

## Top Tips for Mock Trial Competition

### ALL TEAMS

- In preparation for the trial everyone in the team should have an imaginary “view” of the scene – they should agree on where items were, what colour, distances from the witness, whether the item was in the left or right hand etc. so that the barristers and both witnesses are talking about the same thing. This also helps prepare for cross-examination both on your own case and on that of the other team.
- When a team is given the statement of an opposing witness, it might be worthwhile to split the duties of the two barristers and solicitor during the three-minute window i.e. with one to focus on objections only by circling or highlighting all objectionable parts. The other two team members could then work on matters for cross-examination.
- Teams should be aware of the benefit of brevity in the opening and closing addresses
- Teams need to prepare pre-trial notes – you can lose marks for not handing them up!
- Only one barrister should be standing and speaking at any time.
- Submissions on law should be carefully structured.
- Teams should be careful with terminology - e.g. victim, witness, and defendant are all very different things and should not be used interchangeably.
- It is very important to know what your case theory or story is. If the team knows that, it should help to make the rest of their work (examination-in-chief and, more importantly, cross-examination) much easier.
- Look at the Magistrate more when doing opening and closing submissions.
- Try and help the witness by prompting (without leading) in examination in chief.
- Teams should have the elements of the offence or section from legislation in front of them to refer to at all times. Never forget the standard of proof required. In criminal matters, the standard of proof is really important. For example:
  - a. Section 195 Crimes Act
    - i. Person intentionally or recklessly
    - ii. Destroys or damages property of another

- The opening and closing addresses require careful work and should have a natural but not digressive structure. Blocking out the flow of these addresses and then fitting the detail into them would help each legal team.
- Teams to consider all issues, for example, even if the Magistrate found the Defendant had carried out the graffiti, both parties should address and lead evidence or cross examine on the second issue, as to whether the action caused damage.
- Students need to practise objections and reasoning
- Barristers (not necessary for witnesses) should get in the habit of using more formal language. It does take practice and time to get used to it. Some tips include addressing witnesses as “Mr or Ms X” rather than using first names as well as in announcing appearances at the start of the trial (“My name is Mr X and I appear with Ms Y for the defence”).
- A card, token gift or even a formal thank you from the teams would be very much appreciated as a way of acknowledging the time donated by Magistrates.

## DEFENCE TEAMS

- Defence should ask themselves: How do we create reasonable doubt in respect of each element? What questions can we ask the witness to create doubt in the mind of the magistrate?

## PROSECUTION TEAMS

- Prosecution should ask themselves: How do we discredit the Defence witness? Focus on getting the witness to say “Yes” or “No” to a question which is damaging to Defence case.
- When addressing a criminal matter, the Prosecution team should be aware of burden of proof issue, the accused bears no burden of proof and they really need to tell the Magistrate how they (the Crown) had discharged its burden.

## CROSS-EXAMINATION

- Cross-examination is a difficult art, but it should never descend into an argument with the witness. Ideally, the barrister should know the answer of the question they are asking.

- The questions should always be leading (yes/no) questions and give the witness no opportunity to elaborate. The best forms of cross-examination are where the barrister asks a series of non-controversial questions which, if the answers to all are yes, leads to an ultimate question and answer that supports your case. An example of this is:
  - You gave evidence before that you observed my client late at night in the alleyway, do you accept that there are things you could have missed due to the lack of lighting?
  - You also gave evidence that you witnessed the incident when you were in the back of a car, is that right?
  - And that never stopped directly in front of the alleyway?
  - You gave evidence before that you had several alcoholic drinks prior to witnessing the incident, is it possible that you were affected by alcohol?
  - And is it fair to assume you could not hear everything that was said during the incident?
- Depending upon what is in the script, the ability in cross-examination to ask whether the witnesses have discussed their evidence. For example, the second witness was a very good friend of the defendant and his/her evidence strongly corroborated the defendant's statement and the language was strikingly similar. This would have the effect of damaging the credibility of both witnesses.
- Use a selection of questions in examination in chief - beyond "what happened next"
- The teams should think carefully about the rule in **Browne v Dunn** and be assiduous in putting questions to witnesses where that team wishes to rely upon contradictory evidence in its case. Both sides could have made more of these discrepancies between the evidence of the witnesses in cross-examination.
- Cross-examination should focus on elements of the offence e.g. if the line of questioning does not relate to proving actus reus or mens rea, then it is probably not relevant.
- The first questions asked should always be those relevant to your own case. That avoids missing out on points for failing to cross-examine on that evidence, and in the case of the defence avoids a Browne v Dunne objection.
- Questions should always be structured as a statement, followed by "didn't you?" or "don't you?" or "was there?" etc...

- Restrict witness to yes/no response. Do not give the witness an opportunity to explain. The only exception to this is if the witness starts saying things which are damaging to the opponent's case. In that case, let the witness speak and ask them to elaborate on damaging points.
- Don't rush cross examination - it may take 7 or 8 questions before you get to the crunch.
- Cross-examination doesn't mean to examine crossly!
- Repetitive questions during cross-examination can mess-up a case, especially if you have won over your Magistrate with your argument. Questions need to be short, sharp yes/no questions.

## WITNESSES

- Prepare your witnesses for both examination in chief and cross-examination.
- Most of the time, the witness for each team will make or break a case. Make sure each witness is well prepared for possible cross-examination questions. The witness should prepare a list of questions they might be asked and practice their responses.
- Witnesses should not pre-empt the objections from the opposing team by rendering all their speech as direct speech as this deprives the other side of the opportunity to make the objection and receive credit for doing so in the scoring.
- If the witness answers no to a question that you assert should be yes, have a quick follow up such as "but you nevertheless drank several alcohol drinks over the course of several hours prior to the incident, is that right?" If the witnesses persist with answers that are not logical or simply not possible, that is a matter for submissions in the end. There are no points for "getting one up" on the witness during the cross examination – the barrister will have done enough by asking the right questions.
- If the witness answers a yes/no question with a lengthy or argumentative response, it is appropriate to follow by asking, "is that a yes or a no?" Obviously the question needed to have been a leading question, but in asking this of the witness, you are alerting the magistrate to the witness being difficult.
- At the same time, witnesses should refrain from giving detailed responses during cross examination where the questions don't call for it. By doing so, they become defacto advocates, making them appear argumentative, less objective and weighs down their points scored. The role of the witness is to assist the court by recounting their version of events. Just as in real life, Judges and Magistrate give less weight to evidence given by a witness who is not cooperative.

- It is very important for witnesses to know their witness statement. A lot of points can be, and are, unnecessarily lost when the students have not thoroughly memorised their statement

## OBJECTIONS

- Teams should select one of their team members to mark a copy of the other team's witness statements with possible objections. That person should be the solicitor (which increases that member's contribution to the trial) but can be one of the barristers if the solicitor is not skilled at the task. The objections should be marked "R" (relevance) or "O" (opinion) or "DS" (direct speech) or "H" (hearsay) etc. as appropriate and should be highlighted in differing coloured pens. This enables the barristers (assuming the solicitor takes this task) to look at the statement as a whole and to get a feel for the areas to cross-examine. It also avoids missing possible objections and therefore points.
- Keep to the facts as provided.
- Mistakes teams are making when making Objections:
  - Making or not making objections and understanding when to apply them
  - During the whole statement asking 2 to 3 questions and witness giving blocks of response as per statement, not remembering statement
  - That objections frequently determine which teams win and that barristers and the solicitor all make themselves familiar with all of the possible types of objections, and when and how to make them.

## COURT OFFICER/MAGISTRATE'S CLERK

- The Court Officer and Magistrate's Clerk should take their role as seriously as do those at the Bar table and the witnesses. This is a team event and many trials have been won or lost because the difference between the teams was the better performance of the Court Officer or Magistrate's Clerk.
- The Objections and Time sheet needs to be completed by the Magistrates Clerk at each trial
- Make sure the Court Officer and Magistrate's Clerk know their job responsibilities. Teams should read carefully on how to call a witness, how to affirm the witness and the requirement to time the three minutes once statements were exchanged. Court Officers should also practice how to complete the forms regarding timing, objections etc.

