

Witness Examination Handbook 2019



Nigella Lawson giving evidence in 2013 (Elizabeth Cook)



Warwick Bar Society

Introduction

Warwick Bar Society's Witness Examination Competition, now in its third year, offers you a distinctive and advantageous opportunity to develop your advocacy skills through courtroom examination. Such experience is very beneficial to both prospective barristers and solicitors, atop of those wishing to enter occupations which require effective communication.

This competition complements the mooting and negotiation competitions provided by the Law Society, while offering an alternative to those who felt that these competitions did not particularly suit them. **The focus here is upon the actual trial**, rather than an appeal, thus things are less determinate and more dynamic.

If you elect to enter this competition, you will be performing examinations-in-chief and cross-examinations in pairs. These examinations are often the most crucial and stirring part of any trial; the outcome of a case can be contingent upon effective examination. Therefore, the ability to dissect the narrative of a witness through your questioning is a pivotal skill of any successful advocate (be it barrister or solicitor advocate).

Frequently asked questions

How much of my time will this take?

In short, not a lot. Success in this competition hinges upon your performance in the mock courtroom. While some preparation is required, emphasis is upon how you act in the mock courtroom. What we require is spontaneity and dynamism.

Will a lack of experience disadvantage me?

It will not. We aim provide you with the elementary information in this short handbook. If heeded, it will assist you in adequately preparing for the competition.

How does this differ from mooting?

Mooting focuses upon advocacy in the superior courts, where cases are on appeal. This competition focuses upon the actual trial, where things are less determinate. You and your partner will experience being both barrister and witness in a first instance environment. The focus is upon how to be effective in the courtroom; the interaction between lawyer and witness over interpretation of statute and case-law.



Is it just for prospective barristers/law students?

The competition is open to all, notwithstanding aspiration or degree. Law students receive no glaring advantage because emphasis is upon the practical over the academic.

Must I sign up with a partner?

While all participants will have a partner, you are free to sign up without one; if this is the case, we will randomly allocate you someone. You and your partner will take turns playing barrister and witness.

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Structure of the competition

The Witness Examination Competition will take the format of a **criminal** trial. You will compete in **teams of two**. You and your partner will alternate between barrister and witness; **both team members will have the chance to be both** because all entrants will participate in the preliminary and knockout rounds. Each round will have a different brief. The two teams receiving the highest scores from the knockout round will proceed to the final, with special commendations going to 3rd and 4th place.

The barrister: You will be acting as either prosecution or defence counsel, conducting an examination-in-chief of your witness and a cross-examination of your opponent's witness.

The witness: You will be required to testify in accordance with the case facts. The **witness is non-competitive** and must be cooperative for both sides during the trial.

All teams will be given a problem a few days prior to their round. They will then be informed of when and where their round will occur, as well as their opposition and judge (who will act as Master of Fact in place of a jury).

All participants are expected to be punctual and wear business attire. Furthermore, you should ensure that your courtroom etiquette is as expected (e.g. no colloquial language).



Marking criteria

The competition is judged **wholly on your ability to advocate**. We therefore **do not expect you to be experts in criminal law**. The examination of a witness is about the ability to construct and dismantle arguments. Unlike mooting, it is not focused upon extensive, borderline academic, legal debate. **The emphasis is practice rather than law.**

The focus is more on fact. You are ordinarily required to establish the credibility, nature, and motivations of each witness, not to quote extensive passages of academic discussion. This is a trial, not an appeal.

These are the categories in which marks will be awarded:

1. Communication with the witness (incl. tone and pace)	20 marks
2. Structure of questions	20 marks
3. Question type	20 marks
4. Understanding of the case	10 marks
5. Eliciting the case/undermining case	20 marks
6. Formalities and courtroom etiquette	10 marks

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Structure of the trial: outlined

Each round will consist of:

1. Appearances	1 minute
2. Opening statement by Prosecution	2 minutes
3. Opening Statement by Defence	2 minutes
4. Examination-in-chief by the Prosecution	10 minutes
5. Cross-examination by the Defence	12 minutes
6. Examination-in-chief by the Defence	10 minutes
7. Cross-examination by the Prosecution	12 minutes
8. Closing statement by the Prosecution	3 minutes
9. Closing statement by the Defence	3 minutes



Structure of the trial: detailed

Appearances (1 minute) – to begin proceedings; formality

Judge: “I will now take appearances”

Prosecution: “May it please the court, my name is [your name] and I appear on behalf of the prosecution, representing the Crown”

Defence: “May it please the court, my name is [your name] and I appear on behalf of the defence, representing [your client]”

Opening Statements (2 minutes)

The aim of the opening statement is to construct a persuasive case. You should attempt to be clear, concise, and confident. Your opening should be structured logically, in an intelligible manner. **Act as if a pliant jury is present.**

Examination-in-chief (10 minutes max.) – establishing reliability

This is the sole chance you have to question your own witness. The aim is to have a conversation with your witness (i.e. your partner) and, through your questioning, extract a replicate of their witness statement.

Always consider what you want from the witness from an examination-in-chief. There are usually 3 things:

- i. To **educate** the court about the facts within the witness’s knowledge.
- ii. To **persuade** the court that the witness is a **reliable narrator of fact**.
- iii. To **persuade** the court that the witness is a **reliable narrator of impression, emotion, and instinct**.

When preparing an examination-in-chief, ensure to have an end goal for which your questions are the means. **You may not ask leading questions**; the onus is upon the witness reciting events in their own words.



Cross-examination (12 minutes max.) – undermining the opposition

Unlike examinations-in-chief, cross-examinations are predicated upon leading questions. This is your opportunity to undermine the opposition's witness (i.e. their partner).

Construct your questions meticulously, in a calculated fashion; it is generally imperative to know the answer to the question you are asking.

Closing Statement (3 minutes)

Effective closing statements will unify all the evidence established throughout the trial; emphasise should be placed upon how your case has been proved. Focus upon the critical evidence and how it supports your case theory, ensuring to severely undermine the crucial element of the opposition's case.

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Some advice

Read through everything several times:

Appreciate and play upon inconsistencies between statements, ensuring that your manner of presentation convinces the judge that your witness is more credible.

Do not worry about the law:

You are not required to know copious law and need not research extensively. This is not mooting. The required skills for success all regard effective, persuasive communication.

Prepare your line of questioning

It is often beneficial to recite your questions and statements a few times with your partner prior to the session. However, do not depend upon scripted questions.

Enjoy!

We want all competitors to enjoy their experience, which will be evident when you are communicating; your questions will become more natural and exude confidence.

We are not in the USA

You should not attempt to *free roam* the courtroom or shout 'objection'.

