



**The Law Society**  
OF SOUTH AUSTRALIA



The  
**LAW FOUNDATION**  
of SA Incorporated

## Mock Trial School Resource Materials Lesson Plans

**February 2026**



**For Students**

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## Introduction

“The Mock Trial Competition aims to bring the legal profession into closer communication with teachers and students in Secondary Schools, to remove some of the mystique surrounding the law and the legal profession, and to give students a better understanding of how the South Australian legal system operates. The Competition encourages students to express themselves and to present an argument in a forum based on our adversarial legal system”, (from the Manual).

Several elements of the Mock Trial Competition learning experience are likely be relevant to many of the Humanities and Social Sciences subjects, including “Legal Studies”, “Modern History”, “Philosophy”, “Politics, Power and People”, and “Society and Culture”. The suggested learning activities set out in the following documents, which are expressly focused on preparation for the Mock Trial Competition, together with participation in the mock trial, are likely to align with assessment categories specified in the South Australian Certificate of Education (SACE) curriculum requirements, including presentation, folio, and inquiry assessment categories. The following lesson plans aim to align, in practical ways, with the relevant SACE curriculum requirements. Participating in a Mock Trial Competition offers South Australian secondary school students a practical and immersive experience that aligns with several subjects within the South Australian Certificate of Education (SACE). For example:

**1. Legal Studies:** mock trials provide students with firsthand exposure to legal processes, courtroom procedures, and the adversarial system. This experience deepens their understanding of legal principles, case analysis, and the application of law, which are core components of the Legal Studies curriculum.

**2. English:** the competition enhances students' abilities in constructing coherent arguments, persuasive writing, and oral communication. Drafting opening statements, examining witnesses,

and delivering closing arguments require skills in rhetoric, critical analysis, and effective communication, all of which are emphasised in English studies.

**3. Drama:** participating in mock trials allows students to engage in role-play, character development, and performance under pressure. Embodying various courtroom personas and presenting cases before an audience align with the performance and improvisation aspects of the Drama curriculum.

**4. Research Project:** the preparation for a mock trial involves research into and analysis of legal precedents, case law, and factual evidence. This process mirrors the investigative and analytical skills required for the SACE Research Project, fostering independent learning and critical thinking.

**5. Civics and Citizenship:** engaging in mock trials promotes a deeper understanding of democratic processes, the rule of law, and civic responsibilities. This practical involvement complements the civics and citizenship education, which aims to prepare students for informed and active participation in society. By integrating mock trial participation into their educational journey, students not only gain practical insights into the legal system but also develop a range of skills that are applicable across multiple SACE subjects, enriching their overall academic experience.

Refer to the Annexures regarding potential alignment of Mock Trial Competition activities to South Australia Certificate of Education requirements for:

- Legal Studies Stage 1 & 2
- Politics, Power, and People Stage 1 & 2, and
- Society and Culture Stage 1 & 2.<sup>1</sup>

For information about how the Mock Trial Competition is structured and conducted, please read the Essential Reading and Resources listed below.<sup>2</sup>

## Using the suggested Lesson Plans

The lesson plans are created to assist students and teachers to prepare for the Moot Trial Competition by using the Case Materials as the basis for the suggested learning activities. The lesson plans include suggestions for practical learning activities that will help students to prepare for most if not all aspect of the Moot Trial Competition. These activities can be adopted and adapted in ways that are appropriate to class sizes and the time allotted to the competition.

It is strongly recommended that teachers and students take time to complete an initial read through of the Manual and the Case Materials before commencing the suggested lesson plans. It is suggested that all students work on all lessons, regardless of the allocation of roles for the Mock Trial Competition. The advantage is that all students benefit from the learnings in each lesson, but also that all students can be equipped to take on any role in the event that a student allocated to a role falls ill or is otherwise unable to participate.

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<sup>1</sup> Disclaimer – the material in the annexures is a preliminary assessment of the alignment between the Mock Trial Competition activities and the SACE Subject Outlines – teachers should make their own inquiries regarding the suitability of the Competition for SACE subjects.

<sup>2</sup> The expressions, “Mock Trial” and “Moot Trial” are used interchangeably in some of the materials.

## Essential Reading and Resources

The Law Society of South Australia, Moot Trial Competition Webpage:

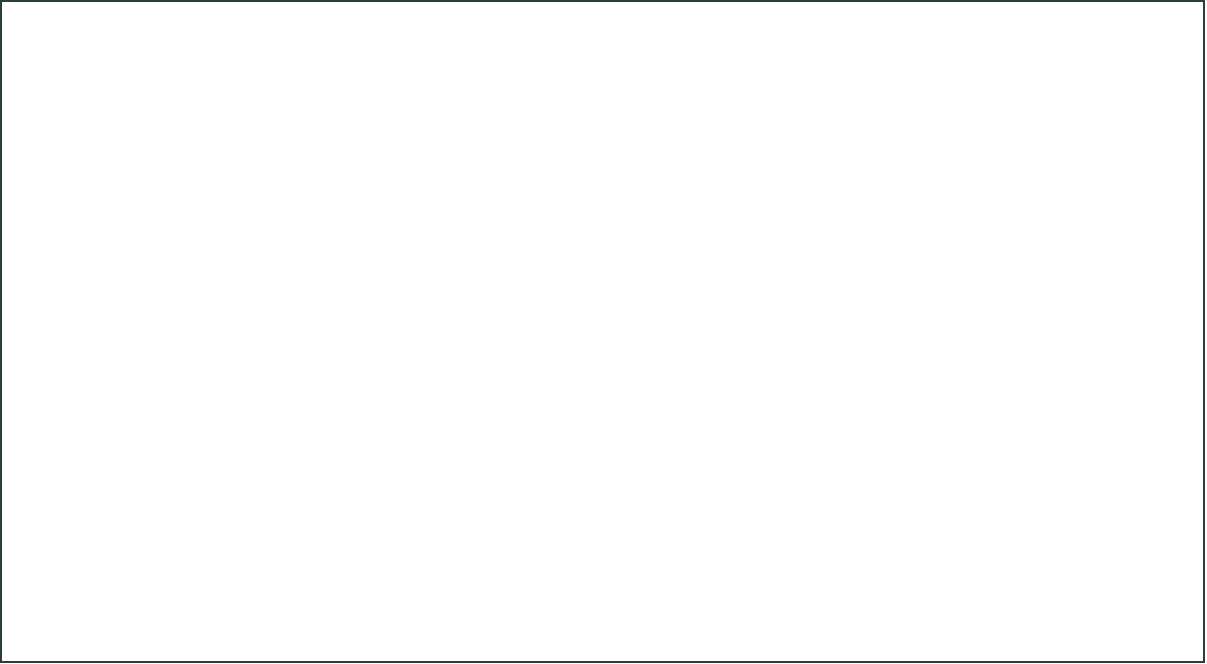
<https://www.lawsocietysa.asn.au/site/for-students/mock-trial.aspx>

The Law Society of South Australia, 2025 Manual for Moot Trial Competition:

[https://lssa.informz.net/lssa/data/images/Website/MCS/MOCKTRIAL/2025\\_Manual.pdf](https://lssa.informz.net/lssa/data/images/Website/MCS/MOCKTRIAL/2025_Manual.pdf)

Police v Pedler Case Materials: contact the Law Society of South Australia, Member Services on (08) 8229 0266 or via [education@lawsocietysa.asn.au](mailto:education@lawsocietysa.asn.au).

Notes



## Lesson 1

**Courts, Roles and Procedures: the hierarchy of the courts, the roles of legal bodies and professional within a courtroom.**



## 1. Courts, Roles and Procedures: the hierarchy of the courts, the roles of legal bodies and professionals within a courtroom.

### Purpose

- Support students' understanding of the real-world legal context in which the Police v Police v Pedler case is situated.
- Provide opportunities for students to identify, locate, and analyse authoritative information about legal practice and procedure.
- Introduce students to the Course Manual and the Police v Pedler case materials.

### Learning Objectives and Activities

By the end of this lesson, students will be able to demonstrate understanding of:

1. The hierarchy and jurisdiction of courts in South Australia.

2. The roles of judicial officers, legal practitioners, court staff, and other participants in the courtroom

3. The existence of written and unwritten rules governing the conduct of legal practitioners in the courtroom.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access to the Courts Administration Authority of South Australia webpage

## Introduction to Topic

### Lesson Content

The mock trials competition provides an exciting opportunity for students and teachers to experience the practical challenges involved in investigating, analysing and presenting a criminal case at court. It is a multi-dimensional activity with several participants and many moving parts that must be drawn together in a coherent way. This lesson aims for students to engage with the foundational concepts and contexts that underpin the mock trial, to provide an overarching understanding of the world in which a criminal trial is situated.

#### **Hierarchy and Jurisdiction of Courts in South Australia**

- The hierarchy of South Australian courts ensures that different types of cases are heard at the appropriate level, allowing for specialization and an orderly appeals process. It starts with the Magistrates Court for minor matters, moves to the District Court for more serious criminal and civil cases, and then to the Supreme Court for the most serious matters and appeals. At the top is the High Court of Australia, which hears constitutional and high-level appeals.
- In South Australia, each of the State courts has jurisdiction to hear matters specified in the court's enabling legislation. In a legal context, "jurisdiction" refers to the authority of a court or legal body to hear and decide cases. This authority depends on factors such as the type of case (e.g., criminal, civil), the location where the event happened, and the people or organisations involved. Jurisdiction ensures cases are heard in the right place and by the right level of court. For example, geographical jurisdiction refers to the cases a court can hear in a defined physical area, and subject matter jurisdiction refers to the specific types of cases that a court can hear, such as family disputes, criminal cases, civil disputes, or corporation matters.
- In a court's jurisdiction to hear criminal matters, the enabling legislation (e.g., the *Magistrates Court Act 1991 (SA)*) might limit the court's ability to hear such matters by reference to the maximum penalty the court can decide if a defendant is found guilty, such as the duration of imprisonment or the dollar amount of a fine.

#### **Judicial officers, legal practitioners, court staff, and other participants**

- Courts are large, busy, and complex organisations that depend on many people in a variety of roles to function effectively and efficiently. You can imagine that such organisations are expensive to set up, operate, and maintain – consequently, just as there are rules, regulations, and directions to ensure that justice is done and seen to be done, there are also rules to ensure that participants adhere to schedules, time limits, and procedural requirements to minimise the time and expense involved in legal proceedings.

## Judicial Officers

Individuals who have the authority to make decisions in a court of law. They are responsible for ensuring that legal cases are heard fairly and that the rules of law are followed. Examples of judicial officers include judges and magistrates.

In their roles, judicial officers:

Listen to the facts and arguments presented by both sides in a case.

Apply the law to the case to reach a decision.

Ensure that trials are conducted fairly and that all parties are treated with respect.

Judicial officers are impartial, meaning they do not take sides in a case. Their job is to uphold the law and deliver justice.

## Legal Practitioners

include solicitors and barristers, but they have different roles in the court system:

**Solicitors** are often the first point of contact for people who need legal advice. They work closely with their clients to help them understand their rights and obligations. While solicitors can represent clients in lower courts (like the Magistrates Court), they usually focus on preparing cases, managing paperwork, gathering evidence, and providing advice. Solicitors often work with barristers by briefing them and helping prepare for more complex cases or cases in the District Court or Supreme Court.

**Barristers** are specialists in court advocacy and representing clients in court. They are trained to present arguments and question witnesses during trials. Barristers mainly appear in court, particularly in higher courts such as the District Court or Supreme Court. They focus on persuading the judge or jury

So the key differences between solicitors and barristers involve client contact

Solicitors deal directly with clients, while barristers are typically hired by solicitors to act as advocates in court; work focus - solicitors handle the preparation and administration of cases, while barristers specialise in courtroom advocacy; and court representation - solicitors often represent clients in lower courts, while barristers are more commonly found handling complex cases and in higher courts.

**Court Staff** can include registrars, court clerks, Sheriff's officers, judge's associates, court reporters, and witness liaison officers

**Registrars** manage the administrative functions of the court. Their responsibilities include scheduling court hearings and trials; maintaining court records and documents; and assisting judicial officers with procedural matters.

**Court clerks** support the functioning of the courtroom during proceedings, including calling cases and swearing in witnesses; recording court proceedings; and managing evidence and ensuring it is correctly labelled and submitted.

**Sheriff's officers** ensure courtroom security and assist with enforcing court orders. Their responsibilities include maintaining order in the courtroom; escorting defendants in custody to and from court; and serving legal documents such as orders for enforcement.

**Judge's Associates** are personal assistants to judges, helping them with their duties. They assist the judge with research and preparing case materials; manage the judge's schedule and court documents; and communicate with lawyers and other court personnel on behalf of the judge.

**Court reporters** create accurate transcripts of court proceedings, recording spoken words verbatim using specialised equipment or shorthand, and producing official records of trials, hearings, and judgments.

**Witness liaison officers** assist witnesses and victims of crime during court cases. They provide information about the court process, offer support to witnesses, such as explaining their rights and what to expect in court, and ensure witnesses are present and prepared to testify.

These roles are essential for the smooth operation of South Australian courts, each contributing to the fairness and efficiency of the justice system.

**Witnesses** - a witness in a trial plays a key role in providing sworn testimony about what they saw, heard, or know about the case. Their obligations include telling the truth, answering questions clearly, and following court instructions. Witnesses must be impartial and avoid discussing the case with others outside of court. A witness's obligation to be impartial means they must provide honest testimony without favouring one side over the other. For example, if a witness is asked about an event they observed, they should only state the facts as they remember them, even if the truth could harm someone they know personally. If a witness were to exaggerate details for any reason, this would breach their duty to be impartial.

### Written and Unwritten Rules of Conduct in Court

- Lesson 3 deals with this topic in greater depth, but for now it is important to be aware that legal practitioners involved in court work are obliged to comply with written and unwritten rules of conduct when appearing in court and in relation to the work connected to the case.
- In South Australia, the written rules are contained in documents such as the "South Australian Legal Practitioners Conduct Rules", including sections dealing with fundamental duties, advocacy and litigation, and court rules such as the "Joint Criminal Rules 2022" deal with the overarching obligations of parties and lawyers.
- The unwritten rules, or "conventions", generally involve respectful behaviour towards the judicial officer, the court generally, and legal practitioners appearing for your opponent. For example, while the court is in session, you should not turn your back to the judge, leave drinks or personal possessions on the bar table (where the lawyers sit), or talk on your mobile phone. Expressing a belief in your client's case is frowned upon, (e.g., "I think my client is innocent, your honour") – instead you would say "My client denies the allegations and says she is innocent, your honour".

## Key Takeaways

- The court hierarchy ensures cases are heard at the appropriate level, starting with the Magistrates Court, followed by the District Court, Supreme Court, and ultimately, the High Court of Australia for appeals and constitutional matters.
- Jurisdiction refers to a court's authority to hear and decide cases, determined by factors such as the type of case, location, and parties involved.
- Courts may have specific jurisdiction limits, such as maximum penalties for criminal matters outlined in enabling legislation.
- Judicial Officers include judges and magistrates who ensure fairness, apply the law, and remain impartial.
- Solicitors provide legal advice, manage cases, and represent clients in lower courts.
- Barristers specialise in court advocacy, representing clients in higher courts.
- Court Staff include registrars, court clerks, Sheriff's officers, tipstaff, court reporters, and witness liaison officers, all contributing to the court's efficient operation.
- Witnesses provide sworn testimony about what they observed or know. Witnesses' obligations include truthfulness, impartiality, and following court instructions.
- Written rules for court conduct are set out in documents like the "South Australian Legal Practitioners Conduct Rules" and "Joint Criminal Rules 2022." Unwritten conventions emphasize respect, such as not turning your back to the judge, avoiding personal items on the bar table, and using proper language in court.

## Practical Application & Examples

- In the Case Materials, we are informed that the offence carries a maximum penalty of \$50,000.00 or imprisonment for 10 years, or both. In the real world, should this matter be heard in the Magistrates Court or the District Court?
- Jurisdiction is relevant here – if we were to look up the *Magistrates Court Act 1991*, we would see that Section 9 of that Act grants the court jurisdiction in criminal matters in minor indictable offences and certain major indictable offences. The court can impose a penalty of up to \$150,000.00 – however, the maximum sentence of imprisonment is 5 years for a single offence. Imagine you are the prosecutor, and you are seeking the maximum term of imprisonment of 10 years – in which court would you commence the case? In this situation, it is likely that you would commence the case in the District Court's criminal division.
- In the Case Materials, we see the evidence includes an Analysis Certificate signed by Dr Fitzpatrick. Imagine you are appearing for the prosecution and after making inquiries, you realise that the certificate is not yet on the court file, so the Judge does not have a copy. During the hearing, you want to enter the certificate into evidence by tendering it to the court – to whom should you give the certificate?

For the purposes of the Mock Trial, you would hand the certificate to the Sheriff's Officer who would pass it to the Judge's Associate, who is responsible for marking and numbering it as an "exhibit" before handing it up to the judge.

- We know that convention dictates that legal practitioners must not turn their back to the judge while the court is in session. Imagine that you are the barrister, and you need to quietly discuss something with your client. How should you manage this?

In practice, if the client in a criminal matter is "in the dock" – you would seek leave (permission) from the judge to confer with your client.

## Formative Assessment Activities

### Activity 1: Research, Analysis, and Reflection

- Earlier we observed that the maximum possible sentence for imprisonment in the *Police v Pedler* case is 10 years.
- Search online for an authoritative and current version of the South Australian *Criminal Procedure Act 1921* (try looking for the Act at <https://www.legislation.sa.gov.au/legislation>).
- How does that Act define "summary offence", "minor indictable offence", and "major indictable offence"? Which would apply to the *Police v Pedler* matter?
- Imagine that you act for the defendant, Pedler. Thinking broadly, how would you describe the practical significance of the category of offence that you believe applies to Pedler. Discuss.

### Activity 2: Research and Group Discussion

- Search online for a copy of the South Australian Legal Practitioners Conduct Rules (a link to the document usually appears as the first search result).
- Read Rule 17.1 (Independence and Avoidance of Personal Bias). In a group, discuss what does the prohibition against being a "mere mouthpiece" mean? What purpose does the rule serve?
- Read Rule 18.1 (Formality Before the Court). In a group, discuss the prohibition against informal personal familiarity. What would be an example of such conduct? What purpose does the rule serve?

### Activity 3: Reflection

- In this lesson we have touched on the hierarchy of the court system in South Australia, the courts' jurisdiction, legislation that relates to the categorisation of criminal offences, and examples of written and unwritten rules relating to the conduct of criminal cases and the in-court conduct of individual legal practitioners.
- Imagine that you are taking a birds-eye view of the entire system, with the pieces we have examined as parts of the machinery by which the system operates.
- In your view, what is the overarching social purpose of this system?
- How do things like the conventions governing in-court conduct serve that overarching purpose?
- Will your response influence how you prepare for and approach the purpose of the Mock Trial Competition?

#### Additional Resources

- Courts Administration Authority of South Australia, "Court Behaviour": <https://www.courts.sa.gov.au/going-to-court/preparing-for-court/court-behaviour/>.
- Legal Services Commission, "Duty Solicitor Handbook": <https://lsc.sa.gov.au/dsh/> (see section on Courts and Jurisdiction).
- South Australian Legislation: <https://www.legislation.sa.gov.au/legislation>.

#### Optional Activities

- Research (online) the recommended dress standards for appearing in South Australian courts.

#### Evaluation Criteria

- The primary criterion in Lesson 1 is active participation including in-class activities, research, analysis, and reflection.
- The lesson aim to help students prepare for the Mock Trial Competition. In that context, as they work through the lessons, students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).

Lesson 2

Professional Ethics, Courtesies, and Court Conduct



## 2. Professional Ethics, Courtesies, and Court Department

### The written and unwritten rules for court conduct

#### Purpose

- In Lesson 1, we briefly touched on the written and unwritten rules for lawyers' in-court conduct. In this lesson we will deepen and broaden our understandings of those rules.
- It is important to have a practical understanding of the rules and conventions for in-court conduct for several reasons, including:
  - Successful performance in the Mock Trial Competition is partly dependent on participants' demonstrated understanding of the rules.
  - In the competition, and in real life, other people's confidence in you as an individual and what you say is influenced by the ways in which you conduct yourself, especially when you are under pressure.
  - Understanding the rules informs your competent preparation and presentation of your case.

Page 15 of the Mock Trial Competition Manual sets out a Basic Guide for "Professional Ethics, Courtesies and Court Department" – this lesson provides additional material to support (not to substitute for) those rules.

#### Learning Objectives

By the end of this lesson, students will be able to demonstrate understanding of:

**1.** Demonstrate an applied understanding of the ethics, conventions, and etiquette applicable to lawyers representing a client at a court.

**2.** Demonstrate understanding of the nature of a lawyer's fundamental duties, including the duty to the Court and to the Administration of Justice.

**3.** Demonstrate understanding of the existence of specific obligations for lawyers engaged in litigation and advocacy.

#### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access for research – particularly to access the South Australian Legal Practitioners' Conduct Rules:  
[https://www.lawsocietysa.asn.au/Public/Publications/Resources/Legal\\_Practitioner\\_Conduct\\_Rules.aspx](https://www.lawsocietysa.asn.au/Public/Publications/Resources/Legal_Practitioner_Conduct_Rules.aspx)

## Introduction to the Topic

### Lesson Content

- As mentioned above, page 15 of the Mock Trial Competition Manual sets out a Basic Guide for “Professional Ethics, Courtesies and Court Department”, which you should carefully read as part of your preparation for the Mock Trial Competition.
- You will see that some points in the Basic Guide relate to the written rules, whereas some other points reflect long observed conventions regarding court conduct. For example, the requirement “to assist the Mock Trial Judge honestly and must not mislead him or her by presenting evidence which is known positively to be untrue” is reflected in the South Australian Legal Practitioners’ Conduct Rules (SALPCR) at Rule 19.1:

“19.1 A legal practitioner must not deceive or knowingly or recklessly mislead the court.

19.2 A legal practitioner must take all necessary steps to correct any misleading statement made by the practitioner to a court as soon as possible after the practitioner becomes aware that the statement was misleading”.

- On the other hand, the Basic Guide’s specific requirement, “to remain behind the bar table and not to wander around the court room as seen on television” reflects a convention observed in Australian courts – although you might recognise that the SALPCR does include a requirement for formality before the court, and that wandering about the court would be construed as undue familiarity.

It is important to understand that, in practice, a lawyer who breaches the professional conduct rules can face a charge of unprofessional conduct, or more seriously, professional misconduct under the *Legal Practitioners Act 1981* (SA):

Section 68: “unsatisfactory professional conduct includes conduct of a legal practitioner occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner”

Section 69: “professional misconduct includes—

- (a) unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of a legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to practise the profession of the law.”

The key point here is that the rules are taken seriously by the judges and the lawyers.

### Fundamental Duties of Legal Practitioners

The Duty to the Court and the Administration of Justice is Paramount

Here, “paramount” means of utmost importance. Rule 3 SALPCR states: “A legal practitioner’s duty to the court and the administration of justice is paramount and prevails to the extent of inconsistency with any other duty” (underlining added).

This requirement sometimes leads to a conundrum for a lawyer who is obliged to act in a client's best interest, which might conflict with the duty to the court. Fortunately, you are unlikely to encounter such a dilemma during the Mock Trial Competition, but it is worth remembering that the duty to the court is very serious.

### Other Fundamental Ethical Duties

**Rule 4** involves requirements for honesty, courtesy, diligence, timeliness, integrity, independence, lawful, and the client's best interests. Legal practitioners must:

- Act in the best interests of a client in any matter in which the practitioner represents the client.
- Be honest and courteous in all dealings in legal practice.
- Act competently, diligently, and as promptly as reasonably possible.
- Avoid any compromise to their integrity and professional independence, and
- Comply with the SALPCR and the law.

Standard of Conduct – **Rule 5** states that legal practitioners must not engage in conduct that demonstrates they are not a “fit and proper” person to practice law, or diminish confidence in the proper administration of justice, or bring the legal profession into disrepute. Generally, a “fit and proper” person demonstrates good character and honesty, compliance with the law, financial responsibility, professional competence, and observance of ongoing professional obligations.

**Rule 6 SALPCR** deal with “undertakings” (or promises). Essentially, legal practitioners must keep promises they make and complete the promise in a timely and efficient manner. At the same time, they cannot ask for an undertaking from another legal practitioner if it would require compliance by a third party.

### Advocacy and Litigation Rules

#### Maintain Independence – Avoid Personal Bias (rule 17)

A legal practitioner representing a client at court must not act as the “mere mouthpiece” of the client. Proper preparation involves scrutinising the client's statements and appropriate and tactful testing of the validity of the statements. It is a good idea to identify gaps or blind spots in your client's statements early in your preparations.

In everyday life we might be used to using such expressions, as “I think...”, or “I believe...”. When addressing the court, it is unprofessional to use expressions that might imply that the practitioner is failing their duty of independence. Generally, using an active sentence, “My client instructs that...” / “The plaintiff maintains that...”, or the passive, “I am instructed that...” helps to avoid unintended statements of belief or opinion.

#### Formality before the Court (rule 18)

“A legal practitioner must not, in the presence of any of the parties or practitioners, deal with a court on terms of informal personal familiarity which may reasonably give the appearance that the practitioner has special favour with the court.”

A person observing court proceedings should have the impression that the conduct of the proceedings was “regular” in the sense of being formal, orderly, methodical, customary, disciplined, and consistent with principled and proper procedure. The appearance of informality and irregularity undermines confidence in the administration of justice.

The Courts Administration Authority South Australia provides ‘General Protocols’ and ‘Addressing a Judicial Officer’ guidance, particularly regarding:

- Correct form of address for the judicial officer in the relevant forum.
- Entering and leaving the court room.
- Entry and departure of the judicial officer.
- Standing when addressing (or being spoken to by) the judicial officer.
- Silencing personal electronic devices.
- Appropriate attire.
- Forbidden use of recording devices.

A legal practitioner’s failure to observe dress standards can be interpreted by the bench as a sign of incompetence. Essentially, professionally respectful behaviour in words and actions is more likely to inspire confidence and reinforce the impression that you know what you are doing and should be listened to – (also part of acting in your client’s best interests).

In relation to “appropriate attire” the South Australian Magistrates Court’s guidance states (in part):

- Visitors to a courtroom are not required to wear a suit but should be neat and smart. It is inappropriate to wear singlets, thongs, hats or sunglasses in the courtroom.
- Legal practitioners appearing in a court proceeding shall adopt a standard of dress which respects the importance of the exercise of judicial power to the parties and the community.

**Other conventions regarding formality in court include:**

- Remain silent when a witness is taking the oath or affirmation.
- The bar table should be left free of clutter.
- Do not leave the bar table unoccupied if the judicial officer remains at the bench – the convention is to await permission to leave if there is not another practitioner ready to occupy the bar table.
- Remain professional and courteous during exchanges at the bar table – quarrelling with an opponent is unproductive and unimpressive – and distracting for the judge.
- Do not argue directly with the judge – consider rephrasing your argument as a submission, for example, “It may be that your honour prefers that approach – however, it is our submission that ...”
- Avoid colloquial language and adopt a plain language approach wherever possible.

**Do not mislead the court; make relevant disclosures**

“19.1 A legal practitioner must not deceive or knowingly or recklessly mislead the court.

19.2 A legal practitioner must take all necessary steps to correct any misleading statement made by the practitioner to a court as soon as possible after the practitioner becomes aware that the statement was misleading” (underlining added).

It is important to avoid unintended misleading conduct, which might arise from a failure to carefully test a client’s information, or through your own oversight or inattention.

## Do not abuse process or privilege

Here, “privilege” means the protection (e.g. from defamation claims) given to lawyers asking questions in court. There is a balance to be struck between advancing a client’s case and observing the rules of professional conduct. SALPCR Rule 21 is comprehensive, but in the context of the Mock Trial Competition, the following might be most relevant:

- take care to ensure that allegations or suggestions under privilege against any person are reasonably justified and appropriate, and not principally done to harass or embarrass someone, or to gain some collateral advantage.
- do not allege any matter of fact unless that the already available factual material provides a proper basis to do so, on reasonable grounds.
- do not make a suggestion in cross-examination regarding a witness’s credibility unless you genuinely believe, on reasonable grounds, that the suggestion would lower the credibility of the witness’s evidence. In other words, the suggestion must be relevant to the material facts and evidence. This ensures that cross-examination remains focused, ethical, and effective.

## Do Not Actively Mislead Opponents

A legal practitioner must not knowingly make a false or misleading statement to an opponent in relation to the case.

SALPCR **Rule 22** requires that if a lawyer becomes aware they have made a false or misleading statement to an opponent, they must immediately take steps to correct the error.

## Integrity of Evidence

A legal practitioner’s duty to the Court extends to maintaining the integrity of evidence, in the sense of evidence being uncorrupted, whole, undivided, unified, and sound.

SALPCR **rule 24** prohibits practitioners from prompting or condoning a witness to give false or misleading evidence, or coaching a witness – however, a practitioner can test the witness’s evidence in conference, and draw attention to any inconsistencies, whilst reminding the witness to tell the truth.

**Rule 25** prohibits conferencing simultaneously with two or more witnesses unless there are special circumstances.

Practitioners must not confer with a witness while the witness remains under cross-examination (for example, during an adjournment), unless the cross-examiner provides express consent, and there are special circumstances for doing so (**Rule 26**).

Care must be taken to not to directly or indirectly influence the evidence a witness will give in court – it may be that the witness needs some boundaries to be outlined in terms of focus and relevance – for example, “the judge will be interested to hear in your own words about what you heard and saw when you received the luggage”.

## Key Takeaways

### Professional Ethics, Courtesies, and Court Department

- Lawyers must adhere to ethical guidelines and courtroom conventions.
- The South Australian Legal Practitioners' Conduct Rules (SALPCR) require honesty and prohibit misleading the court.
- Lawyers can face professional misconduct charges for breaching conduct rules.
- Conventions such as not wandering in court and maintaining formal courtroom behaviour are crucial.

### Fundamental Duties of Legal Practitioners

- Duty to the Court and Administration of Justice is Paramount: This duty overrides any conflicting obligations.
- Ethical Duties: Lawyers must act honestly, diligently, and in the best interests of clients while maintaining independence and integrity.
- Standard of Conduct: Lawyers must be "fit and proper" individuals and avoid conduct that undermines confidence in justice.
- Undertakings: Legal practitioners must uphold promises and cannot request unreasonable commitments from others.

### Advocacy and Litigation Rules

- Maintain Independence: Lawyers should not act as mere mouthpieces for clients but critically assess client statements.
- Court Formality: Lawyers must maintain professionalism, avoid informal interactions with the court, and adhere to court protocols, including:
  - Proper addressing of judicial officers.
  - Standing when addressing the court.
  - Wearing appropriate attire.
  - Avoiding quarrels with opponents.
  - Using professional and clear language.

### Responsibilities in Legal Proceedings

- Do Not Mislead the Court: Lawyers must not deceive or recklessly mislead the court and must correct any misleading statements promptly.
- Do Not Abuse Process or Privilege: Lawyers must ensure their allegations are justified and not used to harass or gain unfair advantages.
- Do Not Mislead Opponents: Any false or misleading statement made to an opponent must be corrected immediately.

### Integrity of Evidence: Lawyers must:

- Not prompt or condone false testimony.
- Avoid coaching witnesses but may help clarify inconsistencies.
- Not confer with witnesses under cross-examination unless permitted.

## Practical Application

The Courts Administration Authority of South Australia (<https://www.courts.sa.gov.au/going-to-court/preparing-for-court/court-behaviour/>) provides Protocols for Court Behaviour, including:

- When you enter and exit the courtroom, it is customary to acknowledge respect for the laws of the land, the court and its judiciary. This is simply a matter of pausing briefly at the door and bowing your head towards the Coat of Arms located behind the Judicial Officer.
- When a Judicial officer enters or leaves the courtroom, it is customary to stand and bow and remain standing until the Judicial Officer has departed. The Judicial Officer is in charge of the courtroom and may order the removal of anybody who misbehaves or is dressed inappropriately.
- You should stand whenever the Judge is talking to you, or you are talking to the Judge

The following are not permitted in the courtroom:

- talking, smoking, eating and chewing gum
- video or other cameras, tape recorders, two-way radios or other electronic equipment.
- You must turn off your mobile phone, pager and the alarm on your watch while in the courtroom.

You do not need to wear a suit when going to court but your dress should be neat and smart. It is inappropriate to wear singlets, thongs, hat or sunglasses in the courtroom.

In court, it is important that you follow directions and pay attention. You should never be hostile.

A trial is a structured proceeding for the orderly collection of factual evidence by the Court. Fundamental to this process is that each party is allowed to speak in turn presenting their case. It is quite possible that you disagree with the information/evidence the other side is putting to the Judicial Officer. If so, make a note of the errors and correct them when it is your turn to speak, as well as putting your information/evidence to the Judicial Officer.

### Activity 1 Role Play: Announcing Your Appearance

- Read page 10 of the Mock Trial Competition Manual regarding the opening of the court, and the introduction of the prosecution and defence teams (at paragraphs numbered 6 and 7).
- For this activity, divide the group into pairs, with one person acting for the prosecution and one person acting for the defendant (this allocation is just for this activity and not necessarily for the Mock Trial Competition).
- The teacher, or the students can take turns, to act as the judge. For this activity, students can take turns to act as the Sheriff's Officer.
- If you can arrange the room so a desk or table can be used as "the bench" (where the judge sits), and another desk or table can be used as the bar table (where the lawyers sit).



The Judge

Sherrif's Officer

The Bench

DEFENDANT'S LAWYER

Bar Table

PROSECUTOR'S LAWYER

1. Begin with everyone standing. Follow the procedure in the Manual on p. 10 at paragraphs numbered 2 – 4.
2. The judge enters and stands at the bench and bows.
3. The people at the bar table bow to the judge.
4. The judge sits, then everyone may sit after the judge.
5. The judge says, "Appearances".
6. The Prosecutor/Plaintiff stands, and states, "If the court please, [full name], for the prosecution, your honour. The prosecutor sits.
7. The Defendant's lawyer stands, and states, "If the court please, [full name], for the defendant, your honour. The lawyer sits.

Bear in mind that after the court "opens" and before the court "closes", there should only be one person standing at the bar table at any time.

Everyone in the group should take a turn at announcing their appearance. It might look easy to do, but not everyone is comfortable when they try this for the first time, and it is worthwhile to practice it. Remember the professional conduct rule requires courtesy.

### Activity 2: Group Discussion

Take time to discuss the appearances role play. How did you go? Was it difficult to speak up? Be constructive when sharing insights with each other.

### Activity 3: Reflection

Announcing appearances in court has a practical element of letting everyone know who the parties' representatives are. However, is there also an element of "setting the scene" for the court proceedings? How was your own "body language" when announcing your appearance? Were you composed, or did you fidget? What might help you to appear composed and confident to the judge (and your client)?

### **Additional Resources**

- Courts Administration Authority of South Australia, “Court Behaviour”:  
<https://www.courts.sa.gov.au/going-to-court/preparing-for-court/court-behaviour/>.
- Legal Services Commission, “Duty Solicitor Handbook”: <https://lsc.sa.gov.au/dsh/ch02.php>  
(see Chapter 2 – Professional Ethics and Court Etiquette).

### **Extended Activities**

- Consider reading the Legal Services Commission, “Duty Solicitor Handbook”:  
<https://lsc.sa.gov.au/dsh/ch02.php> at Chapter 2 – Professional Ethics and Court Etiquette,  
particularly the following sections:
  - Relations with court staff
  - Entering the courtroom
  - While waiting to appear
  - At the bar table
  - Leaving the bar table

### **Evaluation Criteria**

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual’s comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff). Note that the judge’s expectations regarding conduct will be consistent with Basic Guide in the Mock Trial Competition Manual.

### Lesson 3

Legal cases and legislation that will be the basis for the Mock Trial.



### 3. Legal cases and legislation that will be the basis for the Mock Trial.

The authority for prosecution/plaintiff and defence arguments

#### Lesson Overview

**Note:** “A team is also not permitted to lead or rely upon any provisions of legislation or case law **other than the excerpts provided with the case materials**”, (Manual, “Rules for the Conduct of a Mock Trial – Witnesses, Rule 6”, p. 7) (emphasis added).

#### Purpose

- Purpose of this lesson is to review the case law and legislation that must be used in the Mock Trial Competition, and to demonstrate ways in which to integrate that information with preparation for performance in the mock trial.
- Students will be introduced to the concept of the proof-making model, specifically Level 1 “Cause of Action / Basis for Prosecution” and the Level 2 “Elements” of Level 1.

#### Learning Objectives

By the end of this lesson, students will be able to:

**1.** Read and analyse abridged class law and statutory materials.

**2.** Identify and integrate relevant information from the materials into a proof-making model.

**3.** Demonstrate preliminary understanding of the ways in which Levels 1, 2, and 3 of the proof-making model provide foundations for propositions of fact and evidence in support of those facts.

#### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access to the Australasian Legal Information Institute webpages

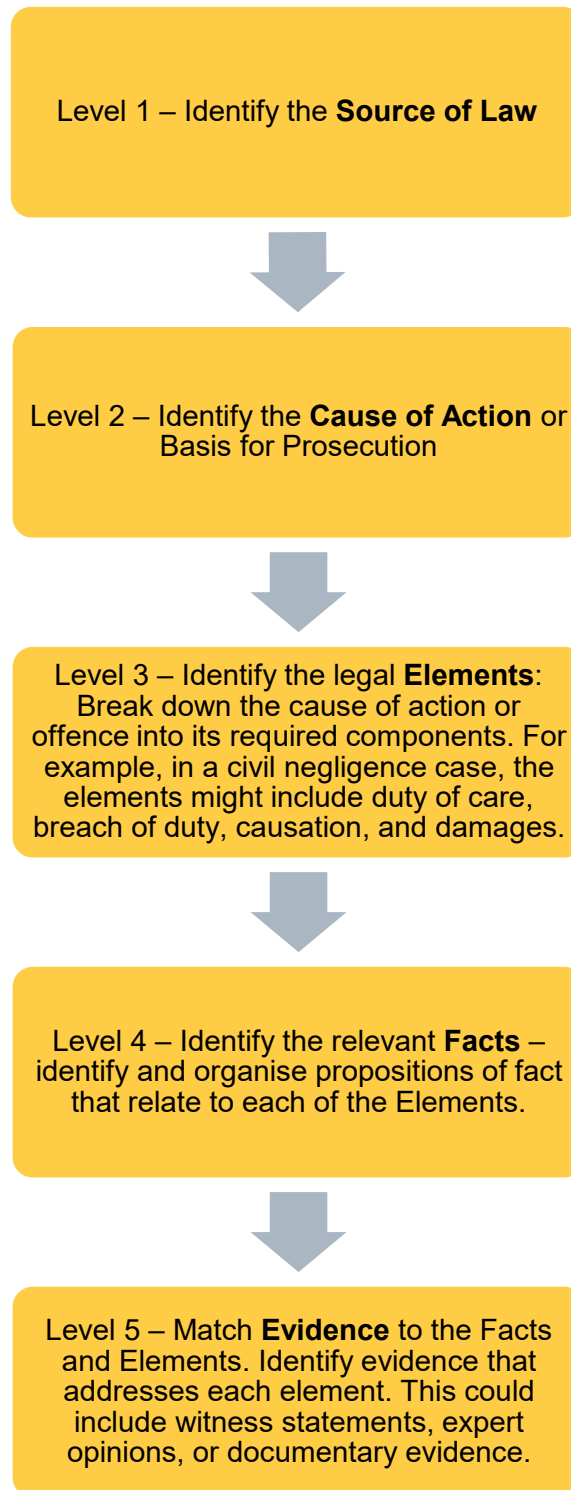
## Introduction to the Topic

- Understanding case law and statutory materials is like unlocking the tools lawyers use to build their arguments. In a Mock Trial Competition, these resources help students step into the shoes of legal professionals, making their arguments stronger and more convincing. Case law—previous decisions made by courts—provides real-world examples and guidance on how laws are interpreted and applied. Statutory materials, on the other hand, are the written laws passed by Parliament that set the rules everyone must follow. Together, these elements form the backbone of any legal case, and learning how to use them effectively is key to success in the courtroom.
- The "ratio decidendi" (or simply "ratio") is the legal principle or reasoning that forms the basis of a court's decision in a case. It is the binding element of a judgment that lower courts must follow in future cases with similar facts. Understanding the ratio is crucial because it explains why the court reached its decision, allowing legal practitioners to apply the same principle to argue or distinguish cases. For example, in a case involving negligence, the ratio might outline the specific conditions under which a duty of care is owed. By identifying the ratio, students can better understand the law's application and enhance their arguments in a mock trial.
- Statutory interpretation is the process by which courts determine the meaning and application of legislation. In a legal trial, statutory interpretation is crucial when there is ambiguity or uncertainty in the language of a law. Judges use established rules and principles to interpret statutes, ensuring they align with the intent of Parliament and can be fairly applied to the facts of a case.
- Simply put, useful approaches to statutory interpretation include:
  - Literal Rule: Courts interpret the words of a statute according to their ordinary and natural meaning, without considering external factors.
  - Golden Rule: If the literal interpretation leads to an absurd or inconsistent result, courts interpret the law in a way to avoid this outcome.
  - Mischief Rule: Courts focus on the problem or "mischief" the statute was intended to address and interpret the law in a way that remedies this issue.

In practice, judges may also refer to extrinsic materials, such as parliamentary debates (Hansard), law reform reports, or explanatory notes, to clarify legislative intent.

## Proof-Making Model Introduction

The proof-making model is a structured approach to preparing and presenting a legal case. It helps legal practitioners clearly identify the elements that must be proven to succeed in their argument and guides the process of gathering and organising evidence to support each element. The model typically involves the following steps:



Preparing a proof-model will help you to anticipate challenges. Consider the opposing party's potential arguments and identify weaknesses in your own case that need to be addressed. This preparatory work also assists you in structuring your argument - organise the evidence and legal reasoning into a clear, persuasive narrative that aligns with the required elements.

Using a proof-making model, students in a Mock Trial Competition can ensure their arguments are well-supported and logically sound, increasing their chances of success.

Here's a proof-making model set up as a table – you can copy this and fill in the first three levels during this lesson (we will return to Levels 4 and 5 in a later lesson):

Level 1	Source of Law				
Level 2	Cause of Action / Basis for Prosecution				
Level 3	Elements				
Level 4	Propositions of Fact				
Level 5	Evidence				

## Main Content

### Source of Law

Our case, *Police v Pedler*, is obviously a criminal case – but what is the source of law? Criminal law originally evolved from the Common Law (or case law) over centuries by judges deciding cases. When the principles underpinning a judge's decision are widely adopted, they can become the precedent by which later cases are decided.

However, in South Australia the legislature (Parliament) has the power to make laws by writing legislation (also known as statutes or acts). Provided those statutes are within the constitutional power of the legislature, the statutes are laws that are binding on South Australian courts and judges.

The police have charged Pedler under the *Illegal Importation of Narcotics Act* (Cth) 1992 and in particular, section 39 of that Act, which prohibits trafficking of a controlled drug, and that unless there is evidence to prove otherwise, possession of the controlled drug is presumed to show an intention to traffic the drug. The Act defines the meaning of "possession" and "traffic". For the purposes of the Mock Trial Competition, we are to accept that heroin is a controlled drug.

### Case Law

**Reminder:** "A team is also not permitted to lead or rely upon any provisions of legislation or case law other than the excerpts provided with the case materials"

### R v GNN [2000] SASR 293:

This is a judgement from the Supreme Court of South Australia in which the defendant appealed against a number of matters arising at trial. For our purposes, the main issue centres on the concept of "possession".

The appeal court said that the judge at trial correctly directed the jury that “possession” of the controlled drug involved the concepts of possession, knowledge, custody, and control. However, the appeal court said that the trial judge provided inadequate directions about the concept of the defendant’s “control” over the drug (or her intention to control).

**Read** the Legal Notes in the Case Materials regarding R v GNN. Look at the language around possession, control, and custody – consider how the language in the Act intersects with the language in the GNN case – how might this be significant in the Police v Pedler case?

**Proudman v Dayman (1941) HCA 28:**

This case was decided by the High Court of Australia nearly 85 years ago but is still an important precedent for a defence involving “honest and reasonable mistake of fact” in criminal law. It is worthwhile noting that the defence is available for strict liability offences, but not absolute liability offences.

**Strict Liability:** In cases of strict liability, the prosecution does not need to prove that the defendant intended to commit the offence. However, the defendant may avoid liability by demonstrating a valid defence, such as an honest and reasonable mistake of fact. Another example: a person driving while suspended without knowing their license was suspended because they never received a notification.

**Absolute Liability:** In absolute liability offences, the prosecution only needs to prove that the prohibited act occurred. There is no requirement to prove intent, and no defences are allowed, not even due diligence or honest mistake. For example: selling alcohol to minors in licensed premises. If alcohol is sold to a person under 18, liability arises regardless of whether the seller was aware of the minor’s age or attempted to verify it.

**Read** Pedler’s statement in the Case Materials. In the context of your previous reading regarding the interpretation of “possession”, what facts might be relevant?

## Key Takeaways

### Importance of Case Law and Statutory Materials:

- These resources are foundational tools for building strong legal arguments.
- Case law provides real-world examples and guidance on interpreting and applying laws.
- Statutory materials outline written laws that must be followed, forming the backbone of legal cases.

### Understanding Ratio Decidendi in Case Law:

- Ratio decidendi (the “ratio”) is the legal reasoning behind a court's decision and is binding in similar future cases.
- Identifying the ratio helps practitioners understand how laws are applied, enhancing their arguments.

### Statutory Interpretation:

- Courts determine the meaning of legislation when ambiguity or uncertainty arises.
- Key approaches include:
  - Using ordinary, natural meanings of words.
  - Adjusting interpretation to avoid absurd outcomes.
  - Interpreting laws to address the problem they were meant to solve.
  - Extrinsic materials, like Hansard or explanatory notes, help clarify legislative intent.

### The Proof-Making Model for Legal Case Preparation:

- A systematic approach to case preparation, involving:
  - Identifying legal elements to be proven.
  - Matching evidence to those elements.
  - Anticipating challenges and addressing weaknesses.
  - Structuring arguments into a clear, logical narrative.
  - Ensure well-supported and persuasive arguments in mock trials.

### Strict Liability v Absolute Liability:

- Strict Liability: no intention to commit the offence is required, but defences like reasonable steps or honest mistake may apply.
- Absolute Liability: only proof of the prohibited act is required, with no defences allowed.
- Key difference: strict liability allows for some defences, while absolute liability does not.

## Practical Application & Examples

- We know that Criminal Law focuses on punishing offenders and protecting society by enforcing laws against actions considered harmful to individuals or the community (e.g., theft, assault).
- In contrast, Civil Law deals with resolving disputes between individuals or entities, often involving compensation or specific performance (e.g., contract breaches, property disputes).
- So, in our proof-making model we would insert “Criminal Law” at Level 1:

Level 1	Source of Law <b>Criminal Law</b>			
Level 2	Cause of Action / Basis for Prosecution			
Level 3	Elements			
Level 4	Propositions of Fact			
Level 5	Evidence			

- We know from the Case Materials that the defendant, Pedler, is charged with “knowingly traffic a controlled drug, namely Heroin”. But importantly, the legal basis of the charge is cited as “s 39(1) of the *Illegal Importation of Narcotics Act (Cth) 1992*”.
- So, Level 2 of our proof-making model would look like this:

Level 1	Source of Law <b>Criminal Law</b>			
Level 2	Cause of Action / Basis for Prosecution <b>s 39(1) <i>Illegal Importation of Narcotics Act (Cth) 1992</i></b>			
Level 3	Elements			
Level 4	Propositions of Fact			
Level 5	Evidence			

- But what are the legal Elements of the cause of action? Will take this up in the following activities.

## Formative Assessment Activities

### • Activity 1: Elements of the Charge

- Read section 39(1) of the *Illegal Importation of Narcotics Act* set out in the Case Materials in the Legal Notes section, together with the definition of “traffic” and “possession”.
- Now break down the charge into its constituent elements, and complete Level 3 of the proof-making model below (we’ve started it for you):

Level 1	Source of Law <b>Criminal Law</b>			
Level 2	Cause of Action / Basis for Prosecution <i>s 39(1) Illegal Importation of Narcotics Act (Cth) 1992</i>			
Level 3	<b>Elements</b>			
	<b>The defendant</b>	<b>Trafficked</b>		<b>A controlled drug</b>
?		?		
Level 4	Propositions of Fact			
Level 5	Evidence			

What are the relevant constituent sub-elements of “traffic” in this case?

### • Activity 2: Group Discussion

- Imagine you are the legal team acting for the Defendant in the *Police v Pedler* case, and you are creating your own proof-making model for the defence.

Which of the elements will be the focus of your preparation. For example, would you dispute the identity of the defendant, or the allegation that the drug is a controlled drug?

Would you focus on the sub-elements of “traffic”?

Explain why.

### Additional Resources

- Legal Services Commission, “Duty Solicitor Handbook”: <https://lsc.sa.gov.au/dsh/> (see section on General Principles of Criminal Law, and Elements of a Criminal Offence).
- South Australian Legislation: <https://www.legislation.sa.gov.au/legislation>.
- Australasian Legal Information Institute: <https://www.austlii.edu.au/>

### Optional Activities

- You can read the entire judgement in *R v GNN* [2000] SASR 293 here: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/sa/SASC/2000/447.html>

## Evaluation Criteria

- The primary criterion in Lesson 2 is active participation including in-class activities, research, analysis, and discussion.
- It is important that students grasp the idea that preparation for the Mock Trial Competition is supported by a methodical approach to reading, understanding, and analysing the facts and the law in the *Police v Pedler* case.
- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).

## Lesson 4

### Rules of Evidence for a Mock Trial.



## 4. Rules of Evidence for a Mock Trial

What evidence can be used, and how it is presented to the court

### Lesson Overview

#### Purpose

- This lesson provides context for the rules concerning evidence in the Mock Trial Competition set out at pp. 8, and 16-18 of the Manual.
- Students will have opportunities to analyse the evidence in the Police v Pedler case materials in the context of proof-making and the rules regarding evidence for the Mock Trial Competition.

### Learning Objectives

By the end of this lesson, students will be able to:

**1. Demonstrate** understanding of the role and categories of evidence tendered in a trial and as part of the proof-making process.

**2. Demonstrate and apply** understanding of the concept of admissibility of evidence.

**3. Demonstrate and apply** understanding of rules of evidence and how to make objections in a trial setting.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access to the South Australian Legislation, Australasian Legal Information Institute webpages, and YouTube.

## Lesson Content

### Introduction to the Topic

- Evidence is essential in any trial. For example, in a criminal trial, evidence serves as the basis upon which guilt or innocence is determined. It provides proof for propositions of fact coupled with legal arguments and helps to establish the credibility of witnesses, the reliability of testimony, and the strength of a case.
- Your preparatory work when using a proof-making model will assist you in identifying relevant evidence that supports a proposition of fact in your argument or rebuts a proposition of fact in your opponent's argument.
- In criminal proceedings, the burden of proof rests on the prosecution, which must prove the accused's guilt beyond a reasonable doubt.
- Evidence—whether physical, documentary, or testimonial—is crucial in meeting this standard and ensuring a fair trial.
- There are two main types of evidence in a criminal trial:
  - Direct Evidence, which directly proves a fact (such as eyewitness testimony or video footage), and
  - Circumstantial Evidence, which requires inference to establish a fact (such as fingerprints at a crime scene).
- Courts distinguish between admissible evidence, which complies with legal rules and is presented in court, and inadmissible evidence, which is excluded due to issues such as hearsay, prejudice, or irrelevance.
- The parties, i.e., the Defence and the Prosecution, can object to the admissibility of evidence based on the rules of evidence, such as irrelevance or hearsay.
- The rules governing evidence are designed to uphold fairness, protect the rights of the accused, and maintain the integrity of the judicial process. Understanding how to present, challenge, and interpret evidence is a key skill for legal practitioners and plays a decisive role in the outcome of criminal trials.

**Note:** In the context of the Mock Trial Competition rules, you will be restricted to making objections against admissibility of evidence on the following bases:

1. Relevance
2. Opinion
3. Hearsay
4. Character
5. Leading questions during examination-in-chief (asking questions of your own witness)
6. The rule in *Browne v Dunn*

In practice, there are other bases for objections (such as improper authentication of documents, and prejudice) – however, these are excluded for the purposes of the Mock Trial Competition.

## Proof Making Model – Evidence

- In Lesson 3, we introduced the Proof-making Model as a tool for you to use during preparation of your case. As we talk about evidence in this less, it would be worthwhile to keep a copy of your own proof-making model on hand, so that you can analyse your case with respect to the evidence.
- Hopefully, you already completed Level 3 “Elements” at the end of Lesson 3 – do it now, if you haven’t already!
- You should complete the Level 4 “Propositions of Fact” before you begin using the model to “test” the evidence. If you’re working for the Defendant’s team, you would be modifying Levels 4 and 5 in order to rebut the prosecution’s case.

Level 1	Source of Law <b>Criminal Law</b>		
Level 2	Cause of Action / Basis for Prosecution <i>s 39(1) Illegal Importation of Narcotics Act (Cth) 1992</i>		
Level 3	<b>Elements</b>		
	The defendant	Trafficked	
		?	?
Level 4	<b>Propositions of Fact</b>		
	Pedler		Heroin
Level 5	Evidence		

## Main Content

**Forms of Evidence** - the most common forms of evidence used in a trial include:

- **Testimonial evidence:** evidence given by witnesses who testify under oath in court. Witnesses can be lay witnesses or expert witnesses - their testimony is used to provide information about the case.
- **Documentary evidence:** includes any physical or written evidence, such as contracts, letters, or photographs, that can help support or rebut a claim made by a party.
- **Physical evidence:** includes any tangible objects, such as weapons or clothing, relevant to the case.
- **Demonstrative evidence:** includes charts, graphs, or diagrams used to illustrate or clarify witness testimony or other evidence.
- **Circumstantial evidence** that does not directly prove a fact but can be used to infer that a fact is true. For example, the presence of a defendant’s fingerprints on physical evidence may be circumstantial evidence.
- **Forensic evidence:** includes any scientific evidence, such as DNA analysis or ballistics, used to support or rebut a claim made by a party.
- The type of evidence used in a trial depends on the propositions of fact and legal arguments advanced by the parties. The evidence must be admissible if it is to be used to prove or disprove the elements of the legal claim or defence.

## Tender of Evidence

“Tender” of non-testimonial evidence means that it is presented to the court for consideration in a legal proceeding.

The legal practitioner would ask that the witness be shown a document or item of physical evidence (such as a certificate), then ask the witness if they recognise it or can identify it – for example, the witness might say “This is a certificate I received from the police laboratory on [date]”. The lawyer tenders the item to the court. The court allocates an exhibit number, and the evidence remains in the custody of the court during the trial.

The following are the general considerations in the process of tendering evidence:

- **Relevance:** The evidence must be relevant – it must relate to a fact in issue in the case.
- **Admissibility:** The evidence must be admissible and admitted into evidence after the court hears and decides on any objections.
- **Offer of proof:** The party seeking to tender the evidence must explain what the evidence is, where it came from, and why it is relevant.
- **Objections:** The opposing party may object to the tendered evidence being admitted. They might argue because of relevance or hearsay, for example.
- **Ruling:** The judge considers the objections and rules as to whether the evidence is admissible.
- **Presentation:** If the evidence is admitted, it may be presented to the court through witnesses, documents, or other means.
- **Weight:** The judge will consider the evidence and what weight to give it as part of their decision-making process.

## Admissibility of Evidence

In the Australian legal context, "admissibility" refers to whether evidence is allowed to be presented in court during a trial or hearing. The admissibility of evidence is determined by rules of evidence, which vary according to whether the matter is being heard under the common law rules, the Evidence Act 1929 (SA) (or the Uniform Evidence Act 1995 (Cth)).

**Note:** In the Mock Trial Competition, only the rules set out in the Manual at pp. 8, and 16-18 will apply.

Admissibility rules are designed to ensure that only relevant, reliable, and fair evidence is presented to a judge or jury.

In the wider world outside of the Mock Trial Competition, common admissibility issues include:

- **Hearsay** and exceptions.
- Privilege.
- Confessions and admissions.
- Tendency or propensity evidence.
- Coincidence or similar fact evidence.
- **Character** and credibility evidence.
- **Opinion** evidence.

- Identification evidence.
- Evidence considered as part of the *res gestae* (“res gestae”, a Latin phrase meaning “things done,” refers to a legal doctrine that allows certain statements and actions made spontaneously during or immediately after an event to be admitted as evidence, even if they would otherwise be considered hearsay. The rationale behind *res gestae* is that such statements are made under the pressure of the moment, leaving little opportunity for fabrication or distortion, making them inherently reliable.
- Discretionary exclusions.
- Statutory exclusions
- Evidence that can be adduced only with the leave of the Court.

Legal practitioners must be familiar with the admissibility rules and know how to make arguments to either admit or exclude evidence.

Ultimately, the judge decides whether evidence is admissible, based on the rules of evidence and arguments made by the lawyers.

The Court’s system requires a disciplined and controlled process, and the Court relies on legal practitioners’ knowledge of what is relevant and admissible. Therefore, you are expected to exercise control over what is introduced in evidence.

### **Objections to Admissibility of Evidence**

In the Mock Trial Competition, the rules state you may only make the following categories of objections:

- Relevance
- Opinion
- Hearsay
- Character
- Leading questions during examination-in-chief (asking questions of your own witness)
- The rule in *Browne v Dunn*

Please read the Manual at pp. 16-18 for a description of each these categories.

**Relevance** can be imagined as the first hurdle to overcome when offering oral testimony or a thing as evidence. It must be relevant to a fact in issue – otherwise it is inadmissible. During your proof-making and your preparations you must scrutinise both your evidence and the opposing party’s evidence for relevance.

**Opinion** (or lay opinion) – “lay opinion” is another way of saying non-expert opinion. It would be inadmissible for a witness to state that they observed that Person X was “nervous”, because that calls for a conclusion. On the other hand, it might be permitted for the witness to give evidence about what they observed with their own senses – for example, “Person X was perspiring and red in the face, they kept looking about and rubbing their forehead”.

**Hearsay** can relate to oral testimony and to documents. It would be inadmissible for a witness to give evidence about what Person X said to them, unless Person X is present in court and available to give evidence. On the other hand, it might be permitted for the witness to state that they met and had a discussion with Person X, and on the basis of that discussion the witness believes that Person X planned to travel by bus to [a location].

**Documentary hearsay** applies where the author of a document, or someone authorised to authenticate the document, is not available in court to give sworn testimony about the authenticity of the document.

**Character evidence** - character evidence from a defendant's witness is usually not hearsay because it involves opinion or reputation testimony based on the witness's personal knowledge. However, if a witness attempts to introduce specific statements by others to prove character, those statements may be considered hearsay unless some exception applies. Whilst the prosecution cannot introduce character evidence, if the defendant does tender character evidence, the witness and the defendant can be cross-examined on that evidence. Both the prosecution and the defence need to scrutinise the character witness's evidence for inadmissible components or potential lines of attack from the prosecution on the weight given to the character evidence.

**Leading Questions** – a party cannot ask leading questions of their own witness under examination-in-chief. We will look more closely at examination-in-chief in a later lesson. In the context of objections, however, the opposing party will usually object to a question that suggests the answer, (unless previous questions have laid sufficient foundation for it), for example, “you saw the defendant at the bus station, didn't you”. In practice, objections to leading questions usually relate to contested facts, rather than mutually agreed facts.

**Rule in Browne v Dunn** – read the description of the rule at p. 18 of the Manual. Essentially, a party that intends to lead evidence that will contradict or challenge the evidence of an opponent's witness, must put that evidence to the opponent's witness in cross-examination.

*Browne v Dunn* (1894) 6 R 67 is the leading case in relation to cross-examination and the requirement of giving a witness an opportunity to respond to an allegation made against them. Lord Chancellor Herschell said at page 71:

“I have always understood that if you intend to impeach a witness you are bound, whilst he is in the box, to give him an opportunity of making an explanation which is open to him; and, as it seems to be, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses” (underlining added).

As part of your preparation for the Mock Trial Competition, when you are deciding the questions that you will ask in examination-in-chief and cross-examination – you should list the “Browne v Dunn” questions you will ask in cross-examination to ensure you have complied with the rule.

### **How to Make Objections?**

If you prepare appropriately, well before the Mock Trial Competition, you will identify and anticipate potential objections you will make regarding evidence that is offered by your opponent.

Also, you will identify your opponent's likely objections to evidence that you seek to introduce. The proof-making tools will assist you.

If you identify a potential objection, prepare a simple statement that identifies the objectionable material AND the reason for your objection. For example, “Objection, your honour, it is hearsay evidence – the person alleged to have made the statement is not in court. They are not available to verify the statement. The statement cannot be tested and that is unfair to my client”.

Sometimes the judge will have already identified the objection and will rule on it before you give your reasons.

Standing promptly and speaking clearly helps to ensure you have the judge's attention and that you intervene before the line of questioning is permitted to progress and admitted into evidence.

It is essential to remain attentive and focused on the proceedings to make objections effectively.

## Key Takeaways

### Role of Evidence in a Criminal Trial

- Evidence is fundamental to determining guilt or innocence in a criminal trial.
- It establishes credibility, reliability, and the strength of a case.
- Effective preparation using a proof-making model helps identify relevant evidence.
- The prosecution bears the burden of proving guilt beyond a reasonable doubt.
- Two main types of evidence:
  - Direct Evidence (e.g., eyewitness testimony, video footage)
  - Circumstantial Evidence (e.g., fingerprints, behaviour patterns)
- Courts differentiate between admissible and inadmissible evidence based on legal rules.
- The prosecution and defence can object to evidence based on legal grounds.
- Rules of evidence uphold fairness, protect rights, and ensure judicial integrity.

### Mock Trial Competition – Grounds for Objecting to Evidence

- Objections in the Mock Trial Competition can only be made on specific grounds:
  1. Relevance
  2. Opinion
  3. Hearsay
  4. Character
  5. Leading questions (during examination-in-chief)
  6. The rule in *Browne v Dunn* (failure to put a contradictory case to a witness)
- Other grounds for objections exist in real trials but are excluded in the competition.

### Proof-Making Model & Trial Preparation

- The Proof-Making Model helps analyse evidence systematically.
- Preparation should include completing:
  - Level 3: Elements (e.g., trafficking, controlled substance)
  - Level 4: Propositions of Fact (e.g., type of drug, defendant's role)
  - Level 5: Evidence (supporting or rebutting legal claims)

### Forms of Evidence in a Trial

- Testimonial Evidence – Witness testimony under oath (lay or expert).
- Documentary Evidence – Written or recorded material (contracts, letters, photos).
- Physical Evidence – Tangible objects (weapons, clothing).
- Demonstrative Evidence – Charts, diagrams, or visual aids.
- Circumstantial Evidence – Indirect proof requiring inference.
- Forensic Evidence – Scientific analysis (DNA, ballistics).

### **Tendering Evidence**

- Non-testimonial evidence must be tendered (submitted) to the court.
- Process:
  1. Witness identifies the evidence.
  2. Lawyer tenders it to the court.
  3. Court assigns an exhibit number.
  4. Judge rules on admissibility.
  5. If admitted, it is presented and considered.

### **Admissibility of Evidence**

- Evidence must be relevant, reliable, and fair.
- Common admissibility issues:
  - Hearsay & exceptions
  - Privilege
  - Confessions & admissions
  - Character & credibility evidence
  - Opinion evidence
  - Identification evidence
  - Res gestae (spontaneous statements made during an event)
  - Discretionary & statutory exclusions

### **Objections to Evidence in the Mock Trial Competition**

- Relevance – Evidence must relate to a fact in issue.
- Opinion Evidence – Lay witnesses cannot give conclusions.
- Hearsay – Statements made outside court are inadmissible unless an exception applies.
- Character Evidence – Generally inadmissible unless the defendant introduces it first.
- Leading Questions – Not allowed during examination-in-chief.
- Browne v Dunn Rule – A witness must be given a chance to respond to contradictory evidence.

### **How to Make an Objection**

- Identify objectionable material and state the legal basis concisely.
- Promptness, clarity, and attentiveness are key to effective objections.

## Practical Application & Examples

You can see a quick example of an objection on YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk> starting a little before the 7 minute point in the video.

## Formative Assessment Activities

### Activity 1: Proof Making

Complete a draft of the Proof Making Model with attention to Level 5 Evidence.

Level 1	Source of Law <b>Criminal Law</b>		
Level 2	Cause of Action / Basis for Prosecution <i>s 39(1) Illegal Importation of Narcotics Act (Cth) 1992</i>		
Level 3	Elements		
	The defendant	Trafficked	
?		?	
Level 4	Propositions of Fact		
	Pedler		Heroin
Level 5	<b>Evidence</b>		

### Activity 2: Evidence Plan

The evidence plan tool will help you to organise the evidence you will present in the Mock Trial case. It is a strategic approach to help you to identify and analyse the strengths and weaknesses of your case, and to prepare for the presentation of evidence in a way that persuasive and effective. The evidence plan typically includes the following elements:

**Issues:** identify the key legal issues in the case. Focus your efforts on the evidence that is most relevant to the issues.

**Evidence:** identify the evidence you will use to support your arguments. This includes documents and witness statements.

**Admissibility:** analyse the admissibility of the evidence, ensuring that it meets the legal standards for relevance and reliability – is it vulnerable to objections?

**Presentation and Questions:** plan the presentation of the evidence in a way that is persuasive and effective by thinking about the questions you will ask in examination- in-chief and cross examination.

Issues / Elements and Facts	Evidence	Admissibility?	Presentation (witness, questions)

Add extra rows, if necessary.

### **Activity 3: Objections to Evidence**

Set up a courtroom for a role play activity.

Practice making objections. If an objection is made when you are asking questions of a witness, immediately stop, and resume your seat. Remain seated and wait for the judge to invite you to answer the objection or continue with your questions. Remember only one lawyer should be standing any given time!

The Bench  
(The Judge)

DEFENDANT'S LAWYER

Bar Table

PROSECUTOR'S LAWYER

### Additional Resources

- Courts Administration Authority of South Australia – Evidence at Hearings (for self-represented litigants): <https://www.courts.sa.gov.au/going-to-court/representing-yourself/evidence-at-hearings/>.
- On YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk> - for real life examples:
  - 00:07:00 ff – Objection example
  - 00:13:00 ff – *voir dire* – Admissibility of Evidence
  - 00:46:00 – *voir dire* – prosecution submits defendant's answers raise case in reply – listen carefully to the discussion between the bench and counsel for the prosecution

### Extended Activities

- Students should be encouraged to continue preparatory work outside of the classroom – reading and re-reading the witness statements and considering the attributes of the documentary evidence in light of the learnings from this lesson is strongly recommended.

### Evaluation Criteria

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).
- Consider the expectations set out in the Manual in relation to Objections to Evidence.

Lesson 5  
Proving Cases



## 5. Proving Cases

The burden of proof, the standard of proof, by whom, and how

### Lesson Overview

#### Purpose

- This lesson introduces the concepts of:
  - Burden of Proof, and
  - Standard of Proof.
- The lesson also deals with who bears the burden of proving a case, and the techniques involved in preparing for and presenting a case.
- It is important that students and teachers read p. 19 of the Mock Trial Competition Manual on “Proving Cases”.
- The Police v Pedler case is a criminal law case, and that is the focus of this lesson about proving cases.

### Learning Objectives

By the end of this lesson, students will be able to:

**1. Demonstrate** understanding of the concepts of the burden of proof and the standard of proof.

**2. Apply** their understanding to analysis of the facts, evidence, and law involved in the case materials.

**3. Demonstrate and apply** understanding of preparatory and presentation techniques relating to proof in a mock trial context.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access to Australasian Legal Information Institute and Legal Services Commission of South Australia (Duty Solicitor Handbook and Law Handbook) webpages.

## Lesson Content

### Introduction to the Topic

*Throughout the web of the English Criminal Law one **golden thread** is always to be seen - that it is the duty of the prosecution to prove a prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. **If, at the end of and on the whole of the case, there is a reasonable doubt**, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, **the prosecution has not made out the case and the prisoner is entitled to an acquittal**. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained (emphasis added).*

Lord Sankey LC in *Woolmington v Director of Public Prosecutions* [1935] AC 462 at 481.

The “golden thread” principle of the presumption of innocence in the absence of evidence that proves guilty “beyond all reasonable doubt” is received into Australian common law in criminal law matters through legal precedents. It is a general principle of criminal law.

Australia is also a signatory to the International Covenant on Civil and Political Rights (ICCPR) that provides for the presumption of innocence at Article 14(2), which was accepted by Australia in 1980.

Consequently, the prosecution in the *Police v Pedler* case bears the burden of proving Pedler's innocence beyond all reasonable doubt.

## Main Content

### Elements of a Criminal Offence

Generally, there are two key elements to most criminal offences: (1) the prohibited act; (2) the guilty mind or intention).

#### Prohibited Act (“*actus reus*”)

*Actus reus* is a fundamental concept in criminal law, referring to the physical act or unlawful omission that constitutes a crime.

#### Key Aspects of Actus Reus

- 1. Voluntary Conduct** - The act must be a voluntary physical action or omission. Involuntary actions (e.g., reflexes, actions under duress) generally do not constitute *actus reus*.
- 2. Types of Actus Reus** - Conduct crimes: the mere performance of an act is criminal (e.g., perjury, possession of illegal drugs). Result crimes – the act must cause a specific outcome (e.g., murder requires the unlawful killing of another). State of affairs crimes – being in a particular situation is enough (e.g., being found in possession of stolen goods).
- 3. Omissions as Actus Reus** - In general, failing to act is not a crime unless there is a legal duty to act, such as Statutory duties (e.g., failure to report a car accident); Contractual duties\*\* (e.g., a lifeguard failing to save a drowning person). Special

relationships (e.g., a parent failing to provide food for their child). Voluntary assumption of responsibility (e.g., taking care of an ill person and failing to seek medical help).

**4. Causation** - If a crime requires a specific result (e.g., homicide), the prosecution must prove:

- Factual causation – The defendant's act was a necessary condition for the harm (the "but for" test).
- Legal causation – The act was a significant and direct cause of the harm.
- Note that intervening acts (e.g., medical negligence, third-party actions) may break the chain of causation.

In summary, *actus reus* is the external, physical element of a crime, which, when combined with *mens rea*, determines criminal liability.

**Intention (“*mens rea*”)**

*Mens rea* is the mental element of a crime, referring to the state of mind or intent of the defendant at the time of committing the offense. It ensures that only those who act with a guilty mind are held criminally responsible.

## Levels of Mens Rea

**Intention:** The highest level of mens rea, where the defendant deliberately aims to bring about a particular result. Can be direct intention (explicitly aiming for a specific outcome) or oblique intention (where the result is a virtually certain consequence of the defendant's actions).



**Recklessness:** The defendant consciously takes an unjustified risk that results in harm. Subjective recklessness: The defendant was aware of the risk but proceeded anyway. Objective recklessness (less common): A reasonable person would have foreseen the risk.



**Negligence:** The defendant fails to meet the standard of care expected of a reasonable person, leading to harm. Common in manslaughter and some driving offenses.



**Knowledge & Belief:** Some crimes require the defendant to know a fact (e.g., handling stolen goods while knowing they are stolen).



**Strict Liability:** No mens rea is required; the mere act (actus reus) is enough to convict. Common in regulatory offenses (e.g., traffic violations, food safety laws).

**Mens Rea and Actus Reus Must Coincide** - The guilty mind (*mens rea*) and the guilty act (*actus reus*) must exist at the same time for criminal liability to arise.

Transferred Malice - If a defendant intends to harm one person but accidentally harms another, their intent transfers to the actual victim. Example: A person throws a rock intending to hit A but misses and hits B instead—liability remains.

Example of Mens Rea in Action - If someone intentionally punches another person, causing injury → likely assault. If someone carelessly swings their arm and accidentally hits someone → possibly negligence but not assault.

In summary, mens rea ensures that a person is only criminally liable if they had the necessary guilty mindset, preventing individuals from being punished for accidents or unintended consequences.

### **Elements of the Charge against Pedler**

The case information states:

Section 39 of the *Illegal Importation of Narcotics Act* (Cth) 1992 provides:

s39 (1) A person commits an offence who:

- a. Without reason excuse (proof whereof shall lie on him/her) has in their possession, or attempted to obtain possession of, any prohibited drug to which this Section applies which have been imported into Australia in contravention of this Act.
- b. For the purposes of this Act a prohibited drug contained in a parcel, bag or suitcase may be deemed to be in the possession of a person if it bears an identifying label or other marking associating such parcel, bag or suitcase with the person in question.

Is it to be accepted for the purposes of this Competition that heroin is a “prohibited drug” within the meaning of s39. Formal proof is not required.

The prosecution must prove their case “beyond all reasonable doubt”.

### **Prohibited Act**

- Possession of a controlled drug
- Control over disposition of a controlled drug

### **Intention**

- Intention to sell a controlled drug
- Bear in mind that the prohibited act and intention must coincide for the charge to be made out.

## Standard of Proof – Prosecution

The prosecution must prove each element of the charge beyond reasonable doubt.

What is “reasonable”?

- "Reasonable" refers to what a rational, fair-minded person would think based on the evidence presented in court.
- It does not mean absolute certainty, but it does mean that any doubt about the defendant's guilt must be real, logical, and based on evidence—not speculation, guesswork, or fanciful doubts.
- -A judge must be firmly convinced of the defendant's guilt.
- If there is a reasonable doubt—one based on reason and evidence—the defendant must be acquitted. For example, a key witness contradicts themselves or is inconsistent or unreliable; or there are major inconsistencies in the prosecution's case.
- A doubt that is unreasonable, far-fetched, or hypothetical does not prevent conviction. For example, a doubt based purely on emotion or sympathy rather than facts; or where the defence case relies on a far-fetched theory without any supporting evidence.

## Burden and Standard of Proof – Defence

Although the prosecution bears the burden of proof for each element of the charge, note that Section 32(5)(b) places a burden on the defendant to rebut the presumption that they intended to traffic/sell the drug if possession of the drug is proved.

Generally, the legal burden of proof on the defendant must be discharged on the balance of probabilities.

- “Balance of probabilities” means the defendant must show their defence is more likely than not to be true.
- It is a lower standard than beyond reasonable doubt. If the evidence tips the scales in the defendant's favour, the prosecution's case should fail.

## Proof-Making Model and Evidence Plan

Look at back at your proof-making model and evidence plan at the end of Lesson 4.

Bear in mind the burden and standard of proof when developing and refining your proof-making model and your evidence plan – test each item of evidence (and proposition of fact) against the relevant standard.

## Case Theory

By now, whether you're on the prosecution's team or the defence team, you are likely to be developing your own theory about the case.

Imagine you are working on the opening address and the closing address to the judge about your case. Those presentations should reflect your theory of the case.

A Theory of the Case is developed by you and is drawn from the disputed and undisputed facts that are certain to be put to the Court. Your theory of the case explains to the Court the most logical conclusion that the Court can draw from the facts and evidence.

You can work on and develop your Theory of the Case as you prepare for the trial. It is possible that you will amend your theory as you analyse the facts and the evidence.

The advantages of developing a Theory of the Case includes:

- A conscious direction for strategy and tactics
- Focus effort on relevant items without distractions
- Identify the important and relevant issues, what facts are undisputed, and the facts that are contested
- Helps to identify the key information to be drawn out during evidence in chief
- Helps to identify the information that must be challenged by cross examination (including Browne v Dunn matters)
- Helps to identify the key submissions to be made in the opening and closing presentations.

For example, part of the prosecution's theory of the case is that the defendant fabricated the story about Alison.

## Key Takeaways

- **Presumption of Innocence & Burden of Proof**
  - The presumption of innocence is a fundamental principle in Australian criminal law, reinforced by legal precedents.
  - Australia is a signatory to the ICCPR, which affirms this principle under Article 14(2).
  - The prosecution bears the burden of proving the defendant's guilt beyond reasonable doubt.
- **Elements of a Criminal Offence**
  - Criminal offences generally require two key elements:
    - Actus Reus – The prohibited act.
    - Mens Rea – The guilty mind or intent.
    - Mens rea and actus reus must coincide.
- **Elements of the Charge Against Pedler**
  - Prohibited act – Possession and control of a controlled drug.
  - Intent – Intention to sell the drug.
- **Standard of Proof – Prosecution**
  - The prosecution must prove guilt beyond reasonable doubt.
  - "Reasonable" means a rational, fair-minded person would be firmly convinced based on the evidence.
  - Real doubts based on logic and evidence lead to acquittal, while speculative doubts do not.
- **Burden & Standard of Proof – Defence**
  - While the prosecution must prove guilt, some legal presumptions (e.g., drug trafficking laws) shift a burden to the defendant to disprove intent.
  - The \*\*defendant must prove their defence on the balance of probabilities (i.e., more likely than not).
- **Proof-Making Model & Evidence Plan**
  - When preparing for trial, legal teams must assess each item of evidence against the required standard of proof.
- **Theory of the Case**
  - A coherent legal narrative is essential for both prosecution and defence.
  - It helps in:
    - Strategic case preparation.
    - Identifying key arguments and disputed facts.
    - Structuring opening and closing statements.

## Practical Application & Examples

- The GNN case supplied in the Mock Trial Competition Case Materials provides a useful example regarding the requirement that the prohibited act and intention must coincide – read that material again and think about the ways in which possession and intention are treated. What is the evidence as to whether the defendant had hidden the drugs in the suitcase, or had directed someone to hide the drugs in the suitcase? Also does possession of the suitcase necessarily constitute possession of the drugs?
- The Proudman v Dayman case mentioned in the Mock Trial Competition Case Materials relates to an honest and reasonable mistake of fact defence.
  - How would this defence affect the rebuttable presumption of intention to sell the drugs? What evidence is there for or against this defence?
  - Was the defendant's mistake both honest, and reasonable? Why, or why not?

## Formative Assessment Activities

- **Group Discussion**
  - What is the evidence for and against the potential defence of honest and reasonable mistake of fact concerning the drugs in the luggage?
- **Proof Making Model and Evidence Plan**
  - Review your proof-making model and evidence plan bearing in mind the burden of proof and standard of proof requirements in relation to each element of the charge or defence.
- **Theory of the Case**
  - After reviewing the facts and the evidence, draft your Theory of the Case (on behalf of the prosecution or the defence, depending on the team to which you are allocated).
  - Bear in mind that your Theory of the Case will shape your team's Opening Address and Closing Address in the Mock Trial Competition.
  - After drafting your Theory of the Case, review your proof-making model and evidence plan again, to ensure that everything is aligned and consistent. Make changes, if necessary.

### Additional Resources

- Legal Services Commission of South Australia, Law Handbook:
  - Elements of a Criminal Offence: <https://lawhandbook.sa.gov.au/ch12s03.php>
  - Drug Offences: <https://lawhandbook.sa.gov.au/ch12s10.php>
- LSC Duty Solicitor Handbook:
  - Trafficking in Controlled Drugs: <https://lsc.sa.gov.au/dsh/ch12s14.php>

### Optional Activities

- Research the honest and reasonable mistake of fact defence in trafficking matters – are there any decided cases with similar facts under similar laws?

## **Evaluation Criteria**

- Students' active participation in the preparatory work is important for success in the competition. Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).

## Notes

## Lesson 6

Opening statements for the prosecution and defence.



## 6. Opening statements for the prosecution and defence

How to set the scene for each party's case

### Lesson Overview

#### Purpose

- Read the procedure for the conduct of a mock trial at p. 10 of the Mock Trial Competition Manual, particularly at numbered paragraph 8 (Prosecution's opening address) and paragraph 16 (Defendant's opening address). Note that in the competition, the time limit for each opening address is 5 minutes.
- See page 20 of the Manual in relation to the opening address:

"...both advocates might make an opening address to put the Judge ... "in the picture". In this opening address it is usual to spell out the matters to be proved and how they are going to be proved".

- In this lesson students will learn about the purpose of the opening address and the attributes of an effective opening address, whether acting for the prosecution or the defence. Students will integrate previous proof-making and evidence planning work into the preparation of the opening address.

### Learning Objectives

By the end of this lesson, students will be able to:

**1.** Demonstrate understanding of the purpose of the opening address in setting the scene for the trier of fact and outlining the key issues of the case.

**2.** Demonstrate the ability to craft a strong and effective opening statement.

**3.** Demonstrate fundamental skills and techniques for the presentation of an opening address.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access the Legal Services Commission of South Australia (Duty Solicitor Handbook and Law Handbook) webpages and YouTube.

## Lesson Content

### Introduction to the Topic

An effective opening address in a criminal case sets the stage for the trial, shaping how the judge perceives the evidence and arguments to come. It is the advocate's first opportunity to present a clear and compelling narrative, outlining the case in a way that is logical, persuasive, and engaging.

Whether for the prosecution or the defence, a strong opening address does more than just summarise the evidence—it establishes credibility, frames the key legal issues, and builds a connection with the audience.

A well-structured and confidently delivered opening can significantly influence how the case unfolds, guiding the court's understanding and leaving a lasting impression that resonates throughout the trial.

Common techniques used by lawyers to make effective submissions include:

- **Set the stage:** The legal practitioner begins with a brief overview of the case, identifying the parties involved, the main issues in dispute, and what practitioner aim to prove. This helps the judge to understand what to expect during the hearing.
- **Engage the audience:** The practitioner may use storytelling techniques to engage the judge. This might involve highlighting the human impact of the case and explaining why it matters.
- **Outline legal issues and arguments:** The practitioner briefly itemises the legal arguments they will make during the hearing. This helps the judge to understand the legal framework of the case.
- **Highlight key evidence:** The practitioner can use the opening statement to introduce the key items of evidence that will be presented during the hearing. This can establish momentum and anticipation for what is to come.

## Main Content

### Setting the Stage

"Setting the stage" in an opening address means giving the judge or jury a clear understanding of what the case is about, what evidence will be presented, and how the trial will unfold. It helps create a roadmap that guides the audience through the legal arguments and factual evidence in a structured and persuasive way.

For example:

- **Frame the Case with a Clear Theme** - a strong opening address presents a theme—a central idea that ties the case together. For example, if you are the prosecution in a theft case, you might say:

"This case is about trust and betrayal. The evidence will show that the defendant abused the trust placed in them and knowingly took what was not theirs. The witnesses you will

hear from today will confirm that the defendant was seen taking the item, and forensic evidence will further prove their involvement."

This statement sets the stage by focusing the judge or jury on the key issue (trust and betrayal) and what they should expect from the evidence.

- **Paint a Vivid Picture of the Events** - an effective opening address brings the case to life with a compelling narrative. For instance, if you are the defence in an assault case, you might say:

"Imagine you are walking home late at night, and suddenly, someone rushes toward you. You act instinctively to protect yourself. This is exactly what happened to our client, Alex. The evidence will show that Alex did not intend to harm anyone but was simply reacting out of fear. Today, we will present testimony that proves Alex was defending themselves and should not be found guilty."

This approach helps the audience visualize the situation, making the defendant's perspective more relatable and believable.

By setting the stage effectively, you help the judge or jury understand your argument from the very beginning, making it easier for them to follow and ultimately support your case.

### **Engaging the Audience (the Judge)**

Engaging the audience—whether it's a judge, jury, or mock trial panel—is crucial in an opening address. The way you speak, the words you choose, and how you connect with your listeners can make a significant impact on how they perceive your case. A persuasive and engaging opening grabs attention, builds credibility, and makes your argument more memorable.

Here are three ways to engage the audience in a mock trial:

**Start with a Powerful Question or Statement** - a compelling question or statement immediately draws the audience into the case and makes them think. For example, in a fraud case, the prosecution might begin with:

"What would you do if someone you trusted stole from you? Would you seek justice? Today, we will prove that the defendant deceived and manipulated others for personal gain."

Or for the defence in a theft case:

"Sometimes, things are not what they seem. The evidence in this case will show that the accused did not steal anything but was simply in the wrong place at the wrong time."

This approach makes the audience curious and encourages them to consider your perspective.

**Use Storytelling to Make the Case More Relatable** - people connect with stories. Instead of listing dry facts, paint a picture for your audience. For example, in an assault case, the defence might say:

"Picture this: It's late at night, and you hear footsteps behind you. You turn around, and someone rushes toward you. Your heart pounds. What would you do? Our client, Alex, faced this exact situation and acted out of fear and self-defence. Today, we will show why Alex is not guilty of assault."

This helps the audience put themselves in the defendant's shoes, making your argument more persuasive.

Use Confident and Engaging Delivery - how you say something is just as important as what you say. Speak clearly, make eye contact, and use natural gestures. If you sound uncertain or monotone, the audience may lose interest. Instead of reading directly from a script, practice delivering your opening address in a conversational yet authoritative tone.

For example, rather than saying flatly:

"The prosecution will show that the defendant is guilty beyond reasonable doubt"

Try:

"The evidence will leave no room for doubt. Witnesses saw the defendant at the scene, fingerprints were found on the stolen item, and the motive is clear. By the end of this trial, you will have no doubt about the defendant's guilt."

Aim to add energy and confidence and make the argument more compelling.

An engaged audience is an attentive audience. The more you connect with them through questions, storytelling, and strong delivery, the more likely they are to follow—and believe—your case.

## **Outlining Legal Issues in an Opening Address**

One of the key purposes of an opening address in a criminal trial is to outline the legal issues at the heart of the case. This helps the judge, jury, or mock trial panel understand what laws apply and what must be proven. A strong opening address clearly explains the legal framework, connects it to the case facts, and prepares the audience for the arguments that will follow.

### **Clearly Define the Legal Elements of the Charge**

The prosecution and defence must explain the specific legal elements that the case revolves around. For example, in a theft case, the prosecution might say:

"To find the defendant guilty of theft, we must prove three key elements: (1) the accused took someone else's property, (2) they did so without permission, and (3) they intended to permanently keep it. Over the course of this trial, we will demonstrate beyond reasonable doubt that each of these elements is met."

Meanwhile, the defence might highlight which element is in dispute:

"The prosecution must prove intent beyond reasonable doubt. However, the evidence will show that our client believed they had permission to borrow the item, meaning there was no intent to steal."

By breaking the charge into key legal components, the audience knows exactly what to focus on.

Remove to use the work you did with the proof-making to assist you in this part of the opening address.

## **Explain the Burden and Standard of Proof**

In criminal trials, the prosecution must prove guilt beyond reasonable doubt. A strong opening address reminds the audience of this high standard. For example:

"The law is clear: no one should be convicted unless their guilt is proven beyond reasonable doubt. This means that if there is any real, logical doubt about the defendant's guilt, the court must acquit. The defence will show that such doubt exists."

For the prosecution:

"By the end of this trial, the evidence will leave no reasonable doubt that the defendant knowingly committed this crime. The law requires you to convict when guilt is proven beyond doubt, and we will meet that standard."

When outlining legal issues, keep it simple and clear. Avoid complicated legal jargon and connect the law directly to the case facts. A well-structured explanation helps the audience follow your argument and makes your case more persuasive.

Don't forget to deal with any statutory reversal of the burden of proof.

## **Highlight Key Evidence**

A strong opening address in a criminal trial must highlight key evidence that will be presented to support the case. This helps the judge, jury, or mock trial panel understand what to expect and why the evidence matters. The goal is to give a clear roadmap of the most important pieces of proof and how they support your side's argument.

Highlight Key Evidence Effectively – (1) mention the most crucial evidence upfront – don't list every piece of evidence (but don't "bury the lede"). Instead, focus on a few key items that will be most persuasive; (2) explain why the evidence is important – connect it to the legal elements of the charge and show how it supports your case; and (3) employ strong, confident language – make it clear that the evidence is convincing and should not be ignored.

### **Example 1: Prosecution in a Burglary Case**

"The security footage will show the defendant entering the victim's home at 11:45 PM— just 10 minutes before the burglary occurred. The fingerprints found on the broken window match the defendant's prints exactly. And you will hear from a witness who saw the defendant leaving the scene, carrying a bag of stolen items. This evidence will prove beyond reasonable doubt that the defendant is guilty of burglary."

This highlights the strongest pieces of evidence (security footage, fingerprints, witness testimony) and ties them directly to the charge.

### **Example 2: Defence in a Drug Possession Case**

"The prosecution claims my client was in possession of illegal drugs, but the evidence will show otherwise. The bag containing the drugs was found in a shared apartment, not in my client's personal space. No fingerprints or DNA link my client to the drugs. And you will hear from a roommate who will testify that the bag did not belong to my client. This evidence will create significant doubt about whether my client ever had possession at all."

This defence focuses on the weaknesses in the prosecution's case and introduces evidence that supports their argument.

When highlighting key evidence, be selective—only mention the strongest proof and explain why it matters. This makes your opening address more compelling and easier for the audience to follow.

## Key Takeaways

- Set the Stage
  - Clearly explain what the case is about, what evidence will be presented, and how the trial will unfold.
  - Frame the Case with a Clear Theme: present a central idea that ties the case together (e.g., "trust and betrayal" in a theft case).
  - Paint a Vivid Picture of the Events: use storytelling to make the case more relatable (e.g., describing a defendant acting in self-defence).

A well-structured introduction helps the audience follow and engage with the argument from the beginning.

- Engage the Audience (the Judge or Jury)
  - Start with a Powerful Question or Statement: capture attention by making the audience think (e.g., "What would you do if someone you trusted stole from you?").
  - Use Storytelling: create a vivid scenario that helps the audience empathise with your argument (e.g., describing a defendant's fear during an alleged assault).
  - Confident and Engaging Delivery: speak clearly, make eye contact, and use natural gestures to maintain interest.
  - A persuasive and engaging style makes the argument more memorable and credible.

- Outline Legal Issues
  - Clearly define the legal elements of the charge and explain what must be proven.
  - Explain the burden and standard of proof (e.g., "If there is any real doubt, the court must acquit.").
  - Keep explanations simple and avoid legal jargon, making it easier for the audience to understand.

- Highlight Key Evidence
  - Mention the most persuasive evidence upfront and explain why it is important.
  - Be selective—focus on the most compelling pieces of evidence to make the case clearer and more persuasive.

These strategies will help make a strong, confident, and effective opening address in a mock trial setting.

## Practical Application & Examples

- You can view an example on YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>:
  - 3 mins 33 secs to 4 mins 25 secs: Prosecution opening address
  - Note the prosecution's depiction of the complainant's "bad day".

## Formative Assessment Activities

### Activity 1: Draft an Opening Statement

- Draft an opening statement for the prosecution or the defence, based on the Police v Pedler Case.
- Use your previous proof-making and evidence plan work to help you draft the statement.
- Remember to work with the key takeaways to help you draft the statement.

### Activity 2: Role-Play Presentation of Opening Statement

- Take turns to present an opening statement.
- Remember the time limit for an opening statement is 5 minutes in the Mock Trial Competition.
- To save time for the in-class activity, you could divide a draft statement between 2 or 3 students.
- Alternatively, students could record an opening statement for the next activity.

### Activity 3: Group Discussion and Feedback

- Constructively engage in discussion and feedback about the role play or video recordings.
- Structure the discussion and feedback using the key takeaways in the lesson.

### Additional Resources

- YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>
- Craig Eberhardt KC, Andrew Hoare KC and Elizabeth Kelso, "Opening Addresses in Criminal Trials", The Bar Association of Queensland, *Hearsay*, 95(March 2024): <https://hearsay.org.au/criminal-trials/>.

### Extended Activities

- Consider reviewing the additional resources listed above.
- Review and re-draft your opening statement after reflecting on the above activities and resources.

### Evaluation Criteria

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).
- Time limits are important – it is strongly recommended that teachers monitor students' observance of the time limits and provide guidance to students about structure and concision in drafting and presenting opening statements.

**Lesson 7**  
**Examination in Chief.**



## 7. Examination in Chief

Ask non-leading questions of your own witness

### Lesson Overview

#### Purpose

- Read p. 20 of the Mock Trial Competition Manual regarding Examination in Chief.
- In this lesson, we will explore:
  - How to structure your questions effectively for examination in chief of your own witness.
  - Techniques to help your witness stay clear and confident.
  - How to anticipate and counter cross-examination.

**Note:** Rule 3 of the Rules for the Conduct of a Mock Trial (see the Mock Trial Competition Manual at p. 7) states:

“Barristers must attempt to ensure that all of their witnesses’ statement is referred to by the witness in examination-in-chief. This also includes evidence that the Barrister may think will be objected to by the other side and thus not admissible (for example opinion evidence). Barristers who fail to question their witness on the whole of that witnesses’ statement may have points deducted from their overall score.”

**Note:** A 15-minute time limit applies to examination in chief of each witness in the Mock Trial Competition (see p. 8 of the Manual).

### Learning Objectives

By the end of this lesson, students will be able to:

**1.** Demonstrate understanding of the rules and good operating practices for asking questions in examination in chief.

**2.** Demonstrate ability to use proof-making and evidence planning techniques to prepare for asking questions in examination in chief.

**3.** Demonstrate ability to effectively conduct examination in chief of a witness.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access the Legal Services Commission of South Australia (Duty Solicitor Handbook and Law Handbook) webpages and YouTube.

## Lesson Content

### Introduction to the Topic

Imagine you're telling a story, but instead of just speaking, you are using real people—your witnesses—to paint the picture. This is what examination-in-chief is all about. It's your chance to present evidence through witnesses in a way that is clear, logical, and convincing.

In a criminal trial, the prosecution and defence each rely on their witnesses to prove their case. The way you question your witnesses can make or break your argument. A well-prepared examination-in-chief will highlight the strengths of your case, build credibility, and persuade the judge that your version of events is the truth.

But there's a catch—you cannot “lead” your witness. That means you cannot ask questions that suggest the answer. Instead, you need to carefully structure your questions so that the witness gives natural, believable responses in their own words.

By mastering examination-in-chief, you will learn how to control the courtroom narrative and make your case stronger and more persuasive.

## Main Content

### Ask Non-Leading Questions

In an examination-in-chief, you cannot “lead” your witness—meaning you cannot suggest answers in your questions. Instead, your job is to guide the witness so they can tell their story naturally and credibly in their own words.

### Techniques to Ask Non-Leading Questions

- Use Open-Ended Questions
  - a) Start with who, what, where, when, why, and how to encourage detailed responses.
  - b) Avoid “yes” or “no” questions that suggest a particular answer.

Ask One Question at a Time - keep questions short and simple to help the witness stay focused.

Follow a Logical Order - organise your questions so that the witness's answers tell a clear and structured story.

Encourage Descriptive Answers - if a witness gives a vague response, ask follow-up questions like:

“Can you explain that in more detail?” or “What happened next?”

Summarise, then follow with “piggyback” questions:

Summarise the evidence that has been presented by the witness. This can be useful to ensure that the judge or jury receives and understands the key facts of the case and how they support the legal claim being made. Using a summary as part of a piggyback question can elicit and reinforce a key detail – for example:

“Earlier, you told the court that Allison directed you to an item of luggage – did that luggage belong to you?”

“Had you seen that luggage before?”

“After Allison directed you to the luggage, what did Allison do next?”.

## **Converting Leading Questions to Non-Leading Questions**

### **Leading Question (Incorrect):**

"The suspect was wearing a red jacket, wasn't he?" (This suggests the answer and tells the witness what to say.)

### **Non-Leading Question (Correct):**

"Can you describe what the suspect was wearing?" (This allows the witness to give their own account.)

### **Leading Question (Incorrect):**

"The fight started when the defendant punched first, right?" (This assumes facts and pressures the witness into agreement.)

### **Non-Leading Question (Correct):**

"Can you describe how the fight started?" (This gives the witness space to tell their version without influence.)

By mastering non-leading questions, you make your witness's testimony credible, persuasive, and legally strong - giving your case the best chance of success.

## **Structure Questions Effectively**

In an examination-in-chief, asking clear, non-leading questions in a structured way helps the witness tell their story smoothly and convincingly. A well-structured questioning approach ensures the testimony is easy to follow, logical, and impactful.

## **Key Strategies for Structuring Non-Leading Questions**

- Start with Broad Questions, Then Get More Specific - begin with general questions to let the witness introduce the topic. Follow up with more specific questions to clarify details.
- Follow a Logical Order - structure your questions chronologically (what happened first, next, and last). Alternatively, structure based on key topics (e.g., describing the scene first, then actions, then outcomes).
  - Use Natural Transitions - help the witness move smoothly from one part of their testimony to another by using phrases like: "What happened after that?" or "Can you explain what you saw next?"
  - Ask One Question at a Time - avoid complicated, multi-part questions that confuse the witness.
  - Encourage Descriptive Answers - use open-ended prompts like "Describe in your own words..." or "Can you explain what you mean by that?"

## Examples of Structured Non-Leading Questions

**Example 1:** Prosecution in an Assault Case - Goal: Establish the sequence of events leading to an attack.

1. Broad Opening Question: "Where were you on the night of July 12th?"
2. Follow-Up for Context: "What were you doing at that time?"
3. Focusing on Key Actions: "Did you see anything unusual?"
4. Clarifying Details: "Can you describe exactly what you saw happen?"
5. Final Follow-Up: "How did the victim react?"

**Example 2:** Defence in a Theft Case - Goal: Show the defendant's lack of intent to steal.

1. Broad Opening Question: "Can you explain why you were in the store that evening?"
2. Follow-Up for Context: "What did you do when you entered the store?"
3. Focusing on Key Details: "What happened when you picked up the item?"
4. Clarifying Doubt: "Did you intend to leave without paying?"
5. Final Follow-Up: "What did you do when you realised the mistake?"

## Why Structure Matters

A well-structured examination makes the testimony believable, clear, and easy to follow. The judge should understand the full story—not just scattered details.

By mastering structured non-leading questions, you will ensure your witness provides strong, persuasive evidence in your mock trial.

## Techniques to Support the Witness

During examination-in-chief, your role as the legal practitioner is to help your witness give clear, confident, and persuasive testimony. You **cannot** lead them to an answer, but you **can** support them in ways that make their evidence stronger and more compelling.

### Create a Comfortable Environment

- Make sure the witness feels at ease before they begin speaking.
- Use a calm, professional tone to help reduce nerves.
- Start with easy background questions to build confidence (e.g., "Can you state your name for the court?").

### Ask Questions Clearly and Slowly

- Avoid long, complicated questions that could confuse the witness.
- If the witness hesitates, rephrase rather than rush them.

### Use Encouraging and Neutral Phrases

- If a witness is nervous or struggling, use neutral prompts to keep them talking:
  - "Take your time."
  - "Can you explain that a bit more?"
  - "What happened next?"

## Help The Witness Stay on Track

- Witnesses sometimes go off-topic or get flustered—bring them back with a simple question: “Let’s focus on the night of the incident. Where were you at 8 PM?”.

## Address Hesitations or Gaps Without Leading

- If a witness forgets an important detail, do not suggest an answer—instead, guide them back:
  - Weak approach: "Was the car red?" (This is leading.)
  - Stronger approach: "Can you describe the car you saw?" (This lets them recall naturally.)

## Reassure Without Coaching

- If a witness looks uncertain, remind them to focus on what they remember: “Just tell the court what you recall happening.”
- **Examples**
  - **Example 1:** Prosecution in an Assault Case – Goal: Help a nervous eyewitness stay focused on what they saw.

Lawyer: "Can you tell the court where you were when the incident happened?"

Witness: "I... um... I was near the shop, but I don't really remember everything."

Lawyer: "That's okay—just take your time. What do you remember about being near the shop?"

Witness: "I saw two people arguing loudly."

Lawyer: "What did you see happen next?"

The lawyer reassures the witness, keeps them on track, and encourages them to recall details at their own pace.

- **Example 2:** Defence in a Theft Case - Goal: Help the defendant stay confident while explaining their side of the story.

Lawyer: "Why were you in the electronics store that day?"

Witness: "I was just looking around, but then... um... I guess I picked up the phone."

Lawyer: "That's fine—let's go step by step. What made you pick it up?"

Witness: "I wanted to check the model because I thought it was the same as mine."

Lawyer: "Did you intend to leave with it?"

Witness: "No! I just forgot I was still holding it when I walked out."

The lawyer keeps the witness calm, breaks down the event logically, and ensures they answer confidently without leading them.

## Supporting a Witness

- Build their confidence with clear, non-threatening questions.
- Stay patient—a calm witness is a credible witness.
- Keep them focused but never put words in their mouth.

By mastering these techniques, you will help your witness tell their story persuasively and effectively in your mock trial.

## Anticipate Cross-examination Questions

In a criminal trial, cross-examination is when the opposing lawyer challenges your witness's testimony. A strong examination-in-chief not only presents the witness's evidence clearly but also prepares them for potential attacks on their credibility and statements.

Your goal is to anticipate the likely challenges from the opposing side and strengthen your witness's testimony, so they remain calm and consistent under pressure.

## Strategies for Anticipating Cross-Examination

**Identify Weak Spots in Advance** - Before trial, think like the opposing lawyer:

- Are there inconsistencies in your witness's statements?
- Does your witness have any biases or motives that could be questioned?
- Are there gaps or uncertainties in their memory?

## Address the Weaknesses Proactively

If a fact might be challenged, introduce it first so the witness controls the narrative (sometimes called the "confess and avoid" technique. Instead of letting the opposing side expose a small contradiction, acknowledge it during examination-in-chief to show your witness is honest.

**Example:** If your witness initially gave two different times for an event, ask:

"You originally thought the incident happened at 8 PM, but after checking your phone records, you corrected that to 8:15 PM. Can you explain how you realised that?"

This removes the element of surprise in cross-examination.

## Prepare the Witness for Tough Questions

Help them stay calm and consistent under pressure by practicing difficult questions:

"What if they say you're biased because the victim is your friend?"

"What if they question how well you could see in the dark?"

## Reinforce Key Points with Strong, Clear Answers

- Encourage the witness to give firm, direct responses instead of hesitating or over-explaining.
- Weak answer: "Um, I think it was the defendant... but maybe I was too far away?"
- Stronger answer: "I was 10 feet away and had a clear view. I am certain it was the defendant."

## Examples

**Example 1:** Prosecution in an Assault Case - Potential Weakness: The eyewitness was far away when they saw the attack.

**Lawyer** (anticipating cross-examination): *"You were standing across the street when the fight happened. Some might argue that's too far to see clearly. How would you respond to that?"*

**Witness:** *"I was across the street, but I had a direct, unobstructed view. The area was well-lit, and I could clearly see the defendant throw the first punch."*

The witness is readied for the challenge under cross-examination and has a strong, confident response that weakens the opponent's attack.

**Example 2:** Defence in a Theft Case - Potential Weakness: The defendant has a prior shoplifting charge, which could harm their credibility.

**Lawyer** (anticipating cross-examination): *"You have a previous shoplifting conviction from two years ago. Some might say this means you're more likely to steal again. How do you respond to that?"*

**Witness:** *"That was a mistake from my past. I took responsibility and learned from it. But that has nothing to do with this case—I did not steal anything."*

Instead of letting the opposing lawyer surprise the witness, the defence brings it up first and controls the narrative.

### Anticipating Cross-Examination

- Think ahead—what weaknesses might the opposing side attack?
- Address potential problems first to avoid surprises.
- Practice tough questions so your witness stays calm under pressure.
- Encourage witnesses to give clear, confident answers—no guessing or exaggeration.

By anticipating cross-examination, you protect your witness's credibility and strengthen your case—a crucial skill for success in a mock trial.

### Use Proof-Making and Evidence Planning Tools

A successful examination-in-chief requires careful planning. You need to present your witness's testimony in a logical, persuasive way, ensuring it aligns with the legal arguments and proves your case. Proof-making and evidence-planning tools help structure your questioning, making your witness's evidence clear, strong, and resistant to cross-examination.

Your proof-making model outlines the legal elements that must be proven and connects them to specific pieces of evidence.

This ensures that every key fact is supported by reliable testimony or documents.

- **Evidence Plan ▶ Witness Questioning Plan**
  - A structured questioning plan ensures you ask questions in a logical order, making it easy for the judge to follow the witness's testimony.
  - It also avoids leading questions that are not allowed in examination-in-chief.

Anticipation Table lists possible challenges from the opposing side and prepares strong responses to protect your witness's credibility.

- **How to Use These Tools in Preparation**

- **Step 1:** Identify the Legal Elements the Prosecution Must Prove - break down the charge into specific elements and list the facts that support each one (this was covered in earlier lessons).
- **Step 2:** Match Witness Testimony to Each Legal Element - Create a proof chart that connects witness statements and evidence to each legal requirement.

Legal Element	Supporting Evidence	Witness Who Provides It
Defendant used force	Victim's testimony: "The defendant punched me in the face."	Victim
Force was intentional	Eyewitness testimony: "I saw the defendant raise their fist before hitting."	Bystander
No self-defence justification	CCTV footage: The victim was not attacking first.	Security Officer

**Step 3: Plan Your Questions in a Logical Order**

- Organize questions to help the witness tell a compelling, structured story rather than jumping around.
- Use non-leading open-ended questions:
- Background Questions: "Where were you on the night of May 12th?"
- Key Fact Questions: "What did you see happen next?"
- Clarification Questions: "How clearly could you see the defendant?"

**Step 4: Anticipate Cross-Examination Challenges** - List the weak points in the witness's testimony and prepare strong responses.

## Key Takeaways

- **Ask Non-Leading Questions**

- Avoid suggesting answers; let the witness tell their story naturally.
- Techniques:
  - Use open-ended questions (who, what, where, when, why, how).
  - Ask one question at a time—keep them short and simple.
  - Follow a logical order to create a clear, structured narrative.
  - Encourage descriptive answers with follow-ups like, “Can you explain that in more detail?”
  - Summarize testimony and use “piggyback” questions to reinforce key facts.

- **Structure Questions Effectively**

- Key Strategies:
  - Start with broad questions, then move to specific details.
  - Follow a logical order (chronological or by key topics).
  - Use natural transitions (“What happened next?”).
  - Keep questions clear and avoid multi-part questions.
  - Encourage descriptive answers (“Describe in your own words...”).

- **Support the Witness Without Leading**

- Create a comfortable environment by reducing nerves.
- Ask questions clearly and at a slow pace.
- Use neutral prompts: “Take your time,” “Can you explain that more?”
- Keep the witness on track without putting words in their mouth.
- If a witness hesitates, guide them with broad prompts instead of leading suggestions.

- **Anticipate Cross-Examination Questions**

- Identify potential weaknesses (inconsistencies, biases, memory gaps).
- Address weaknesses proactively by introducing them first.
- Prepare witnesses for tough questions by practicing responses.
- Reinforce key points with strong, confident answers.
- Example: If a witness was far from the scene, prepare them to explain why they could still see clearly.

- **Use Proof-Making and Evidence-Planning Tools**

- Proof-making: Connect legal elements to witness testimony and evidence.
- Evidence/Questioning Plans: Ensure logical order and avoid leading questions.
- Anticipation Tables: Predict challenges from the opposing side and prepare strong responses.
- Preparation Steps:
  - Identify legal elements that must be proven.
  - Match witness testimony to each element.
  - Plan questions to create a compelling story.
  - Anticipate challenges and prepare counterarguments.

## Practical Application & Examples

You can view real life examples on YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>:

- 00:05:00 ff - Examination in Chief (non-leading questions) and Tender of Evidence
- 00:14.30 ff – Examination in Chief + Counsel's discussion of EiC
- 00:38:25 ff – EiC of defendant (allowing narrative flow)

## Formative Assessment Activities

- **Activity 1: Draft EiC Questions**
  - Using the learnings from this lesson, together with your previous proof-making and evidence planning work, draft questions for examination-in-chief of a witness in the Police v Pedler case.
  - Remember to work with the key takeaways to assist you with this activity.
  - Bear in mind the Mock Trial Competition rules that require all the evidence contained in the witness statements must be drawn out during examination-in-chief.
- **Activity 2: Role-Play**
  - Following from Activity 1, role play the examination in chief of a witness.
  - Bear in mind that the Mock Trial Competition rules set a time limit of 15 minutes for examination in chief of each witness.
  - To save time for the in-class activity, you could divide a single examination in chief between 2 or 3 students.
  - Alternatively, students could record an examination in chief for the next activity.
- **Activity 3: Group Discussion and Feedback**
  - Constructively engage in discussion and feedback about the role play or video recordings.
  - Structure the discussion and feedback using the key takeaways in the lesson.

### Additional Resources

- YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>:
  - 00:05:00 ff - Examination in Chief (non-leading questions) and Tender of Evidence
  - 00:14.30 ff – Examination in Chief + Counsel's discussion of EiC
  - 00:38:25 ff – EiC of defendant (allowing narrative flow)
- Judge Peter Berman SC, "The Ten Commandments of Evidence in Chief", Public Defenders: <https://publicdefenders.nsw.gov.au/resources-and-papers/papers-by-public-defenders/evidence-in-chief-ten-commandments.html>.

### Extended Activities

- Students should continue to prepare examination in chief questions and engage in role play practice.
- Read and watch the additional resources, if possible.

## **Evaluation Criteria**

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).
- It is important that students and teachers read and remember the rules set out in the Manual regarding time limits, and requirement to elicit all of the information in the witness statements for the purpose of the Mock Trial Competition, even where it is unfavourable to the questioner's case.

**Lesson 8**

**Cross Examination**

**CROSS-EXAMINATION**



## 8. Cross Examination

Ask leading questions (propositional questions) of your opponent's witness

### Lesson Overview

#### Purpose

- Read p. 20 of the Mock Trial Competition Manual regarding Cross Examination, and note the following observation:

“To be a successful cross-examiner the barrister must have an objective. He or she must know why particular questions are asked. Merely to go on a fishing expedition is time wasting and dangerous.”

- The purpose of this lesson is to introduce students to fundamentals of cross examination, together with preparation techniques (integrating the proof-making and evidence planning work already undertaken in previous lessons).

**Note:** A 15-minute time limit applies to cross examination of each witness in the Mock Trial Competition (see p. 8 of the Manual).

### Learning Objectives

By the end of this lesson, students will be able to:

**1.** Demonstrate understanding of the rules and good operating practices for asking questions in cross examination.

**2.** Demonstrate ability to use proof-making and evidence planning techniques to prepare for asking questions in cross examination.

**3.** Demonstrate ability to effectively conduct cross examination of a witness.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access the Legal Services Commission of South Australia (Duty Solicitor Handbook and Law Handbook) webpages and YouTube.

### **The Art of Questioning with Purpose**

Cross-examination is where lawyers challenge the other side's witnesses, test the strength of their testimony, and expose inconsistencies in their story. It is often seen as the most dramatic part of a trial (think of courtroom movies where a lawyer asks the "gotcha" question that changes everything)! But cross-examination is more about careful strategy, sharp questioning, and controlling the narrative rather than dramatic confrontations.

Mastering cross-examination means learning how to:

- Ask precise, leading questions that guide the witness toward your argument.
- Challenge inconsistencies to weaken the other side's case.
- Control the witness by keeping them focused and preventing unnecessary explanations.

Unlike examination-in-chief, where open-ended questions allow witnesses to tell their story, cross-examination is all about tight, focused questions that require "yes" or "no" answers. In other words, never ask a non-leading question. Instead ask only "propositional" questions, for example:

Weak question: "Can you explain what happened that night?" (This lets the witness take control.)

Strong question: "You didn't actually see the defendant take the wallet, did you?" (This limits their ability to expand on their answer.)

A great cross-examination should cast doubt on the opposing case, reinforce your argument, and persuade the judge to decide the case in your favour.

In this lesson, we'll cover:

- How to structure effective cross-examination questions
- Techniques for exposing inconsistencies and biases
- Strategies for staying in control of the witness

By learning the skills of cross-examination, you will develop confidence in questioning and sharpen your ability to think critically under pressure.

## Main Content

### Structure Effective Questions for Cross Examination

Cross-examination is not just about asking questions—it's about controlling the witness and guiding the judge toward your argument. To do this, you need to structure your questions precisely and strategically.

Unlike examination-in-chief, where open-ended questions are used, cross-examination relies on short, direct, and leading questions that force the witness to answer with "yes" or "no" responses.

### Key Rules for Structuring Questions

Make Each Question a Statement, Not an Open-Ended Inquiry - your goal is not to invite the witness to explain but to have them confirm facts in a way that supports your case.

#### Example – Defence in a Theft Case

**Bad Question:** "Why did you say you saw my client steal the phone?" (This allows the witness to justify their claim.)

**Good Question:** "You were standing 30 meters away when you claim you saw my client take the phone, correct?" (This forces the witness to confirm or deny a key detail.)

### Ask One Fact Per Question

Never combine multiple ideas into one question. Keep it short and simple.

#### Example – Prosecution in an Assault Case

**Bad Question:** "You saw the defendant punch the victim and then run away, didn't you?" (The witness could challenge either part of this.)

**Good Question:**

"You saw the defendant punch the victim, correct?"

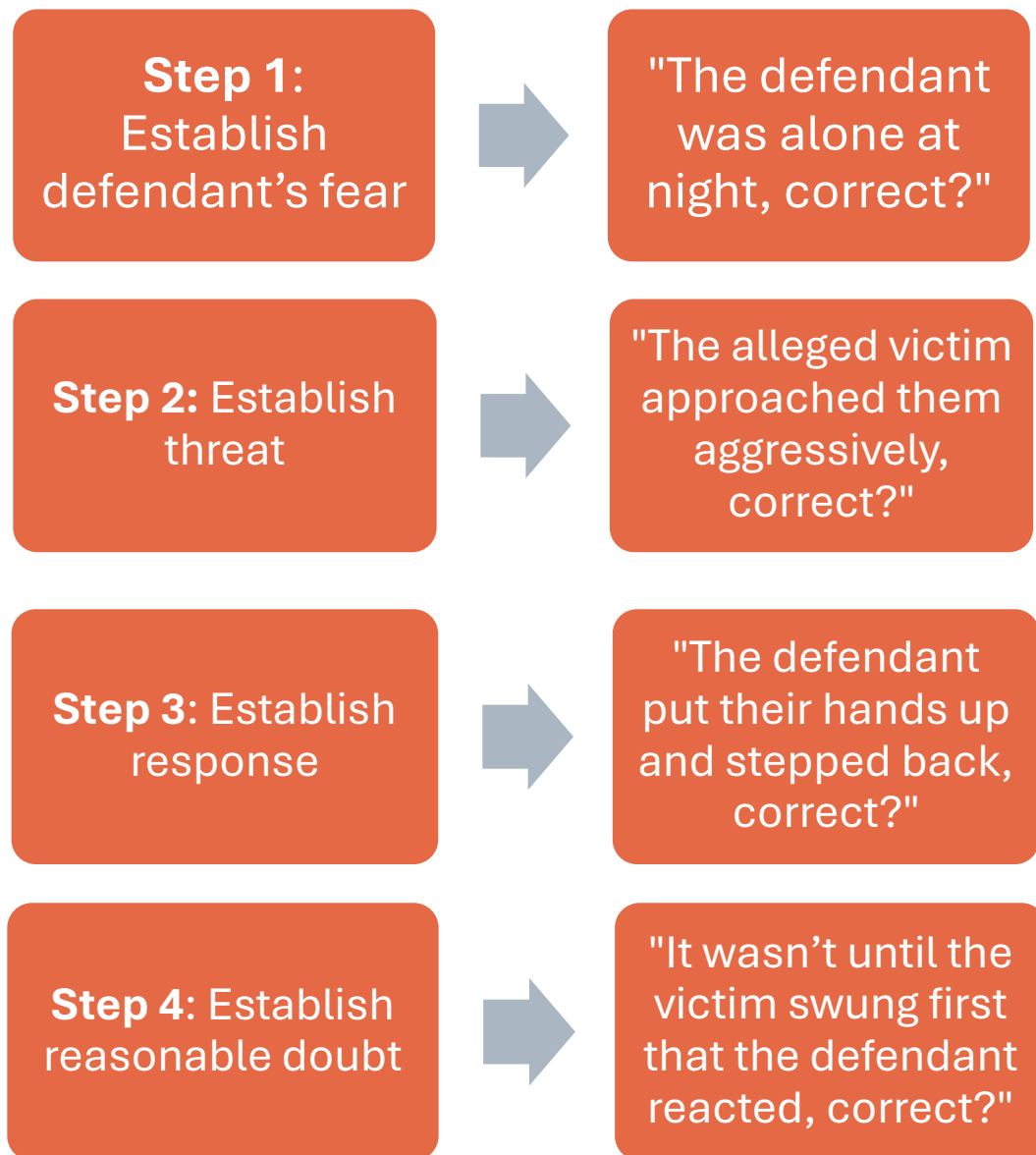
"After that, the defendant ran away, correct?"

(Each question establishes a single uncontested fact before moving on.)

## Use Questions to Build Toward a Conclusion

Plan your questions in a logical order, leading the witness step by step to a final point that supports your case.

### Example – Defence in a Self-Defence Case



By structuring questions in steps, you guide the witness toward supporting your argument rather than letting them control the narrative.

## Trap the Witness Using Their Own Words

If a witness contradicts themselves, use their previous statements against them.

### Example – Prosecution in a Burglary Case

"Earlier, you testified that the lights were off in the house, correct?"

"But in your police statement, you said you saw the burglar's face clearly, correct?"

"So, you're now saying you could see the burglar's face in a completely dark house?"

This highlights inconsistencies in their story, damaging their credibility.

### Key Points

- Keep questions short, direct, and leading.
- Ask one fact per question—never give the witness room to explain.
- Structure questions to build toward a powerful conclusion.
- Use contradictions to weaken the witness's credibility.
- By following this structure, you will control the cross-examination, expose weaknesses in the other side's case, and make your own argument more persuasive.

## Techniques for Exposing Inconsistencies

One of the most powerful ways to discredit a witness during cross-examination is to expose inconsistencies in their statements. If a witness contradicts themselves, it can make them seem unreliable, which weakens the opposing case and strengthens your argument.

Your job in cross-examination is to find and highlight these inconsistencies in a clear, logical, and controlled manner.

### Key Techniques to Expose Inconsistencies

Compare Past Statements with Court Testimony - witnesses often give statements to police before the trial. If they change their story in court, point it out.

Example: If a witness originally said the suspect had a **black jacket**, but in court they say it was a **red jacket**, you can expose the inconsistency.

### Example – Prosecution in a Theft Case

Lawyer: "In your police statement, you said you saw the suspect at 8:15 PM, correct?"

Witness: "Yes, that's what I said."

Lawyer: "But today, you told the court you saw the suspect at 9 PM, correct?"

Witness: "Um... I might have been mistaken."

Lawyer: "So which is it—8:15 PM or 9 PM?"

Witness: "I... I don't know for sure."

This makes the witness seem uncertain and unreliable, reducing the credibility of their testimony.

**Use Contradictions Within Their Own Testimony** - if a witness contradicts something they said earlier in the trial, remind them of their previous answer. This forces them to either correct themselves (showing inconsistency) or double down on an untrue statement (damaging their credibility).

### **Example – Defence in an Assault Case**

Lawyer: "Earlier, you told the court you were standing 10 meters away when the fight happened, correct?"

Witness: "Yes, that's correct."

Lawyer: "But just now, you said you were 30 meters away. Which is it?"

Witness: "Uh... I'm not sure."

Lawyer: "So, you're saying you're not sure how far away you were?"

Witness: "I guess not."

This casts doubt on the witness's memory and makes the judge question their reliability.

**Highlight Improbable or Illogical Testimony** - if a witness says something unrealistic or highly unlikely, challenge them on it to show the story doesn't make sense.

### **Example – Prosecution in a Burglary Case**

Lawyer: "You told the court you saw the burglar's face clearly, correct?"

Witness: "Yes, I did."

Lawyer: "But you also said the house was completely dark, correct?"

Witness: "Yes, it was very dark."

Lawyer: "So, are you telling the court that you could clearly see someone's face in total darkness?"

Witness: "Um... well, I guess not."

This exposes contradictions in their testimony and makes their evidence seem less trustworthy.

#### **Key Points**

- Compare past statements with trial testimony to find contradictions.
- Use the witness's own words against them—show contradictions in what they've said.
- Challenge improbable statements—make them explain the impossible.
- Keep control—don't let the witness explain away the inconsistency.

By using these techniques, you can undermine the credibility of the opposing witness and strengthen your case.

### **Strategies for Staying in Control of the Witness**

Cross-examination is your chance to challenge the witness and control the narrative of the trial. The key to success is staying in control—you decide what is discussed, how it's discussed, and how much detail is given. Witnesses may try to explain too much, argue with you, or avoid answering directly, so you need to keep them on track and limit their responses to what helps your case.

#### **Key Strategies to Stay in Control**

**Ask Leading Questions** - only ask questions that suggest the answer you want. This forces the witness to say "yes" or "no" instead of telling a long story. **DO NOT** ask open-ended questions that let the witness take control.

#### **Example – Prosecution in a Burglary Case**

Bad Question: "What happened after you saw the defendant?" (The witness could go off-topic.)

Good Question: "You saw the defendant enter the house, correct?" (This keeps the answer short and controlled.)

The witness can't explain or add extra details—they are limited to confirming or denying the fact.

**Keep Questions Short and Simple** - One fact per question. **DO NOT** ask multi-part or confusing questions, which allow the witness to control the answer. If a witness tries to give a long answer, interrupt and repeat the question.

#### **Example – Defence in a Theft Case**

Lawyer: "You were standing 30 meters away when you say you saw my client, correct?"

Witness: "Well, I think it was about 30 meters, but there were a lot of people, and—"

Lawyer (interrupts): "Just to be clear, you were 30 meters away, correct?"

Witness: "Yes."

This prevents long, unnecessary explanations and keeps the focus on your argument.

**Ask Questions in a Logical Order** - plan your questions so they build step by step toward your conclusion. If a witness jumps ahead or tries to disrupt the flow, redirect them to your plan.

#### **Example – Prosecution in an Assault Case**

**Step 1:** Establish that the defendant was angry: "You saw the defendant arguing with the victim earlier that night, correct?"



**Step 2:** Establish that the defendant used force: "Then you saw the defendant punch the victim, correct?"



**Step 3:** Establish that the punch was intentional: "The defendant swung with a closed fist, didn't they?"

You control the pace and stop the witness from jumping to parts of the story that might weaken your argument.

**Don't Let the Witness Argue or Explain** - If the witness tries to argue, interrupt and bring them back to answering the question directly. If they refuse to answer, ask again until they do.

#### **Example – Defence in a Drug Possession Case**

Lawyer: "The bag of drugs was found in a shared apartment, not in my client's room, correct?"

Witness: "Yes, but I still think they—"

Lawyer (interrupts): "So the bag was found in a shared apartment, correct?"

Witness: "Yes."

The lawyer cuts off unnecessary explanations and forces the witness to stick to the facts.

**Stay Confident and Assertive** - speak firmly and clearly—don't let the witness take over. If they give a long answer, interrupt and restate your question. If they try to avoid answering, repeat the question firmly.

#### **Example – Prosecution in a Robbery Case**

Lawyer: "You didn't see the defendant's face, did you?"

Witness: "I think it looked like them, but I wasn't paying close attention."

Lawyer: "Just to be clear—you didn't see the defendant's face, correct?"

Witness: "Correct."

The witness tried to avoid answering, but the lawyer stayed firm and got the clear admission they wanted.

### Key Points

- Use leading questions to keep answers short and direct.
- Ask one fact per question—don't let witnesses go off track.
- Plan your questions logically to build toward a strong conclusion.
- Interrupt long or irrelevant answers to maintain control.
- Stay confident and firm—don't let the witness take over the questioning.

By following these strategies, you'll be able to keep control of the witness, challenge their credibility, and make your case.

### The Rule in *Browne v Dunn*

The rule in *Browne v Dunn* is an important legal principle that applies during cross-examination. It ensures that witnesses are given a fair opportunity to respond to challenges to their testimony. If you intend to argue that a witness is wrong, lying, or mistaken, you must put your challenge to them during cross-examination—not just bring it up later in your closing address.

Complying with this rule means that if you are going to argue that a witness's testimony is unreliable, you must ask them about it directly while they are still on the stand.

### Why Is This Rule Important?

- It is about fairness – a witness should have the chance to respond to accusations that they are mistaken or lying.
- It prevents surprises – the judge should hear both sides of a disputed fact during testimony, not for the first time in closing arguments.
- It strengthens your case – if a witness cannot defend their statement under cross-examination, it damages their credibility.
- If you fail to follow this rule, the judge might disregard your argument later in the trial or even stop you from making it altogether.

### How to Apply *Browne v Dunn*

Challenge the Witness Directly - if you plan to argue that the witness is lying or mistaken, you must put that accusation to them during cross-examination.

### Example – Defence in an Assault Case

If the prosecution's witness says the defendant punched first, but you will argue that the victim started the fight, you must challenge them directly:

Lawyer: "You said you saw my client throw the first punch, correct?"

Witness: "Yes."

Lawyer: "I put it to you that you are mistaken, and that the complainant threw the first punch, not my client. What do you say to that?"

Witness: "No, I'm sure your client hit first."

This puts the witness on notice that their version of events is being challenged before closing arguments.

Challenge Key Inconsistencies in Testimony - if a witness's story contradicts other evidence, you must point out the inconsistency and ask them to explain it.

### **Example – Prosecution in a Theft Case**

Suppose the defence's witness claims the defendant was never in the store, but CCTV footage shows otherwise.

Lawyer: "You told the court that the defendant was not in the store that night, correct?"

Witness: "That's right."

Lawyer: "But CCTV footage shows them inside the store at 8:15 PM. How do you explain that?"

Witness: "Maybe it was someone who looked like them."

Lawyer: "I put it to you that you are not telling the truth about their whereabouts that night. What do you say to that?"

The lawyer has directly confronted the witness with evidence contradicting their statement, giving them a chance to respond.

Use "I put it to you..." Statements to Challenge the Witness - a formal way to comply with *Browne v Dunn* is to explicitly state your challenge using phrases like:

- "I put it to you that..."
- "I suggest to you that..."
- "Isn't it the case that...?"

### **Example – Defence in a Drug Possession Case**

Suppose a witness testifies that they saw the defendant holding a bag of drugs, but you will argue that the drugs belonged to someone else.

Lawyer: "I put it to you that you never actually saw my client holding the bag, correct?"

Witness: "No, I saw them with it."

Lawyer: "But isn't it the case that you only saw the bag near them, not in their hands?"

Witness: "Well... yes, I guess."

This technique forces the witness to respond to the challenge before the trial moves forward.

### Key Points

- Always challenge a witness's credibility during cross-examination, not in closing arguments.
- Use direct, leading questions to point out inconsistencies or falsehoods.
- Give the witness a chance to respond to accusations against their testimony.
- Use phrases like "I put it to you that..." or "Isn't it the case that..." to formally challenge testimony.

By following these steps, you ensure that your cross-examination is fair, effective, and legally strong.

## Key Takeaways

- **Control the witness by guiding them toward answers that support your case.**
  - Use leading questions that suggest the answer and require a "yes" or "no" response.
  - Make each question a statement, not an open-ended inquiry to prevent the witness from giving unnecessary explanations.
  - Ask one fact per question to limit the witness's ability to challenge multiple details at once.
  - Build toward a conclusion by structuring questions logically.
  - Use a witness's previous statements against them when they contradict themselves.
- **Techniques for Exposing Inconsistencies**
  - Compare past statements with court testimony to identify contradictions.
  - Use contradictions within testimony to cast doubt on the witness's memory.
  - Highlight improbable testimony to show that a witness's story does not make sense.
- **Strategies for Staying in Control of the Witness**
  - Ask leading questions to keep responses short and direct.
  - Keep questions short and simple—limit answers to a single fact.
  - Ask questions in a logical order to guide the witness to your conclusion.
  - Cut off long or unnecessary explanations by interrupting and restating the question.
  - Stay confident and assertive—don't let the witness avoid answering.
- **The Rule in *Browne v Dunn***
  - You must challenge a witness's testimony during cross-examination—not wait until closing arguments.
  - Failure to follow this rule may result in the judge disregarding your argument or preventing you from making it.
  - How to Apply the Rule:
    - Challenge the witness directly.
    - Challenge key inconsistencies in testimony.
    - Use formal challenge phrases.
  - By applying the rule correctly, you ensure a fair, strong, and legally sound cross-examination.

### Remember:

- Use leading questions to control the witness and limit explanations.
- Ask one fact per question to avoid confusion and unnecessary elaboration.
- Build your questions in a logical order to guide the witness toward your argument.
- Expose inconsistencies by comparing statements and testimony.
- Stay assertive and confident—don't let the witness take over the questioning.
- Comply with *Browne v Dunn* by challenging unreliable testimony directly during cross-examination.

## Practical Application & Examples

Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>:

- 00:08:00 ff - Cross-Examination (propositional questions consistent with Defence's Case Theory)
- 00:10:00 ff - Difficult Witness under Cross Examination – Bench directs witness to answer
- 00:16:23 ff – Cross-Examination + Counsel's use of "slam the gate shut" – not also the formula "this must have made a deep impression of you, something you'll never forget, until your dying day" as the set up for corralling the witness regarding a prior inconsistent statement
- 00:24:00 ff – persistent defence questioning during cross-examination criticised by the bench (i.e., already asked and answered)
- 00:41:00 ff – cross-examination of defendant – note exception to the practice convention of not allowing the witness to restate their story, to highlight inconsistency – use of visual display – use of alternative scenario proposition – consider rule in *Browne v Dunn* re questioning defendant ever having possessed or touched a gun and the failure to confront the accused with proposed evidence.

## Formative Assessment Activities

- **Activity 1: Draft Cross-Examination Questions**
  - Using the learnings from this lesson, together with your previous proof-making and evidence planning work, draft questions for cross examination of a witness in the *Police v Pedler* case.
  - Remember to work with the key takeaways to assist you with this activity.
- **Activity 2: Role-Play**
  - Following from Activity 1, role play the cross examination of a witness.
  - Bear in mind that the Mock Trial Competition rules set a time limit of 15 minutes for cross examination of each witness.
  - To save time for the in-class activity, you could divide a single cross examination between 2 or 3 students.
  - Alternatively, students could record a cross examination for the next activity.
- **Activity 3: Group Discussion and Feedback**
  - Constructively engage in discussion and feedback about the role play or video recordings.
  - Structure the discussion and feedback using the key takeaways in the lesson.

## Additional Resources

- Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>
- Simon Couper KC (2023), "Cross Examination Basics", Bar Association of Queensland: <https://qldbar.asn.au/baq-cms/new-bar-resources-cross>.

**Extended Activities**

- Students should continue to prepare cross examination questions and engage in role play practice.
- Read and watch the additional resources, if possible.

**Evaluation Criteria**

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).
- It is important that students and teachers read and remember the rules set out in the Manual regarding time limits, and the rules regarding the conduct of cross examination in the Mock Trial Competition.

## Lesson 9

### **Closing Statement for the Prosecution and the Defence.**



## 9. Closing Statement for the Prosecution and the Defence

Ensuring the one's case is received, accepted, and remembered by the judge

### Lesson Overview

#### Purpose

- Read the Mock Trial Competition Manual at page 10, particularly numbered paragraphs 15-20.
- Note that in the competition the time limit for each of the prosecution and defence's closing address is 10 minutes.
- Read the Mock Trial Competition Manual at page 21 regarding "Closing Addresses or Summing Up":

"...a prosecutor will limit the issues to the bare minimum to be proved and then show how the evidence he has brought proves them. A defendant's barrister might take the opposite tack and create as many issues as possible and therefore cast doubt as to whether the plaintiff or the prosecution has proved them. If there is conflicting evidence on a particular point from both sides the ... prosecutor, if the conflict cannot be reconciled, should attempt to show why his/her witness should be believed..."

... Make submissions as to the law - highlight prior decisions which favour your case, discuss the submissions on the law which you think your opponent will make and distinguish facts in the precedent which favour your opponent from the facts in the particular case."

- In this lesson students will learn about the purpose of the closing address and the attributes of an effective closing address, whether acting for the prosecution or the defence. Students will integrate previous proof-making and evidence planning work into the preparation of the opening address, together with any new issues or challenges arising from the course of the trial, including each party's examination-in-chief and cross-examination.
- Key techniques include:
  - Summarise the evidence: use the closing address to remind the judge of the key evidence presented during the trial to reinforce the strengths of your case.
  - Highlight inconsistencies in your opponent's case or evidence. This can help undermine the other party's credibility and strengthen your own case.
  - Make a strong appeal to the judge's sense of justice and fairness.
  - Reiterate key legal arguments to remind the judge of the key legal arguments you made during the trial and reinforce the legal framework of your case.

### Learning Objectives

By the end of this lesson, students will be able to:

**1.** Demonstrate understanding of the purpose of the closing address in reinforcing one's own case for the trier of fact in relation to the facts and the law.

**2.** Demonstrate the ability to craft a strong and effective closing statement, taking into account any new matters or issues arising during the trial.

**3.** Demonstrate fundamental skills and techniques for the presentation of a closing address.

### Materials Required

- Manual for Moot Trial Competition
- Police v Pedler Case Materials
- Internet access the Legal Services Commission of South Australia (Duty Solicitor Handbook and Law Handbook) webpages and YouTube.

## Introduction to the Topic

The closing address is your final opportunity to convince the judge of your argument. It is where you bring together all the evidence, reinforce your key points, and leave a lasting impression. Think of it as the grand finale—this is your chance to make sure your audience walks away remembering your strongest arguments.

It is important that you have ensured that your arguments are well communicated to and received by the audience, and that your audience accepts and remembers your arguments.

In a real trial, the closing address can mean the difference between a conviction and an acquittal.

In a mock trial, it is your moment to showcase your reasoning, persuasion, and public speaking skills.

A strong closing should be clear, confident, and compelling. It's not just about repeating what has already been said—it's about making the evidence and arguments unforgettable.

As you prepare, ask yourself:

- What is the one key idea I want the audience to take away from my closing address?
- How can I summarise the most important evidence in a powerful way?
- What language and delivery will make my argument convincing and persuasive?

When you master the art of a closing address, you will improve your mock trial performance and develop skills in critical thinking, argumentation, and public speaking—skills that will serve you well beyond the courtroom!

## Main Content

### The Key Idea

An effective closing address revolves around a key idea—a single, powerful message that ties together all the evidence and arguments. This key idea should be clear, memorable, and persuasive, leaving the judge with a strong impression of your case.

Remember when we looked at the “Theory of the Case” in Lesson 5 (“Proving Cases”)? Your key idea will likely emerge from the final draft of your theory of the case.

Your goal is to make sure that if the audience remembers just one thing, it is the central theme of your argument. This key idea should align with the evidence and legal principles but also appeal to logic, fairness, and justice.

### Examples

#### Prosecution in an Assault Case:

"Violence has consequences. The evidence has shown that the defendant made a deliberate choice to attack the victim, and now they must be held accountable. The law is clear—this was not self-defence, not an accident, but an intentional act of harm. Justice demands a guilty verdict."

This frames the case around responsibility and accountability while reinforcing the legal elements of the crime.

### **Defence in a Theft Case:**

"Innocent until proven guilty. The prosecution has failed to remove reasonable doubt. There are gaps in their evidence, contradictions in witness testimony, and no clear proof that my client committed this crime. In our legal system, doubt means acquittal, and that is the only fair verdict today."

This reminds the audience of the high burden of proof and emphasises weaknesses in the prosecution's case.

### **How to Use the Key Idea Effectively**

- Repeat it throughout your closing address—reinforce it at the start, support it with evidence, and end with it.
- Keep it simple and direct—your audience should be able to summarise your argument in a single sentence.
- Use confident, persuasive language—make your key idea feel undeniable.

A strong key idea ensures that your argument “sticks” with the judge, increasing your chances of a persuasive and compelling closing address.

### **Identifying and Summarising Key Evidence**

A strong closing address does not just repeat everything said during the trial—it highlights the most important evidence that supports your case. This means carefully selecting key pieces of evidence and explaining why they prove your argument.

Your job is to “connect the dots” for the judge, showing how the evidence leads logically to your conclusion. Instead of overwhelming your audience with every fact, focus on the most persuasive and reliable evidence.

### **How to Summarise Key Evidence Effectively**

- Pick 2-3 of the strongest pieces of evidence that directly support your case.
- Explain why the evidence matters—don't just list facts but connect them to your legal argument.
- Use clear, confident language—make it easy for the audience to understand and remember.

### **Examples**

#### **Prosecution in a Burglary Case:**

"The evidence leaves no doubt. The security footage shows the defendant entering the house at 11:45 PM. The fingerprints on the broken window match the defendant's prints. A witness saw the defendant leaving with a bag of stolen items. Each piece of evidence

supports the next, forming a complete picture of guilt. The only reasonable verdict is guilty."

This selects three clear, concrete pieces of evidence and ties them together logically.

### **Defence in an Assault Case:**

"The prosecution's case is full of doubt. No witnesses saw the moment the fight started. The medical evidence doesn't prove who threw the first punch. And the defendant's own injuries show they were defending themselves. Without clear proof, the only just outcome is acquittal."

This focuses on gaps in the prosecution's case, reinforcing the principle of reasonable doubt.

Make sure your summary is short, clear, and powerful. This is the evidence the judge will remember when they make their decision—so make it count!

### **Persuasive and Convincing Language and Delivery**

A strong closing address is not just about what you say but how you say it. Using persuasive language and confident delivery makes your argument more compelling and helps convince the judge or jury to rule in your favour.

### **How to Be Persuasive and Convincing**

- Use Strong, Clear Statements – avoid uncertain or weak phrasing like "maybe," "perhaps," or "it is possible that." Instead, be assertive and confident in your conclusions.
- Use Emotional Appeals (where appropriate) – while a legal argument should be based on facts, you can use emotion to emphasise the human impact of the case.
- Vary Your Tone and Pace – a monotone voice loses the audience's attention. Slow down for key points and use emphasis to highlight crucial arguments.
- Use Rhetorical Questions – ask thought-provoking questions to encourage the audience to engage with your argument.

### **Examples**

#### **Prosecution in a Theft Case:**

"Your honour, the evidence is overwhelming. The defendant was caught on camera. The stolen item was found in their possession. Witnesses saw them fleeing the scene. What more proof do we need? Justice demands a guilty verdict."

This uses strong, confident language ("overwhelming evidence", "justice demands") and a rhetorical question to reinforce the prosecution's case.

#### **Defence in a Self-Defence Case:**

"Imagine being in the defendant's shoes—alone, afraid, and facing an immediate threat. The law protects those who act to save themselves. The prosecution wants you to ignore that truth, but the evidence speaks louder. My client did what any reasonable person would do. You must find them not guilty."

This uses emotional appeal (asking the audience to empathise), direct address ("imagine being in the defendant's shoes"), and a powerful closing statement ("You must find them not guilty").

Practice your tone, volume, and body language—a confident speaker is a persuasive speaker. The way you deliver your closing can make the difference between winning and losing your case!

### **Identifying and Summarising Key Legal Arguments**

A strong closing address ties the law and the facts together in a clear and persuasive way. This means:

- Restate the main legal issue – what law applies, and what must be proven?
- Summarise your strongest legal arguments – which points best support your case?
- Explain how the evidence proves your position – why should the judge rule in your favour?

Your goal is to leave the audience with a **\*\*clear and convincing\*\*** understanding of why your side of the case should win.

#### **Example 1: Prosecution in an Assault Case**

"The law is clear: for the defendant to be found guilty of assault, the prosecution must prove that they (1) intentionally caused harm, (2) had no lawful excuse, and (3) the victim suffered as a result.

We have met that burden beyond reasonable doubt. The eyewitness testimony confirmed that the defendant threw the first punch. Medical records prove the victim was injured. And the defendant admitted to being angry and 'losing control.'

There is no self-defence here—only aggression. The law demands accountability, and the only just verdict is guilty."

This restates the legal test, summarises key evidence, and delivers a confident conclusion.

#### **Example 2: Defence in a Theft Case**

"To convict my client of theft, the prosecution must prove beyond reasonable doubt that they (1) took the item, (2) without permission, and (3) intended to keep it permanently.

But the evidence raises serious doubts. The store's security footage is unclear. No fingerprints place my client at the scene. And my client immediately returned the item when questioned, believing it was theirs.

If even one of these elements is in doubt, the law requires you to find my client not guilty. That is the only fair outcome."

This breaks the law into simple points, highlights reasonable doubt, and reminds the judge/jury of their duty.

Keep your summary short, direct, and persuasive. Make sure the last thing your audience hears is a powerful, confident argument that reinforces your case!

## Key Takeaways

- **The Key Idea**
  - A closing address should revolve around a single, powerful message that ties together all evidence and arguments.
  - This key idea should be clear, memorable, and persuasive to leave a lasting impression.
  - It should emerge from your theory of the case and align with evidence, legal principles, logic, fairness, and justice.
- **How to Use the Key Idea Effectively:**
  - Repeat it at the start, support it with evidence, and reinforce it at the end.
  - Keep it simple and direct—your audience should be able to summarise it in one sentence.
  - Use confident, persuasive language to make it undeniable.
- **Identifying and Summarising Key Evidence**
  - A closing address should highlight only the most important evidence, not repeat everything.
  - The goal is to “connect the dots”—show how key evidence logically leads to your conclusion.
- **How to Summarise Key Evidence Effectively:**
  - Select 2-3 of the strongest pieces of evidence.
  - Explain why the evidence matters and how it supports your case.
  - Use clear, confident language for easy understanding.
- **Persuasive and Convincing Language and Delivery** - a strong closing address is about both content and delivery.
- **How to Be Persuasive and Convincing:**
  - Use Strong, Clear Statements – avoid weak phrasing like “maybe” or “perhaps.”
  - Use Emotional Appeals (where appropriate) – highlight the human impact.
  - Vary Your Tone and Pace – emphasise key points and avoid monotone speech.
  - Use Rhetorical Questions – engage the audience with thought-provoking questions.
- **Identifying and Summarising Key Legal Arguments** - a closing address must connect the law and the facts in a clear and persuasive way.
- **How to Summarise Legal Arguments Effectively:**
  - Restate the main legal issue – what must be proven?
  - Summarise the strongest legal arguments – what supports your case best?
  - Explain how the evidence proves your position – why should the judge rule in your favour?

## Practical Application & Examples

See examples on YouTube: Screen Australia - **On Trial Proof or Truth** (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>:

- 00:56:30 – Prosecution closing statement.
- 00:58:30 – Defence closing statement attacking prosecution case.
- 01:03:10 – Defence closing statement on defence's case.

## Formative Assessment Activities

- **Activity 1: Draft a Closing Statement**
  - Draft a closing statement for the prosecution or the defence, based on the Police v Pedler Case.
  - Use your theory of the case, previous proof-making, and evidence plan work to help you draft the statement.
  - Remember to work with the key takeaways to help you draft the statement.
- **Activity 2: Role-Play Presentation of Closing Statement**
  - Take turns to present a closing statement.
  - Remember the time limit for a closing statement is 10 minutes in the Mock Trial Competition.
  - To save time for the in-class activity, you could divide a draft statement between 2 or three students.
  - Alternatively, students could record a closing statement for the next activity.
- **Activity 3: Group Discussion and Feedback**
  - Constructively engage in discussion and feedback about the role play or video recordings.
  - Structure the discussion and feedback using the key takeaways in the lesson.

### Additional Resources

- YouTube: Screen Australia - On Trial Proof or Truth (Parts 1 and 2), <https://youtu.be/KJZtvToKWnk>.
- John Coombs QC (1994), "Closing Addresses", NSW Bar Association: [https://nswbar.asn.au/docs/professional/prof\\_dev/BPC/course\\_files/Closing%20Addresses.pdf](https://nswbar.asn.au/docs/professional/prof_dev/BPC/course_files/Closing%20Addresses.pdf).

### Extended Activities

- Consider reviewing the additional resources listed above.
- Review and re-draft your closing statement after reflecting on the above activities and resources.

### Evaluation Criteria

- Students and teachers should take note of and bear in mind the Mock Trial Competition Manual's comments in relation to scoring (p. 8ff), Competition Scoring (p. 24), Progressive Score Sheets (p. 28ff) and Scoring Guidelines (p. 32ff).
- Time limits are important – it is strongly recommended that teachers monitor students' observance of the time limits and provide guidance to students about structure and concision in drafting and presenting closing statements.

**Lesson 10**

**Hints for the Conduct of the Case.**



## 10. Hints for the Conduct of the Case

Practical steps to analyse and strategically present the case

### Overview

#### Purpose

- Read pages 20-22 regarding Hints to the Conduct of the Case in the Mock Trial Competition Manual.
- The purpose of this session is to pick up on the hints supplied in the manual and to extend them to the lessons already undertaken in these materials.

### Helpful Hints for Students Participating in the Mock Trial Competition

Mock trials are an exciting opportunity to develop legal skills, improve public speaking, and learn how to think like a lawyer. Below are key helpful hints covering professional ethics, legal principles, rules of evidence, and effective trial techniques.

#### 1. Professional Ethics and Obligations

✓ **Act Honestly and Respectfully** – Legal professionals have a duty to act with integrity, honesty, and fairness in all dealings before the court.

✓ **Duty to the Court Comes First** – Your role in a mock trial is not just to "win" but to present a fair and just case in accordance with legal principles.

✓ **Don't Mislead the Judge** – Always ensure that your arguments and evidence are truthful, logical, and supported by facts or legal precedent.

✓ **Respect Opposing Counsel and the Judge** – Avoid interrupting others, arguing directly with the judge, or displaying unprofessional behaviour (e.g., rolling eyes, whispering to teammates).

✓ **Stay Within the Mock Trial Rules** – The rules exist to create a fair competition—be sure to follow them.

#### 2. Legal Precedents and Legislation

✓ **Understand Case Law and Statutes** – **Legal precedents (previous court decisions)** help determine how laws should be interpreted, while statutes (legislation) define what is legal or illegal.

✓ **Use Precedents to Support Arguments** – If a past case supports your side, cite it clearly.

✓ **Interpret Legislation Carefully** – Legislation often contains definitions that affect interpretation.

✓ **Plan How to Distinguish Opposing Precedents** – If the other team cites a case against you, be ready to explain why it does not apply.

### 3. Rules of Evidence

✓ **Relevance is Key** – If evidence does not directly relate to the case, it can be objected to as irrelevant.

✓ **Understand and Avoid Hearsay** – A witness cannot testify about what someone else said unless it falls under an exception.

✓ **Opinion Evidence is Limited** – Only expert witnesses can give opinions—other witnesses must stick to what they saw, heard, or experienced.

✓ **Character Evidence is Risky** – If the defence introduces good character evidence, the prosecution can cross-examine the witness on it!

✓ **Know When to Object** – Use objections wisely. In the mock trial, you can object on these grounds:

- Relevance
- Opinion evidence
- Hearsay
- Character evidence
- Leading questions (during examination-in-chief)
- **Browne v Dunn** rule violations (failure to challenge evidence properly)

✓ **Practice Making Concise Objections.**

### 4. Proving Cases

✓ **Remember the Burden of Proof** – In criminal cases, the prosecution must prove guilt beyond reasonable doubt.

✓ **Use the Proof-Making Model** – Break down the legal elements of the charge and connect each element to specific evidence.

✓ **Think Like a Lawyer, Not a Storyteller** – You must prove facts through admissible evidence, not just tell a convincing story.

✓ **Anticipate Weaknesses in Your Case** – Be ready to explain inconsistencies before the opposing side exposes them.

### 5. The Opening Address

✓ **Set the Stage Clearly** – Outline what the case is about and what the evidence will show.

✓ **Start with a Strong Theme** – Example: "This case is about trust and betrayal" (Prosecution) or "Innocent until proven guilty" (Defence).

✓ **Preview Your Key Evidence** – Give the judge a roadmap of what to expect.

✓ **Be Clear About the Law** – Explain the legal test that must be met for conviction or acquittal.

✓ **Speak Confidently and Persuasively** – This is your first impression—make it count!

## 6. Examination-in-Chief (Questioning Your Own Witness)

✓ **Ask Open-Ended Questions** – Begin with Who, What, Where, When, Why, and How.

✓ **Follow a Logical Order** – Start with background questions before moving to key events.

✓ **Never Ask Leading Questions** – Bad: "The car was red, wasn't it?" → **Good:** "Can you describe the car?"

✓ **Support Your Witness** – If they seem nervous, reassure them: "Just tell the court what you remember."

✓ **Anticipate Cross-Examination** – Prepare your witness for difficult questions from the opposing team.

## 7. Cross-Examination (Challenging the Other Side's Witness)

✓ **Control the Witness** – Ask short, leading questions that require a "yes" or "no" answer.

✓ **Expose Inconsistencies** – If the witness changes their story, confront them with their previous statement.

✓ **Don't Let the Witness Explain** – If they try, politely cut them off and repeat your question.

✓ **Use Their Words Against Them** – Example:

- "Earlier, you said it was dark. Now you're saying you saw the defendant's face. Which is it?"

✓ **Follow the Rule in *Browne v Dunn*** – If you will challenge a witness's statement later, you must put it to them during cross-examination.

## 8. The Closing Address

✓ **Return to Your Key Theme** – Reiterate the most important idea of your case.

✓ **Summarise the Best Evidence** – Focus on 2-3 strongest pieces of proof.

✓ **Be Persuasive and Confident** – Avoid weak phrases like "maybe" or "possibly." Instead.

### And another thing...

✓ **Know Your Case Inside and Out** – Be prepared to argue both strengths and weaknesses.

✓ **Practice Speaking Clearly and Confidently** – Judges value clear, persuasive presentations.

✓ **Anticipate the Other Team's Arguments** – Always prepare a response for their strongest points.

✓ **Stay Professional and Respectful** – Address the judge as "Your Honour" and remain polite to opponents.

✓ **Most Importantly: Have Fun and Learn!** – The mock trial is about developing critical thinking, public speaking, and teamwork.

***Good luck and may the best argument win!***

Lesson 11

Expert Tips.



## 11. Expert Tips

### Reinforcing the elements necessary for sound performance

#### Introduction

Participating in a mock trial offers a unique opportunity to develop legal skills and courtroom demeanour. Building upon foundational knowledge, here are advanced expert tips to enhance your performance:

#### Professional Conduct in Court

- **Master Non-Verbal Communication:** Your body language speaks volumes. Maintain eye contact, use deliberate gestures, and adopt a confident posture to convey authority and credibility.
- **Navigate Objections with Poise:** When objecting, stand promptly, address the judge respectfully, and succinctly state the legal basis for your objection. If overruled, accept the decision gracefully and proceed without hesitation.

#### Good Body Language (Professional and Persuasive)

##### 1. Confident Posture:

- Standing straight with shoulders back when speaking.
- Sitting upright with hands neatly placed on the table when not speaking.
- Avoiding slouching or leaning too much on the podium or bar table.

##### 2. Eye Contact:

- Making steady eye contact with the judge while addressing them.
- Looking at the witness during examination-in-chief and cross-examination.
- Avoiding staring at notes excessively or looking down when speaking.

##### 3. Controlled Hand Gestures:

- Using natural and deliberate hand gestures to emphasize points.
- Avoiding excessive or distracting hand movements (e.g., don't twirl your pen!).
- Keeping hands above the table when seated, rather than hiding them in pockets or under the table.

##### 4. Facial Expressions and Reactions:

- Maintaining a neutral or serious expression that matches the tone of the case.
- Nodding slightly when listening to show engagement but not overdoing it.
- Avoiding exaggerated expressions like rolling eyes, frowning, or smirking.

##### 5. Voice and Speech Control:

- Speaking clearly, slowly, and with confidence.
- Using a firm but respectful tone when addressing the court.
- Avoiding mumbling, speaking too softly, or using filler words like "um" or "uh".

##### 6. Respectful Movement and Presence:

- Standing still while speaking, rather than pacing or rocking back and forth.
- Walking with purpose if needing to approach the bench or witness stand.
- Avoiding nervous habits like tapping feet, playing with hair, or fidgeting with objects.

## **Bad Body Language (Unprofessional and Distracting)**

### **1. Slouching or Poor Posture:**

- Leaning too far back or slumping in the chair.
- Resting elbows on the bar table with the head propped up.
- Crossing arms defensively while speaking.

### **2. Lack of Eye Contact:**

- Looking down at notes the entire time while speaking.
- Staring at the floor or out the window instead of at the judge or jury.
- Constantly shifting gaze around the room in an unfocused manner.

### **3. Distracting Hand Movements:**

- Overusing hand gestures to the point of distraction.
- Pointing aggressively at the judge, witness, or opposing counsel.
- Playing with a pen, tapping fingers on the table, or adjusting clothing repeatedly.

### **4. Inappropriate Facial Expressions:**

- Rolling eyes or sighing loudly in reaction to opposing arguments.
- Smirking, laughing, or making sarcastic expressions during serious moments.
- Showing frustration visibly when an answer isn't what was expected.

### **5. Poor Speech Habits:**

- Speaking too fast, making it difficult to understand.
- Raising voice too much, appearing aggressive rather than assertive.
- Using informal language like "yeah" instead of "yes, your Honour."

### **6. Unnecessary Movements:**

- Rocking back and forth while standing.
- Walking around the courtroom unnecessarily.
- Fidgeting with clothes, hair, or jewellery while listening or speaking.

### ***Practice Exercise:***

Have students take turns playing a lawyer and presenting a short argument while the rest of the group observes and gives feedback on body language. Encourage students to practice: Good posture; Confident speaking tone; Controlled gestures - Avoiding distracting habits.

## **Analysing Witness Statements**

- **Develop a Chronological Timeline:** Map out events as described by all witnesses to identify discrepancies and construct a coherent narrative. This timeline can be pivotal during examinations.
- **Assess Witness Credibility:** Evaluate each witness's potential biases, motivations, and reliability. Understanding these factors will inform your strategy in both supporting and challenging testimonies.

## **Using a Flowchart in a Mock Trial**

- ✓ Helps structure witness questioning in examination-in-chief and cross-examination.
- ✓ Allows students to identify key evidence gaps and potential inconsistencies in testimony.
- ✓ Encourages strategic planning for presenting evidence in the correct order.
- ✓ Provides a clear sequence of events for crafting an opening and closing address.

### **Activity**

- Have students create their own flowchart of events based on a case scenario.
- Assign students to play different witness roles and present their testimonies in order.
- Have prosecution and defence teams analyse the timeline and prepare cross-examination strategies.
- This structured flowchart approach ensures that all elements of the case align logically and that students develop strong legal reasoning skills

### **Examination-in-Chief (Direct Examination)**

- Employ the Funnel Technique: Start with broad questions to set the scene, then narrow down to more specific inquiries, guiding the witness to provide detailed and pertinent information.
- Highlight sensory Details: Encourage witnesses to describe sights, sounds, and feelings to create a vivid and memorable narrative for the judge and jury.

### **Cross-Examination**

- Implement the "Five Question Rule": Limit your cross-examination to five impactful questions per witness to maintain focus and prevent diminishing returns. This approach ensures clarity and reinforces key points.
- Sequence Questions Strategically: Begin with questions that establish control, then address critical points, and conclude with questions that reinforce your case theory. This structure maximises the impact of your cross-examination.

### **Activity**

- Have students experiment with drafting cross examination questions that comply with the 5-question rule.

### **Closing Address**

- Weave a Compelling Narrative: Transform the presented evidence into a cohesive story that resonates with the judge, emphasising themes of justice, truth, or morality as appropriate.
- Utilise Rhetorical Devices: Incorporate techniques such as analogies, metaphors, and rhetorical questions to enhance persuasion and leave a lasting impression.

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