATEMENT OF JODY BARTLETT

My name is Jody Bartlett. I am 36 years old. I live at 4488 Abbey Road in Riverton. I was raised in rural Oregon and attended Lewis & Clark College. I am married and have a three year-old little boy. I work as a loan officer at Riverton Community Bank. I started as a teller at State Bank & Loan just after I graduated. I left SB&L after a few years to take a job at Riverton Community Bank as a Teller II, then worked my way up to customer service representative then to loan officer.

Lee and I have been carpooling to work together for about six years, just after Lee came to the City Center Branch. By that time I was a Teller III, which is essentially a teller manager. I trained Lee. It was kind of funny, since we lived in the same neighborhood and worked the same hours, we would follow each other in to the bank in the morning and then home in the evening. One day one of us said we might as well be riding together, so we started carpooling. I drive one week, Lee drives the next. It works out pretty well.

On the morning of the accident, I remember I was running a little late. My son was still a baby and we had had a bad night – a new tooth coming in was causing him a lot of pain and he cried most of the night. I didn't have time to fix myself breakfast, so I asked Lee if we could run though the drive-thru somewhere. Cup of Joe was right there on the way.

The cashier handed me Lee's coffee and stuff first, then my bag of food. I didn't order a beverage. I don't like coffee. I remember the cashier saying something about the coffee being hot. I'm not sure of the exact words. I don't know if Lee heard what was said or not. Of course coffee is hot. I guess I didn't realize just how seriously coffee could burn you if you aren't careful. Not so funny now.

After I got my food, I pulled around and out of the Cup of Joe parking lot. As I turned right out of the driveway, we lurched forward because of a drop from the curb area to the street. That's when Lee spilled the coffee. I looked over and saw Lee, eyes and mouth wide open, cup in one hand. I don't recall seeing the lid but clearly it was not on the cup or the coffee wouldn't have spilled. It was like time stood still for a split second, then Lee started flailing and screaming, napkins were flying. Lee's whole body was lifted up off the seat.

I pulled right back off the road into the parking lot of the gas station next to Cup of Joe. I got out and ran around to the passenger side. Lee was out before I could get the passenger door all the way open. Lee was like an animal, seething, yelping, crying, and tearing at his/her clothes. When I saw that Lee's clothes were pulling off skin, I realized how serious the situation was. I knew I had to act quickly. I grabbed my cell phone and called 911. By that time, Lee had fainted. I didn't know what to do. A few people had come out from their cars or whatever, but no one was doing anything for Lee. I remember yelling for someone to get me some ice. I was pouring a bag of convenience store ice on Lee when the paramedics got there. Although it seemed like hours, the ambulance must have arrived in just minutes.

I followed the ambulance to the hospital and stayed there until Lee's sister and brother arrived.

Lee is my boss and also my friend. But it doesn't matter who subpoenas me to testify, I am going to tell the truth. I did not see Lee take the lid off the cup, but I think that's what happened. I think that Lee was taking the lid off the coffee cup to put the cream and sugar in it because I handled the cup myself and there was no indication of the lid being loose. It didn't spill when it was handed to me or when I handed it to Lee. I hate what happened, but Lee should have been more careful.

I have reviewed this statement. The material facts are true and correct.

Signed,

Jody Bartlett
Jody Bartlett

SIGNED AND SWORN to January 15, 2011

C.M. McCormack
C.M. McCormack, Notary Public, State of Oregon
My commission expires: December 31, 2012

EXHIBIT 1

PHOTOS OF BURNS

EXHIBIT 2

DIAGRAM OF HEALTHY DERMIS LAYERS

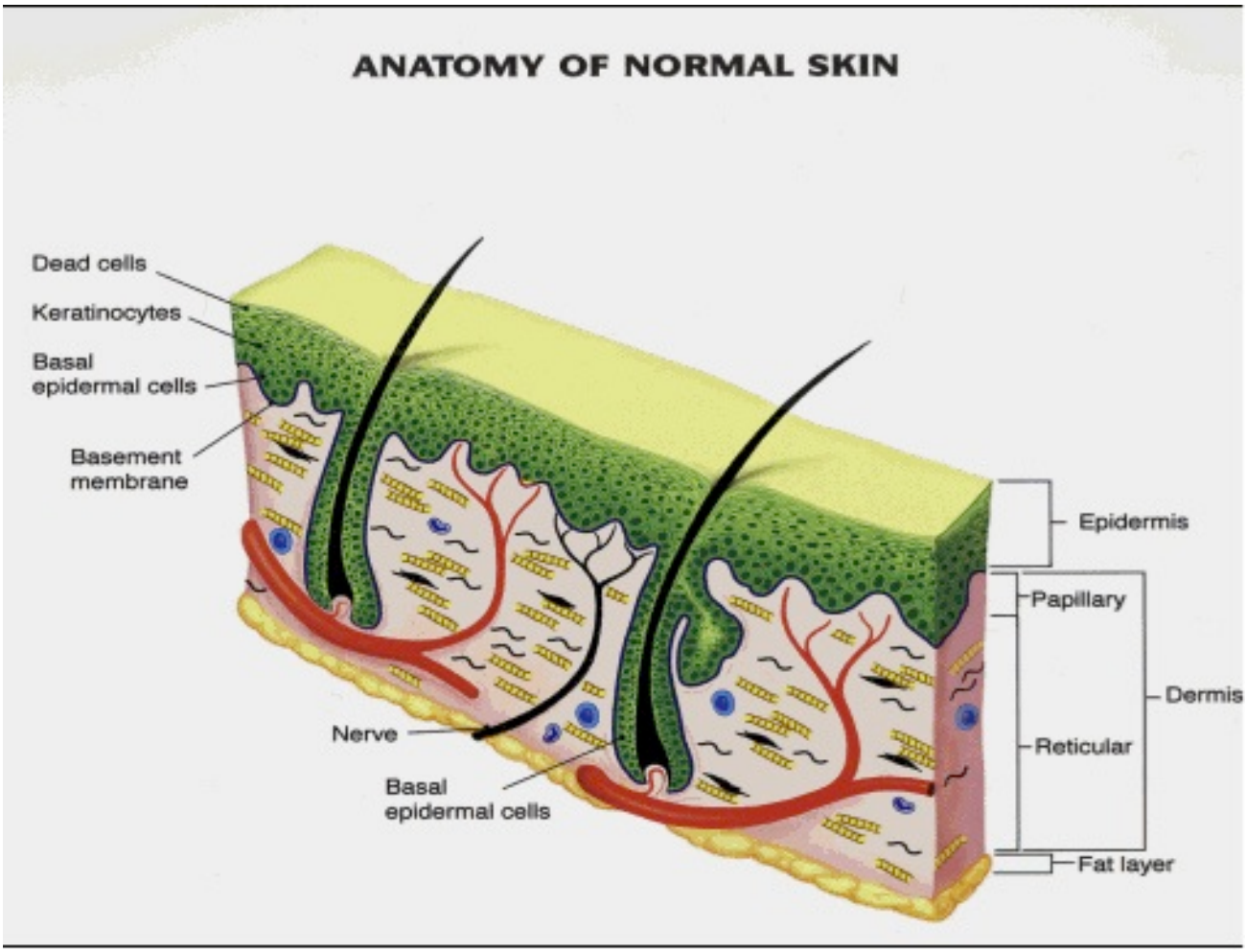
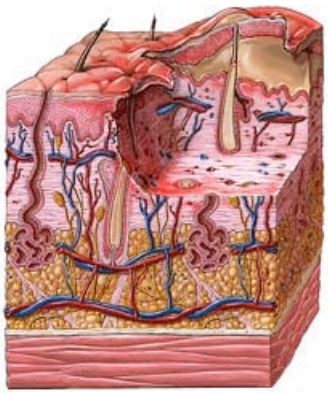


EXHIBIT 3
ILLUSTRATION OF BURN DAMAGE TO DERMIS LAYERS

1st degree burn

A.D.A.M.



2nd degree burn

A.D.A.M.

3rd degree burn

A.D.A.M.

Source: http://health.allrefer.com/health/burns-pictures-images.html

EXHIBIT 4

EXPOSURE TO HOT LIQUIDS CHART

Estimated Times and Temperatures Causing Full Thickness Burns in Adults

If the temperature is	*third degree burn will occur after*
120°F	5 minutes
125°F	2 minutes
130°F	35 seconds
140°F	5 seconds
150°F	2 seconds
160°F	1 second

Published by the National Institute for Burn Injury Prevention

EXHIBIT 5

PHOTO OF COFFEE CUP AND LID

Exhibit 6

Memo of Devon Rutledge

MEMO - CONFIDENTIAL

TO: **J. Pettipone**
Office of the Director of Purchasing

FROM: **Devon Rutledge**
Office of the Director of Quality Assurance

DATE: **March 30, 2006**

RE: COFFEE CUP/LID PURCHASE RECOMMENDATION

We have reviewed the three cup/lid options you provided for the new coffee product line. Factors considered include the customer preference, product quality, and cost. Of the three options you submitted, #837992 (plastic foam with secure lid option) provides the most heat retention – both with regard to product temperature and outside surface temperature. The plastic foam cup is made from 10% post-consumer material and is recyclable. It has a raised base and is reinforced at both the base and rim for added stability and optimal crush-resistance. The lid has a double-lock base and perforated, snap back opening with a small steam release vent. The cost is $0.12 per cup/lid combination. The cost increases to $0.19 per cup/lid with a one-color logo imprint and to $0.21 with a two-color logo imprint. The second option is #837907 (paper board with secure lid option). This cup option provides less heat retention than the #837992 model. It is made from 90% post consumer materials and is recyclable. The cup includes a raised base and base and rim reinforcement for standard crush-resistance. The lid has a single-lock base and perforated, removable opening with a small steam release vent. The cost is $0.09 per cup/lid combination. The cost increases to $0.16 per cup/lid with a one-color logo imprint and to $0.18 with a two-color logo imprint. The third option is #837964 (paper board with flat snap lid option). This cup offers minimal heat retention. It is made from 20% post-consumer materials, but is not recyclable. It has a flat, unreinforced base with a rolled, reinforced rim. Crush resistance is minimal. The lid is single-lock, with no opening or vent. The cost is $0.05 per cup/lid combination. The cost increases to $0.12 per cup/lid with a one-color logo imprint. Two-color logo imprinting is not available on this option.

My recommendation is the first option #837992. This recommendation is based on its heat retention, stability, crush resistance, and visual appeal including a two-color logo imprint.

Exhibit 7
MustSearch Market Research Study

MustSearch

The Voice of the American Consumer

Report of Market Research Study
Cup of Joe, Inc.
February 2006

Thank you for choosing MustSearch for your market research needs. We have completed your study regarding consumer preferences for restaurant coffee. The three-question survey was mailed to all 10,000 MustSearch Consumer Panel Members. MustSearch Consumer Panel Members are all adults over the age of twenty-one. They consist of male and female respondents and identify themselves with a wide range of ethnic and economic backgrounds. A total of 6,241 responses were received. Complete results of this study are attached. Please note that 14% of Consumer Panel Members who submitted responses to this survey indicated that they never purchased coffee from restaurants in response to Question #1. Those Consumer Panel Members were instructed to return the survey without completing Question #2 or 3. Therefore, the results include only 5,368 responses to Questions #2 and 3.

We are happy to assist you with all of your market research needs.

MustSearch

The Voice of the American Consumer

Dear Consumer Panel Member:

This month we are interested in your preferences and opinions about restaurant coffee. Please complete the following survey and return it in the envelope provided. If you return your survey by March 1, 2006, your name will be entered in our drawing for a chance to win one of ten $100.00 prizes. Thank you for your assistance with this important survey.

1. How often do you purchase prepared coffee (not grounds or beans for home preparation) from a restaurant for your personal consumption? [6240 responses]
    - More than one time per day 08.99% (561)
    - One time per day 32.00% (1997)
    - Three to five times per week 17.05% (1064)
    - One or two times per week 12.85% (802)
    - One to three times per month 08.13% (507)
    - Less than one time per month 07.00% (437)
    - Never (Please return this survey.) 13.98% (872)

2. Please rank the following factors in order of importance. (Please use numbers 1 through 3, do not use the same number twice.) [5368 responses]

	1	2	3
Taste	38%	31%	31%
Temperature	41%	51%	08%
Cost	21%	18%	61%

3. Indicate the extent you agree or disagree with the following statements. (1- agree; 2-neither agree nor disagree; 3-disagree) [5368 responses]

    I drink my coffee black, with nothing added.

1	2	3
54%	02%	44%

    When I buy coffee from a restaurant, I prefer to drink with a meal.

1	2	3
21%	22%	57%

    As long as it's hot, the taste of my coffee is not that important.

1	2	3
43%	19%	38%

    I drink coffee only in the morning.

1	2	3
39%	21%	40% 134

    I add cream and/or sugar to my coffee.

1	2	3
42%	06%	52%

Coffee from fast food restaurants doesn't taste good.

1	2	3
29%	34%	37%

When I get coffee to go, I expect it to stay hot until I finish drinking it.

1	2	3
57%	22%	21%

The cheaper the coffee, the worse it tastes.

1	2	3
43%	28%	29%

I don't like to drink coffee with a meal.

1	2	3
52%	28%	20%

I drink to-go coffee in my car.

1	2	3
58%	04%	38%

Good-tasting, rich-flavored coffee is important to me.

1	2	3
34%	18%	48%

I drink coffee because the caffeine wakes me up.

1	2	3
49%	13%	38%

I buy coffee to-go to drink when I get to work.

1	2	3
54%	12%	34%

I am willing to pay more for a great tasting coffee.

1	2	3
40%	21%	39%

The hotter the coffee, the better the taste.

1	2	3
53%	09%	38%

I only buy coffee at coffee shops.

1	2	3
29%	34%	37%

I drink coffee all day long.

1	2	3
40%	31%	29%

I prefer decaffeinated coffee.

1	2	3
32%	24%	44%

Thank you for returning this survey no later than March 1, 2006.

Exhibit 8
Chinook County Health Department Inspection Report

Chinook County Health Department Complaint Inspection Report

Date of Complaint	**6-23-2010**
Complaint Number	**2010-00782**
Establishment Name	**Cup of Joe, Inc.**
Establishment Owner	**Cup of Joe, Inc.**
Complaint/Source	**Cam Gentry, M.D., Oregon Valley Medical Center**
Date of Incident/Violation	**6-21-2010**
Inspector	**T. Vickers**

Nature of Complaint

Agent Vickers received a phone call from Cam Gentry, M.D. from Oregon Valley medical Center. Dr. Gentry reported that a customer of the Cup of Joe establishment on Campbell Avenue suffered serious burns from coffee purchased there. Numerous previous complaints regarding coffee temperature at this establishment. Agent Vickers conducted an unannounced inspection at the establishment the following Monday. Using standard equipment, Agent Vickers measured the temperature in the three coffee machines found at the establishment. Liquid temperatures in the coffee machines were determined to be 189 F, 194 F and 201 F.

Inspection Conclusion

The temperatures in the coffee machines at the establishment exceeded industry standards and resulted in the production and sale of beverages unfit for consumption and hazardous to the health of the establishment's employees and consumers

Remedial Measures Recommended

Reduce holding temperature of establishment's coffee machines. Install standard liquid thermometers. Establish written policies for routine checks on coffee temperatures. Provide burn prevention training to all establishment employees.

Re-Inspection

Date of Re-Inspection	**TBD**
Re-Inspection Status	**Pending**

White Copy - Establishment Yellow Copy - Reg Office Pink Copy - Dept. Office
ACHD Form #216 (rev. 10-1-1999)

V. The Form and Substance of a Trial

A. The Elements of a Civil Case

In civil law, when a person commits a wrong, it is called a tort. It is a civil wrong committed by one against another. The injured party, or plaintiff, may sue the wrongdoer, or defendant, in court for a remedy which is usually money damages. In this case the plaintiff alleges that a tort has been committed and is suing under the legal theories of negligence and strict liability.

The tort of negligence contains four elements and the plaintiff has the burden of proving each of them. They are:

- **Duty**: the defendant owed a duty of care to the plaintiff;
- **Breach of duty**: that duty was violated, or breached, by the defendant's conduct;
- **Causation**: the defendant's conduct caused the plaintiff's harm; and
- **Damages**: the plaintiff suffered actual damages.

A defendant can defend himself or herself by showing either (1) that at least one of the four elements above has not been proven, or (2) introducing the concept of **comparative negligence**. Comparative negligence means dividing the loss according to the degree to which each party is at fault. If the defendant can prove that 50% or more of the fault lies with the plaintiff, then the plaintiff gets no damages and the defense wins.

In this case the plaintiff is suing under two legal theories. The second theory is **strict liability**. Strict liability applies when the defendant is engaged in an activity that is so dangerous neither negligence nor intent need to be proven. For example, transporting toxic chemicals is a situation in which strict liability may apply. The plaintiff has the burden of proving:

- **Causation**: the defendant's conduct caused the plaintiff's harm;
- **Damages**: the plaintiff suffered actual damages; and
- Defendant's **unreasonably dangerous or defective product** caused the harm.

B. Proof by a Preponderance of Evidence

The standard of proof in a civil case is the preponderance of the evidence. This standard requires that more than 50% of the weight of the evidence be in favor of the winning party. This means that Cavanaugh only has to show that it is more likely than not that the injuries occurred as a result of Cup of Joe's actions or inactions. Likewise, Cup of Joe need only prove that is more likely than not that Cavanaugh's injuries occurred as a result of his or her own actions or inactions.

C. Role Descriptions

1. Attorneys

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They introduce evidence and question witnesses to bring out the facts surrounding the allegations.

The plaintiff's attorneys present the case for the plaintiff, Lee Cavanaugh. By questioning witnesses, they will try to convince the jury that the defendant, Cup of Joe, Inc., is liable by a preponderance of the evidence.

The defense attorneys present the case for the defendant, Cup of Joe, Inc. They will offer their own witnesses to present their client's version of the facts. They may undermine the plaintiff's case by showing that the plaintiff's witnesses cannot be depended upon or that their testimony makes no sense or is seriously inconsistent.

Demeanor of **all attorneys** is very important. On direct examination it is easy to be sympathetic and

supportive of your witnesses. On cross-examination it is not less important to be sympathetic and winning. An effective cross-examination is one in which the cross examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney's tool, but it is best achieved by being friendly and winning in the courtroom, including with the other side.

Trial attorneys will:

- conduct direct examination and redirect if necessary
- conduct cross examination conduct redirect and re-cross if necessary
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony)
- be prepared to act as a substitute for other attorneys
- make opening statement and closing arguments

a. Opening Statement

The opening statement outlines the case it is intended to present. The plaintiff's attorney delivers the first opening statement. A good opening statement should explain what the attorney plans to prove, how it will be proven; mention the burden of proof and applicable law; and present the events (facts) of the case in an orderly, easy to understand manner.

One way to begin your statement could be as follows:

"Your Honor, my name is (full name), representing the plaintiff/defense in this case" or
"You Honor, my name is (full name), counsel for the plaintiff/defense in this action."

Proper phrasing in an opening statement includes:

"The evidence will indicate that ..."
"The facts will show that ..."
"Witnesses (full names) will be called to tell ..."
"The defendant will testify that ..."

Tips: You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read you notes word for word – use your notes sparingly and only for reference.

b. Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- call for answers based on information provided in the case materials
- reveal all of the facts favorable to your position
- ask questions which allow the witness to tell the story. Do not ask leading questions which call for only "yes" or "no" answers – leading questions are only appropriate during cross-examination
- make the witness seem believable
- keep the witness from rambling

Call for the witness with a formal request:

"Your Honor, I would like to call (full name of witness) to the stand."
The clerk will swear in the witness before you ask your first question.

It is good practice to ask some introductory questions of the witness to help him/her feel comfortable. Appropriate introductory questions might include the witness' name, length of

residence, present employment, etc.

Proper phrasing of questions on direct include:

"Could you please tell the court what occurred on (date)?"
"How long did you remain in that spot?"
"Did anyone do anything while you waited?"

Conclude your direct examination with:

"Thank you Mr./s. _____. That will be all, your Honor."

Tips: Isolate exactly what information each witness can contribute to proving your case and prepare a series of clear and simple questions designed to obtain that information. Be sure all items you need to prove your case will be presented through your witnesses. Never ask questions to which you do not know the answer. Listen to the answers. If you need a moment to think, do not be afraid to ask the judge for a moment to collect your thoughts, or to discuss a point with co-counsel.

c. Cross Examination, Redirect, Re-Cross, and Closing

For cross examination, see explanations, examples, and tips for *Rule 611*.

For redirect and re-cross, see explanation and note to *Rule 40* and *Rule 611*.

For closing, see explanation to *Rule 41*.

2. Witnesses

Witnesses supply the facts in the case. As a witness, the official source of your testimony, or record, is your witness statement, all stipulations, and exhibits you would reasonably have knowledge of. The witness statements contained in the packet should be viewed as signed and sworn affidavits.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official statement, you can choose how to answer it. You may reply, "I don't know" or "I can't remember," or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable*. If your inference contradicts your official statement, you can be impeached. Also see Rule 3.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or cannot be inferred from the witness statement.

3. Court Clerk, Bailiff, Team Manager

It is recommended that you provide two separate team members for these roles. If you use only one, then that person must be prepared to perform as clerk and bailiff in every trial. The court clerk and bailiff aid the judge in conduction the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

When evaluating the team performance, judges will consider contributions by the clerk and bailiff.

The **plaintiff** will be expected to provide the **clerk** for any given trial. **Defense** will provide the **bailiff**.

a. Duties of the Clerk – Provided by the Plaintiff

When the judge arrives in the courtroom introduce yourself and explain that you will assist as the court clerk. The clerk's duties are as follows:

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the

mock trial packet. In addition, the clerk is responsible for bringing a copy of the "Rules of Competition." In the event that questions arise and the judge needs further clarification, the clerk shall provide this copy to the judge.

2. Swear in the witnesses: Every witness should be sworn in as follows:

"Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mock Trial Competition?"

Witness responds, "I do."

Clerk then says, "Please be seated and state your name for the court and spell your last name."

3. Provide exhibits for attorneys or judges if requested (both sides should have their own exhibits, however, it is a well-prepared clerk who has spares).

A proficient clerk is critical to the success of a trial and points will be given on his/her performance.

b. Duties of the Bailiff – Provided by the Defense

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff. The bailiff's duties are to call the court to order and to keep time during the trial.

1. Call to Order: As the judges enter the courtroom, say, "All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."
Say, "all rise" whenever the judges enter or leave the room.

2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trail and keep track of the time used and time left on the time sheet provided in the mock trial materials.

Time should stop when attorneys make objections. Restart after the judge has ruled on the objection and the next question is asked by the attorney. You should also stop the time if the judge questions a witness or attorney.

After each witness has finished testifying, announce the time remaining, e.g., if after direct examination of two witnesses, the plaintiff has used twelve minutes, announce "8 minutes remaining" (20 minutes total allowed for direct/redirect, less the twelve minutes already used). When the time has run out for any segment of the trial, announce "Time" and hold up the "0" card. After each witness has completed his or her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, hold up "3" minute card, then again at "1" minute, and finally at "0" minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up.

Time sheets will be provided at the competition. You will be given enough time sheets for all rounds. It is your responsibility to bring them to each round. Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave them in the courtroom for the next trial round.

A competent bailiff who times both teams in a fair manner is critical to the success of a trial and points will be given on his/her performance.

c. Team Manager, Unofficial Timer – optional

Team Manager (optional)

Teams may wish to have a person act as its **team manager**. She or he could be responsible for tasks

such as keeping phone numbers of all team members and ensuring that everyone is well informed of meeting times, listserv posts, and so on. In case of illness or absence, the manager could also keep a record of all witness testimony and a copy of all attorneys' notes so that someone else may fill in if necessary. This individual could be the clerk or bailiff. A designated official team manager is not required for the competition.

Unofficial Timer (optional)

Teams may, at their option, provide an unofficial timer during the trial rounds. The unofficial timer can be a Clerk or a currently performing attorney from plaintiff's attorney side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the plaintiff's case-in-chief and once during the presentation of the defense's case). When possible, the unofficial timer should sit next to the official timer.

Any objections to the bailiff's official time must be made by the unofficial timer during the trial, before the decision is rendered. The presiding judge shall determine if there has been a rule violation and whether to accept the Bailiff's time or make a time adjustment. Only currently-performing team members in the above-stated roles may serve as unofficial timers.

To conduct a time check, request one from the presiding judge and ask the Bailiff how much time was recorded in every completed category for both teams. Compare the times with your records. If the times differ significantly, notify the judge and ask for a ruling as to the time remaining. If the judge approves your request, consult with the attorneys and determine if you want to add or subtract time in any category. If the judge does not allow a consultation, you may request an adjustment. You may use the following sample questions and statements:

"Your Honor, before bringing the next witness, may I compare time records with the Bailiff?"

"Your Honor, there is a discrepancy between my records and those of the Bailiff. May I consult with the attorneys on my team before requesting a ruling from the court?"

"Your Honor, we respectfully request that ___ minutes/seconds be subtracted from the prosecution's (direct examination/cross-examination/etc.)."

"Your Honor, we respectfully request that ___ minutes/seconds be added to the defense (direct examination/cross-examination/etc.)."

Be sure not to interrupt the trial for small time differences; your team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timer should be prepared to show records and defend requests. Frivolous complaints will be considered by judges when scoring the round; likewise, valid complaints will be considered against the violating team.

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

All trials will be governed by the Rules of the Oregon High School Mock Trial Competition and the Federal Rules of Evidence – Mock Trial Version.

Rules of the competition as well as proper rules of courthouse and courtroom decorum and security must be followed. CLASSROOM LAW PROJECT and Regional Coordinators have the authority to

impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program. Questions or interpretations of these rules are within the discretion of CLASSROOM LAW PROJECT; its decision is final.

Rule 2. The Problem

The problem is a fact pattern that contains statement of fact, stipulations, witness statements, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Rule 3. Witness Bound by Statements

Each witness is bound by the facts contained in his or her own witness statement, also known as an affidavit, and/or any necessary documentation relevant to his or her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement and does not materially affect the witness' testimony. A witness may be asked to confirm (or deny) the presence (or absence) of information in his or her statement.

> *Example:* A cross-examining attorney may ask clarifying questions such as, "isn't it true that your statement contains no information about the time the incident occurred?"

A witness is **not** bound by facts contained in other witness statements.

> *Explanation:* Witnesses will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably inferred from their own witness statements or fact situation. On direct examination, when your side's attorney asks you questions, you should be prepared to tell your story. Know the questions your attorney will ask you and prepare clear and convincing answers that contain the information that your attorney is trying to get you to say. However, do not recite your witness statement verbatim. Know its content beforehand so you can put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement.
>
> In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all the possible weaknesses, inconsistencies, or other problems in your testimony and be prepared to explain them as best you can. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. Witnesses may be impeached if they contradict what is in their witness statements (see Evidence Rule 607).
>
> The stipulated facts are a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained should be viewed as signed statements made in sworn depositions. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply something like, "I don't know" or "I can't remember." It is up to the attorney to make the appropriate objection when witnesses are asked to testify about something that is not generally known or cannot be reasonably inferred from the fact situation or witness statement.

Rule 4. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting unfair

extrapolation.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to *Rule 4* when objecting, such as "unfair extrapolation" or "outside the scope of the mock trial materials."

Possible rulings a judge may give include:

a) no extrapolation has occurred;
b) an unfair extrapolation has occurred;
c) the extrapolation was fair; or
d) ruling taken under advisement.

The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3).

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Team Rosters, exchanged between teams before the round begins (Rule 31), indicates witnesses and their gender so that references to them can be made correctly during trial.

B. The Trial

Rule 6. Team Eligibility, Teams to State

Teams competing in the Oregon High School Mock Trial Championship must register their team(s) by the registration deadline. A school may register one or two teams.

To participate in the state finals, a team must successfully compete at the regional level. Teams will be assigned to their regions by CLASSROOM LAW PROJECT in January.

All **regional** competitions are **Saturday, March 3.** Teams should be aware, however, that that it is subject to change. The Regional Coordinator has discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, and needs of teams. If dates change, every effort will be made to notify all times in a timely manner.

Teams will be notified of the region in which they will compete after registration closes in mid-January. Teams are not guaranteed to be assigned to the same region they were in last year.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top their region. Students on the team advancing to the state competition must be the same as those in the regional competition. Should a team be unable to compete in the state competition, CLASSROOM LAW PROJECT may designate an alternate team. The **state finals** are scheduled for **March 16-17**, in Portland.

A minimum of four teams are required to hold a regional competition. The following formula will be used to determine the number of teams that advance to the state competition:

No. of Teams in Regional	No. of Teams to State
4-5	1
6-10	2
11-15	3
16-20	4
21-25	5

Rule 7. Team Composition

A mock trial team must consist of a **minimum of eight** students and may include up to a **maximum of 18** students all from the same school. Additional students could be used in support roles as researchers, understudies, photographers, court artists, court reporters, and news reporters. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable, especially where there are large enrollments.

> *Note:* At the National High School Mock Trial Championships, teams shall consist of a maximum of eight members with six participating in any given round. Since teams larger than eight members are ineligible, Oregon's winning team may have to scale back on the number of team members to participate at the national level.

A mock trial team is defined as an entity that includes attorneys and witnesses for both the plaintiff and defense (students may play a role on the plaintiff side as well as on the defense side if necessary), clerk, and a bailiff. One possible team configuration could be:

3 attorneys for the plaintiff
3 attorneys for defense
3 witnesses for the plaintiff
3 witnesses for the defense
1 clerk
1 bailiff
14 TOTAL

All team members, including teacher and attorney coaches, are required to wear name badges at all levels of competition. Badges are provided by the competition coordinator.

All mock trial teams must submit the Team Roster – Coordinator's Copy (see appendix) form listing the team name and all coaches and students to the competition coordinators at the student orientation. If a school enters two teams, **team members cannot switch teams at any time for any round of regional or state competition.**

For schools entering one team, your team name will be the same as your school name. For schools entering two teams, your team name will be your school name plus one of your school colors (for example, West Ridge Black and West Ridge Blue).

For purposes of pairings in the competition, all teams will be assigned letter designations such as AB or CD. This addresses concerns related to bias in judging due to school name. Teams will be assigned letter codes by CLASSROOM LAW PROJECT prior to the competition. Notification of letter code designations will be made via the mock trial listserv.

Rule 8. Team Presentation

Teams must present both the plaintiff and defense sides of the case. All team members must be present and ready to participate in all rounds. The competition coordinators guarantee that both the plaintiff and defense sides of every team will have at least one opportunity to argue its side of the case.

Note: **Because teams are power-matched after Round 1, there is no guarantee that in Round 2 the other side of your team will automatically argue.** However, if, for example, in Rounds 1 and 2 your plaintiff side argued, then you are guaranteed that in Round 3 the defense side will argue. **Parents should be made aware of this rule.**

Rule 9. Emergencies

During a trial, the Presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period to address the emergency.

In the event of an emergency that would cause a team to participate with less than eight members,

the team must notify the Competition Coordinator as soon as is reasonably practical. If the Coordinator, in his or her sole discretion, agrees that an emergency exists, the Coordinator shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than eight members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the team ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement will be made by the Competition Coordinator.

Rule 10. Team Duties

Team members are to divide their duties as evenly as possible. Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call all three witnesses; failure to do so results in a mandatory two-point penalty. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

> "Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?"

The **clerk**, provided by the plaintiff, swears in all witnesses.

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 40 minutes to present its case. The trial sequence and time limits are as follows:

1.	Introductory matters	5 minutes total (conducted by judge)*
2.	Opening Statement	5 minutes per side
3.	Direct and Redirect (optional)	20 minutes per side
4.	Cross and re-cross (optional)	10 minutes per side
5.	Closing argument	5 minutes per side**
6.	Judges' debrief	15 minutes total (conducted by judges)*

*Not included in 40 minutes allotted for each side of the case.

**Plaintiff may reserve time for rebuttal at the beginning its closing argument. Presiding Judge should grant time for rebuttal even if time has not been explicitly reserved.

The Plaintiff gives the opening statement first. And the Plaintiff gives the closing argument first and should reserve a portion of its closing time for a rebuttal if desired. The Plaintiff's rebuttal is limited to the scope of the defense's closing argument.

None of the foregoing may be waived (except rebuttal), nor may the order be changed.

The attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is

provided by the **defense**. An optional unofficial timer may also be provided by the plaintiff/prosecution according to the directions in Section V.D.3.c. Unofficial Timer.

b. Timing will halt during objections, extensive questioning from a judge, and administering the oath.

c. Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.

d. Three and one-minute card warnings must be given before the end of each trial segment. **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**

e. The bailiff will also **time the judges' critique** after the trial; the judging panel will be allowed 15 minutes (5 minutes per judge). When the time has elapsed, the bailiff will hold up the "0" card. Presiding judge should limit critique sessions to the 15 minutes allotted.

Rule 14. Time Extensions and Scoring

The Presiding Judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether to deduct points because of overruns in time.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case materials. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials or CLASSROOM LAW PROJECT. Use of easels, flip charts, and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates and observers shall not talk to, signal, communicate with or coach their teams during trial. **This rule remains in force during any recess time that may occur.** Performing team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. **There must be no spectator or non-performing team member contact with the currently performing student team members once the trial has begun.**

Everyone in the courtroom shall turn off all electronic devices.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar.

There will be an **automatic two-point deduction** from a team's total score if the coach, other team members or spectators are found in violation of this rule by the Judges or Competition Coordinators. Regional Coordinators may exercise their discretion if they find a complaint is frivolous or the conversation was harmless.

Rule 17. Viewing a Trial

Team members, alternates, coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the Coordinator, are **not** allowed to view other teams in competition, so long as their team remains in the competition.

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, tape recording, still photography or media coverage. However, media coverage shall be allowed by the two teams in the championship round.

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge. All three shall score teams using ballots. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

During the final championship round of the state competition, the judges' panel may be comprised of more than three members at the discretion of CLASSROOM LAW PROJECT.

Rule 21. Ballots

The term "ballot" refers to the decision made by a scoring judge as to which team won the round. Each judge completes his or her own ballot with a number between 1 (poor) and 10 (excellent) less penalty points, for each team. Ties are not allowed. The team that earns the highest points on an individual judge's ballot is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The points shall not be announced during the competition. A sample ballot is included in the Appendix.

Rule 22. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss record - equals the number of rounds won or lost by a team;
2. Total number of ballots - equals the number of scoring judges' votes a team earned in preceding rounds;
3. Total number of points accumulated in each round;
4. Point spread against opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 23. Power Matching/Seeding

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The schools emerging with the strongest record from the three rounds will advance to the state competition and final round. The first-place team at state will be determined by ballots from the championship round only.

Power-matching provides that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order (1) win/loss record; (2) ballots; and (3) total presentation points. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Teams will not meet the same opponent twice;
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds.
7. Bracket integrity in power matching will supersede alternate side presentation.

Competition Coordinators in smaller regions (generally fewer than eight teams) have the discretion to modify power matching rules to create a fairer competition.

Rule 24. Merit Decisions

Judges are not required to make a ruling on the legal merits of the trial. However, during the critiquing process, judges may inform students of a hypothetical verdict. Judges shall **not** inform the teams of score sheet results.

Rule 25. Effect of Bye/Default or Forfeiture

A "bye" becomes necessary when an odd number of teams compete in a region. The byes will be assigned based on a random draw. For the purpose of advancement and seeding, when a team draws a bye or wins by default, that team will be given a win and the average number of ballots and points earned in its preceding trials.

A forfeiting team will receive a loss and points totaling the average received by the losing teams in that round. If a trial cannot continue, the other team will receive a win and an average number of ballots and points received by the winning teams in that round.

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

At the conclusion of the trial round, the presiding judge will ask each side if it needs to file a dispute. If any team has serious reason to believe that a material rules violation has occurred including the Code of Ethical Conduct, one of its student attorneys shall indicate that the team intends to file a dispute. The student attorney may communicate with co-counsel and student witnesses before lodging the notice of dispute or in preparing the form, found in the Appendix, Rule 26 form. **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke dispute procedure.** Teams filing frivolous disputes may be penalized.

Rule 27. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute deserves a hearing or should be denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, and retire along with the other judges to complete the scoring process.

If the judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (five minutes maximum) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 28. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation or a violation of the Code of Ethical Conduct has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges. The decisions of the judges are FINAL.

Rule 29. Reporting Rules Violation – Outside the Bar

Charges of ethical violations that involve people other than student team members must be made promptly to a competition coordinator, who will ask the complaining party to complete a dispute form, found in the Appendix, Rule 30 form. The form will be taken to the coordinator's communication center, where the panel will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in *Rules 26-28*.

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

Copies of the Team Roster Form (see appendix) must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by their letter code only; no information identifying team origin should appear on the form. Before beginning a trial, the teams shall exchange copies of the Team Roster Form. Witness lists should identify the gender of each witness so that references to them can be made correctly.

Rule 31. Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 32. The Record

No stipulations, pleadings, or jury instructions shall be read into the record.

NEW THIS YEAR: Rule 33. Courtroom Seating

The Plaintiff team shall be seated closest to the jury box. No team shall rearrange the courtroom without permission of the judge.

B. Beginning the Trial

Rule 34. Jury Trial

The case will be tried to a jury; arguments are to be made to the judge and jury. Teams may address the scoring judges as the jury.

NEW THIS YEAR: Rule 35. Motions Prohibited

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 36. Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening statements and closing arguments, during direct and cross examinations, and for all objections.

Rule 37. Objection During Opening Statement/Closing Argument

No objections shall be raised during opening statements or during closing arguments.

Note: It will be the Presiding Judge's responsibility to handle any legally inappropriate statements made in the closing; all judges may consider the matter's weight when scoring.

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
   Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "
2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
   Example: "tell us what you know about the case."
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
   Warning: this objection also applies to the witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections so long as they are based on Mock Trial Rules of Evidence or other mock trial rules. **Objections not related to mock trial rules are not permissible.**

Rule 39. Procedure for Introduction of Exhibits

As an *example*, the following steps effectively introduce evidence:

Note: Steps 1 - 3 introduce the item for identification.

1. Hand copy of exhibit to opposing counsel while asking permission to approach the bench. “I am handing the Clerk what has been marked as Exhibit X. I have provided copy to opposing counsel. I request permission to show Exhibit X to witness ____ .”
2. Show the exhibit to the witness. “Can you please identify Exhibit X for the Court?”
3. The witness identifies the exhibit. But the attorney *does not* show it to the jury until it is admitted into evidence.

Note: Steps 4-8 offer the item into evidence.

4. Offer the exhibit into evidence. “Your Honor, we offer Exhibit X into evidence at this time. The authenticity of the exhibit has been stipulated.”
5. Court, “Is there an objection?” If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
6. Opposing Counsel, “no, your Honor,” or “yes, your Honor.” If the response is “yes,” the objection will be stated on the record. Court, “Is there any response to the objection?”
7. Court, “Exhibit X is/not admitted.”

   The attorney may then proceed to ask questions.
8. If admitted, Exhibit X becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. *Do not* leave the exhibit with the witness or take it back to counsel table.

Rule 40. Use of Notes

Attorneys may use notes when presenting their cases. Witnesses, however, are **not** permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. NEW THIS YEAR: The use of laptops or other electronic devices is prohibited.

Rule 41. Redirect/Re-Cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version). **For both redirect and re-cross, attorneys are limited two questions each.**

> *Explanation:* Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only; they may not bring up other issues. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination." It is sometimes more beneficial not to conduct it for a particular witness. The attorneys will have to pay close attention to what is said during the cross-examination of their witnesses, so that they may decide whether it is necessary to conduct re-direct. Once re-direct is finished the cross examining attorney may conduct re-cross to clarify issues brought out in the immediately preceding re-direct examination only.

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to "save" the witness. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness' truth telling image in the eyes of the court. Work closely with your attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

Note: **Redirect and re-cross time used will be deducted from total time allotted for direct and cross-examination for each side.**

D. Closing Arguments

Rule 42. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial.

> *Explanation:* a good closing argument summarizes the case in the light most favorable to your position. The plaintiff delivers the first closing argument. The plaintiff side should reserve time for rebuttal before beginning its closing argument and the judge *should* grant it. The closing argument of the defense concludes that side's the presentation.
>
> A good closing should:
>
> - be spontaneous, synthesize what actually happened in court rather than being re-packaged;
> - be emotionally charged and strongly appealing (unlike the calm opening statement);
> - emphasize the facts which support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
> - outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
> - isolate the issues and describe briefly how your presentation addressed these issues
> - summarize the favorable testimony

- attempt to reconcile inconsistencies that might hurt your side
- be well-organized, clear and persuasive (start and end with your strongest point);
- the plaintiff should emphasize that it has proven liability/negligence by a preponderance of the evidence;
- the defense should raise questions that show element(s) of negligence not met;
- the defense should raise questions about the plaintiff's responsibility;
- weave legal points of authority with the facts.

Proper phrasing includes:
"The evidence has clearly shown that ..."
"Based on this testimony, there can be no doubt that ..."
"The plaintiff has failed to prove that ..."
"the defense would have you believe that ..."

Plaintiff should conclude the closing argument with an appeal to find the defendant liable based on the preponderance of the evidence. And the defense should say the plaintiff has failed to demonstrate liability by a preponderance of the evidence and, in this case, that the plaintiff is at least 50 percent responsible for his or her injuries.

E. Critique

Rule 43. The Critique

The judging panel is allowed 15 minutes for critiquing. The timekeeper (bailiff) will monitor the critique following the trial. Judges are to limit critique sessions to 15 minutes total (5 minutes per judge) time allotted.

Note: Judges' 15 minutes is not included in 40 minutes allotted to each side of the case.

VIII. FEDERAL RULES OF EVIDENCE – Mock Trial Version

To assure each party of a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way and mock trial

attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The mock trial Rules of Competition and these Federal Rules of Evidence - Mock Trial Version govern the Oregon High School Mock Trial Championship.

Article I. General Provisions

Rule 101. Scope

These Federal Rules of Evidence - Mock Trial Version govern the trial proceedings of the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article IV. Relevancy and Its Limits

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

Explanation: Questions and answers must relate to an issue in the case; this is called "relevance." Questions or answers that do not relate to an issue in the case are "irrelevant" and inadmissible.
Example: (in a traffic accident case) "Mrs. Smith, how many times have you been married?"

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes of time. or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence Not admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence. – Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

(1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

(2) Character of victim. – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered buy the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness. – Evidence of the character of a witness as provided in Rules 607, and 608.

(b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be

admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) Reputation or opinion. – In all cases where evidence of character or a character trait is admissible, proof may be by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.
(b) Specific instances of conduct. – In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence or subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusions of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.)

> *Example*: "I know Harry well enough to know that two beers usually make him drunk, so I'm sure he was drunk that night, too."

Rule 607. Who May Impeach

The credibility of a witness may be attacked or challenged by any party, including the party calling the witness.

Explanation: On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g. "isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g. "you were convicted of shoplifting, weren't you?); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit.

Witness statements in the Mock Trial materials are considered to be affidavits.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:
Step 1: Introduce the affidavit for identification (see Rule 38).
Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burns, on direct examination you testified that you were out of town on the night in question, didn't you?"
Witness responds, "yes."

Step 3: Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

Example: "All right, Mrs. Burns, will you read paragraph three?" Witness reads, "Harry and I decided to stay in town and go to the theater."

Step 4: Dramatize the conflict in the statements. Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burns was in town or not.

Example: "So, Mrs. Burns, you testified that you were *out* of town in the night in question didn't you?"
"Yes."
"Yet in your affidavit you said you were *in* town, didn't you?"
"Yes."

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character of truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime.

(a) General rule. For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. -- The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

(1) make the questioning and presentation effective for ascertaining the truth,
(2) avoid needless use of time, and
(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. -- The scope of cross examination **shall not** be limited to the scope of the direct examination, but **may inquire into any relevant facts or matters contained in the witness' statement**, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

Explanation: Cross examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross examination should:

- call for answers based on information given in witness statements or fact situation;
- use leading questions which are designed to get "yes" or "no" answers;
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;
- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience;

Examples of proper questions include: "Isn't it a fact that ...?" "Wouldn't you agree that ...?" "Don't you think that ...?"

Cross examination should conclude with:
"Thank you Mr./s _____ (last name). That will be all, your Honor."

Tips: Be relaxed and ready to adapt your prepared questions to the actual testimony given during direct examination; always listen to the witness's answer; avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination; don't harass or attempt to intimidate the witness; and don't quarrel with the witness. **Be brief; ask only questions to which you already know the answer.**

(c) Leading questions. -- Leading questions are **not** permitted on direct examination of a witness (except as may be necessary to develop the witness' testimony). Leading questions **are** permitted on cross examination.

Explanation: A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.
Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?" This is an appropriate question for cross-examination but not direct or re-direct.

(d) Redirect/Re-Cross. -- After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition. **For both redirect and re-cross, attorneys are limited to two questions each.**

Explanation: A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on a subjects raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be "beyond the scope of re-direct/cross." See Rule 44 for more discussion of redirect and re-cross.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Explanation: Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. But a witness may give an opinion on his/her perceptions if it helps the case.
Example - inadmissible lay opinion testimony: "The doctor put my cast on wrong. That's why I have a limp now."
Example - admissible lay opinion testimony: "He seemed to be driving pretty fast for a residential street."

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

Note: Attorneys should qualify a witness as an expert by asking questions from the list suggested above.
Note: In criminal cases, witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the defendant was guilty. This is a matter for the judge or jury to decide.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Explanation: Unlike lay witnesses who must base their opinions on what they actually see

and hear, expert witnesses can base their opinions on what they have read in articles, texts, or records they were asked to review by a lawyer, or other documents which may not actually be admitted into evidence at the trial. **These records or documents may include statements made by other witnesses.**

Rule 704. Opinion on Ultimate Issue

(a) opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact. (b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Note: In criminal cases, witnesses, including experts, cannot have opinions on the guilt or innocence of the defendant. This is a matter for the judge or jury to decide.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:
(a) Statement -- A *statement* is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
(b) Declarant -- A *declarant* is a person who makes a statement.
(c) Hearsay -- *Hearsay* is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Explanation: If a witness tries to repeat what someone has said, the witness is usually stopped from doing so by the hearsay rule. Hearsay is a statement made by someone other than the witness while testifying. Because the statement was made outside the courtroom, usually a long time before the trial, it is called an "out-of-court statement." The hearsay rule also applies to written statements. The person who made the statement is referred to as the "declarant." Because the declarant did not make the statement in court under oath and subject to cross examination, the declarant's statement is not considered reliable.

Example: Witness testifies in court, "Harry told me the blue car was speeding."
What Harry said is hearsay because he is not the one testifying. He is not under oath, cannot be cross-examined, and his demeanor cannot be assessed by the judge or jury. Further, the witness repeating Harry's statement might be distorting or misinterpreting what Harry actually said. For these reasons, Harry's statement, as repeated by the witness, is not reliable and therefore not admissible. The same is true if Harry's prior written statement was offered.

Only out-of-court statements which are offered to prove what is said in the statements are considered hearsay. For example, a letter that is an out of court statement is not hearsay if it is offered to show that the person who wrote the letter was acquainted with the person who received it. But if the letter was offered to prove that what was said in the letter was true, it would be hearsay.

(d) Statements which are not hearsay -- A statement is not hearsay if:
(1) Prior statement by witness -- the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is
(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition or
(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
(C) one of identification or a person made after perceiving the person; or

Explanation: If any witness testifies at trial, and the testimony is different from what

the witness said previously, the cross-examining lawyer can bring out the inconsistency. In the witnesses' statements in the mock trial materials (considered to be affidavits), prior inconsistent statements may be found (see Impeachment Rule 607).

(2) Admission by a party-opponent -- The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Explanation: A statement made previously by a party (either the plaintiff or defendant) is admissible against that party when offered by the other side. Admissions may be found in the plaintiff's or defendant's own witness statements. They may also be in the form of spoken statements made to other witnesses.

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression -- A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

Example: As the car drove by Janet remarked, "wow, that car is really speeding."

(2) Excited utterance -- A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

Example: the witness testifies, "Mary came running out of the store and said, 'Cal shot Rob!'"

(3) Then existing mental, emotional, or physical conditions -- A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory of belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of a declarant's will.

Example: A witness testifies, "Mary told me she was in a lot of pain and extremely angry at the other driver."

(4) Statements for purposes of medical diagnosis or treatment -- Statements made for the purpose of medical diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay if each part of the combined

statement conforms with an exception to the hearsay rule provided in these rules.

> *Example*: A police report contains a notation written by the officer, "Harry told me the blue car was speeding." The report might be admissible as a business record but Harry's statement within the report is hearsay.

IX. NOTES TO JUDGES

A. Note to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with the case materials as well as the rules of competition. Mock trial rules sometimes differ with what happens in a court of law. Particular attention should be paid to the simplified rules of evidence. The students have worked hard for many months and are disappointed when judges are not familiar with the case materials.

Please note that the mock trial competition differs from a real trial situation in the following ways:

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge may request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (plaintiff/prosecution provides the clerk). Bailiffs time all phases of the trial *including the 15-minute judges' critique (5 minutes per judge)*.
4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round should be **completed within two hours**. To keep the competition on schedule, please keep within the time limits set out in Rule 12. *Do not allow judges' critiques go overtime*.

Each courtroom will be assigned a panel of three judges:

- The presiding attorney will sit at the bench and will be responsible for conducting the trial, including ruling on objections.
- The other two judges will sit in the jury box and will have primary responsibility for evaluating and scoring student performances.

The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative.

B. Introductory Matters

The presiding judge should handle the following introductory matters prior to the beginning of the trial:

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role. Students are to identify their team by their assigned letter designation and not by school name.
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.

3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave. They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the competing teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following items may be offered as evidence at the trial:
    Exhibit 1. Photos of Burns
    Exhibit 2. Diagram of Healthy Dermis Layer
    Exhibit 3. Illustration of Burn Damage to Dermis Layers
    Exhibit 4. Exposure to Hot Liquids Chart
    Exhibit 5. Photo of Cup of Joe Coffee Cup and Lid
    Exhibit 6. Memo of D. Rutledge
    Exhibit 7. MustSearch Market Research Study
    Exhibit 8. Chinook County Health Department Inspection Report

Finally, before you begin, indicate that you have been assured that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition including the teams before you. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect.

If there are no other questions, begin the trial.

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as specified in Rule 27. Then judges complete their ballots. **Judges shall NOT inform the students of results of their scores or results from their ballots.** The presiding judge may, however, announce a ruling on the merits of the case – that is, which side would have prevailed if the trial were real – being careful to differentiate that winning the trial has no bearing on which side won on performance (on judges' ballots).

C. Evaluation Guidelines

All teams will compete in all three rounds. Teams are randomly matched for Round 1 and then power matched based on win/loss record; total number of ballots (which is the number of scoring judges' votes); and in Rounds 2 and 3, total number of points accumulated in each round.

Teams will provide Team Rosters to each judge. The rosters are helpful for note-taking, identifying gender of witnesses and providing critique at the end.

Judges will be provided with individual ballots by the Competition Coordinator. The ballots must be filled out and given to the Clerk to deliver to the scoring room **before** judges begin critiquing. Both Team Rosters and ballots are confidential and shall not be shared with any team members.

The following evaluation guidelines should be used to provide comments to the students during the debrief and determine the overall team presentation points:

EVALUATION GUIDELINES

An overall presentation score (1-10) must be awarded each team. This score, minus any penalty points, is the total team score that should be written on the colored win/loss ballot to be turned in for scoring and matching purposes. The three judges do **not** need to agree on number of points or winning team.

The following criteria should be used in determining **overall team presentation** points:

1-2 pts **Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.

3-4 pts **Fair**. Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.

5-6 pts **Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case, but no mastery. Communications clear and understandable but could be more fluent and persuasive.

7-8 pts **Excellent.** Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.

9-10 pts **Outstanding**. Superior in qualities listed in 7-8 above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential, used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed proper courtroom decorum, spoke clearly and distinctly. All team members were involved in the presentation and participated actively in fulfilling their respective roles, including the Clerk and Bailiff. The Clerk and Bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

D. Penalty Points

Points should be deducted if a team member:

1. Uses procedures beyond the mock trial rules.
2. Goes beyond the scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing team members or other observers. This includes breaks or recesses, if any should occur, in the trial: **mandatory 2-point penalty**. The Competition Coordinator and judge have discretion to determine whether a communication was harmful.
5. Does not call all witnesses: **mandatory 2-point penalty.**

Judges may assign the number of penalty points at their discretion except where otherwise indicated. Rate each team on overall presentation using 1-10 points. **Use whole numbers only (no fractions!).** A unanimous decision among the three judges is not required.

Note: The behavior of teachers and attorney coaches may also impact the team's score.

The judges' decision is final.

Judges shall not engage in any discussion with students or coaches about scoring after the trial. Any questions from teams about scoring should be referred to the Competition Coordinators**.**

E. Tips for Critiquing

Although students are anxious to hear how they did in all rounds of the mock trial competition, specific feedback is most important in the early rounds so that students have the opportunity to incorporate your suggestions for improvement into their next trial rounds. Try not only to praise

students but also to provide comments to help them improve. Each judge should offer a **few** comments. Providing one useful comment to a student is better than a generic, "well done" to all.

Because it is impossible for each of the three judges to offer comments to every team member within the 15-minute debrief time allotted, it is recommended that judges divide the team members among the themselves so that every team member gets at least one comment but the critique time is honored:

- the educator judge should critique the witnesses, bailiff, and clerk;
- the presiding judge should critique on trial strategy and overall presentation; and
- the other judge should critique the attorneys.

Suggested critique might include comments such as:

> "The content of your opening statement laid a clear strategy for your case – well done. A little more volume and it would have been even better." *or*
>
> "You asked good, specific questions on direct that went to the heart of your team's strategy – that made you and your team look great. Be ready to defend your questions when objections are made."

The bailiff shall time the critique. Critique is limited to 15 minutes total – five minutes per judge. When the bailiff holds up the "0" minutes card, the critique is over. Once the critique has concluded, the presiding judge should make certain that the courtroom is cleaned before the teams are dismissed.

##

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APPENDICES

Notes:

Often Used Objections in Suggested Form

Note: This exhibit is provided to assist students with the proper form of objections. It is NOT a comprehensive list of all objections. Permissible objections are those related to a rule in the mock trial material (examples below). Impermissible objections are those not related to mock trial rules (example: hearsay based on business records exception). That is to say, an objection must be based on a rule found in the Mock Trial materials, not additional ones even if they are commonly used by lawyers in real cases.

The following objections are often heard in mock trials but do not represent an exhaustive list.

> **Note**: Objections during the testimony of a witness will be permitted only by the direct examining and cross-examining attorneys for that witness.

1. Leading Question (see Rule 611)
Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)
Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question would not be leading if rephrased as: "Mr. Smith, where did you and Ms. Jones go that night?" (This does not ask for a yes or no answer.)

2. Relevance (see Rule 402)
Objection: "Your Honor, this question is irrelevant to this case."
Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

3. Hearsay (see Rules 801, 802, 803, 805)
Objection: "Objection, Your Honor, this is hearsay."
Response: "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

4. Personal Knowledge (see Rule 602)
Objection: "Your Honor, the witness has no personal knowledge of Harry's condition that night."
Response: "The witness is just generally describing her usual experience with Harry."

5. Opinions (see Rule 701)
Objection: "Objection, Your Honor, the witness is giving an opinion."
Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

6. Outside the Scope of Mock Trial Materials/Rules (see Rule 4)
Objection: "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."
Response: "The witness is making a reasonable inference."

The presiding **judge** may call a bench conference for clarification from both attorneys.

TEAM ROSTER – COORDINATOR'S COPY

Please provide one copy to competition Coordinator at student orientation

School Name		**Team Letter Code**
OPENING		
Plaintiff		**Defense**
Direct	**Witness**	**Cross**
	Lee Cavanaugh	
	Cam Gentry, M.D.	
	Taylor Vickers	
Cross		**Direct**
	Devon Rutledge	
	Alex Frye	
	Jody Bartlett	
CLOSING		
Plaintiff		**Defense**
Clerk		**Bailiff**
Coaches (include addresses)		

TEAM ROSTER – PLAINTIFF SIDE

Please provide each judge with a copy when representing the Plaintiff

Team Letter Code		
OPENING STATEMENT Plaintiff's attorney		
Direct	**Witness**	**Cross**
	Lee Cavanaugh	
	Cam Gentry, M.D.	
	Taylor Vickers	
Cross		**Direct**
	Devon Rutledge	
	Alex Frye	
	Jody Bartlett	
CLOSING Plaintiff's attorney		
Clerk		
General Comments		

TEAM ROSTER – DEFENSE SIDE

Please provide each judge with a copy when representing the defendant

Team Letter Code		
	OPENING STATEMENT	**Defendant's attorney**
Direct	**Witness**	**Cross examination**
	Lee Cavanaugh	
	Cam Gentry, M.D.	
	Taylor Vickers	
Cross		**Direct examination**
	Devon Rutledge	
	Alex Frye	
	Jody Bartlett	
	CLOSING ARGUMENTS	**Defendant's attorney**
		Bailiff
General Comments		

SAMPLE JUDGE'S BALLOT

JUDGES: Please fill in every line, enclose with colleagues' ballots in envelope provided, **seal** envelope and ask clerk to deliver envelope to scoring room **BEFORE begining your debrief!**

WINNER: _____

Winning Team Code

Winning score (1-10):	_____	points
Less penalty points:	_____	points*
TOTAL SCORE:	_____	points

LOSER: _____

Losing Team Code

Losing score (1-10):	_____	points
Less penalty points:	_____	points*
TOTAL SCORE:	_____	points

***Penalty points may, at the discretion of the judge, be deducted if a team member:**

1. Uses procedures beyond the mock trial rules.
2. Goes beyond scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing members or other observers. This includes breaks or recesses, if any should occur, in the trial (***mandatory** 2 point penalty).
5. Does not call all witnesses (***mandatory** 2 point penalty).

Frivolous complaints should not be filed. The regional coordinator and judge have discretion to determine whether a communication was harmful.

- You may assign the number of penalty points at your discretion except where otherwise indicated.
- Rate the team on overall presentation using 1-10 points.
- Use whole numbers (no fractions!).
- The winning team must have more points than the losing team.

Do NOT announce which team has won by points

~but OK to announce team winning on the legal merits~

Evaluation Guidelines

An overall presentation score (1-10) must be awarded each team. This score, minus any penalty points, is the total team score that should be written on the colored win/loss ballot to be turned in for scoring and matching purposes. The three judges do **not** need to agree on number of points or winning team.

The following criteria should be used in determining **overall team presentation** points:

1-2 pts **Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.

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5-6 pts **Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case, but no mastery. Communications clear and understandable but could be more fluent and persuasive.

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Time Sheet

_____ v. _____

Plaintiff/Pros.—Team Code **Defense—Team Code**

Opening Statement: 5 minutes per side

P	5 minutes	___ minutes used
D	5 minutes	___ minutes used

Plaintiff/Pros.: Direct/Re-direct—20 minutes total

Start		20 minutes	
Witness #1:	time used ____	less	___ minutes
			___ minutes unused
Witness #2:	time used ____	less	___ minutes
			___ minutes unused
Witness #3:	time used ____	less	___ minutes
			___ minutes unused

Defense: **Cross/Re-cross—10 minutes total**

Start		10 minutes	
P witness #1	time used ____	less	___ minutes
			___ minutes unused
P witness #2	time used ____	less	___ minutes
			___ minutes unused
P witness #3	time used ____	less	___ minutes
			___ minutes unused

Defense: Direct/Re-direct—20 minutes total

Start		20 minutes	
D witness #1:	time used ____	less	___ minutes
			___ minutes unused
D witness #2:	time used ____	less	___ minutes
			___ minutes unused
D witness #3:	time used ____	less	___ minutes
			___ minutes unused

Plaintiff/Pros.: **Cross/Re-cross—10 minutes total**

Start		10 minutes	
D witness #1	time used ____	less	___ minutes
			___ minutes unused
D witness #2	time used ____	less	___ minutes
			___ minutes unused
D witness #3	time used ____	less	___ minutes
			___ minutes unused

Closing Argument: 5 minutes per side

Plaintiff/Pros.	time used ____	less	___ minutes
			___ minutes left for rebuttal
Defense	time used ____	less	___ minutes

Judges' Debrief: 15 minutes total ___minutes used

RULE 26 - REPORTING RULES VIOLATION FORM FOR TEAM MEMBERS INSIDE THE BAR (PERFORMING IN THIS ROUND)

THIS FORM MUST BE RETURNED TO THE TRIAL COORDINATOR ALONG WITH THE SCORESHEETS OF THE SCORING JUDGES.

Round (circle one) **1 2 3** **Pros/Plaintiff:** team code ____ **Defense:** team code _____

Grounds for Dispute: _____

_____

_____

_____

Initials of Team Spokesperson: _____ Time Dispute Presented to Presiding Judge: _____

Hearing Decision of Presiding Judge (circle one): **Grant Deny** Initials of Judge: _____

Reason(s) for Denying Hearing: _____

_____

_____

_____

Initials of Opposing Team's Spokesperson: _____

Presiding judge's notes from hearing and reason(s) for decision: _____

_____

_____

_____

_____

Signature of Presiding Judge

RULE 29 - REPORTING RULES VIOLATION FORM
FOR USE BY PERSONS BEHIND THE BAR
(NOT PERFORMING IN THIS ROUND)

Non-Performing team members wishing to report a violation must promptly submit this form to competition coordinator

Date: _____ **Time Submitted:** _____

Person Lodging: _____ **Affiliated With:** (Team Code) _____

Grounds for Dispute: _____

_____

_____

_____

Initials of Competition Coordinator: _____ Time Dispute Presented to Coordinator: _____

Notes From Hearing: _____

_____

_____

_____

Decision/Action of Coordinator:_____

_____

_____

_____

_____ _____

Signature of Competition Coordinator Date /Time of Decision

Diagram of a Typical U.S. Courtroom