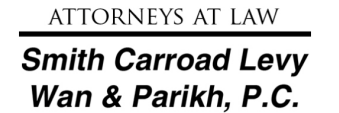




CLLA FALL VIRTUAL EDUCATION BONANZA SEPTEMBER 9 - 11

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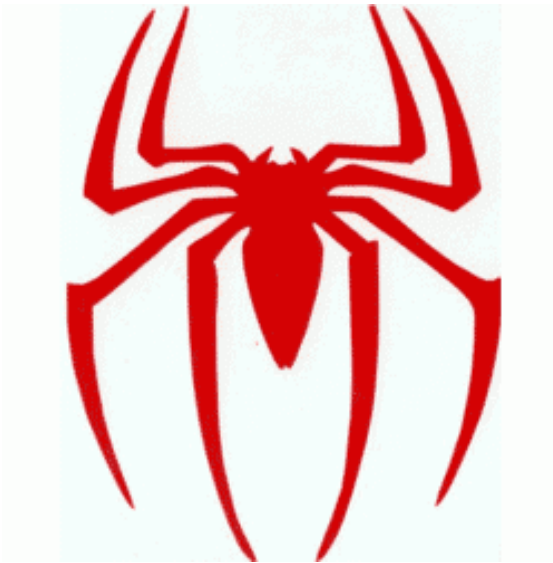
Trying Complex Commercial Litigation Cases to a Jury

John O. Postl

Postl Legal

21 Mayor Thomas J. McGrath Highway

Quincy, MA 02169



The Facts

The Facts:

Clark Kent Manufacturing (“CKM”) makes molded injection containers for food products.

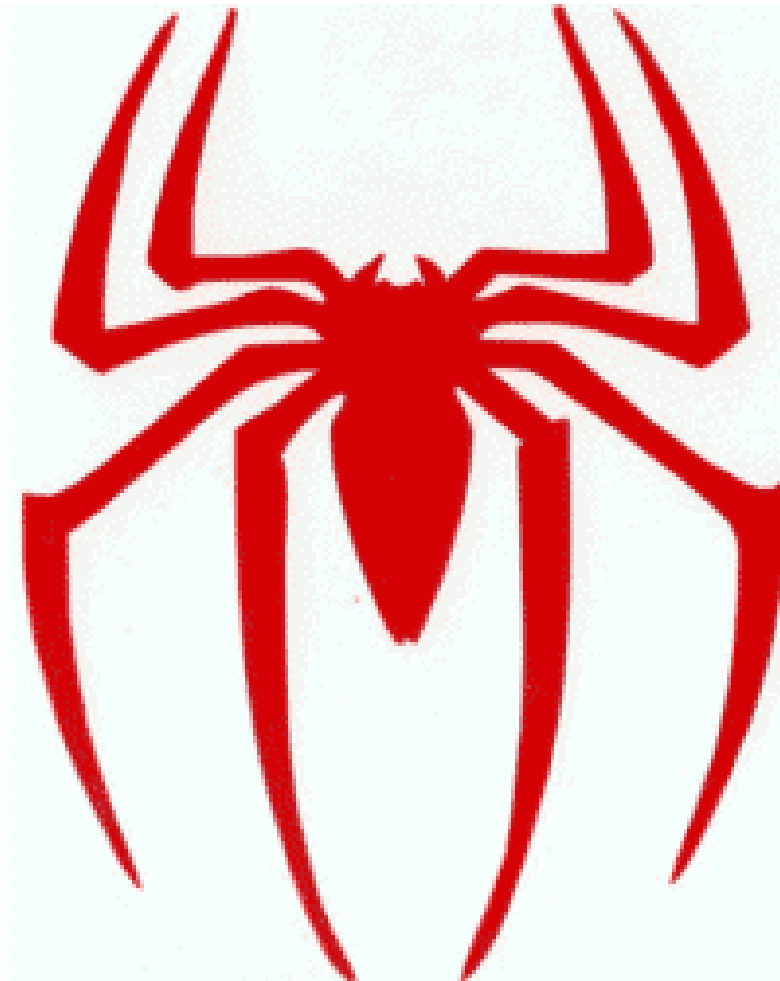


(“CKM”)

The Facts:

CKM works with a broker, Peter Parker Plastics (“PPP”), to find plastic resin pellets for use in the injection molding process.

CKM orders 150,000 pounds of pellets from PPP.



(“PPP”)

The Facts:

PPP then contacts its supplier, Acme Plastics, and is informed that Acme has a rail car of the plastic resin pellets.

Acme has the product shipped to Metropolis.

Acme then title transfers the rail car to PPP.



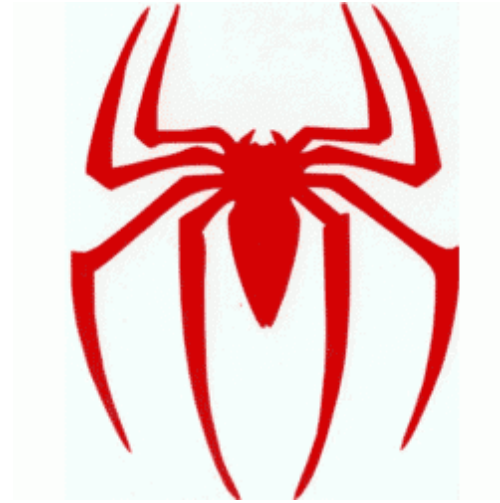
The Facts:

The rail car is divided into four (4) sections: A, B, C, and D.

Two of the sections, A and B, are offloaded and sent to a warehouse operated by Wonder Woman Warehouse (“WWW”)



The Facts:



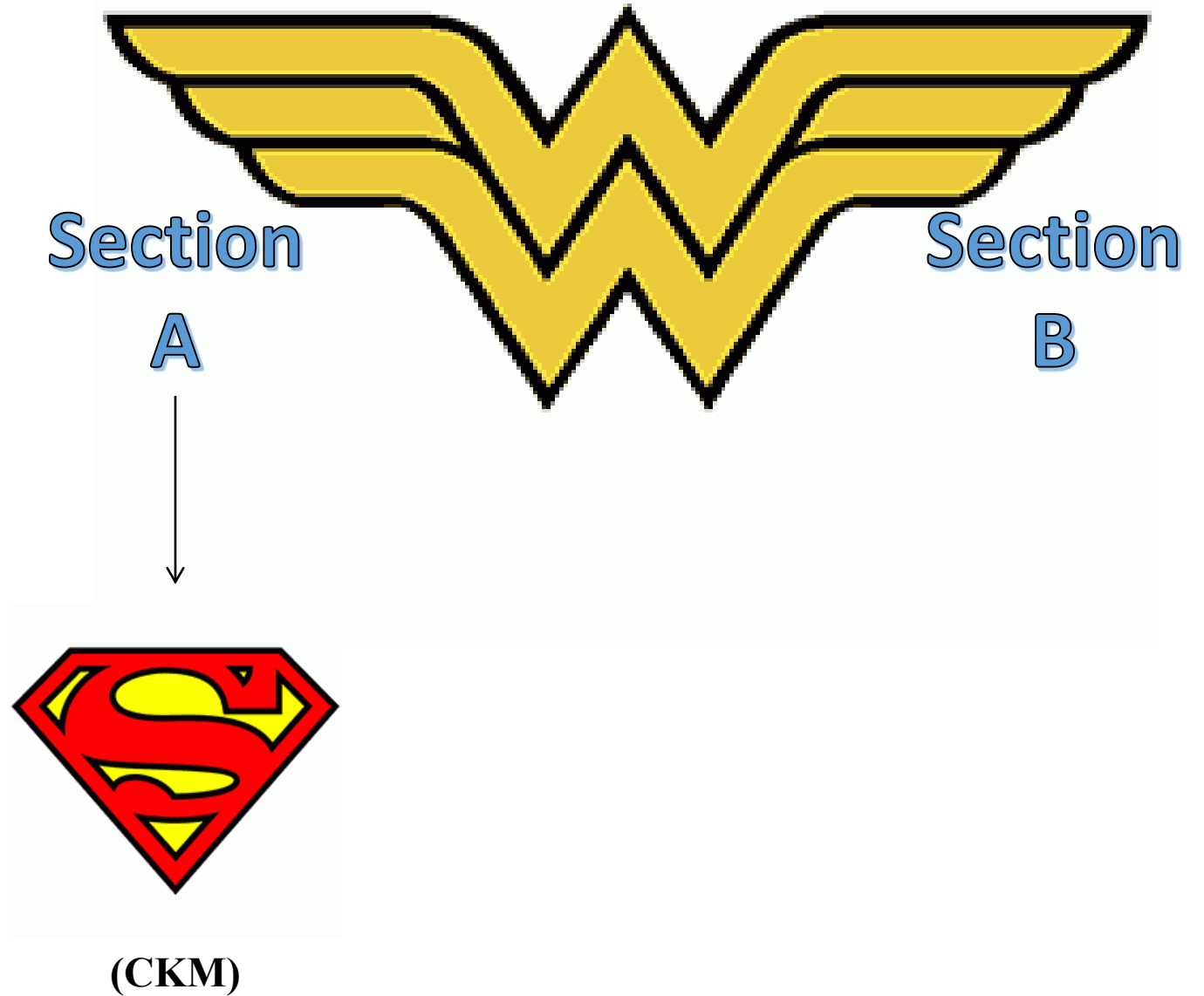
Both PPP and Acme have accounts with WWW.



The Facts:

Section A is shipped to CKM from WWW.

Section B remains in WWW.



The Facts:

When CKM attempts to use the pellets, it experiences clogging of its machines.

CKM notifies PPP that the goods are rejecting as non-conforming.



(“CKM”)

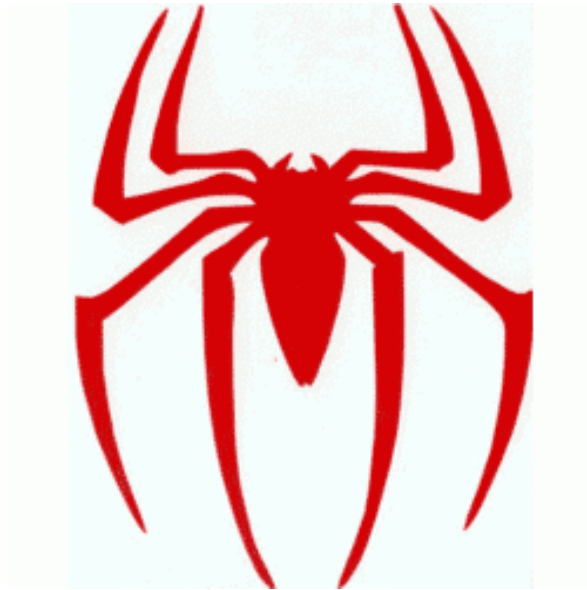


The Facts:

PPP notifies Acme of the non-conforming goods.

Acme instructs PPP to:

1. Title the half railcar (Sections C and D) back to Acme; and
2. Return Section A to WWW



The Facts:

Acme contacts PPP to get a title transfer of Sections A and B back to Acme and is informed that the goods have been at the warehouse for several months on Acme's account

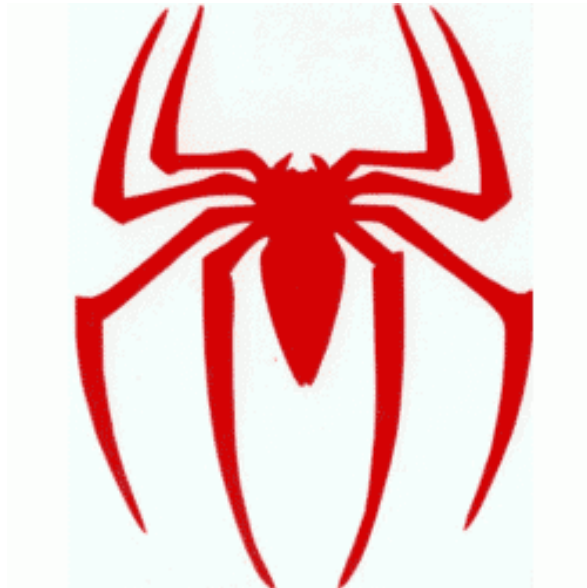


The Facts:

When Acme contacts WWW, it is informed that Sections A and B are missing.

WWW has no insurance and shortly after goes out of business.





The Facts:

Acme sues PPP claiming the goods were never properly returned to Acme and no title transfer document was ever issued.

PPP claims that it returned the goods to Acme and the goods were on Acme's account at WWW and, therefore, Acme could have retrieved the goods whenever it wanted.

Acme sues PPP. PPP requests a jury trial.



The Legal Issues



The Legal Issues

REJECTION OF NON-CONFORMING GOODS:

UCC §2-602:

- (2) Subject to the provisions of the two following sections on rejected goods (Sections 2-603 and 2-604),
- A. after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
 - B. if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of Section 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
 - C. the buyer has no further obligations with regard to goods rightfully rejected.



The Legal Issues

§ 2-603. Merchant Buyer's Duties as to Rightfully Rejected Goods.

(1) Subject to any security interest in the buyer (subsection (3) of Section 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.



The Legal Issues

RISK OF LOSS – UCC 2-509

The risk of loss for goods shifts from the seller to the buyer when the goods are delivered, and the buyer is able to take delivery.



The Legal Issues

RETURN OF GOODS - UCC 2-327 (2)(a)

In order for the buyer to succeed in his claim that the goods were returned, he must show that the return was completed. In order to complete the return, he must show that:

1. His request to return the goods to seller was made in a reasonable period of time;
2. That seller provided specific instructions to the defendant for the return of the goods; and
3. That the buyer did not follow those instructions.

“Return” is defined as merchandise which is brought back to the seller for credit. Black’s Law Dictionary 1318 (6th ed. 1990).



The Legal Issues

RISK OF LOSS – RETURN

A buyer holds the risk of loss until the return is completed (UCC 2-327(2)(b)).

Goods are returned when merchandise is brought back to the seller for credit. Black's Law Dictionary 1318 (6th ed. 1990).



The Legal
Issues

WHO WINS?

Are these statutes complementary or
conflicting?



How to Make This Interesting for the Jury



How to Make
This
Interesting for
the Jury

1. Opening Statement –
Tell the story



How to Make
This
Interesting for
the Jury

2. Use a Theme—

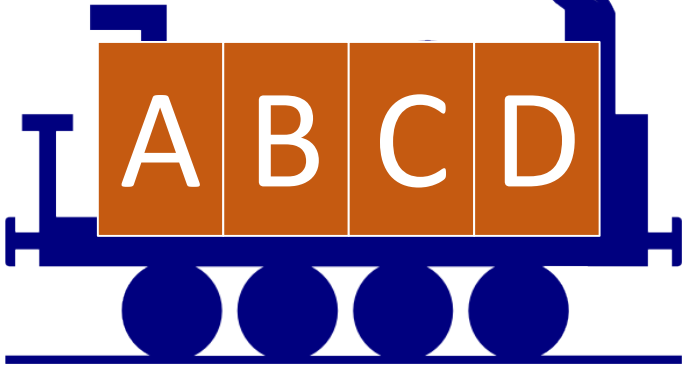
- Present theme in opening
- Keep it simple- no legalese
 - Incorporate theme in examinations
- Bring home the theme in closing argument



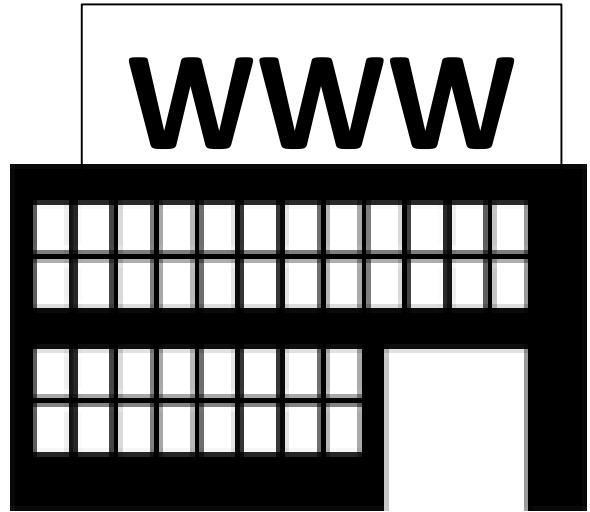
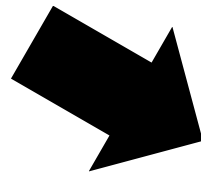
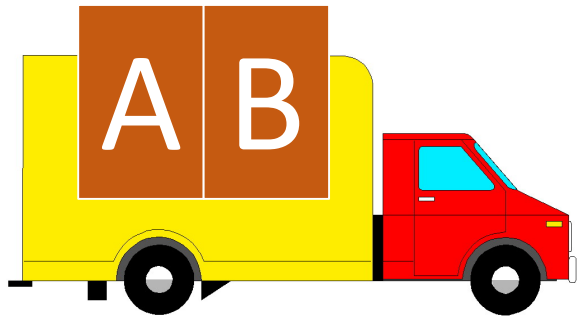
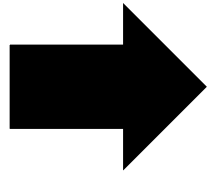
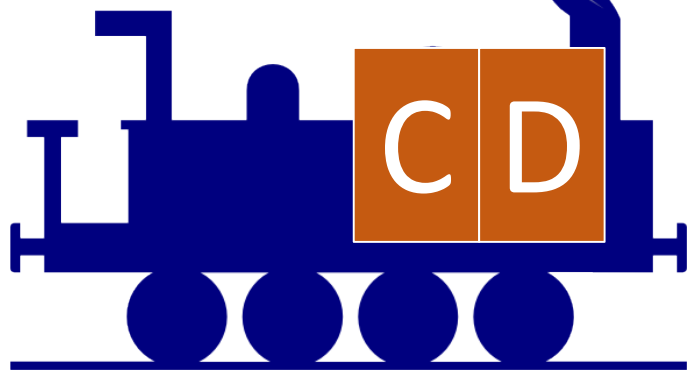
How to Make
This
Interesting for
the Jury

3. Use Diagrams – A
picture is worth a thousand
words

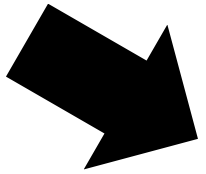
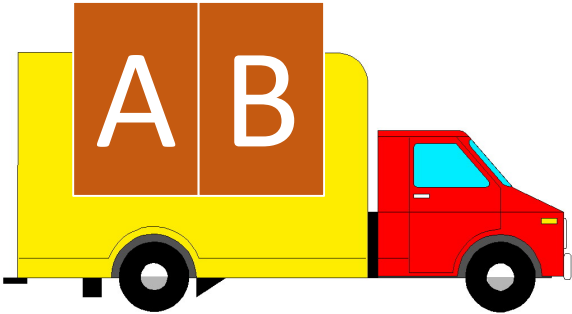
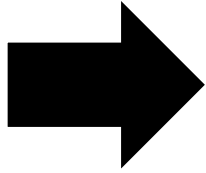
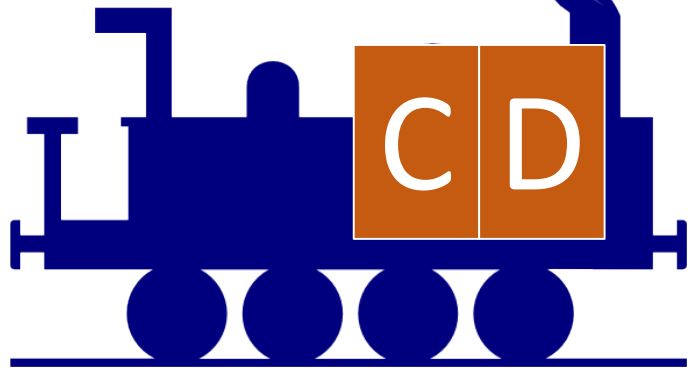
ACME



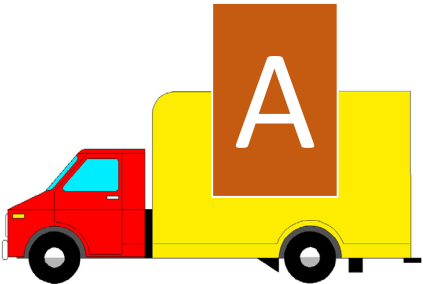
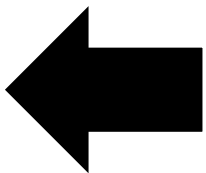
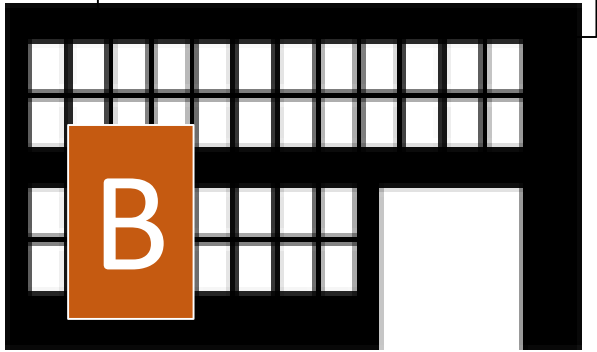
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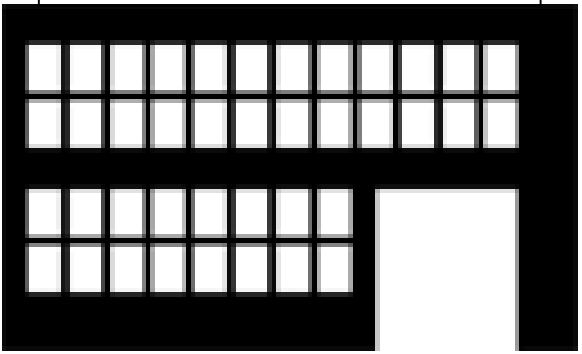
ACME



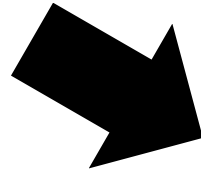
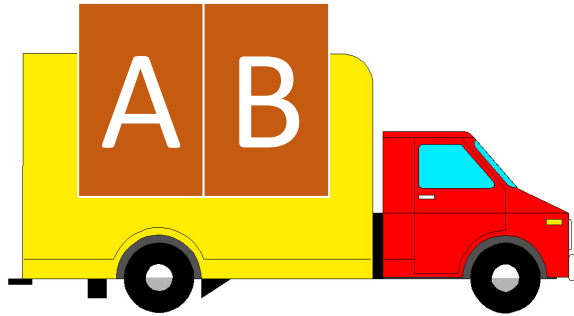
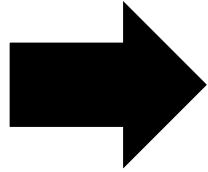
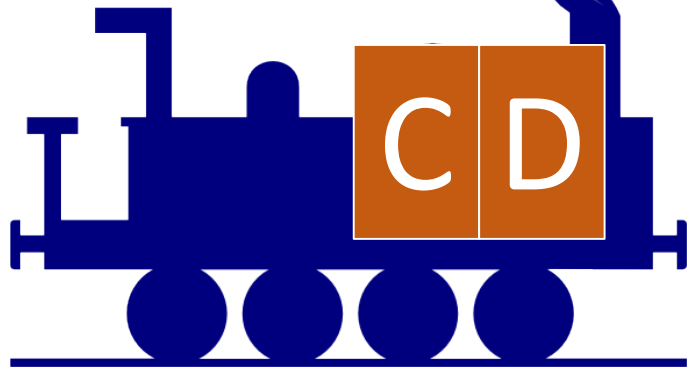
WWW



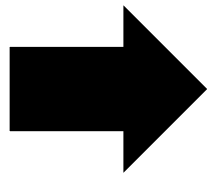
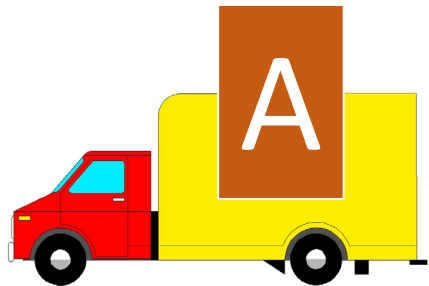
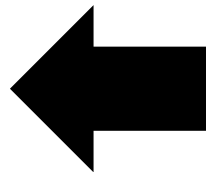
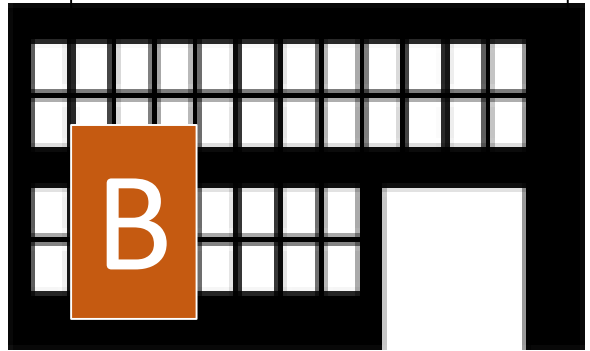
CKM



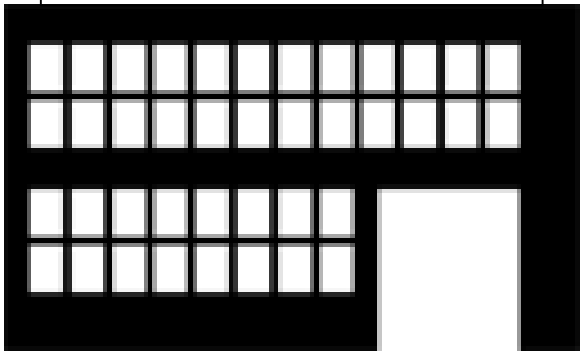
ACME

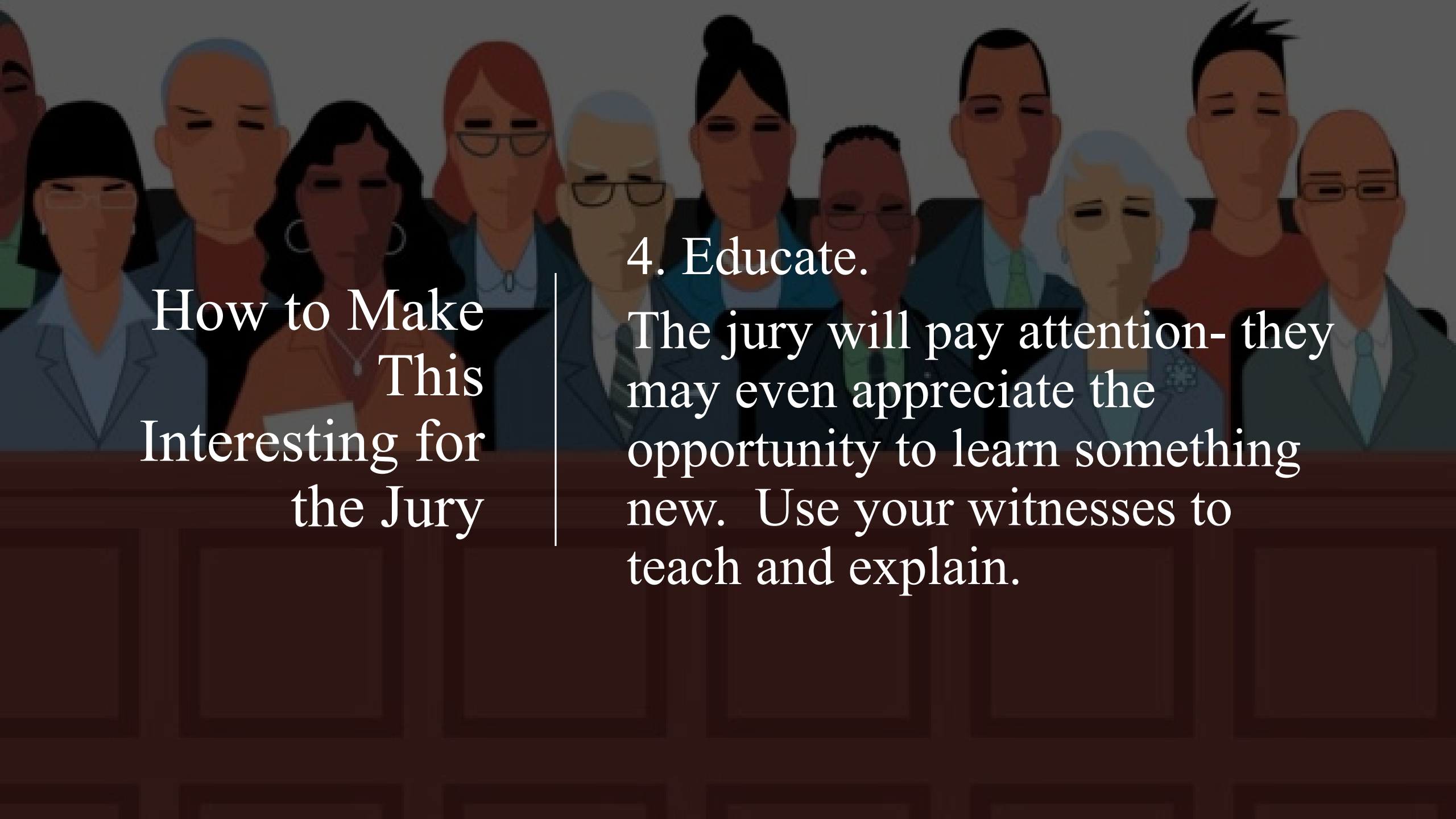


WWW



CKM





How to Make
This
Interesting for
the Jury

4. Educate.

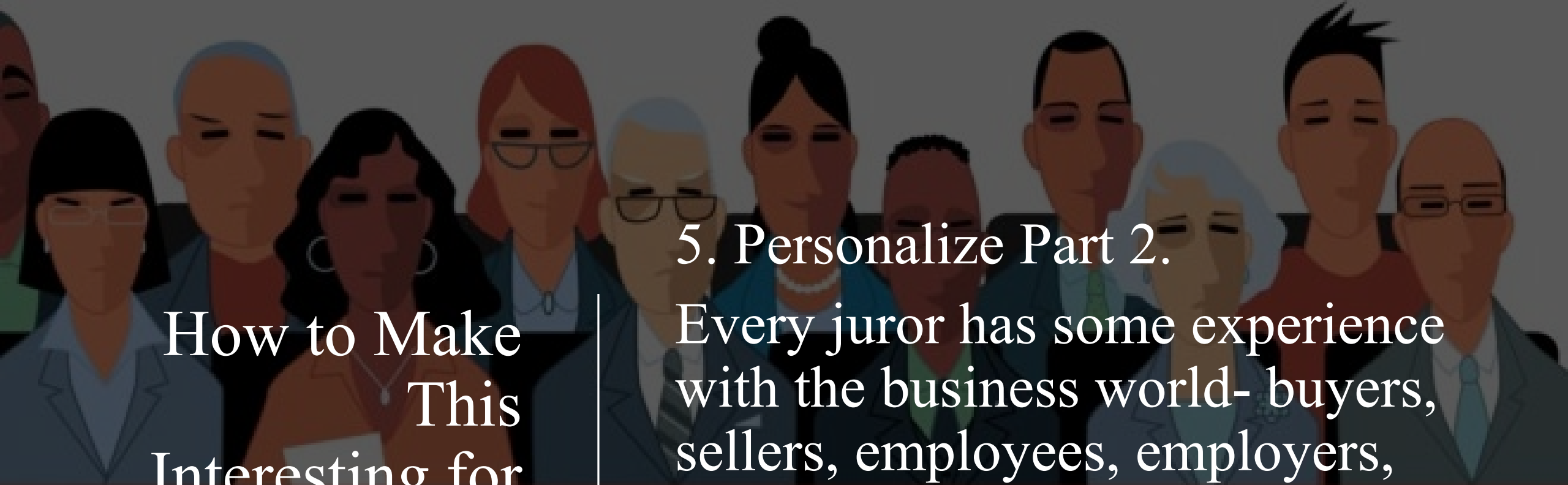
The jury will pay attention- they may even appreciate the opportunity to learn something new. Use your witnesses to teach and explain.

An illustration of a diverse group of people, including men and women of various ethnicities and ages, sitting at a jury box. They are depicted from the chest up, looking forward with serious expressions. The background is a dark, muted color, and the overall style is flat and modern.

How to Make
This
Interesting for
the Jury

5. Personalize.

The Plaintiff's witness is a person – not a nameless big corporation. The risk of not getting paid is real to the people who are directly affected.



How to Make
This
Interesting for
the Jury

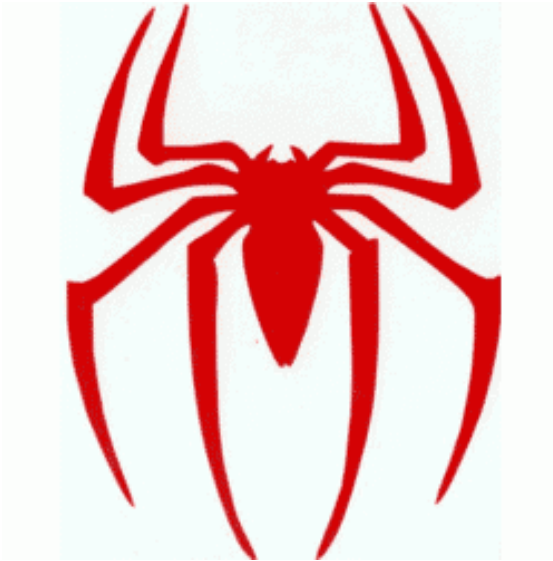
5. Personalize Part 2.

Every juror has some experience with the business world- buyers, sellers, employees, employers, colleagues and competitors- every commercial dispute has a human story.

An illustration of a diverse group of people, including men and women of various ethnicities and ages, sitting at a dark wooden jury table. They are all looking forward with serious expressions. The background is a dark, muted color.

How to Make
This
Interesting for
the Jury

6. It's still about right and wrong.
Don't let the complexity get in
the way of what the trial is really
about- right and wrong.



Questions?
