



University of Newcastle Law Students' Association

Witness Examination Competition

2022 COMPETITION HANDBOOK

2022 UNLSA Witness Examination Competition

Why Should You Enter?

The UNLSA holds witness examination competitions to complement your legal education, increase your engagement with the Law School, and to find the best students to represent the University of Newcastle at a national level.

Contacts

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Appendix

1. Witness Examination Marking Guide

Competition Rules

1. Purpose of the Competition

- 1.1. The University of Newcastle Law Students' Association (**UNLSA**) has established a Competitions Portfolio to provide as many students as possible with the opportunity to gain valuable practical skills by competing in Educational Competitions and further UNLSA's interests. The UNLSA and the Director of Educational Competitions will at all times endeavour to uphold this purpose by promoting involvement, sportsmanship and excellence in educational competitions.
- 1.2. It is UNLSA's position that where the implementation of any rule or procedure would be inconsistent with the overarching purpose outlined in this Rule 1, that rule or procedure should not be implemented. Any course of action may be determined by the Directors of Competitions (Advocacy) in order to uphold the purpose of the Competition.
- 1.3. Please be aware that it is the responsibility of each competitor to be familiar with the rules of this competition.

2. Competition Structure

- 2.1. The structure of the Competition and the way in which it is conducted may be subject to change to accommodate the exigencies of public health circumstances. Participants will be notified via email if any such changes occur.
- 2.2. The Competition may consist of two preliminary rounds, one or more quarter-final rounds, one semi-final round and one grand-final.
- 2.3. The number of rounds held will be at the discretion of the Director(s) of Competitions (Advocacy) and will be dependent on competitor numbers.
- 2.4. Notification of Winners
 - 2.4.1. Teams progressing through the preliminary and semi-final rounds will be notified via email.
 - 2.4.2. The winner of the grand final will be announced immediately after the grand final takes place.

3. Competitors

- 3.1. Each team will consist of one competitor, who must be in third, fourth or fifth year, or any year of the JD program.
- 3.2. Competitors may be required to supply their own witness, who can be from any year of the Undergraduate or JD program, at the discretion of the Directors of Competitions (Advocacy).
 - 3.2.1. The Directors of Competitions (Advocacy) will supply a witness for all competitors competing in a semi-final or grand final round.
 - 3.2.2. It is at the discretion of the Director(s) of Competitions (Advocacy) to make any exceptions to rule 3.2.1.
- 3.3. The competitor must be a member of the UNLSA. Witnesses are not required to be a member of UNLSA.
- 3.4. Competitors must register by the registration date as set out by the Directors of Competitions (Advocacy). The Directors of Competitions (Advocacy) may apply penalties for late registration at their discretion.

4. Withdrawal and Forfeiture

- 4.1. Where a competitor is unable to compete for a particular round, that competitor must communicate this decision as soon as possible to the Director(s) of Competitions (Advocacy).
 - 4.1.1. If communication occurs earlier than 48 hours prior to the commencement of that round, that competitor will be taken to have withdrawn and will no longer be permitted to continue with the competition.
 - 4.1.2. Where a competitor cannot compete in a particular round due to extenuating circumstances, the Director of Competitions (Advocacy) may, at their discretion, permit substitution. All decisions as to whether substitution will be permitted will be made with reference to section 1 of these Rules.
 - 4.1.3. In deciding whether to permit substitution, the Director of Competitions (Advocacy) may consult with the Competitions Appeals Board, or any or all members of the UNLSA Executive.
 - 4.1.4. Any member of the UNLSA Executive who is also a competitor should not be consulted by the Director of Competitions (Advocacy) during the decision- making process.
- 4.2. Any competitor who forfeits shall be excluded from progressing in the competition.

- 4.2.1. A forfeit will be considered to have occurred where a competitor withdraws later than 48 hours prior to the commencement of that round of competition.
- 4.2.2. The forfeiting competitor will be deemed to have a mark of zero for that round.
- 4.2.3. Any competitor whose opponent forfeits a round will be deemed to have won that round. The team's margin will be the average of their margins from the other rounds.
- 4.2.4. It is at the discretion of the Director(s) of Competitions (Advocacy) to make any exceptions to rule 4.2, including any rules therein.

5. Release of Questions

- 5.1. Witness examination competitors will receive their materials ninety (90) minutes prior to the start of judging. The allocation of that time will be as follows:
 - 5.1.1. Sixty (60) minutes to review the problem; and
 - 5.1.2. Thirty (30) minutes to interview the relevant witness.
- 5.2. Materials given to competitors will consists of:
 - 5.2.1. The statement of their witness;
 - 5.2.2. The statement of the opponent's witness; and
 - 5.2.3. The relevant section of any Act(s).
- 5.3. All questions, regardless of whether in a preliminary or final round, may be based on either criminal or civil law trials.

6. Preparation of Arguments

- 6.1. Competitors must not discuss the contents of the trial with any person other than their witness.
 - 6.1.1. Competitors and witnesses are not permitted to use or carry mobile phones during the preparation or the judging of any round.
- 6.2. Competitors may avail themselves of any legal resources at their grasp, but must not communicate with any person once they have received their materials for the round.
- 6.3. Any infringement of the above rules may result in disqualification, at the discretion of the Directors of Competitions (Advocacy).
 - 6.3.1. In the event that a mistrial is caused in this manner, the opposing competitor will be permitted to continue for the purposes of points allocation.

- 6.4. The applicable law for the Competition (including the rules of evidence) is that of the jurisdiction in which the Competition is held.

7. Judging

- 7.1. Each preliminary round will be observed and evaluated by a single judge.
- 7.2. Each semi-final or grand final will be observed and evaluated by a single judge or a panel of three judges.
- 7.3. Judges will be legal practitioners, professionals or senior students with witness examination experience, or Newcastle Law School staff.
- 7.4. Judges have access to all simulation materials provided to participants.
- 7.5. The judge(s) will evaluate the performance of the participants according to the criteria provided.
- 7.6. Judging Standards
 - 7.6.1. There is no one “correct” approach to conducting a Witness Examination. Instead the strategies and techniques used will vary according to the nature of the problem, the personalities involved and other circumstances.
 - 7.6.2. Each panel of judges ranks the team whom they observe according to their effectiveness in the witness examination. To assist the process of ranking, judges also score each team against the following standards:
 - 7.6.2.1. *Opening Address*
 - 7.6.2.1.1. Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; outlines case theory; paints a picture of the fact scenario.
 - 7.6.2.2. *Examination-in-Chief*
 - 7.6.2.2.1. Factors: short, clear, non-leading questions; leads where appropriate; facts elicited efficiently and effectively; engages with witness and witness’ answers; avoids objectionable questions; argues objections according to principles of Evidence law (statute and common law).
 - 7.6.2.3. *Cross-Examination*
 - 7.6.2.3.1. Factors: clear, succinct leading questions; advances own case; probes character and attitude of witness; engages with witness and witness’ answers (including from examination-in-chief); avoids objectionable

questions; argues objections according to principles of Evidence law (statute and common law).

7.6.2.4. Closing Address

7.6.2.4.1. Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; encapsulates case theory; draws on oral evidence to further case theory and arguments.

7.6.2.5. Manner and Expression

7.6.2.5.1. Factors: engages well with the court; projects voice; articulates submissions with eloquence and enunciation; deals with interventions with ease and skill; uses inference where appropriate; speaks with consistent style and manner; demonstrates sophisticated understanding of Evidence law (statute and common law).

7.6.2.6. Case Theory

7.6.2.6.1. Factors: appropriateness of case theory to the facts; potential to improve case theory; effectiveness in eliciting evidence to support case theory; simplicity and logic of case theory.

8. The Witness Examination

- 8.1. There is one prosecutor or counsel for the plaintiff and one counsel for the accused or defendant.
- 8.2. Counsel will not robe.
- 8.3. Counsel must give appearances.
- 8.4. The swearing of the oath for witnesses is dispensed with.
- 8.5. Competitors are randomly allocated sides.
- 8.6. The witness examination will proceed as follows:

8.6.1	Opening by prosecution	2 minutes
7.6.2	Examination in chief by the prosecution	10 minutes
7.6.3	Cross-examination by the defence	15 minutes
7.6.4	Opening by the defence	2 minutes
7.6.5	Examination in chief by the defence	10 minutes
7.6.6	Cross-examination by the prosecution	15 minutes

7.6.7	Summation by the defence	3 minutes
7.6.8	Summation by the prosecution	3 minutes

8.7. **Penalties**

- 8.7.1. Exceeding time limits without judge's permission: one mark for every 20 seconds (or part thereof).
- 8.7.2. Judges do have the discretion to grant competitors an additional three minutes without penalty provided the competitor seeks leave to do so.
- 8.8. At the end of the summation by the prosecution, counsel for the defence may seek permission from the judge to draw attention to contraventions of the rule in *Browne v Dunn* or misstatements of evidence or law in the summation by the prosecution. If granted, counsel for the defence may speak for only one minute, unless an extension pursuant to rule 7.4.2 is granted. Counsel for the defence may only respond to the summation by the prosecution.
- 8.9. Counsel may object and must state the grounds for objection. The clock will be stopped during any objections. The judge should ordinarily invite opposing counsel to respond to the objection.
- 8.10. No re-examination will be allowed.

9. Witnesses

- 9.1. Witnesses will be supplied by the Directors of Competitions (Advocacy), subject to availability. Competitors may be called upon to supply their own witness.
- 9.2. Any witness used in the competition must be a currently-enrolled law student.
- 9.3. The witnesses receive their materials one hour before the commencement of the round, thus allowing:
 - 9.3.1. Thirty (30) minutes to review the problem; and
 - 9.3.2. Thirty (30) minutes of being privately interviewed by their own counsel.
- 9.4. Witnesses are advised that their 'performance' commences as soon as they step into the meeting with their counsel. It is up to the competitor to suggest how that character be highlighted/toned down, as best suits the case on hand.

10. Appeal Process

- 10.1. A two-stage appeals process exists for decisions made in relation to the Competition.
- 10.2. The first stage (Stage One) of appeal must be made to the Vice President (Competitions). Should a second stage (Stage Two) of appeal be commenced then the appeal will be reviewed by the Competition Appeals Board.
- 10.3. Appeals should only be made where the issue has first been raised with the Director(s) of Competitions (Advocacy).
- 10.4. Appeals may only be made where they relate to matters other than the decisions of competition judges on the basis of merit. Decisions of judges may not be appealed.
- 10.5. The Competition Appeals Board will consist of two academic members of Law School Staff and the UNLSA President, or his/her nominee. Where possible, the academic members of the Competition Appeals Board will be the coordinators of the Competitive Mooting directed course or have an academic interest in competitions.
- 10.6. Decisions made by the Competition Appeals Board are final and may not be appealed.
- 10.7. The Procedure of Appeals
 - 10.7.1. When wishing to appeal, the competitor(s) will notify the Directors of Competitions (Advocacy) by email within six hours of the issue arising. The notification should contain the following:
 - 10.7.1.1. Identification of the competition (name, date, time, and parties);
 - 10.7.1.2. Grounds of appeal or grievance or complaint;
 - 10.7.1.3. Arguments supporting the need for review or resolution; and
 - 10.7.1.4. Suggested outcomes.
 - 10.7.2. The Directors of Competitions (Advocacy) will then notify the Vice President (Competitions). The Vice President (Competitions) has the power to:
 - 10.7.2.1. Grant the appeal;
 - 10.7.2.2. Dismiss the appeal; or
 - 10.7.2.3. Direct the appeal to the Competitions Appeals Board.
 - 10.7.3. The Vice President (Competitions) must inform the person or team appealing of the outcome of the appeal by email.
 - 10.7.4. Following a decision being handed down by the Vice President (Competitions), the person or member of the appealing team who lodges the original appeal may further appeal to the Competition

Appeals Board within 24 hours of the Vice President(Competitions)' decision being handed down.

- 10.7.5. They are to email their Stage Two appeal to the Vice President (Competitions) along with a notification written by that person containing the following:
 - 10.7.5.1. Justification for a review of the decision on grounds other than merit; and
 - 10.7.5.2. Suggested outcomes.
- 10.7.6. The appeal will then be forwarded to an academic staff member of the Competition Appeals Board who will determine its appropriateness for review by the full Competition Appeals Board.
- 10.7.7. In determining the appeal, the Competition Appeals Board will consult the Director(s) of Competitions (Advocacy). The Competition Appeals Board may also consult any or all members of the UNLSA Executive, or any other person(s) deemed necessary.
 - 10.7.7.1. Any member of the UNLSA Executive who is also a competitor should not be consulted by the Competitions Appeals Board during the appeals process.
- 10.7.8. The Competitions Appeals Board will notify the Director(s) of Competitions (Advocacy) of their decision, who will then notify the competitor(s).

11. Competition Blacklist

- 11.1. The Competitions Blacklist (found in UNLSA By-Law 47) will be enforced throughout the competition. By-Law 47 has been reproduced below.

47. Competitions Blacklist

1. The Vice President (Competitions) is to create and maintain a Competitions Blacklist.
2. Any member added to the Competitions Blacklist will not be permitted to:
 - a. compete in any internal competition;
 - b. be selected for an external competition; and
 - c. receive a subsidy from the Association to attend an external competition.
3. The Competitions Blacklist must provide blacklisted member's:
 - a. name;
 - b. student number;
 - c. date blacklisted;
 - d. period of blacklisting; and
 - e. reason(s) for blacklisting.

4. The Vice President (Competitions) may add a member to the Competitions Blacklist where that member:
 - a. withdraws from an internal competition outside of the dates prescribed by the relevant competition directors;
 - b. is disqualified from an internal competition; or
 - c. refuses or fails to attend preparations for an external competition that they have been selected for; and
 - d. fails to provide a reasonable excuse for doing so.
5. If the Vice President (Competitions) adds a member to the Competitions Blacklist, they must provide that member with written notice within reasonable time of doing so, which details:
 - a. the effect of blacklisting;
 - b. the reasons for adding them to the Competitions Blacklist;
 - c. the duration that they have been blacklisted for;
 - d. the date that the blacklisting will expire; and
 - e. how they may appeal the decision.
6. A member who is added to the Competitions Blacklist may appeal the decision within seven days of receipt of written notice of their suspension by sending written notice to the Vice President (Administration).
 - a. Such notice should detail the reasons why the member believes that the blacklisting or duration of the blacklisting is inappropriate.
7. Within reasonable time following receipt of a written notice to appeal, the Vice President (Administration) is to notify the Executive of the appeal who may:
 - a. dismiss the appeal if it is vexatious or without merit; or
 - b. convene a Committee Meeting within the next 28 days where the Committee will decide the appeal.
 - i. If the Committee is to decide the appeal, the Vice President (Administration) is to provide the relevant member of written notice of that decision, and invite them to that Committee Meeting.
8. At a Committee Meeting where a Competitions Blacklisting Appeal is to be decided:
9. The Vice President (Competitions) is to provide a short explanation of the reasons for the Blacklisting;
 - a. The relevant Member is to provide a short explanation as to the reasons for their appeal; and
 - b. The Committee, after hearing those reasons, is to vote by show hands, either in favour of or against the appeal.
10. The Committee's decision in a Competitions Blacklisting Appeal is final.

12. Miscellaneous

- 12.1. In the event that an issue arises that is not covered by the rules of the Competition, the Directors of Competitions (Advocacy) may consult:
 - 12.1.1. the UNLSA Executive;
 - 12.1.2. the UNLSA Committee;
 - 12.1.3. Newcastle Law School Staff;
 - 12.1.4. ALSA rules and ALSA;
 - 12.1.5. any other university competition director(s); or
 - 12.1.6. any other person(s) they deem necessary.



University of Newcastle Law Students' Association
Witness Examination Competition
Marking Guide

Date _____ Time _____ Room _____

Counsel for the Plaintiff/Prosecution _____

Judge _____

Case _____

Winner _____

FINAL SCORE

/100

Please mark all criteria and remember the emphasis is on the *difference in points*. A draw is not possible. Do not announce the scores or results. Please return the score sheets directly to the Directors of Competitions (Advocacy).

OPENING ADDRESS (two minutes) Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their significance; outlines case theory; paints a picture of the fact scenario.	/10

EXAMINATION-IN-CHIEF (ten minutes) Factors: short, clear, non-leading questions; leads where appropriate; facts elicited efficiently and effectively; engages with witness and witness' answers; avoids objectionable questions; argues objections according to principles of Evidence law (statute and common law).	/25



CROSS-EXAMINATION (fifteen minutes)

Factors: clear, succinct, leading questions; advances own case; probes character and attitude of witness; engages with witness and witness' answers (including from examination-in-chief); avoids objectionable questions; argues objections according to principles of Evidence law (statute and CL).

/25

Break before summation: Three minutes

CLOSING ADDRESS (three minutes)

Factors: logical structure; clear expression; clarity; confidence; brevity; identification of issues and their legal significance; encapsulates case theory; draws on oral evidence to further case theory and arguments.

/10

MANNER AND EXPRESSION

Factors: engages well with the court; projects voice; articulates submissions with eloquence and enunciation; deals with interventions with ease and skill; uses inference where appropriate; speaks with consistent style and manner; demonstrates sophisticated understanding of Evidence law (statute and common law).

/20



CASE THEORY	
Factors: appropriateness of case theory to the facts; potential to improve case theory; effectiveness in eliciting evidence to support case theory; simplicity and logic of case theory.	/10